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## DEPARTMENT OF HOMELAND SECURITY

### 8 CFR Chapter I

[CIS No. 2555-14; DHS Docket No. USCIS-2016-0006; 1615-AC07]

### Ratification of Department Actions

**AGENCY:** Department of Homeland Security (DHS).

**ACTION:** Ratification.

**SUMMARY:** The Department of Homeland Security is publishing notification of the Secretary of Homeland Security's ratification of a rule.

**DATES:** The ratification was signed on March 31, 2021 and relates back to the original date of the action that it ratifies.

**FOR FURTHER INFORMATION CONTACT:** Leo (Chip) Boucher, Assistant General Counsel, Administrative Law, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528, (202) 282-9822.

**SUPPLEMENTARY INFORMATION:** On March 31, 2021, the Secretary of Homeland Security ratified a final rule entitled, EB-5 Immigrant Investor Program Modernization. See 84 FR 35750 (July

24, 2019). The Department is now publishing the ratification in the **Federal Register** out of an abundance of caution. Neither the ratification nor the publication is a statement that the ratified action would be invalid absent the ratification, whether published or otherwise.

**Adam Hunter,**

*Deputy Assistant Secretary for Immigration Policy, U.S. Department of Homeland Security.*

**Appendix**

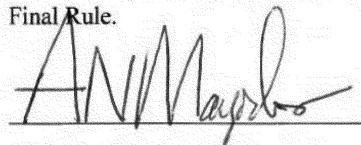
## RATIFICATION

I am affirming and ratifying a prior action by Acting Secretary Kevin McAleenan, out of an abundance of caution, because of a Government Accountability Office (GAO) opinion, see B. 331650 (Comp. Gen. Aug. 14, 2020), and recent actions filed in federal court alleging that Mr. McAleenan's appointment as Acting Secretary of Homeland Security was not valid. See, e.g., *Guedes v. Bureau of Alcohol, Tobacco, Firearms and Explosives*, 920 F.3d 1 (D.C. Cir. 2019) ("We have repeatedly held that a properly appointed official's ratification of an allegedly improper official's prior action . . . resolves the claim on the merits by remedy[ing] the defect (if any) from the initial appointment") (quotation marks omitted) (second alteration in original).

I have full and complete knowledge of the following action taken by Acting Secretary McAleenan:

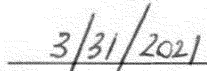
- Final Rule, EB-5 Immigrant Investor Program Modernization, 84 Fed. Reg. 35,750 (July 24, 2019) (the "EB-5 Final Rule").

Pursuant to my authority as Secretary of Homeland Security, and based on my review of the EB-5 Final Rule, I hereby make a detached and considered affirmation and ratification of the EB-5 Final Rule.



Alejandro N. Mayorkas

Secretary of Homeland Security



Date

[FR Doc. 2021-16330 Filed 7-29-21; 8:45 am]

BILLING CODE 9112-PP-P

**DEPARTMENT OF HOMELAND SECURITY****8 CFR Chapter I**

[CIS No. 2617-18; DHS Docket No. USCIS-2018-0001]

RIN 1615-AC19

**Ratification of Department Actions****AGENCY:** Department of Homeland Security (DHS).**ACTION:** Ratification.**SUMMARY:** The Department of Homeland Security is publishing notification of the Secretary of Homeland Security's ratification of a rule.**DATES:** The ratification was signed on May 4, 2021 and relates back to the original date of each action that it ratifies.**FOR FURTHER INFORMATION CONTACT:** Leo (Chip) Boucher, Assistant General Counsel, Administrative Law, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528, (202) 282-9822.**SUPPLEMENTARY INFORMATION:** On May 4, 2021, the Secretary of Homeland Security ratified a final rule entitled, Removal of 30-Day Processing Provisionfor Asylum Applicant-Related Form I-765 Employment Authorization Applications, as well as the associated notice of proposed rulemaking. See 85 FR 37502 (June 22, 2020); 84 FR 47148 (Sept. 9, 2019). The Department is now publishing the ratification in the **Federal Register** out of an abundance of caution. Neither the ratification nor the publication is a statement that the ratified action would be invalid absent the ratification, whether published or otherwise.

Signed:

**Adam Hunter,***Deputy Assistant Secretary for Immigration Policy, U.S. Department of Homeland Security.*

## APPENDIX

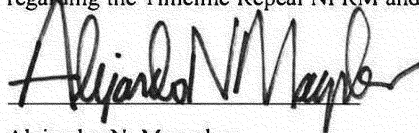
## RATIFICATION

Out of an abundance of caution, I affirm and ratify prior delegable actions and decisions regarding the approval, issuance, signing, and publication of the Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications rulemaking.

I have familiarized myself with the following actions:

- Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, Notice of Proposed Rulemaking (NPRM), 84 Fed. Reg. 47,148 (published Sept. 9, 2019) ("Timeline Repeal NPRM").
- Removal of 30-Day Processing Provision for Asylum Applicant-Related Form I-765 Employment Authorization Applications, Final Rule, 85 Fed. Reg. 37,502 (published June 22, 2020) ("Timeline Repeal Final Rule").

Pursuant to my authority as Secretary of Homeland Security and based on my review of the actions and decisions listed above, I hereby affirm and ratify the above actions and decisions regarding the Timeline Repeal NPRM and the Timeline Repeal Final Rule.



Alejandro N. Mayorkas  
Secretary of Homeland Security

MAY 4, 2021

Date

[FR Doc. 2021-16329 Filed 7-29-21; 8:45 am]

BILLING CODE 9112-FP-P

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**DEPARTMENT OF HOMELAND  
SECURITY**

**8 CFR Chapter I**

[DHS Docket No. ICEB-2017-0001]

RIN 1653-AA67

**Ratification of Department Action**

**AGENCY:** Department of Homeland Security (DHS).

**ACTION:** Ratification.

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**SUMMARY:** The Department of Homeland Security is publishing notification of the Secretary of Homeland Security's ratification of a rule.

**DATES:** The ratification was signed on April 15, 2021 and relates back to the original date of the action that it ratifies.

**FOR FURTHER INFORMATION CONTACT:** Leo (Chip) Boucher, Assistant General Counsel, Administrative Law, Office of the General Counsel, Department of Homeland Security, Washington, DC 20528, (202) 282-9822.

**SUPPLEMENTARY INFORMATION:** On April 15, 2021, the Secretary of Homeland Security ratified a final rule entitled, Procedures and Standards for Declining

Surety Immigration Bonds and Administrative Appeal Requirement for Breaches. *See* 85 FR 45968 (July 31, 2020). The Department is now publishing the ratification in the **Federal Register** out of an abundance of caution. Neither the ratification nor the publication is a statement that the ratified action would be invalid absent the ratification, whether published or otherwise.

Signed:

**Adam Hunter,**

*Deputy Assistant Secretary for Immigration Policy, U.S. Department of Homeland Security.*

## Appendix

Secretary

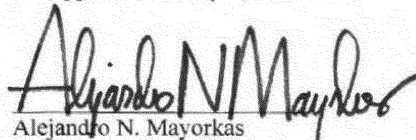
U.S. Department of Homeland Security  
Washington, DC 20528Homeland  
Security

## Ratification of the Final Rule Regarding Surety Bonds

I am affirming and ratifying the delegable action taken by Acting Secretary Wolf, *see* 5 U.S.C. § 3348(a)(2), as listed below, to provide an independent basis to address potential legal challenges to the final rule because of a Government Accountability Office (GAO) opinion, *see* B-331650 (Comp. Gen., Aug. 14, 2020) and actions filed in federal court alleging that the April 9, 2019, order of succession issued by former Secretary Kirstjen Nielsen and the November 8, 2019, order of succession issued by former Acting Secretary Kevin McAleenan were not valid. *See, e.g., Guedes v. Bureau of Alcohol, Tobacco, Firearms, and Explosives*, 920 F.3d 1, 13 (D.C. Cir. 2019) (“We have repeatedly held that a properly appointed official’s ratification of an allegedly improper official’s prior action . . . resolves the claim on the merits by remedy[ing] the defect (if any) from the initial appointment.”) (internal quotation marks and citation omitted).

I have full knowledge of the ICE Final Rule: *Procedures and Standards for Declining Surety Immigration Bonds and Administrative Appeal Requirements for Breaches*, approved on July 1, 2020, and I believe that this action was consistent with the Department’s authorities.

Pursuant to the Secretary of Homeland Security’s authorities under, *inter alia*, the Homeland Security Act of 2002, Pub. L. No. 107-296, as amended, and 5 U.S.C. §§ 301-302, I hereby make a detached and considered affirmation and ratification of the above noted action originally taken and approved on July 1, 2020.

  
Alejandro N. Mayorkas  
Secretary

April 15, 2021  
Date

[www.dhs.gov](http://www.dhs.gov)

**SMALL BUSINESS ADMINISTRATION****13 CFR Part 120****[Docket Number SBA–2021–0015]****RIN 3245–AH79****Business Loan Program Temporary Changes; Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment****AGENCY:** U.S. Small Business Administration.**ACTION:** Interim final rule.

**SUMMARY:** This interim final rule implements changes related to the forgiveness of loans made under the Paycheck Protection Program (PPP), which was originally established under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) to provide economic relief to small businesses nationwide adversely impacted by the Coronavirus Disease 2019 (COVID–19), as amended. SBA has issued a number of interim final rules implementing the PPP Program. This interim final rule further streamlines the forgiveness process for PPP loans of \$150,000 or less by allowing lenders to use a COVID Revenue Reduction Score at the time of forgiveness to document the required revenue reduction for Second Draw PPP Loans, and establishing a direct borrower forgiveness process for lenders that choose to opt-in as an alternative method of processing loan forgiveness applications. This interim final rule also extends the loan deferment period for those PPP loans where the borrower timely files an appeal of a final SBA loan review decision with the SBA Office of Hearings and Appeals.

**DATES:**

*Effective date:* The provisions of this interim final rule are effective July 28, 2021.

*Applicability date:* The COVID Revenue Reduction Score portion of this interim final rule applies to all Second Draw PPP Loans for which the lender has not yet issued a loan forgiveness decision to SBA as of the effective date of this rule. The direct borrower forgiveness process portion of this rule applies to all PPP loans for which a loan forgiveness application has not been submitted by the borrower to the lender as of the effective date of this rule. The deferment portion of the rule applies to PPP appeals filed after the effective date of this rule and to those PPP appeals filed before the effective date of this rule for which a Notice and Order has not been issued.

*Comment date:* Comments must be received on or before August 30, 2021.

**ADDRESSES:** You may submit comments, identified by docket number SBA–2021–0015 through the Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

SBA will post all comments on [www.regulations.gov](http://www.regulations.gov). If you wish to submit confidential business information (CBI) as defined in the User Notice at [www.regulations.gov](http://www.regulations.gov), please send an email to [ppp-ifr@sba.gov](mailto:ppp-ifr@sba.gov). All other comments must be submitted through the Federal eRulemaking Portal described above. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination whether it will publish the information.

**FOR FURTHER INFORMATION CONTACT:** A Call Center Representative at 833–572–0502 or the local SBA Field Office; the list of offices can be found at <https://www.sba.gov/tools/local-assistance/districtoffices>. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339. Individuals with disabilities can obtain this document in an accessible format that may be provided in Rich Text Format (RTF) or text format (txt), a thumb drive, an mp3 file, Braille, large print, audiotape, or compact disc, or other accessible formats.

**SUPPLEMENTARY INFORMATION:****I. Background Information**

On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Pub. L. 116–136) was enacted to provide emergency assistance and health care response for individuals, families, and businesses affected by the Coronavirus Disease 2019 (COVID–19) pandemic. Section 1102 of the CARES Act temporarily permitted the Small Business Administration (SBA) to guarantee 100 percent of 7(a) loans under a new program titled the “Paycheck Protection Program,” pursuant to section 7(a)(36) of the Small Business Act (15 U.S.C. 636(a)(36)) (First Draw PPP Loans). Section 1106 of the CARES Act provided for forgiveness of up to the full principal amount of qualifying loans guaranteed under the Paycheck Protection Program (PPP). On April 24, 2020, the Paycheck Protection Program and Health Care Enhancement Act (Pub. L. 116–139) was enacted, which

provided additional funding and authority for the PPP Program.

On June 5, the Paycheck Protection Program Flexibility Act of 2020 (PPP Flexibility Act) (Pub. L. 116–142) was enacted, which changed provisions of the PPP relating to the maturity of PPP loans, the deferral of PPP loan payments, and the forgiveness of PPP loans. On July 4, 2020, Public Law 116–147 extended the authority to guarantee PPP loans to August 8, 2020.

On December 27, 2020, the Economic Aid to Hard-Hit Small Businesses, Nonprofits and Venues Act (Economic Aid Act) (Pub. L. 116–260) was enacted. The Economic Aid Act reauthorized lending under the PPP through March 31, 2021. The Economic Aid Act added a new temporary section 7(a)(37) to the Small Business Act, which authorizes SBA to guarantee additional PPP loans (Second Draw PPP Loans) to certain eligible borrowers that previously received a First Draw PPP Loan under generally the same terms and conditions available under section 7(a)(36) of the Small Business Act. Among other things, to be eligible for a Second Draw PPP Loan, the borrower must have experienced a revenue reduction of not less than 25% in at least one quarter of 2020 compared to the same quarter in 2019. The Economic Aid Act also redesignated section 1106 of the CARES Act as section 7A of the Small Business Act, to appear after section 7 of the Small Business Act. Additionally, the Economic Aid Act provided for a simplified forgiveness application process for PPP loans of \$150,000 or less.

On March 11, 2021, the American Rescue Plan Act (ARPA) (Pub. L. 117–2) was enacted, and among other things, expanded eligibility for First Draw PPP Loans and Second Draw PPP Loans and revised exclusions from payroll costs for purposes of forgiveness. On March 30, 2021, the PPP Extension Act of 2021 (Pub. L. 117–6) was enacted, extending SBA’s PPP program authority through June 30, 2021.

From April 3, 2020, through August 8, 2020, when the 2020 round of PPP expired, SBA guaranteed over 5.2 million PPP loans made by over 5,000 PPP lenders under delegated authority. From January 11, 2021, when the PPP reopened, through June 30, 2021, when the PPP program authority expired, SBA guaranteed over 6.6 million additional PPP loans. Thus, the total number of PPP loans guaranteed by SBA exceeds 11.8 million.<sup>1</sup> The total dollar amount of

<sup>1</sup>By way of contrast, in a normal fiscal year, for example FY 2019, SBA guaranteed 51,907 7(a)

the PPP loans guaranteed by SBA exceeds \$806 billion.

SBA posted the first interim final rule implementing the PPP on SBA's website on April 2, 2020, and published the rule in the **Federal Register** on April 15, 2020 (85 FR 20811). SBA subsequently issued numerous additional interim final rules. On June 1, 2020, SBA published an interim final rule on loan forgiveness requirements (85 FR 33004) and an interim final rule on loan review procedures (85 FR 33010). Prior to the publication of the loan forgiveness and loan review interim final rules, on May 15, 2020, SBA issued SBA Form 3508, which was a loan forgiveness application to be used by all PPP borrowers.

On June 26, 2020, SBA published an interim final rule revising the loan forgiveness and loan review procedures to conform to the key forgiveness changes made by the PPP Flexibility Act (85 FR 38304). In conjunction with the rule, SBA issued a second loan forgiveness application form, SBA Form 3508EZ, which is a streamlined form that incorporates the forgiveness safe harbors established under the PPP Flexibility Act.

SBA's 2020 PPP program authority expired on August 8, 2020. On August 10, 2020, SBA began accepting PPP lender decisions on PPP borrower loan forgiveness applications through SBA's Paycheck Protection Platform (Platform) (*forgiveness.sba.gov*). PPP borrowers were required to submit their loan forgiveness applications to their PPP lenders, and as required by section 1106 of the CARES Act (now section 7A of the Small Business Act), lenders were required to issue a decision to SBA on the borrower's loan forgiveness application within 60 days of receipt of the application. On August 27, 2020, SBA issued an interim final rule on Appeals of SBA Loan Review Decisions under the Paycheck Protection Program (85 FR 52883). On October 2, 2020, SBA began remitting forgiveness payments to PPP lenders that submitted forgiveness decisions to SBA through the Platform. SBA continues to remit forgiveness payments to PPP lenders, and as of July 12, 2021, SBA has remitted over 4.3 million forgiveness payments to lenders.<sup>2</sup>

On October 19, 2020, in response to borrower and lender concerns about the complexity of the loan forgiveness

process for the smallest of borrowers, SBA and the Department of the Treasury (Treasury) jointly issued an interim final rule revising the loan forgiveness and loan review procedures to simplify the forgiveness process for PPP loans of \$50,000 or less. Among other things, the rule exempted borrowers with loans of \$50,000 or less from the full-time equivalent employee (FTE) and salary/wage reduction penalties included in section 1106 of the CARES Act, under the joint SBA/Treasury statutory authority to make *de minimis* exemptions to those penalties. In conjunction with the rule, SBA issued a third loan forgiveness application, SBA Form 3508S, which was a further streamlined loan forgiveness application available for use by borrowers with loans of \$50,000 or less.

On January 14, 2021, SBA published interim final rules implementing the Economic Aid Act amendments to the PPP. The first interim final rule implemented Economic Aid Act changes to, among other things, PPP eligibility, and consolidated numerous prior interim final rules on PPP (86 FR 3692) (Consolidated Eligibility IFR). The second interim final rule implemented the Second Draw PPP Loan program authorized by the Economic Aid Act under section 7(a)(37) of the Small Business Act (86 FR 3712) (Second Draw IFR). On February 5, 2021, SBA published a third interim final rule implementing Economic Aid Act changes related to the forgiveness and review of PPP loans (86 FR 8283) (Consolidated Forgiveness and Loan Review IFR). Among other things, the Consolidated Forgiveness and Loan Review IFR implemented the simplified forgiveness application process for loans of \$150,000 or less required by the Economic Aid Act. In conjunction with this rule, on January 19, 2021, SBA issued a revised SBA Form 3508S, which increased the loan amount for which the form could be used from \$50,000 to \$150,000.<sup>3</sup> The new SBA Form 3508S was also shortened to one page, as required by the Economic Aid Act, and no longer requires the submission of supporting forgiveness documentation, as mandated by the Economic Aid Act.

Following the publication of the interim final rules implementing the Economic Aid Act, SBA published another interim final rule on March 8, 2021, revising certain loan amount calculation and eligibility provisions for

PPP (86 FR 13149). On March 22, 2021, SBA published an interim final rule implementing the PPP provisions of ARPA (86 FR 15083).

As described below, this interim final rule further streamlines the forgiveness process for PPP loans of \$150,000 or less by (a) allowing lenders to use a COVID Revenue Reduction Score at the time of loan forgiveness to document the required revenue reduction for Second Draw PPP loans of \$150,000 or less, and (b) establishing a direct borrower forgiveness process for lenders that choose to opt-in as an alternative method of processing loan forgiveness applications for PPP Loans of \$150,000 or less. This interim final rule also extends the loan deferment period for those PPP loans where the borrower timely files an appeal of a final SBA loan review decision with the SBA Office of Hearings and Appeals.

## II. Comments and Immediate Effective Date

This interim final rule is being issued without advance notice and public comment because section 1114 of the CARES Act and section 303 of the Economic Aid Act authorize SBA to issue regulations to implement the Paycheck Protection Program without regard to notice requirements. Even otherwise, SBA finds good cause for setting aside the advance notice-and-public-comment procedure because that procedure would be impracticable and contrary to the public interest. The intent of the CARES Act and the Economic Aid Act is to afford SBA the flexibility to provide relief to America's small businesses and nonprofit organizations expeditiously. Given the urgent need to provide borrowers with timely relief, the purpose of the rule is to minimize the burdens of the current loan forgiveness process that, without modification, could result in borrowers unnecessarily having to make principal and interest payments on loans that should be forgiven. If SBA were to follow the advance notice-and-public-comment process, that would delay issuance of the rule by at least three months. SBA understands—based on its expertise and consistent portfolio analysis—that a significant number of borrowers will have to apply for loan forgiveness in the next three months. Therefore, if the proposed rule is still undergoing notice and comment during that time, these borrowers will be applying under the current process, which (as noted above) would mean these borrowers could unnecessarily have to make principal and interest payments on loans that should be forgiven and would not be positively

loans. The astronomical increase in SBA's 7(a) portfolio, of which the PPP is a part, has strained SBA's resources and will continue to strain SBA's resources going forward.

<sup>2</sup> As of July 12, 2021, SBA has received over 4.5 million forgiveness decisions from PPP lenders through the Platform.

<sup>3</sup> Although borrowers with loans of \$150,000 or less may now use SBA Form 3508S, only those borrowers with loans of \$50,000 or less may use the *de minimis* exemption from the FTE and salary/wage reduction penalty.

impacted by a later rule change. Providing for notice and comment would render the rule effectively moot and useless for millions of intended beneficiaries.

For these same reasons, SBA has determined that it is impractical and not in the public interest to provide a 30-day delayed effective date. An immediate effective date will allow SBA to expedite loan forgiveness to small businesses and nonprofit organizations and remit forgiveness payments to lenders.

This good cause justification also supports waiver of the 60-day delayed effective date for major rules under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act) at 5 U.S.C. 808(2). Although this interim final rule is effective immediately, comments are solicited from interested members of the public on all aspects of the interim final rule.

These comments must be submitted on or before August 30, 2021. SBA will consider these comments and the need for making any revisions as a result of these comments.

### **III. Paycheck Protection Program—COVID Revenue Reduction Score, Direct Borrower Forgiveness Process, and Appeals Deferment**

#### *Overview*

#### **A. Further Streamlining Forgiveness for PPP Loans of \$150,000 or Less**

A key feature of the PPP is that a borrower may obtain forgiveness of up to the full amount of its PPP loan provided that the borrower complied with PPP requirements. Since SBA issued the first loan forgiveness application form (SBA Form 3508) in May 2020 and published the first loan forgiveness and loan review rules in June 2020, SBA has received comments from borrowers and lenders that the loan forgiveness process is overwhelming and difficult to manage and requesting simplification of the process. In response to borrower and lender requests for simplification of the loan forgiveness process, Congress enacted the PPP Flexibility Act in June 2020, which created safe harbors from the FTE and salary/wage reduction penalties of section 1106 of the CARES Act, and in response, SBA issued a new streamlined loan forgiveness application (SBA Form 3508EZ) implementing those changes.

In October 2020, SBA and Treasury exempted borrowers with loans of \$50,000 or less from the FTE and salary/wage reduction penalties and issued a

second new streamlined loan forgiveness application (SBA Form 3508S) implementing those changes. Borrowers and lenders continued to express concerns about the complexity of the loan forgiveness process, and in December 2020, Congress enacted the Economic Aid Act, which provides for a simplified loan forgiveness application process for borrowers with loans of \$150,000 or less. SBA implemented this requirement by revising the second streamlined loan forgiveness application (SBA Form 3508S) to allow all borrowers with loans of \$150,000 or less to use the form.

Loans of \$150,000 or less represent 93 percent of the outstanding PPP loans. Despite the implementation of the streamlined loan forgiveness application for borrowers with loans of \$150,000 or less, many smaller PPP lenders continue to express concerns to SBA that they do not have the technology or human resources to develop efficient electronic loan forgiveness platforms to process the new streamlined loan forgiveness application.<sup>4</sup> SBA has also become aware that because lenders are overwhelmed by the volume of PPP loans and are mindful of the statutory 60-day requirement for lenders to issue a forgiveness decision to SBA from receipt of the borrower's loan forgiveness application, lenders are limiting when loan forgiveness applications are accepted from borrowers, creating uncertainty among borrowers that they are going to have to start making payments on their PPP loans while they are waiting for their lenders to accept and process their loan forgiveness applications.

Additionally, SBA has heard concerns from PPP lenders of all sizes that the requirement for borrowers to submit and lenders to review at the time of forgiveness the revenue reduction documentation for Second Draw PPP Loans of \$150,000 or less is delaying the forgiveness process for these borrowers.

To further simplify and streamline the forgiveness process for loans \$150,000 or less, SBA is making two changes under this interim final rule. First, for Second Draw PPP Loans of \$150,000 or less, where the borrower is required to provide revenue reduction documentation at the time of loan forgiveness, SBA is allowing lenders to use a COVID Revenue Reduction Score developed by SBA's contractor as an optional method to document the borrower's revenue reduction. Second,

SBA is making available a direct borrower forgiveness process for lenders that choose to opt-in as an alternative method for processing borrower loan forgiveness applications for all PPP loans of \$150,000 or less.

#### **1. COVID Revenue Reduction Score**

Among other things, to be eligible for a Second Draw PPP Loan, a PPP borrower is required to have experienced a revenue reduction of not less than 25% during one quarter of 2020 compared to the same quarter in 2019. Under section 7(a)(37)(I) of the Small Business Act, when a borrower applies for a Second Draw PPP Loan of \$150,000 or less, the borrower can submit a certification that the borrower meets the revenue reduction standard, provided that on or before the date on which the borrower submits an application for loan forgiveness, the borrower produces adequate documentation that the borrower has met the revenue reduction standard. All Second Draw PPP Loan borrowers were required to certify on their loan applications (SBA Forms 2483–SD and 2483–SD–C) that they realized a reduction in gross receipts in excess of 25% relative to the relevant comparison time period.

The Second Draw PPP Loan IFR and the Loan Forgiveness and Loan Review IFR implementing the Economic Aid Act provide that if a borrower with a Second Draw PPP Loan of \$150,000 or less did not produce documentation of revenue reduction at the time of application, the borrower must, on or before the date the borrower applies for loan forgiveness, submit to the lender documentation adequate to establish that the borrower experienced a revenue reduction of 25% or greater in 2020 relative to 2019, and such documentation may include relevant tax forms, including annual tax forms, or if relevant tax forms are not available, quarterly financial statements or bank statements. The rules also provide that where a borrower with a Second Draw PPP Loan of \$150,000 or less does not provide documentation of revenue reduction with its loan application, the lender must perform a good faith review of the documents provided by the borrower at or before forgiveness, including the borrower's calculations and supporting documents.<sup>5</sup>

<sup>5</sup> As set forth in the Consolidated Eligibility IFR, Lenders must comply with the applicable lender obligations set forth in the interim final rule, but will be held harmless for borrowers' failure to comply with program criteria and will not be subject to any enforcement action or penalty relating to loan origination or forgiveness of the PPP



To streamline forgiveness of Second Draw PPP Loans of \$150,000 or less where the borrower did not submit documentation of revenue reduction at the time of the loan application, SBA has determined that an alternative form of revenue reduction confirmation is warranted to document the borrower's revenue reduction. An independent third-party SBA contractor has developed a COVID Revenue Reduction Score (score) based on a variety of inputs including industry, geography, and business size. The score uses current data on economic recovery and return of businesses to operational status.<sup>6</sup> Each Second Draw PPP Loan of \$150,000 or less will be assigned a score, which will be maintained in the Platform and will be visible to lenders to use on an optional basis as an alternative to document revenue reduction. Additionally, the score will be visible to those borrowers that submit their loan forgiveness applications through the Platform using the direct borrower forgiveness process.

When the score meets or exceeds the value required for validation of the borrower's revenue reduction, use of the score will satisfy the requirement for the borrower to document revenue reduction. When the score does not meet the value required for validation of the borrower's revenue reduction, and if the borrower has not already provided documentation to the lender that validates the borrower's revenue reduction, the borrower must provide documentation either directly to the lender (for those lenders that do not opt-in to the direct borrower forgiveness process) or provide documentation to the lender by uploading it to the Platform.

Shortly after issuance of this rule, SBA will be providing additional guidance regarding the procedures for

loan if the lender acts in good faith relating to the origination or forgiveness of the PPP loan and satisfies all other applicable Federal, State, local, and other statutory or regulatory requirements (as provided in section 7A(h) of the Small Business Act, as amended) (86 FR 3692, 3695).

<sup>6</sup> The independent third-party contractor will use a Consumer Demand Recovery Index that combines multiple data sources of the consumption of products and/or services (foot traffic, third party data, credit card spending, etc.) provided by businesses. Further, using the Business Operations Response Index, the score will measure the businesses' return to operational status, which includes employment and unemployment data, business to business payment transactions, mobility and foot traffic on workplace and visitor frequency at physical locations. The resulting score will reflect declines in revenue. The contractor has advised SBA that this methodology will result in a score that will adequately document that the borrower met the revenue reduction standard as required by section 7(a)(37)(I)(i)(II) of the Small Business Act.

lenders and borrowers to use the COVID Revenue Reduction Score, including when a score meets or exceeds the value required for validation of the required reductions in gross receipts and thus is considered adequate documentation of the borrower's revenue reduction.

## 2. Direct Borrower Forgiveness Process

In response to PPP lender and borrower concerns, SBA is implementing a direct borrower forgiveness process. The direct borrower forgiveness process is an optional technology solution that SBA is providing to PPP lenders that will leverage SBA's existing and proven Platform and align with and seamlessly integrate the streamlined forgiveness application for loans of \$150,000 or less mandated by the Economic Aid Act.

When a PPP lender opts-in to the direct borrower forgiveness process, the Platform will provide a single secure location for all of its borrowers with loans of \$150,000 or less to apply for loan forgiveness through the Platform using the electronic equivalent of SBA Form 3508S. Upon receipt of notice that a borrower has applied for forgiveness through the Platform, lenders will review the loan forgiveness application in the Platform and issue a forgiveness decision to SBA inside the Platform. SBA believes that lenders that opt-in to using the direct borrower forgiveness process will benefit with reduced costs, increased efficiency, and more timely remittance of forgiveness payments from SBA, while borrowers will benefit from the ability to submit loan forgiveness applications directly through the Platform and reduce the wait time and uncertainty associated with submission through their lender.

Shortly after issuance of this rule, SBA will be issuing more detailed procedural guidance regarding (1) the process for lenders to opt-in to the direct borrower forgiveness process, (2) the process for borrowers with loans of \$150,000 or less to access the Platform and submit their loan forgiveness applications directly through the Platform, and (3) the process for lenders to access the forgiveness applications in the Platform to perform reviews of their borrowers' applications, issue forgiveness decisions to SBA, and request forgiveness payments from SBA. During the transition period after the launch of the direct borrower forgiveness process, lenders that opt-in will be expected to complete the processing of any loan forgiveness applications that have already been submitted by borrowers to the lender and should inform such borrowers not

to submit a duplicate loan forgiveness application through the Platform.

After the launch of the direct borrower forgiveness process, borrowers will continue to submit loan forgiveness applications to their lenders, rather than through the Platform, under the following circumstances:

- The PPP lender does not opt-in to use the direct borrower forgiveness process;
- The borrower's PPP loan amount is greater than \$150,000;
- The borrower does not agree with the data as provided by the SBA system of record, or cannot validate their identity in the Platform (for example, if there is an unreported change of ownership); or
- For any other reason where the Platform rejects the borrower's submission.

In such circumstances, borrowers must follow instructions from their lender regarding how the lender expects the borrower to submit a forgiveness application for its PPP loan.

## B. Deferment Extension for OHA Appeals

Currently, the rule for appeals of final SBA loan review decisions on PPP loans provides that because a PPP borrower must begin making payments of principal and interest on the remaining balance of its PPP loan when SBA remits the loan forgiveness amount to the PPP lender (or notifies the lender that no loan forgiveness is allowed), an appeal by a PPP borrower of any final SBA loan review decision does not extend the deferment period of the PPP loan. SBA is amending the appeals rule to, among other things, provide that a borrower's timely appeal of a final SBA loan review decision will extend the deferment period for the PPP loan until SBA's Office of Hearings and Appeals (OHA) issues a final decision on the appeal. The revised OHA rule will provide that the borrower should notify the lender of the appeal so that the lender can extend the deferment period. Under the revised OHA rule, an appeal petition must be filed with OHA within 30 calendar days after the appellant's receipt of the final SBA loan review decision.

SBA has determined that, in order to avoid the potential administrative burden of having to reverse implementation of the final SBA loan review decision, including the refund of borrower payments by the lender and the processing of forgiveness payments by SBA, a timely appeal by a PPP borrower of a final SBA loan review decision should extend the deferment period of the PPP loan. SBA believes

that allowing for continued deferment is in the best interest of the borrower. For these reasons, SBA is conforming the applicable PPP rules to provide that a timely appeal by a PPP borrower of a final SBA loan review decision extends the deferment period of the PPP loan until OHA's decision becomes final under 13 CFR 134.1211.

#### IV. Revisions to Prior PPP Rules

Therefore, the following changes are made to PPP rules:

*1st Revision:* The first sentence of Part IV.2.a. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8287) is revised to read as follows:

##### 2. Loan Forgiveness Process

a. What is the general process to obtain loan forgiveness?

To receive loan forgiveness on either a First Draw PPP Loan or a Second Draw PPP Loan, a borrower must complete and submit the Loan Forgiveness Application<sup>27</sup> to its lender (or to the lender servicing its loan), or for loans of \$150,000 or less if directed by its lender, through the Paycheck Protection Platform (*forgiveness.sba.gov*). \* \* \*

*2nd Revision:* Part IV.2.b. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8288) is revised by adding a sentence to the end of the paragraph to read as follows:

b. When must a borrower apply for loan forgiveness or start making payments on a loan?<sup>31</sup>

\* \* \* Notwithstanding the foregoing, a borrower's timely appeal of a final SBA loan review decision extends the deferment period on the PPP loan until SBA's Office of Hearings and Appeals issues a final decision on the appeal under 13 CFR 134.1211.

*3rd Revision:* Part IV.6.a. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8293) is revised by adding a sentence to the end of the first paragraph to read as follows:

##### 6. Documentation Requirements

a. What must borrowers submit for forgiveness of their PPP loans?

\* \* \* If a Second Draw PPP Loan borrower's COVID Revenue Reduction Score in the Paycheck Protection Platform meets or exceeds the value

required to validate the borrower's revenue reduction, no additional documentation is required to be submitted by the borrower.

\* \* \* \* \*

*4th Revision:* The first sentence of Part IV.6.b. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8293) is revised to read as follows:

b. What documentation are borrowers who are individuals with self-employment income who file a Form 1040, Schedule C or F required to submit to their lender with their request for loan forgiveness?

For borrowers that received loans of \$150,000 or less that use the SBA Form 3508S, the borrower must submit the certification and information required by section 7A(J)(1)(A) of the Small Business Act and, for a Second Draw PPP Loan, revenue reduction documentation (which could be the COVID Revenue Reduction Score, if applicable) if such documentation was not provided at the time of application.<sup>68</sup> \* \* \*

\* \* \* \* \*

*5th Revision:* Part IV.6.c. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8293) is revised by adding a sentence to the end of the third paragraph to read as follows:

c. What additional documentation must a borrower submit when the President of the United States, Vice President of the United States, the head of an Executive department, or a Member of Congress, or the spouse of any of the preceding, directly or indirectly holds a controlling interest in the borrower?

\* \* \* \* \*

\* \* \* If a borrower with a First Draw PPP Loan of \$150,000 or less submits its loan forgiveness application through the Paycheck Protection Platform (Platform), the borrower must submit any required SBA Form 3508D through the Platform not later than 30 days after submitting its application through the Platform.

\* \* \* \* \*

*6th Revision:* Footnote 82 in Part V.1.f. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8295) is revised to read as follows:

See 85 FR 52833 (Aug. 27, 2020), as amended.

*7th Revision:* The SBA Form 3508S subsection of Part V.2.a. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8296) is revised to read as follows:

#### 2. The Loan Forgiveness Process for Lenders

a. What should a lender review?

\* \* \* \* \*

When a borrower submits SBA Form 3508S or lender's equivalent form, the lender shall:

i. Confirm receipt of the borrower certifications contained in the SBA Form 3508S or lender's equivalent form.

ii. In the case of a Second Draw PPP Loan of \$150,000 or less for which the borrower did not provide documentation of revenue reduction with its application and the lender did not conduct a review of the documentation at the time of application:

If the borrower submits its loan forgiveness application to the lender, the lender may review the borrower's COVID Revenue Reduction Score (score) in the Platform to confirm that it meets or exceeds the value required to validate the required reduction in gross receipts. If the borrower's score does not meet or exceed the required value, the lender must confirm the dollar amount and percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction.<sup>85</sup>

If the borrower submits its loan forgiveness application through the Paycheck Protection Platform (Platform), the lender must review the borrower's score in the Platform to confirm that it meets or exceeds the value required to validate the required reduction in gross receipts. If the borrower's score does not meet or exceed the required value, the lender must review the revenue reduction documentation uploaded by the borrower into the Platform and confirm the dollar amount and percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction.

For those borrowers that are required to submit documentation regarding revenue reduction (other than a COVID Revenue Reduction Score), if the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents regarding revenue reduction, the lender should work with the borrower to remedy the issue. Providing an accurate calculation

<sup>27</sup> SBA Form 3508, 3508EZ, 3508S, as applicable, or lender equivalent. Loan Forgiveness Application forms were amended to conform to the Economic Aid Act, including section 307, which requires a simplified forgiveness application for loans of not more than \$150,000. The Simplified Forgiveness Application is SBA Form 3508S (as amended).

<sup>31</sup> This subsection was originally published at 85 FR 38304, section III.1.e. (June 26, 2020), was modified to conform to sections 306 and 307 of the Economic Aid Act by 86 FR 8283, 8288 (February 5, 2021), and is being further modified to incorporate deferments due to appeals.

<sup>68</sup> See subsection (g)(2)(v) of the interim final rule on Second Draw PPP Loans. 86 FR 3712, 3721 (Jan. 14, 2021).

<sup>85</sup> See subsection (h)(2)(i)(D) of the interim final rule on Second Draw PPP Loans. 86 FR 3712, 3721 (Jan. 14, 2021).

of the loan forgiveness amount is the responsibility of the borrower, and the borrower attests to the accuracy of its reported information and calculations on the Loan Forgiveness Application. The borrower shall not receive forgiveness without submitting all required documentation to the lender.

As the First Interim Final Rule<sup>86</sup> and section IV.7 above indicate, lenders may rely on borrower representations. As stated in paragraph III.3.c of the First Interim Final Rule, the lender does not need to independently verify the borrower's reported information if the borrower submits documentation supporting its request for loan forgiveness (if required) and attests that it accurately verified the payments for eligible costs.

*8th Revision:* The first sentence of the first paragraph of Part V.2.b. of the Consolidated Forgiveness and Loan Review IFR (86 FR 8283, 8296) is revised to read as follows:

b. What is the timeline for the lender's decision on a loan forgiveness application?

The lender must issue a decision to SBA on a loan forgiveness application not later than 60 days after receipt of a complete loan forgiveness application from the borrower or, if applicable, notification by the Paycheck Protection Platform (Platform) that the borrower has submitted a loan forgiveness application into the Platform. \* \* \*

*9th Revision:* Part III.B.9. of the Consolidated Eligibility IFR (86 FR 3692, 3703) is revised to add a fourth paragraph at the end that reads as follows:

9. When will I have to begin paying principal and interest on my PPP loan? \* \* \*

Notwithstanding the foregoing, a borrower's timely appeal of a final SBA loan review decision extends the deferment period on the PPP loan until SBA's Office of Hearings and Appeals issues a final decision on the appeal under 13 CFR 134.1211.

*10th Revision:* Part IV.(g)(2)(v) of the Second Draw IFR (86 FR 3712, 3721) is revised to read as follows:

(g) How do I submit an application for a Second Draw PPP Loan and what documentation must I provide to demonstrate eligibility? \* \* \*

(2) \* \* \*

(v) For loans with a principal amount of \$150,000 or less, the applicant must submit documentation sufficient to establish that the applicant experienced

a reduction in revenue as provided in subsection (c)(1)(i) of this section at the time of application, on or before the date the borrower submits an application for loan forgiveness, or, if the borrower does not apply for loan forgiveness, at SBA's request. Such documentation may include relevant tax forms, including annual tax forms, or, if relevant tax forms are not available, a copy of the applicant's quarterly income statements or bank statements. A COVID Revenue Reduction Score that meets or exceeds the value required to validate the required reduction in gross receipts will be considered adequate documentation of the borrower's revenue reduction.

*11th Revision:* Part IV.(h)(2)(D) of the Second Draw IFR (86 FR 3712, 3721) is revised to read as follows:

(h) What do lenders need to know and do?

(2) \* \* \*

(D) For a Second Draw PPP Loan greater than \$150,000 or a loan of \$150,000 or less where the borrower provides documentation of revenue reduction, confirm the dollar amount and percentage of the borrower's revenue reduction by performing a good faith review, in a reasonable time, of the borrower's calculations and supporting documents concerning the borrower's revenue reduction. For a loan of \$150,000 or less where the borrower does not provide documentation of revenue reduction with its application, the lender shall perform this review when the borrower provides such documentation. If the lender identifies errors in the borrower's calculation or material lack of substantiation in the borrower's supporting documents, the lender should work with the borrower to remedy the issue. For loans of \$150,000 or less where the lender elects to use the COVID Revenue Reduction Score (score) in the Paycheck Protection Platform (Platform) or where the lender has opted-in to the direct borrower forgiveness process and the borrower submits a loan forgiveness application to the lender through the Platform, the lender must review the borrower's score to confirm that it meets or exceeds the value required to validate the required reduction in gross receipts, otherwise the lender must review the borrower's supporting documentation in accordance with the foregoing requirements. \* \* \*

*12th Revision:* Part IV.(j) of the Second Draw IFR (86 FR 3712, 3722) is revised to read as follows:

(j) Are Second Draw PPP Loans eligible for loan forgiveness?

Second Draw PPP Loans are eligible for loan forgiveness on the same terms and conditions as First Draw PPP Loans, except that Second Draw PPP Loan borrowers with a principal amount of \$150,000 or less are required to provide documentation of revenue reduction if such documentation was not provided at the time of the loan application as specified in subsections (g)(2)(iv) and (v) of this section. If a lender elects to use the COVID Revenue Reduction Score (score) in the Paycheck Protection Platform (Platform) or where the lender has opted-in to the direct borrower forgiveness process and the borrower submits a loan forgiveness application to the lender through the Platform, a score that meets or exceeds the value required to validate the required reduction in gross receipts will be considered adequate documentation of the borrower's revenue reduction.

**V. Additional Information**

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

**Compliance With Executive Orders 12866, 12988, 13132 and 13563, the Congressional Review Act, the Administrative Procedure Act, the Paperwork Reduction Act (44 U.S.C. Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601-612).**

*Executive Orders 12866 and 13563*

OMB's Office of Information and Regulatory Affairs (OIRA) has determined that this interim final rule is economically significant for the purposes of Executive Orders 12866 and 13563. SBA, however, is proceeding under the emergency provision at Executive Order 12866 section 6(a)(3)(D) based on the need to move expeditiously to mitigate the current economic conditions arising from the COVID-19 emergency.

This rule is necessary to provide economic relief to small businesses and nonprofit organizations nationwide adversely impacted under the COVID-19 Emergency Declaration. We anticipate that this rule will result in substantial benefits to small businesses, nonprofit organizations, their employees, and the communities they serve. However, we lack data to estimate the effects of this rule.

<sup>86</sup> 85 FR 20811, 20815-20816 (Apr. 15, 2020).

*Congressional Review Act and Administrative Procedure Act*

OIRA has determined that this is a major rule for purposes of Subtitle E of the Small Business Regulatory Enforcement and Fairness Act of 1996 (also known as the Congressional Review Act or CRA) (5 U.S.C. 804(2) *et seq.*). Under the CRA, a major rule takes effect 60 days after the rule is published in the **Federal Register**. 5 U.S.C. 801(a)(3).

Notwithstanding this requirement, the CRA allows agencies to dispense with the requirements of section 801 when the agency for good cause finds that such procedure would be impracticable, unnecessary, or contrary to the public interest and the rule shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). Pursuant to section 808(2), SBA for good cause finds that a 60-day delay to provide public notice is impracticable and contrary to the public interest. Likewise, for the same reasons, SBA for good cause finds that there are grounds to waive the 30-day effective date delay under the Administrative Procedure Act. 5 U.S.C. 553(d)(3).

As discussed elsewhere in this interim final rule, given the urgent need to provide borrowers with timely relief and the short period of time before certain borrowers will be required to begin making principal and interest payments if they have not yet applied for forgiveness with their lenders, SBA has determined that it is impractical and not in the public interest to provide a delayed effective date. An immediate effective date will allow SBA to expedite loan forgiveness to small businesses and nonprofit organizations and remit forgiveness payments to lenders.

*Executive Order 12988*

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

*Executive Order 13132*

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

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

SBA has determined that this rule will require revisions to existing recordkeeping or reporting requirements of the Paycheck Protection Program (PPP) information collection, OMB Control Number 3245-0407. The revisions will affect SBA Forms 3508S and 3508D. SBA Form 3508S will be revised to incorporate the direct borrower forgiveness process and the COVID Revenue Reduction Score. SBA Form 3508D will be revised to incorporate the direct borrower forgiveness process.

SBA has requested Office of Management and Budget (OMB) emergency approval of the revisions to the information collections to give small businesses and nonprofits affected by this interim final rule the maximum amount of time to apply for loan forgiveness under the new procedures.

*Regulatory Flexibility Act (RFA)*

The Regulatory Flexibility Act (RFA) generally requires that when an agency issues a proposed rule, or a final rule pursuant to section 553(b) of the Administrative Procedure Act or another law, the agency must prepare a regulatory flexibility analysis that meets the requirements of the RFA and publish such analysis in the **Federal Register**. 5 U.S.C. 603, 604.

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

**Authority:** 15 U.S.C. 636(a)(36); 15 U.S.C. 636(a)(37); and 15 U.S.C. 636m; Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, section 1114, and Economic Aid to Hard-Hit Small Businesses, Nonprofits, and Venues Act, Pub. L. 116-260, section 303.

**Isabella Casillas Guzman,**  
*Administrator.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA-2020-0333; Product Identifier 2020-NM-015-AD; Amendment 39-21623; AD 2021-13-18]

RIN 2120-AA64

**Airworthiness Directives; The Boeing Company Airplanes**

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for all The Boeing Company Model 737 airplanes powered by LEAP-1B engines. This AD was prompted by reports of inadvertent release of the spring energy of the spring door opening system (SDOS) actuator with a certain part number, causing injury and the potential for injury to maintenance personnel. This AD requires replacing each affected SDOS actuator with a new SDOS actuator, and verifying that new safety markers are installed in the proper locations. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 3, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 3, 2021.

**ADDRESSES:** For service information identified in this final rule, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminister Blvd., MC 110-SK57, Seal Beach, CA 90740-5600; telephone 562-797-1717; internet <https://www.myboeingfleet.com>. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0333.

**Examining the AD Docket**

You may examine the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2020-0333; 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:** Rose Len, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206-231-3604; email: [rose.len@faa.gov](mailto:rose.len@faa.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all The Boeing Company Model 737-8 and 737-9 airplanes. The NPRM published in the **Federal Register** on April 20, 2020 (85 FR 21791).

The NPRM was prompted by a report of an incident involving an SDOS actuator. The SDOS actuator is a telescopic, spring-loaded actuator that assists the mechanic in raising the engine fan cowl. Even when the actuator is extended (uncompressed), it retains energy in the spring (preloaded). In the incident, after an SDOS actuator with part number BOE-2001-901F was removed, a part separation occurred at the joint between the actuator's inner tube and its related "back end" bracket. The actuator came apart with spring-propelled force, injuring one of the maintenance personnel. This SDOS actuator used two roll pins and epoxy at this joint. The FAA has determined that this design, together with spring preload, caused these parts to break.

The FAA received a second report of a hazardous sudden extension of this actuator when, during improper removal of the SDOS actuator from the engine fan cowl while it was retracted, the SDOS actuator rapidly extended, with the potential to cause injury. This was possible because the fastener connecting the SDOS actuator to the fan cowl can be removed by cracking open the fan cowl and reaching under it. After the fastener was removed, the SDOS actuator was still connected to the engine fan case and was held in the retracted position by the "catch" hook, per the design. When the SDOS was rotated upward by hand, the catch hook released, and the SDOS actuator rapidly extended. The FAA has determined that the design of the SDOS actuator with part number BOE-2001-901H obscures the safety marker when the fan cowl is opened. The design of this SDOS actuator could, during maintenance, result in injury to maintenance personnel or damage to the airplane.

The manufacturer of the SDOS actuator, General Aerospace, has changed the design to have a stronger joint between the inner tube and the "back end" bracket that uses blind rivets rather than pins, together with an improved shape of the "catching" bracket. This redesign addressed the aforementioned part separation of the SDOS actuator, and the redesigned actuator became part number BOE-2001-901H. General Aerospace then modified part number BOE-2001-901H to include more detailed safety markers in new locations that display the warnings more clearly to maintenance personnel. That redesign addressed the aforementioned extension of the SDOS actuator from release of the catch hook. With the addition of the more detailed safety markers in the new locations, the SDOS actuator part number changed from BOE-2001-901H to BOE-2001-901J. General Aerospace Service Bulletin BOE-2001-901-71-01, dated November 2, 2019, which is referenced in Boeing Service Bulletin 737-71-1911, Revision 1, dated September 10, 2020, provides instructions for changing a BOE-2001-901H SDOS actuator to a BOE-2001-901J SDOS actuator.

The NPRM therefore proposed to require replacing each affected SDOS actuator with a new SDOS actuator, and verifying that the new safety markers are installed in the proper locations on the SDOS actuator.

The FAA is issuing this AD to address the possible separation of the SDOS actuator, and the visual obstruction of the SDOS actuator safety marker, either of which, during maintenance, could cause injury to maintenance personnel or damage to the airplane.

**Actions Since the NPRM Was Issued**

In the NPRM, the FAA proposed that the AD would apply to Boeing model 737-8 and 737-9 airplanes. Since then, the FAA determined that all Boeing model 737 airplanes powered by LEAP-1B engines (737 MAX airplanes), have engine fan cowls on which affected SDOS actuators could be installed. The affected SDOS actuators are rotatable parts, so the future replacement of an SDOS actuator could reintroduce the unsafe condition. The 737 airplane models that are powered by LEAP-1B engines, and therefore that have fan cowls on which affected SDOS actuators could be installed, are currently the Model 737-8, 737-9, and 737-8200.<sup>1</sup> The airplane models on which affected actuators could be installed could

<sup>1</sup> The FAA type certificated the Model 737-8200 on March 31, 2021; there are currently no U.S. operators of that model.

include any 737 models which will be powered by LEAP-1B engines, such as the Model 737-7. Therefore the FAA has revised the applicability of this AD to include all Model 737 airplanes powered by LEAP-1B engines. The prohibition on the installation of an affected SDOS actuator similarly applies to all airplanes identified in the applicability of this AD.

**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.

**Request To Update the Service Information to the Latest Revision**

Boeing requested that the FAA mandate Boeing Special Attention Requirements Bulletin 737-71-1911 RB, Revision 1, dated September 10, 2020, because of various updates including removing retrofitted airplanes from the effectivity, group and configuration changes, and adapting certain instructions to allow work to be done on an individual fan cowl instead of all fan cowls at once. The revised service information does not add work for any airplane.

The FAA agrees. The service information mandated by this AD has been updated, to Boeing Special Attention Requirements Bulletin 737-71-1911 RB, Revision 1, dated September 10, 2020.

**Request To Include Later Approved Revisions of the Service Information**

American Airlines and United Airlines requested that paragraph (g) of the proposed AD be changed to include the words "or later approved revisions" with regards to Boeing Special Attention Requirements Bulletin 737-71-1911 RB, dated November 26, 2019.

The requested revision to paragraph (g) of the proposed AD to allow use of later-approved revisions of the service information would be contrary to Office of the Federal Register (OFR) regulations regarding incorporation by reference. Specifically, incorporation by reference of a publication is limited to the edition of the publication that is approved by OFR. 1 CFR 51.1(f). To allow operators to use later revisions of the referenced document that are not approved by the OFR and identified in the AD, either the FAA must (1) seek OFR approval to incorporate a later revision of the service document and revise the AD to reference the approved later revision, or (2) operators must request approval to use a later revision as an alternative

method of compliance with this AD under the provisions of paragraph (k) of this AD.

#### **Request for Clarification of the RC Steps in the Service Information**

American Airlines requested clarification of paragraph (g) of the proposed AD. The commenter stated that it believes that the RC steps in both Boeing Special Attention Service Bulletin 737-71-1911 and Requirements Bulletin 737-71-1911 RB can be interpreted to mean that all steps of each Work Package are Required for Compliance. The company also states that the instruction to "Refer to the listed procedures in SB 737-71-1911 Original Issue or later approved revisions as an accepted procedure" found in each Work Package can be interpreted to mean that any part of the Work Package can be deviated from at the discretion of the operator, using the accepted procedures in the service information.

The FAA notes that Boeing's intention in including the multiple Work Packages, and the FAA's intention in mandating them, is to provide flexibility to the operator in the sequence of performing the mandated corrective actions. Each Work Package can be implemented one at a time. Each Work Package is defined by a unique combination of Group, Configuration, Engine 1 or Engine 2, and LEFT or RIGHT Fan Cowl descriptors. All of the Work Packages do not apply to every affected airplane.

The FAA further notes that both Boeing Special Attention Service Bulletin 737-71-1911 and Requirements Bulletin 737-71-1911 RB are consistent in their "RC: Start" and "RC: End" designations, which clearly delineate those Required Actions that are mandated by this AD. The instructions outside of the "RC: Start" and "RC: End" steps can be used to accomplish the required actions, but the AD does not authorize operators to use them as alternatives to the required actions. Where the service information specifies to "refer to" a recommended procedure, and only for those steps, operators may use an accepted alternative procedure.

The FAA has added paragraph (i) to this AD to provide credit for the previous accomplishment of Boeing Special Attention Requirements Bulletin 737-71-1911 RB, dated November 26, 2019.

#### **Request for Clarification on the Correct Number of Safety Markers**

American Airlines asked if the FAA requires a certain number of safety

markers on SDOS part number (P/N) BOE-2001-901J units that have been changed from SDOS P/N BOE-2001-901H units. The AD requires that two P/N 12299 safety markers be installed on the SDOS actuator outer tube (cowl door side) if they are not already installed, but the commenter noted that there could be a third safety marker, P/N BOE-2001-713, already installed.

The FAA notes that an operator can comply with this AD by installing either (1) a P/N BOE-2001-901J actuator with its two original safety markers, or (2) a P/N BOE-2001-901H actuator that has been converted to a P/N BOE-2001-901J actuator with two new safety markers, with or without a third marker. The FAA has not changed this AD regarding this request.

#### **Request for Clarification on Newly Delivered Airplanes**

American Airlines requested clarification on whether the operator would need to request an AMOC for the newly delivered airplanes that already have the SDOS part number BOE-2001-901J. The commenter noted that paragraph (g) of the proposed AD did not include Boeing Special Attention Requirements Bulletin 737-71-1911 RB, Revision 1, dated September 10, 2020.

The FAA notes that AMOCs will not be necessary for airplanes that are newly delivered with the P/N BOE-2001-901J SDOS actuator installed. As previously explained, paragraph (g) of this AD has been updated to include Boeing Special Attention Requirements Bulletin 737-71-1911 RB, Revision 1, dated September 10, 2020, which includes a revised effectivity list. No further change to this AD is necessary.

#### **Request for Change to the Airplane Applicability**

American Airlines and United Airlines requested that paragraph (c) of the proposed AD be amended to be limited to airplanes identified in the Effectivity section of Boeing Special Attention Requirements Bulletin 737-71-1911 RB. As an alternative, American Airlines requested that a subparagraph be added to paragraph (h) of the proposed AD to state that a review of maintenance and delivery records can be used to determine the installed SDOS actuator part number, provided the SDOS part number can be definitively determined from the records check.

The FAA notes that paragraph (c) of this AD now includes all Boeing Model 737 airplanes powered by LEAP-1B engines. Paragraph (g) of this AD now mandates Boeing Special Attention Requirements Bulletin 737-71-1911 RB, Revision 1, dated September 10, 2020.

Because all Model 737 airplanes powered by LEAP-1B engines have engine fan cowls that, due to the rotability of the affected parts, are subject to the same SDOS actuator issue, paragraph (j) of this AD now prohibits the installation of SDOS actuators having part numbers BOE-2001-901F and BOE-2001-901H on all Model 737 airplanes powered by LEAP-1B engines.

#### **Request To Allow Use of Alternative Lockwire**

American Airlines requested that the FAA allow use of .040 lockwire for the lock wire specified in steps 1(b) and 2(b) of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 737-71-1911, dated November 26, 2019. American Airlines noted that the .040 lockwire is more common and readily available than .041 lockwire and would provide an equivalent level of safety. American Airlines expressed concern that if the FAA interpreted use of .041 lockwire as an RC step, the .040 lockwire could easily be mistakenly used due to the similarity to the .041 lockwire. The commenter requested that the FAA include an exception regarding this issue if appropriate.

The FAA notes that for the purposes of the SDOS actuator, .040 lockwire will function the same as .041 lockwire. The FAA further notes that Boeing Special Attention Requirements Bulletin 737-71-1911 RB, Revision 1, dated September 10, 2020, does not specify the use of lockwire in an RC step. Therefore, no change to this AD is necessary as a result of this comment.

#### **Request To Change Description of the Incidents Prompting This AD**

Boeing requested an update to the SUMMARY and Discussion sections of the NPRM, and paragraph (e) of the proposed AD, to clarify that there were two different causes and corrective actions.

The FAA agrees and has revised the Summary, Background, and paragraph (e) of this AD to delineate the two corrective actions. The Background section of this final rule describes in detail the two incidents and how each resulted in the actuator's sudden and hazardous extension. To address the cause of each incident, this AD requires two actions, both of which are unchanged from the NPRM: (1) Replacing each affected SDOS actuator with a new SDOS actuator, and (2) verifying that new safety markers are installed in the proper locations.

**Request To Update the Number of Affected U.S. Airplanes**

Boeing stated that the number of affected U.S.-registered airplanes identified in the Costs of Compliance section depends on whether the NPRM covers only the SDOS attachment issue (in which case Boeing stated the number is correct), or also covers the safety marker issue (in which case Boeing stated an additional 240 airplanes would be affected).

The FAA notes that since this AD addresses both the SDOS actuator attachment issue and the safety marker issue, both types of affected SDOS actuators must be replaced, resulting in an additional 240 U.S.-registered airplanes that would be affected. The estimated cost for this AD has been updated to reflect a total of 400 U.S.-registered airplanes.

**Request To Revise Cost Estimate**

Boeing requested that the FAA revise the Costs of Compliance section of the NPRM to correct the labor cost calculation to \$425 per airplane.

The FAA agrees that the NPRM provided an incorrect estimate for the number of work-hours to replace the SDOS actuators. The FAA has revised the costs accordingly in this final rule.

**Request To Modify the Affected Part Without Removal**

Southwest Airlines requested clarification as to whether the SDOS actuator part number BOE-2001-901H can be changed on wing to part number BOE-2001-901J using the General Aerospace Service Bulletin BOE-2001-901-71-01 referenced in the Boeing Special Attention Service Bulletin 737-71-1911, Revision 1, dated September 10, 2020. Southwest Airlines stated that it believes it is possible to do so.

The FAA notes that neither General Aerospace Service Bulletin BOE-2001-901-71-01, which is referenced in Boeing Special Attention Service Bulletin 737-71-1911, nor Boeing Special Attention Requirements Bulletin 737-71-1911 RB, Revision 1, both dated September 10, 2020, requires removing the SDOS actuator before applying the safety markers. No change to this final

rule is necessary as a result of this comment.

**Request To Clarify the Need for Ongoing Inspections**

Southwest Airlines asked whether the FAA was developing a requirement for ongoing inspections to make sure the safety markers are still present. The commenter stated that Boeing Special Attention Requirements Bulletin 737-71-1911 RB, dated November 26, 2019, does not mention inspecting for safety markers after the initial compliance.

The FAA notes that proper installation of the safety markers is intended to be permanent; therefore, no repetitive inspections of the safety marker installation are necessary. Because all Model 737 airplanes powered by LEAP-1B engines have engine fan cowls that, due to parts rotability, are subject to reinstallation of affected SDOS actuators, those airplanes are subject to the requirements of paragraph (j) of this AD, which prohibits the installation of SDOS actuators having part numbers BOE-2001-901F and BOE-2001-901H. The FAA has not changed this AD as a result of the comment.

**Request To Include Instructions for Examination of Spare Parts**

United Airlines requested clarification of actions required for spare parts. The commenter asserted that spare parts should be handled in the same manner as parts found installed on the aircraft once they are removed and that Paragraph 3.B., Work Instructions, provided in the Boeing Special Attention Service Bulletin 737-71-1911, dated November 26, 2019, are intended to be performed at an aircraft level with some steps not being applicable.

The FAA disagrees and has not changed the AD with regard to this request. ADs in general do not apply directly to spare parts because under 14 CFR part 39, ADs are legally enforceable rules that apply only to products such as airplanes, and not to parts that are not installed on an airplane. The FAA can, by AD, prohibit or condition the installation of a part on a product. This

AD prohibits the installation of SDOS actuators having part numbers BOE-2001-901F and BOE-2001-901H. However, the FAA notes that Boeing Special Attention Service Bulletin 737-71-1911, Revision 1, dated September 10, 2020, includes non-mandatory information on how to contact General Aerospace for shipping instructions for SDOS actuator part number BOE-2001-901F, although this AD does not require the return of any parts. Further, the BOE-2001-901H SDOS actuators can be changed to BOE-2001-901J SDOS actuators.

**Conclusion**

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

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

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

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

The FAA reviewed Boeing Special Attention Requirements Bulletin 737-71-1911 RB, Revision 1, dated September 10, 2020. This service information describes procedures for replacing each affected SDOS actuator with a new SDOS actuator and verifying that safety markers are installed. 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 400 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
Replace SDOS actuator .....	5 work-hours × \$85 per hour = \$425 .....	*\$	*\$425	*\$170,000

\* The FAA has received no definitive data that would enable the agency to provide parts cost estimates for the actions specified in this proposed AD.



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 persons.

#### 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:

**2021–13–18 The Boeing Company:**  
Amendment 39–21623; Docket No. FAA–2020–0333; Product Identifier 2020–NM–015–AD.

#### (a) Effective Date

This AD is effective September 3, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to all The Boeing Company Model 737 airplanes powered by LEAP–1B engines, certificated in any category.

#### (d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

#### (e) Unsafe Condition

This AD was prompted by reports of inadvertent release of the spring energy of certain spring door opening system (SDOS) actuators. The FAA is issuing this AD to address possible separation of the SDOS actuator and visual obstruction of the SDOS actuator safety marker, which, during maintenance, can cause injury to maintenance personnel or damage to the airplane.

#### (f) Compliance

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

#### (g) Required Actions

For airplanes identified in Boeing Special Attention Requirements Bulletin 737–71–1911 RB, Revision 1, dated September 10, 2020: At the applicable times specified in the "Compliance" paragraph of Boeing Special Attention Requirements Bulletin 737–71–1911 RB, Revision 1, dated September 10, 2020, except as specified by paragraph (h) of this AD, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Special Attention Requirements Bulletin 737–71–1911 RB, Revision 1, dated September 10, 2020.

**Note 1 to paragraph (g):** Guidance for accomplishing the actions required by this AD can be found in Boeing Special Attention Service Bulletin 737–71–1911, Revision 1, dated September 10, 2020, which is referred to in Boeing Special Attention Requirements Bulletin 737–71–1911 RB, Revision 1, dated September 10, 2020.

#### (h) Exception to Service Information Specifications

Where Boeing Special Attention Requirements Bulletin 737–71–1911 RB, Revision 1, dated September 10, 2020, uses the phrase "the original issue date of Requirements Bulletin 737–71–1911 RB," this AD requires using "the effective date of this AD."

#### (i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Special Attention Requirements Bulletin 737–71–1911 RB, dated November 26, 2019.

#### (j) Parts Installation Prohibition

As of the effective date of this AD, no person may install on any airplane an SDOS actuator having part number BOE–2001–901F or BOE–2001–901H.

#### (k) 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 local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: [9-ANM-Seattle-ACO-AMOC-Requests@faa.gov](mailto: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 local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, 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.

#### (l) Related Information

For more information about this AD, contact Rose Len, Aerospace Engineer, Propulsion Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3604; email: [rose.len@faa.gov](mailto:rose.len@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 the AD specifies otherwise.

(i) Boeing Special Attention Requirements Bulletin 737–71–1911 RB, Revision 1, dated September 10, 2020.

(ii) [Reserved]

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

(4) You may view this service information at the FAA, Airworthiness Products Section,



Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on June 18, 2021.

**Lance T. Gant,**

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16174 Filed 7–29–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2021–0193; Project Identifier MCAI–2020–01612–T; Amendment 39–21585; AD 2021–11–23]

RIN 2120–AA64

#### Airworthiness Directives; Airbus SAS Airplanes

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

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also requires, for certain airplanes, an update of the hydraulic monitoring system to include additional redundancy. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 3, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 3, 2021.

**ADDRESSES:** For EASA material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet

[www.easa.europa.eu](http://www.easa.europa.eu). You may find this IBR material on the EASA website at <https://ad.easa.europa.eu>. For Airbus SAS service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No. 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email [continued-airworthiness.a350@airbus.com](mailto:continued-airworthiness.a350@airbus.com); internet <http://www.airbus.com>. 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–2021–0193.

#### 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–2021–0193; 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, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; [Kathleen.Arrigotti@faa.gov](mailto:Kathleen.Arrigotti@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Discussion

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0268, dated December 4, 2020 (EASA AD 2020–0268) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 and –1041 airplanes. EASA AD 2020–0268 refers to Airbus A350 Airworthiness Limitations Section (ALS), Part 5, “Fuel Airworthiness Limitations (FAL),” Revision 04, dated May 29, 2020; and Airbus A350 ALS Part 5, “Fuel Airworthiness Limitations (FAL),” Variation 4.1, dated September 15, 2020. Airplanes with an original airworthiness certificate or original export certificate

of airworthiness issued after September 15, 2020, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the 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 certain Airbus SAS Model A350–941 and –1041 airplanes. The NPRM published in the **Federal Register** on March 26, 2021 (86 FR 16117). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2020–0268. The NPRM also proposed to require, for certain airplanes, an update of the hydraulic monitoring system to include additional redundancy.

The FAA is issuing this AD to address the overheat failure mode of the hydraulic engine-driven pump (EDP), which may cause a fast temperature rise of the hydraulic fluid, and, if combined with an inoperative fuel tank inerting system, could lead to an uncontrolled overheat of the hydraulic fluid, possibly resulting in ignition of the fuel-air mixture of the affected fuel tank. See the MCAI for additional background information.

#### Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA) stated that it supports the NPRM.

#### Conclusion

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

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

#### Related Service Information Under 14 CFR Part 51

EASA AD 2020–0268 describes new or more restrictive airworthiness limitations related to fuel tank ignition

prevention and fuel tank flammability reduction.

This AD would also require accomplishing a certain airworthiness limitation using the following service information. This service information describes procedures for an update of the hydraulic monitoring system to include additional redundancy (*i.e.*, modifying the case-drain filter manifolds by installing new dual temperature sensors on the hydraulic EDP). These documents are distinct since they apply to different airplane models.

- Airbus Service Bulletin A350–29–P025, dated August 10, 2020.
- Airbus Service Bulletin A350–29–P027, dated November 24, 2020.
- Airbus Service Bulletin A350–29–P029, dated December 16, 2020.

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

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

**ESTIMATED COSTS FOR REQUIRED ACTIONS**

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 510 work-hours × \$85 per hour = Up to \$43,350 .....	Up to \$29,320 ..	Up to \$72,670 .....	Up to \$1,090,050.

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 adding the following new airworthiness directive:

**2021–11–23 Airbus SAS:** Amendment 39–21585; Docket No. FAA–2021–0193; Project Identifier MCAI–2020–01612–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective September 3, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category; with an original airworthiness certificate or original export certificate of airworthiness issued after September 15, 2020.

**(d) Subject**

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance checks; 29, Hydraulic power.

**(e) Reason**

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address the overheating failure mode of the hydraulic engine-driven pump, which may cause a fast temperature rise of the hydraulic fluid, and, if combined with an inoperative fuel tank inerting system, could lead to an uncontrolled overheat of the hydraulic fluid, possibly resulting in ignition of the fuel-air mixture of the affected fuel tank.

**(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 2020–0268, dated December 4, 2020 (EASA AD 2020–0268).

**(h) Exceptions to EASA AD 2020–0268**

(1) Where Section 6 of the service information referenced in EASA AD 2020–0268 specifies to update the hydraulic monitoring system “to include additional redundancy to be installed (MOD 114073 and MOD 114075 OR 114531 and MOD 114075 OR MOD 114533 and MOD 114075 OR MOD 114535 and MOD 114075),” this AD requires

that the update of the hydraulic monitoring system be accomplished using the method of compliance specified in paragraphs (h)(1)(i) through (iv) of this AD, as applicable.

(i) For Model A350–941 airplanes identified in Airbus Service Bulletin A350–29–P025 (MOD 114531 and MOD 114075): The modification must be done in accordance with paragraphs 3.C., 3.D., and 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A350–29–P025, dated August 10, 2020.

(ii) For Model A350–941 airplanes identified in Airbus Service Bulletin A350–29–P027 (MOD 114533 and MOD 114075): The modification must be done in accordance with paragraphs 3.C., 3.D., and 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A350–29–P027, dated November 24, 2020.

(iii) For Model A350–941 airplanes identified in Airbus Service Bulletin A350–29–P029 (MOD 114535 and MOD 114075): The modification must be done in accordance with paragraphs 3.C., 3.D., and 3.E. of the Accomplishment Instructions of Airbus Service Bulletin A350–29–P029, dated December 16, 2020.

(iv) For Model A350–941 airplanes not identified in paragraphs (h)(1)(i) through (iii) of this AD, and without MOD 114073 and 114075 installed in production: The modification must be done 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.

(2) Where EASA AD 2020–0268 refers to its effective date, this AD requires using the effective date of this AD.

(3) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0268 do not apply to this AD.

(4) Paragraph (3) of EASA AD 2020–0268 specifies revising “the approved AMP” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(5) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0268 is at the applicable “thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2020–0268, or within 90 days after the effective date of this AD, whichever occurs later.

(6) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0268 do not apply to this AD.

(7) The “Remarks” section of EASA AD 2020–0268 does not apply to this AD.

**(i) Provisions for Alternative Actions, Intervals, and Critical Design Configuration Control Limitations (CDCCLs)**

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, and CDCCLs are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2020–0268.

**(j) Other FAA AD Provisions**

The following provisions also apply to this AD:

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

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

**(k) Related Information**

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; [Kathleen.Arrigotti@faa.gov](mailto:Kathleen.Arrigotti@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 2020–0268, dated December 4, 2020.

(ii) Airbus Service Bulletin A350–29–P025, dated August 10, 2020.

(iii) Airbus Service Bulletin A350–29–P027, dated November 24, 2020.

(iv) Airbus Service Bulletin A350–29–P029, dated December 16, 2020.

(3) For EASA AD 2020–0268, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. For Airbus SAS service information identified in this AD, contact Airbus SAS, Airworthiness Office—EAL, Rond-Point Emile Dewoitine No: 2, 31700 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email [continued-airworthiness.a350@airbus.com](mailto:continued-airworthiness.a350@airbus.com); internet <http://www.airbus.com>.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0193.

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

Issued on May 21, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021–16241 Filed 7–29–21; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. FAA–2021–0303; Project Identifier MCAI–2020–01367–T; Amendment 39–21611; AD 2021–13–06]**

**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 certain Airbus SAS Model A350–941 and –1041 airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in two European Union Aviation Safety Agency (EASA) ADs, which are incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 3, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 3, 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](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://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-2021-0303.

#### 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-2021-0303; 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:** Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206-231-3218; email [kathleen.arrigotti@faa.gov](mailto:kathleen.arrigotti@faa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020-0211, dated October 5, 2020 (EASA AD 2020-0211); and EASA AD 2021-0026, dated January 20, 2021 (EASA AD 2021-0026); (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI) to correct an unsafe condition for all Airbus SAS Model A350-941 and -1041 airplanes. EASA AD 2021-0026 refers to Airbus A350 Airworthiness Limitations Section (ALS) Part 4, Variation 5.1, dated July 22, 2020. Airplanes with an original airworthiness certificate or original

export certificate of airworthiness issued after July 22, 2020, must comply with the airworthiness limitations specified as part of the approved type design and referenced on the type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued AD 2019-20-01, Amendment 39-19754 (84 FR 55495, October 17, 2019) (AD 2019-20-01), to require, among other things, repetitive greasing of certain thrust reverser actuators (TRAs). For those TRAs identified as batch 02 in EASA AD 2018-0234R2, dated September 17, 2019 (which is required by AD 2019-20-01), the repetitive greasing task has since been incorporated into Airbus A350 Airworthiness Limitations Section (ALS), Part 4, Systems Equipment Maintenance Requirements (SEMR), Revision 05 Issue 02, dated June 25, 2020, which is specified in EASA 2020-0211. Accomplishing the actions in this AD would therefore terminate the repetitive greasing of batch 02 TRAs required by paragraph (g) of AD 2019-20-01.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus SAS Model A350-941 and -1041 airplanes. The NPRM published in the **Federal Register** on April 16, 2021 (86 FR 20086). The NPRM was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The NPRM proposed to require revising the existing maintenance or inspection program, as specified in EASA AD 2020-0211 and EASA AD 2021-0026.

The FAA is issuing this AD to address hazardous or catastrophic airplane system failures. See the MCAI for additional background information.

#### Comments

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA) stated its support for the NPRM.

#### Conclusion

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

- Are consistent with the intent that was proposed in the NPRM for addressing the unsafe condition; and

- Do not add any additional burden upon the public than was already proposed in the NPRM.

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

EASA AD 2020-0211 and EASA AD 2021-0026 describe new or more restrictive airworthiness limitations for airplane systems and safe life limits. These documents are distinct because they apply to different airplane configurations. 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 15 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the agency estimates the average total cost per operator to be \$7,650 (90 work-hours × \$85 per work-hour).

#### 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:

**2021–13–06 Airbus SAS:** Amendment 39–21611; Docket No. FAA–2021–0303; Project Identifier MCAI–2020–01367–T.

#### (a) Effective Date

This airworthiness directive (AD) is effective September 3, 2021.

#### (b) Affected ADs

This AD affects AD 2019–20–01, Amendment 39–19754 (84 FR 55495, October 17, 2019) (AD 2019–20–01).

#### (c) Applicability

This AD applies to Airbus SAS Model A350–941 and –1041 airplanes, certificated in any category, with an original airworthiness certificate or original export certificate of airworthiness issued on or before July 22, 2020.

#### (d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

#### (e) Reason

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address hazardous or catastrophic airplane system failures.

#### (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 2020–0211, dated October 5, 2020 (EASA AD 2020–0211); and EASA AD 2021–0026, dated January 20, 2021 (EASA AD 2021–0026). Where EASA AD 2021–0026 affects the same airworthiness limitations (tasks and life limits) as those in EASA AD 2020–0211, the airworthiness limitations referenced in EASA AD 2021–0026 prevail.

#### (h) Exceptions to EASA AD 2020–0211 and EASA AD 2021–0026

(1) Where EASA AD 2020–0211 and EASA AD 2021–0026 refers to its effective date, this AD requires using the effective date of this AD.

(2) The requirements specified in paragraphs (1) and (2) of EASA AD 2020–0211 and EASA AD 2021–0026 do not apply to this AD.

(3) Paragraph (3) of EASA AD 2020–0211 and EASA AD 2021–0026 specifies revising “the approved AMP [aircraft maintenance program]” within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, to incorporate the “limitations, tasks and associated thresholds and intervals” specified in paragraph (3) of EASA AD 2020–0211 and EASA AD 2021–0026 within 90 days after the effective date of this AD.

(4) The initial compliance time for doing the tasks specified in paragraph (3) of EASA AD 2020–0211 and EASA AD 2021–0026 is at the applicable “thresholds” as incorporated by the requirements of paragraph (3) of EASA AD 2020–0211 and EASA AD 2021–0026, or within 90 days after the effective date of this AD, whichever occurs later.

(5) The provisions specified in paragraphs (4) and (5) of EASA AD 2020–0211 do not apply to this AD.

(6) The provisions specified in paragraph (4) of EASA AD 2021–0026 do not apply to this AD.

(7) The “Remarks” section of EASA AD 2020–0211 and EASA AD 2021–0026 does not apply to this AD.

#### (i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (e.g., inspections) and intervals are allowed unless they are approved as specified in the provisions of the “Ref. Publications” section of EASA AD 2020–0211 or EASA AD 2021–0026.

#### (j) Terminating Action for Certain Requirements of AD 2019–20–01

Accomplishing the actions required by this AD terminates the repetitive greasing task for

batch 02 group of affected thrust reverser actuators required by paragraph (g) of AD 2019–20–01.

#### (k) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Large Aircraft Section, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or 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 (l) 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 (k)(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.

#### (l) Related Information

For more information about this AD, contact Kathleen Arrigotti, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3218; email [kathleen.arrigotti@faa.gov](mailto:kathleen.arrigotti@faa.gov).

#### (m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0211, dated October 5, 2020.

(ii) European Union Aviation Safety Agency (EASA) AD 2021-0026, dated January 20, 2021.

(3) For EASA AD 2020-0211 and EASA AD 2021-0026, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find these EASA ADs on the EASA website at <https://ad.easa.europa.eu>.

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206-231-3195. This material may be found in the AD docket on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0303.

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

Issued on June 10, 2021.

**Lance T. Gant,**

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

[FR Doc. 2021-16245 Filed 7-29-21; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2021-0264; Project Identifier MCAI-2020-01416-T; Amendment 39-21616; AD 2021-13-11]

**RIN 2120-AA64**

#### **Airworthiness Directives; MHI RJ Aviation ULC (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 MHI RJ Aviation ULC Model CL-600-2D15 (Regional Jet Series 705) and CL-600-2D24 (Regional Jet Series 900) airplanes. This AD was prompted by a report that the lower aft outboard supporting structure of galley 2 does not meet certification requirements for all flight and/or emergency landing loads. This AD requires modifying the floor structure between certain fuselage stations. The FAA is issuing this AD to address the unsafe condition on these products.

**DATES:** This AD is effective September 3, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 3, 2021.

**ADDRESSES:** For service information identified in this final rule, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1-844-272-2720 or direct-dial telephone +1-514-855-8500; fax +1-514-855-8501; email [thd.crj@mhirj.com](mailto:thd.crj@mhirj.com); internet <https://mhirj.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-2021-0264.

#### **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-2021-0264; 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:**

Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion 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](mailto: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-2020-40, dated October 15, 2020 (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for certain MHI RJ Aviation ULC Model CL-600-2D15 (Regional Jet Series 705) and CL-600-2D24 (Regional Jet Series 900) airplanes. You may examine the MCAI in the AD docket on the internet at <https://www.regulations.gov> by

searching for and locating Docket No. FAA-2021-0264.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain MHI RJ Aviation ULC Model CL-600-2D15 (Regional Jet Series 705) and CL-600-2D24 (Regional Jet Series 900) airplanes. The NPRM published in the **Federal Register** on April 7, 2021 (86 FR 17998). The NPRM was prompted by a report that the lower aft outboard supporting structure of galley 2 does not meet certification requirements for all flight and/or emergency landing loads. The NPRM proposed to require modifying the floor structure between certain fuselage stations. The FAA is issuing this AD to address the insufficient structural safety margin of galley 2 in case of hard landing or severe turbulence. This condition, if not corrected, could result in injury to the occupants and could limit access to the exit door during emergencies if the galley is displaced or fails structurally. See the MCAI for additional background information.

#### **Comments**

The FAA gave the public the opportunity to participate in developing this final rule. The FAA has considered the comment received. The Air Line Pilots Association, International (ALPA), indicated its support for the NPRM.

#### **Conclusion**

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

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

#### **Related Service Information Under 14 CFR Part 51**

MHI RJ has issued MHI RJ Service Bulletin 670BA-53-060, Revision A, dated September 17, 2020. This service information describes procedures for modifying the floor structure between fuselage station (FS) 379.00 and FS 394.00 at right buttock line (RBL) 37.75. 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 1 airplane 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
20 work-hours × \$85 per hour = \$1,700 .....	\$5,081	\$6,781	\$6,781

**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:

**2021–13–11 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.):** Amendment 39–21616; Docket No. FAA–2021–0264; Project Identifier MCAI–2020–01416–T.

**(a) Effective Date**

This airworthiness directive (AD) is effective September 3, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to MHI RJ Aviation ULC (type certificate previously held by Bombardier, Inc.) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, certificated in any category, having serial numbers 15057, 15063 through 15065 inclusive, 15071, 15074, 15079, 15087, 15090, 15106, 15111, 15113, 15115, and 15117.

**(d) Subject**

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

**(e) Unsafe Condition**

This AD was prompted by a report that the lower aft outboard supporting structure of galley 2 does not meet certification requirements for all flight and/or emergency landing loads. The FAA is issuing this AD to address the insufficient structural safety margin of galley 2 in case of hard landing or severe turbulence. This condition, if not corrected, could result in injury to the occupants and could limit access to the exit door during emergencies if the galley is displaced or fails structurally.

**(f) Compliance**

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

**(g) Required Actions**

Within 36 months after the effective date of this AD: Modify the floor structure

between fuselage station (FS) 379.00 and FS 394.00 at right buttock line (RBL) 37.75 in accordance with paragraph 2.B. of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–53–060, Revision A, dated September 17, 2020.

**(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 MHI RJ Service Bulletin 670BA–53–060, dated August 6, 2020.

**(i) 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 MHI RJ Aviation ULC’s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

**(j) Related Information**

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–40, dated October 15, 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–2021–0264.

(2) For more information about this AD, contact Antariksh Shetty, Aerospace Engineer, Airframe and Propulsion 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](mailto: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 (k)(3) and (4) of this AD.

**(k) Material Incorporated by Reference**

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

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

(i) MHI RJ Service Bulletin 670BA-53-060, Revision A, dated September 17, 2020.

(ii) [Reserved]

(3) For service information identified in this AD, contact MHI RJ Aviation ULC, 12655 Henri-Fabre Blvd., Mirabel, Québec J7N 1E1 Canada; Widebody Customer Response Center North America toll-free telephone +1-844-272-2720 or direct-dial telephone +1-514-855-8500; fax +1-514-855-8501; email [thd.crj@mhij.com](mailto:thd.crj@mhij.com); internet <https://mhij.com>.

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

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

Issued on June 10, 2021.

**Ross Landes,**

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**DEPARTMENT OF LABOR**

**Wage and Hour Division**

**29 CFR Part 791**

**RIN 1235-AA37**

**Rescission of Joint Employer Status Under the Fair Labor Standards Act Rule**

**AGENCY:** Wage and Hour Division (WHD), Department of Labor (DOL).

**ACTION:** Final rule; rescission.

**SUMMARY:** This action finalizes the Department's proposal to rescind the final rule titled "Joint Employer Status Under the Fair Labor Standards Act," which published on January 16, 2020, and took effect on March 16, 2020. This rescission removes the regulations established by that rule.

**DATES:** This final rule is effective on September 28, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Amy DeBisschop, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693-0406 (this is not a toll-free number). Copies of this final rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693-0675 (this is not a toll-free number). TTY/TDD callers may dial toll-free 1-877-889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of the agency's regulations may be directed to the nearest WHD district office. Locate the nearest office by calling WHD's toll-free help line at (866) 4US-WAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local time zone, or logging onto WHD's website for a nationwide listing of WHD district and area offices at <http://www.dol.gov/whd/america2.htm>.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Fair Labor Standards Act (FLSA or Act) requires all covered employers to pay nonexempt employees at least the Federal minimum wage for every hour worked in a non-overtime workweek.<sup>1</sup> In an overtime workweek, for all hours worked in excess of 40 in a workweek, covered employers must pay a nonexempt employee at least one and one-half times the employee's regular rate.<sup>2</sup> The FLSA also requires covered employers to make, keep, and preserve certain records regarding employees.<sup>3</sup>

The FLSA does not define "joint employer" or "joint employment." However, section 3(d) of the Act defines "employer" to "include[] any person acting directly or indirectly in the interest of an employer in relation to an employee."<sup>4</sup> Section 3(e) generally defines "employee" to mean "any individual employed by an employer"<sup>5</sup> and identifies certain specific groups of workers who are not "employees" for purposes of the Act.<sup>6</sup> Section 3(g) defines "employ" to "include[] to suffer or permit to work."<sup>7</sup>

**A. Prior Guidance Regarding FLSA Joint Employment**

In 1939, a year after the FLSA's enactment, the Department's Wage and

Hour Division (WHD) issued Interpretative Bulletin No. 13, addressing, among other topics, whether two or more companies may be jointly and severally liable for a single employee's hours worked under the FLSA.<sup>8</sup> WHD recognized in the Bulletin that there is joint employment liability under the FLSA and provided examples of situations where two companies would or would not be joint employers of an employee.<sup>9</sup> For situations where an employee works hours for one company and works separate hours for another company in the same workweek, WHD focused on whether the two companies "are acting entirely independently of each other with respect to the employment of the particular employee" (in which case they would not be joint employers) or, "on the other hand, the employment by [the one company] is not completely disassociated from the employment by [the other company]" (in which case they would be joint employers and the hours worked for both would be aggregated for purposes of the Act).<sup>10</sup> WHD stated in the Bulletin that it "will scrutinize all cases involving more than one employment and, at least in the following situations, an employer will be considered as acting in the interest of another employer in relation to an employee: If the employers make an arrangement for the interchange of employees or if one company controls, is controlled by, or is under common control with, directly or indirectly, the other company."<sup>11</sup>

In 1958, the Department published a rule introducing 29 CFR part 791, titled "Joint Employment Relationship under Fair Labor Standards Act of 1938."<sup>12</sup> Section 791.2(a) reiterated that there is joint employment liability under the Act and stated that the determination "depends upon all the facts in the particular case."<sup>13</sup> It further stated that two or more employers that "are acting entirely independently of each other and are completely disassociated" with respect to the employee's employment are not joint employers, but joint employment exists if "employment by one employer is not completely disassociated from employment by the

<sup>8</sup> See Interpretative Bulletin No. 13, "Hours Worked: Determination of Hours for Which Employees are Entitled to Compensation Under the Fair Labor Standards Act of 1938," ¶¶ 16-17. In October 1939 and October 1940, WHD revised other portions of the Bulletin that are not pertinent here.

<sup>9</sup> See *id.*

<sup>10</sup> *Id.* ¶ 17.

<sup>11</sup> *Id.*

<sup>12</sup> See 23 FR 5905 (Aug. 5, 1958).

<sup>13</sup> 29 CFR 791.2(a) (1958).

<sup>1</sup> See 29 U.S.C. 206(a).

<sup>2</sup> See 29 U.S.C. 207(a).

<sup>3</sup> See 29 U.S.C. 211(c).

<sup>4</sup> 29 U.S.C. 203(d).

<sup>5</sup> 29 U.S.C. 203(e)(1).

<sup>6</sup> See 29 U.S.C. 203(e)(2)-(5).

<sup>7</sup> 29 U.S.C. 203(g).



other employer(s).”<sup>14</sup> Section 791.2(b) explained that, “[w]here the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between the employers to share the employee’s services, as, for example, to interchange employees; or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee; or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.”<sup>15</sup>

In 1961, the Department amended a footnote in § 791.2(a) to clarify that a joint employer is also jointly liable for overtime pay.<sup>16</sup> Over the next several decades, WHD issued various guidance documents including Fact Sheets, opinion letters, as well as legal briefs reiterating the Department’s position concerning joint employment. *See, e.g.*, WHD Opinion Letter FLSA2005–15, 2005 WL 2086804 (Apr. 11, 2005) (addressing joint employment in a health care system comprised of hospitals, nursing homes, and parent holding company); WHD Opinion Letter, 1999 WL 1788146 (Aug. 24, 1999) (advising that private duty nurses were jointly employed by a hospital and individual patients); WHD Opinion Letter, 1998 WL 852621 (Jan. 27, 1998) (addressing the joint employment of grocery vendor employees stocking grocery shelves); WHD Opinion Letter FLSA–1089, 1989 WL 1632931 (Aug. 9, 1989) (advising that workers participating in an enclave program would be jointly employed by a participating business and a supervising workshop).

In 2014, WHD issued an Administrator’s Interpretation (Home Care AI) addressing how joint employment under the FLSA applies to certain home care workers.<sup>17</sup> The Home Care AI explained that the FLSA’s

definitions of “employer,” “employee,” and “employ,” “and therefore the scope of employment relationships the Act covers, are exceedingly broad.”<sup>18</sup> The Home Care AI discussed application of 29 CFR 791.2 and stated that its “focus . . . is the degree to which the two possible joint employers share control with respect to the employee and the degree to which the employee is economically dependent on the purported joint employers.”<sup>19</sup> WHD recognized that, “when making joint employment determinations in FLSA cases, the exact factors applied may vary,” but also stated that “a set of factors that addresses only control is not consistent with the breadth of employment under the FLSA” because an analysis based solely on the potential employer’s joint control “cannot be reconciled with [FLSA section 3(g)’s “suffer or permit” language], which necessarily reaches beyond traditional agency law.”<sup>20</sup> Accordingly, the Home Care AI applied a non-exclusive set of “economic realities factors” relating to the potential joint employer’s control and other aspects of the relationship to provide guidance regarding the possibility of joint employment in numerous hypothetical scenarios specific to the home care industry.<sup>21</sup> WHD withdrew the Home Care AI on March 10, 2020.

In 2016, WHD issued an Administrator’s Interpretation (Joint Employment AI) addressing joint employment generally under the FLSA and the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), which uses the same definition of “employ” as the FLSA.<sup>22</sup> Relying on the text and history of FLSA section 3(g) and case law interpreting it, the Joint Employment AI explained that joint employment, like employment generally, is expansive under the FLSA and “notably broader than the common law concepts of employment and joint employment.”<sup>23</sup> The Joint Employment

AI further explained that “the expansive definition of ‘employ’ as including ‘to suffer or permit to work’ rejected the common law control standard and ensures that the scope of employment relationships and joint employment under the FLSA and MSPA is as broad as possible.”<sup>24</sup> The AI described how “suffer or permit” or “similar phrasing was commonly used in state laws regulating child labor and was ‘designed to reach businesses that used middlemen to illegally hire and supervise children.’”<sup>25</sup> The AI thus concluded that “the ‘suffer or permit to work’ standard was designed to expand child labor laws’ coverage beyond those who controlled the child laborer,” “prevent employers from using ‘middlemen’ to evade the laws’ requirements,” and ensure joint liability in a type of vertical joint employment situation (explained below).<sup>26</sup>

The Joint Employment AI described and discussed two types of joint employment. It discussed horizontal joint employment, which exists where an employee is separately employed by, and works separate hours in a workweek for, more than one employer, and the employers “are sufficiently associated with or related to each other with respect to the employee” such that they are joint employers.<sup>27</sup> The Joint Employment AI explained that “the focus of a horizontal joint employment analysis is the relationship between the two (or more) employers” and that 29 CFR 791.2 provided guidance on analyzing that type of joint employment, and the AI provided some additional guidance on applying § 791.2.<sup>28</sup> The Joint Employment AI also discussed vertical joint employment, which exists where an “employee has an employment relationship with one employer (typically a staffing agency, subcontractor, labor provider, or other intermediary employer),” another employer is “receiv[ing] the benefit of the employee’s labor,” and “the economic realities show that [the employee] is economically dependent on, and thus employed by,” the other employer.<sup>29</sup> The Joint Employment AI explained that the vertical joint employment analysis does not focus on examining the relationship between the two employers but instead “examines the economic realities” of the relationship between the employee and the other employer that is benefiting

<sup>14</sup> *Id.* at \*2.

<sup>15</sup> *Id.* at \*2 n.4.

<sup>16</sup> *Id.* at \*2 n.5 (quoting *Zheng v. Liberty Apparel Co.*, 355 F.3d 61, 69 (2d Cir. 2003)).

<sup>17</sup> *See id.* at \*7–14; *see also id.* at \*3 (“[A]ny assessment of whether a public entity is a joint employer necessarily involves a weighing of all the facts and circumstances, and there is no single factor that is determinative[.]”) (citing *Rutherford Food Corp. v. McComb*, 331 U.S. 722, 730 (1947)).

<sup>18</sup> *See* Administrator’s Interpretation No. 2016–1, “Joint Employment Under the Fair Labor Standards Act and Migrant and Seasonal Agricultural Worker Protection Act” (Jan. 20, 2016), available at 2016 WL 284582; *see also* 29 U.S.C. 1802(5) (“The term ‘employ’ [under MSPA] has the meaning given such term under section 3(g) of the [FLSA].”).

<sup>19</sup> *Id.* at \*3 (citing, *inter alia*, *Torres-Lopez v. May*, 111 F.3d 633, 639 (9th Cir. 1997); *Antenor v. D & S Farms*, 88 F.3d 925, 929 (11th Cir. 1996)).

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* (quoting *Antenor*, 88 F.3d at 929 n.5).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at \*4.

<sup>28</sup> *Id.* at \*4–8.

<sup>29</sup> *Id.* at \*2.

<sup>14</sup> *Id.*

<sup>15</sup> 29 CFR 791.2(b) (1958) (footnotes omitted).

<sup>16</sup> *See* 26 FR 7730, 7732 (Aug. 18, 1961).

<sup>17</sup> *See* Administrator’s Interpretation No. 2014–2, “Joint Employment of Home Care Workers in Consumer-Directed, Medicaid-Funded Programs by Public Entities under the Fair Labor Standards Act” (June 19, 2014), available at 2014 WL 2816951.

from the worker's labor.<sup>30</sup> The AI noted that "several Circuit Courts of Appeals have also adopted an economic realities analysis for evaluating vertical joint employment under the FLSA," and that, "[r]egardless of the exact factors, the FLSA and MSPA require application of the broader economic realities analysis, not a common law control analysis, in determining vertical joint employment."<sup>31</sup> The AI advised that, "because of the shared definition of employment and the coextensive scope of joint employment between the FLSA and MSPA," the non-exclusive, multi-factor economic realities analysis set forth by the Department in its MSPA joint employment regulation should be applied in FLSA vertical joint employment cases to analyze the relationship between the employee and the other employer, and that doing so "is consistent with both statutes and regulations."<sup>32</sup> The AI provided additional guidance on applying the analysis.<sup>33</sup> WHD withdrew the Joint Employment AI on June 7, 2017.<sup>34</sup>

#### B. 2020 Joint Employer Rule

In January 2020, the Department published a final rule titled "Joint Employer Status Under the Fair Labor Standards Act," which became effective on March 16, 2020 (Joint Employer Rule or Rule).<sup>35</sup> The Joint Employer Rule revised 29 CFR part 791 so that: § 791.1 contained an introductory statement; § 791.2 contained the substance of the Rule and addressed both vertical joint employment (which it referred to as "the first joint employer scenario") and horizontal joint employment (which it referred to as "the second joint employer scenario"); and § 791.3 contained a severability provision.<sup>36</sup>

#### 1. Joint Employer Rule's Vertical Joint Employment Standard

For vertical joint employment, § 791.2(a)(1) stated that "[t]he other

person [that is benefitting from the employee's labor] is the employee's joint employer *only* if that person is acting directly or indirectly in the interest of the employer in relation to the employee," and then cited FLSA section 3(d)'s definition of "employer."<sup>37</sup> The Joint Employer Rule provided that section 3(d) is the sole statutory provision in the FLSA for determining "joint employer status" under the Act—to the exclusion of sections 3(e) and 3(g).<sup>38</sup> The Joint Employer Rule further provided that the definitions of "employee" and "employ" in sections 3(e) and 3(g) "determine whether an individual worker is an employee under the Act."<sup>39</sup> Citing section 3(d)'s definition of "employer" as including "any person acting directly or indirectly in the interest of an employer in relation to an employee," the Rule stated that "only this language from section 3(d) contemplates the possibility of a person in addition to the employer who is also an employer and therefore jointly liable for the employee's hours worked."<sup>40</sup> The Rule concluded that this language from section 3(d), "by its plain terms, contemplates an employment relationship between an employer and an employee, as well as another person who may be an employer too—which exactly fits the [vertical] joint employer scenario under the Act."<sup>41</sup> The Rule relied on the Supreme Court's decision in *Falk v. Brennan*<sup>42</sup> and the Court of Appeals for the Ninth Circuit's decision in *Bonnette v. California Health & Welfare Agency*<sup>43</sup> to "support focusing on section 3(d) as determining joint employer status."<sup>44</sup>

Section 791.2(a)(1) of the Joint Employer Rule stated that "four factors are relevant to the determination" of whether the other employer is a joint employer in the vertical joint employment situation.<sup>45</sup> Those four factors were whether the other employer: (1) Hires or fires the employee; (2) supervises and controls the employee's work schedule or conditions of employment to a

substantial degree; (3) determines the employee's rate and method of payment; and (4) maintains the employee's employment records.<sup>46</sup> The Joint Employer Rule stated that its four-factor test was "derived from" *Bonnette*.<sup>47</sup> In *Bonnette*, the Ninth Circuit affirmed a finding of vertical joint employment after considering whether the other employer: (1) Had the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records.<sup>48</sup>

The Joint Employer Rule's four-factor analysis deviated from the analysis in *Bonnette* in several ways. First, the Rule articulated the first factor as whether the other employer "[h]ires or fires the employee" as opposed to whether it had "the power" to hire and fire.<sup>49</sup> Section 791.2(a)(3)(i) stated that the "potential joint employer must actually exercise . . . one or more of these indicia of control to be jointly liable under the Act," and that "[t]he potential joint employer's ability, power, or reserved right to act in relation to the employee may be relevant for determining joint employer status, but such ability, power, or right alone does not demonstrate joint employer status without some actual exercise of control."<sup>50</sup> Second, the Joint Employer Rule modified the *Bonnette* factor requiring consideration of whether the potential joint employer supervises and controls work schedules or conditions of employment by adding the phrase "to a substantial degree." This phrase was absent from the test articulated in *Bonnette* (although *Bonnette* found that, on the factual record before it, the potential joint employers "exercised considerable control" in that area).<sup>51</sup> Third, § 791.2(a)(2) stated that "[s]atisfaction of the maintenance of employment records factor alone will not lead to a finding of joint employer status," however, *Bonnette* did not include this limitation to a finding of joint employer status.<sup>52</sup> Finally, § 791.2(b) stated that "[a]dditional factors may be relevant for determining joint employer status in this scenario, but only if they are indicia of whether

<sup>30</sup> *Id.* at \*4.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at \*5 (citing WHD's multi-factor economic realities analysis for joint employment under MSPA set forth at 29 CFR 500.20(h)(5)). The Department issued its current MSPA joint employment regulation in 1997 via a final rule following notice-and-comment rulemaking. See 62 FR 11734 (Mar. 12, 1997).

<sup>33</sup> See 2016 WL 284582, at \*8–12.

<sup>34</sup> See News Release 17–0807–NAT, "US Secretary of Labor Withdraws Joint Employment, Independent Contractor Informal Guidance" (June 7, 2017), available at <https://www.dol.gov/newsroom/releases/opa/opa20170607>.

<sup>35</sup> See 85 FR 2820 (Jan. 16, 2020). The Department had published a notice of proposed rulemaking (NPRM) requesting comments on a proposed rule. See 84 FR 14043 (Apr. 9, 2019). The final rule adopted "the analyses set forth in the NPRM largely as proposed." 85 FR 2820.

<sup>36</sup> See 29 CFR 791.1, 791.2, and 791.3 (2020).

<sup>37</sup> 29 CFR 791.2(a)(1) (2020) (citing 29 U.S.C. 203(d)) (emphasis added).

<sup>38</sup> See generally 85 FR 2825–28.

<sup>39</sup> *Id.* at 2827.

<sup>40</sup> *Id.* (citing 29 U.S.C. 203(d)); see also *id.* ("This language from section 3(d) makes sense only if there is an employer and employee with an existing employment relationship and the issue is whether another person is an employer.").

<sup>41</sup> *Id.*

<sup>42</sup> 414 U.S. 190 (1973).

<sup>43</sup> 704 F.2d 1465 (9th Cir. 1983), *abrogated on other grounds*, *Garcia v. San Antonio Metro. Transit Auth.*, 469 U.S. 528 (1985).

<sup>44</sup> 85 FR 2827.

<sup>45</sup> 29 CFR 791.2(a)(1) (2020).

<sup>46</sup> See 29 CFR 791.2(a)(1)(i)–(iv) (2020).

<sup>47</sup> 85 FR 2830.

<sup>48</sup> See 704 F.2d at 1469–1470.

<sup>49</sup> Compare 29 CFR 791.2(a)(1)(i) (2020) with *Bonnette*, 704 F.2d at 1469–1470.

<sup>50</sup> 29 CFR 791.2(a)(3)(i) (2020) (citing 29 U.S.C. 203(d)).

<sup>51</sup> Compare 29 CFR 791.2(a)(1)(ii) (2020) with *Bonnette*, 704 F.2d at 1469–1470.

<sup>52</sup> Compare 29 CFR 791.2(a)(2) (2020) with *Bonnette*, 704 F.2d at 1469–1470.

the potential joint employer exercises significant control over the terms and conditions of the employee's work.”<sup>53</sup> *Bonnette*, however, stated that its four factors “provide a useful framework for analysis in this case,” but “are not etched in stone and will not be blindly applied,” and that “[t]he ultimate determination must be based ‘upon the circumstances of the whole activity.’”<sup>54</sup>

In addition to generally excluding factors that are not indicative of the potential joint employer's control over the employee's work, the Joint Employer Rule specifically excluded any consideration of the employee's economic dependence on the potential joint employer.<sup>55</sup> The Rule asserted that “[e]conomic dependence is relevant when applying section 3(g) and determining whether a worker is an employee under the Act; however, determining whether a worker who is an employee under the Act has a joint employer for his or her work is a different analysis that is based on section 3(d).”<sup>56</sup> The Rule further asserted that, “[b]ecause evaluating control of the employment relationship by the potential joint employer over the employee is the purpose of the Department's four-factor balancing test, it is sensible to limit the consideration of additional factors to those that indicate control.”<sup>57</sup>

## 2. Joint Employer Rule's Horizontal Joint Employment Standard

To determine horizontal joint employment, the Joint Employer Rule adopted the longstanding standard articulated in the prior version of 29 CFR 791.2 with “non-substantive revisions.”<sup>58</sup> Section 791.2(e)(2) stated that, in this “second joint employer scenario,” “if the employers are acting independently of each other and are disassociated with respect to the employment of the employee,” they are not joint employers.<sup>59</sup> It further stated that, “if the employers are sufficiently associated with respect to the employment of the employee, they are joint employers and must aggregate the hours worked for each for purposes of determining compliance with the Act.”<sup>60</sup> It identified the same three

general examples of horizontal joint employment provided in the prior version of 29 CFR 791.2.<sup>61</sup>

## 3. Joint Employer Rule's Additional Provisions

The Joint Employer Rule adopted additional provisions that apply to both vertical and horizontal joint employment. Section 791.2(f) addresses the consequences of joint employment and provided that “[f]or each workweek that a person is a joint employer of an employee, that joint employer is jointly and severally liable with the employer and any other joint employers for compliance” with the Act.<sup>62</sup> Section 791.2(g) provided 11 “illustrative examples” of how the Rule may apply to specific factual situations implicating both vertical and horizontal joint employment.<sup>63</sup>

## C. Decision Vacating Most of the Joint Employer Rule

In February 2020, 17 States and the District of Columbia (the States) filed a lawsuit in the United States District Court for the Southern District of New York against the Department asserting that the Joint Employer Rule violated the Administrative Procedure Act (APA).<sup>64</sup> The Department moved to dismiss the lawsuit on the grounds that the States did not have standing. The district court denied that motion on June 1, 2020.<sup>65</sup> The district court issued an order on June 29, 2020, permitting the International Franchise Association, the Chamber of Commerce of the United States of America, the National Retail Federation, the Associated Builders and Contractors, and the American Hotel and Lodging Association (Intervenors) to intervene as defendants in the case.<sup>66</sup> The parties filed cross-motions for summary judgment, which the district court decided on September 8, 2020.<sup>67</sup>

The district court vacated the Joint Employer Rule's “novel standard for vertical joint employer liability” because its “revisions to that scenario are flawed in just about every respect.”<sup>68</sup> The district court found that the Rule violated the APA because it was contrary to the law—specifically, it

conflicted with the FLSA.<sup>69</sup> The district court identified three conflicts: The Rule's reliance on the FLSA's definition of “employer” in section 3(d) as the sole textual basis for joint employment liability; its adoption of a control-based test for determining vertical joint employer liability; and its prohibition against considering additional factors beyond control, such as economic dependence.<sup>70</sup> In addition, the district court found that the Rule was “arbitrary and capricious” in violation of the APA for three reasons: The Rule did not adequately explain why it departed from the Department's prior interpretations; the Rule did not consider the conflict between it and the Department's MSPA joint employment regulations; and the Rule did not adequately consider its cost to workers.<sup>71</sup>

The district court concluded that the Joint Employer Rule's “novel interpretation for vertical joint employer liability” was unlawful under the APA and vacated all of § 791.2 except for § 791.2(e).<sup>72</sup> The court determined that, because the Rule's “non-substantive revisions to horizontal joint employer liability are severable,” § 791.2(e) “remains in effect.”<sup>73</sup>

In November 2020, the Department and the Intervenors appealed the district court's decision vacating most of the Joint Employer Rule, and the appeal remains pending before the Court of Appeals for the Second Circuit, as discussed further below.<sup>74</sup>

## D. Proposal To Rescind the Joint Employer Rule

On March 12, 2021, the Department issued a notice of proposed rulemaking (NPRM) proposing to rescind the Joint Employer Rule.<sup>75</sup> The NPRM explained that the Department was considering rescinding the Joint Employer Rule for several reasons.<sup>76</sup> The Department decided to further consider the concerns raised by the district court in *New York v. Scalia* that the Rule's reliance on section 3(d) alone among the FLSA's provisions may be contrary to the FLSA's text and Congressional intent, particularly as the Department had never previously excluded FLSA sections 3(e) and (g) from the joint employment analysis and had instead

<sup>53</sup> 29 CFR 791.2(b) (2020).

<sup>54</sup> 704 F.2d at 1470 (quoting *Rutherford Food*, 331 U.S. at 730).

<sup>55</sup> 29 CFR 791.2(c) (2020) (“[T]o determine joint employer status, no factors should be used to assess economic dependence.”).

<sup>56</sup> 85 FR 2821.

<sup>57</sup> *Id.* at 2836.

<sup>58</sup> *Id.* at 2823; see also *id.* at 2844–45.

<sup>59</sup> 29 CFR 791.2(e)(1)–(2) (2020).

<sup>60</sup> 29 CFR 791.2(e)(2) (2020).

<sup>61</sup> Compare 29 CFR 791.2(e)(2)(i)–(iii) (2020) with 29 CFR 791.2(b)(1)–(3) (1958).

<sup>62</sup> 29 CFR 791.2(f) (2020).

<sup>63</sup> 29 CFR 791.2(g) (2020).

<sup>64</sup> See *New York v. Scalia*, No. 1:20-cv-01689 (S.D.N.Y. filed Feb. 26, 2020). The APA requires courts to hold unlawful and set aside agency actions that are “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. 706(2)(A).

<sup>65</sup> See 464 F. Supp. 3d 528.

<sup>66</sup> See 2020 WL 3498755.

<sup>67</sup> See 490 F. Supp. 3d 748.

<sup>68</sup> *Id.* at 795.

<sup>69</sup> See *id.* at 774.

<sup>70</sup> See *id.* at 774–92.

<sup>71</sup> See *id.* at 792–95.

<sup>72</sup> *Id.* at 795–96.

<sup>73</sup> *Id.*

<sup>74</sup> See *New York v. Scalia*, 490 F. Supp. 3d 748, appeal docketed, No. 20–3806 (2d Cir. Nov. 6, 2020).

<sup>75</sup> See 86 FR 14038.

<sup>76</sup> See 86 FR 14042–46.

applied an economic realities framework that included the definitions of “employ” or “employee” when determining joint employer liability, consistent with the approach taken by courts.<sup>77</sup> The Department was similarly concerned that the Rule’s use of section 3(d) alone as the statutory basis for joint employment might not “easily encompass all scenarios in which joint employment may arise; multiple employers may ‘suffer or permit’ an employee to work and could thus be joint employers under section 3(g) without one [employer] working ‘in the interest of an employer’ under section 3(d).”<sup>78</sup>

The Department also believed that it should consider and address the district court’s conclusion that the Joint Employer Rule “unlawfully limits the factors the Department will consider in the joint employer inquiry” by focusing on a control-based test to the exclusion of economic dependence generally, certain economic dependence factors, and certain other considerations, as this approach is not consistent with the totality-of-the-circumstances economic realities standard that has generally been used by the courts.<sup>79</sup> The Rule’s approach was also different than the Department’s prior guidance on joint employment, and the Department acknowledged in the NPRM the district court’s concerns that the Rule did not adequately explain the reasons for the significant departure.<sup>80</sup> Relatedly, the Department recognized in the NPRM that courts have generally declined to adopt the Rule’s vertical joint employment analysis as a replacement for their existing analyses, indicating that the Rule had not provided the intended clarity and that rescinding the Rule would not be disruptive to stakeholders.<sup>81</sup> Finally, the Department was concerned that the Rule may not have sufficiently considered the negative effect that it would have on employees by reducing the number of businesses who were FLSA joint employers from which employees may be able to collect back wages due to them under the FLSA.<sup>82</sup> For all of these reasons, the Department proposed in the NPRM to rescind the entire Joint Employer Rule.<sup>83</sup>

### *E. Status of Pending Appeal of Decision Vacating Most of the Joint Employer Rule*

Although its filing deadline was not until February 19, 2021, the Department filed an opening brief in support of the Rule on January 15, 2021. The Intervenor filed their opening brief on the same day. On March 31, 2021, the Department filed a motion seeking to hold the appeal in abeyance in light of the published NPRM proposing to rescind the Joint Employer Rule. The Second Circuit denied the motion without explanation. The States filed their response brief on April 16, 2021. The Intervenor filed their reply brief on May 7, 2021. On May 28, 2021, the Department filed a reply brief. In its reply brief, the Department explained that the rulemaking proposing to rescind the Joint Employer Rule may moot the States’ challenge to the Rule, making any resolution of the appeal unnecessary. The Department took no position on the merits of the Rule in its reply brief. The Department argued that if the Second Circuit resolves the appeal, it should reverse the district court’s decision on the grounds that the States had no standing to challenge the Rule.

## **II. Comments and Decision**

The Department received over 290 comments in response to the NPRM. State officials, members of Congress, labor unions, social justice organizations, worker advocacy groups, and individual commenters wrote in support of the Department’s proposal to rescind the Joint Employer Rule, including a number of commenters who submitted comments with similar template language. These commenters supported rescission of the Rule predominantly on the basis that, in their view, the Rule improperly narrowed the test for joint employer status and conflicted with decades of Department interpretation, the text of the FLSA, and Congressional intent. Some suggested that the Rule did not align with the Supreme Court’s observation that the FLSA’s conception of employment is of “striking breadth.”<sup>84</sup> Commenters also noted detrimental effects of the Rule on vulnerable workers employed by contractors. Others pointed out that a court had vacated the Rule’s vertical joint employment analysis and asserted that the horizontal joint employment test was intertwined with the vacated vertical joint employment provisions. Commenters also raised numerous other

legal and policy criticisms of the Rule, discussed in greater detail below.

Various trade associations, business advocacy organizations, law firms, and individual commenters submitted comments opposing the Department’s proposal to rescind the Joint Employer Rule. These commenters generally supported the Rule for, in their view, providing a clearer, common-sense standard for determining joint employer status. Several expressed the view that the Department was relying too much on a district court decision which the commenters believe to be erroneous, and encouraged the Department to stay this rulemaking pending the outcome of the appeal to the Second Circuit. They raised numerous other legal and policy arguments in defense of the Rule (or in objection to the proposed rescission), discussed in greater detail below.<sup>85</sup>

Having considered the comments submitted in response to the NPRM, the Department has decided to finalize the rescission of the Joint Employer Rule. The Rule was inconsistent with the FLSA’s text and purpose. The Rule’s vertical joint employment analysis had never before been applied by WHD, was different from the analyses applied by every court to have considered the issue prior to the Rule’s issuance, and has generally not been adopted by courts. The Rule’s horizontal joint employment analysis, although consistent with prior guidance, was intertwined with the vertical joint employment analysis, and thus the Department is rescinding the entire Rule as explained below. The Department’s response to commenter feedback on specific aspects of the proposed rescission is also provided below.

### *A. Statutory Analysis and Control-Based Test for Vertical Joint Employment*

The NPRM observed that the statutory analysis and control-based test for vertical joint employment set forth in the Joint Employer Rule was different, to varying degrees, from the analyses and tests applied by every court to have considered joint employer questions

<sup>85</sup> In addition, some commenters provided political or ideological statements that did not specifically support or oppose the proposed rescission. For example, some comments were limited to offering support for working people without suggesting how best to do so in the context of this rulemaking. A few other commenters appeared to confuse the proposed rescission of the Joint Employer Rule with the proposed withdrawal of the Department’s rule related to independent contractors. See 86 FR 14027 (Mar. 12, 2021) (proposing withdrawal of the final rule, “Independent Contractor Status under the Fair Labor Standards Act,” previously published on January 7, 2021 at 86 FR 1168). The Department finalized withdrawal of the Independent Contractor Rule on May 6, 2021. See 86 FR 24303.

<sup>77</sup> See 86 FR 14042–43.

<sup>78</sup> See 86 FR 14043.

<sup>79</sup> See 86 FR 14043–44 (quoting *Scalia*, 490 F. Supp. 3d at 790).

<sup>80</sup> See 86 FR 14044.

<sup>81</sup> See 86 FR 14044–45.

<sup>82</sup> See 86 FR 14045.

<sup>83</sup> See 86 FR 14045–46.

<sup>84</sup> *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992).

prior to the Rule's issuance, as well as WHD's previous enforcement approach. The NPRM further noted that the Rule may have been impermissibly narrow due to its exclusive focus on control.

#### 1. The Rule's Reliance on Section 3(d) as the Sole Textual Basis for Determining Joint Employer Status

In the Rule, the Department stated that section 3(d) of the FLSA, which contains the definition of employer, is the sole statutory basis for determining joint employer status under the Act, and asserted that sections 3(e) and 3(g), which define "employee" and "employ," respectively, are not relevant to determining joint employer status.<sup>86</sup> In the NPRM, the Department explained its concern that, upon further consideration, the text of section 3(d) alone may not easily encompass all scenarios in which joint employment may arise under the Act.<sup>87</sup>

Multiple commenters representing employees agreed that by limiting the statutory basis of the vertical joint employment analysis to section 3(d) and ignoring the "suffer or permit" language of section 3(g)'s definition of "employ," the Joint Employer Rule's test for vertical joint employment was unduly narrow and contrary to law and the Act. *See, e.g.,* National Employment Lawyers Association. The North Carolina Justice Center, for example, stated that the "rule's narrow definition of who is responsible as an employer is contrary to the plain language of the statute's definition of 'employ' contained in section 203(g) of the Act." The International Brotherhood of Teamsters noted that the Rule impermissibly ignored the statutory definitions of "employ" and "employee," which they asserted "are integral to the 'employer' definition." The Northwest Workers' Justice Project commented on the Rule's "novel" interpretation and asserted that "the Secretary is unable to point to a single authority for its unusual assertion that this section [3(d)] is the sole source of joint employment." The Project's comment further criticized the Rule's statutory interpretation, observing that "[t]he word 'joint' does not appear in § 203(d)" and opining that "the word 'includes' in 29 U.S.C. 203(d) would suggest that there are other types of employers under the FLSA than those that meet the statutory definition of § 203(d)." Texas RioGrande Legal Aid noted that the Rule "grew from the belief that section 3(d) of the FLSA 'is the touchstone for joint employer

status'"<sup>88</sup> but section 3(d) "is circular and provides little or no guidance as to the extent of employer-employee relationships." A coalition of State Attorneys General (State AGs) commented that the Rule's vertical joint employment test "conflicted with the statutory text of the FLSA" because its "narrow interpretation of the term 'employer' and its assertion that the definition of 'employer' is the sole textual basis to determine joint employment were not faithful to the Act's definitions and Congress' intent in enacting them."

Employers and trade associations generally commented that the Joint Employer Rule was consistent with the FLSA and case law and should be upheld. *See, e.g.,* U.S. Chamber of Commerce, Littler Workplace Policy Institute (WPI). The Associated Builders and Contractors, for example, stated that it "strongly supports the [D]epartment's clarification [in the Rule] that only the definition of an 'employer' in section 3(d) of the FLSA, 29 U.S.C. 203(d), determines joint employer status, not the definition of 'employee' in section 3(e)(1) or the definition of 'employ' as 'to suffer or permit work' in section 3(g) of the FLSA, 29 U.S.C. 203(e)(1), (g)." This commenter further stated that "Section 3(d) of the FLSA is the sole section that defines 'employer' (as a person 'acting directly or indirectly in the interest of an employer in relation to an employee'), while Section 3(g)'s separate definition of 'employ' (to 'suffer or permit' to work) has been improperly cited by some courts as a basis for finding joint employer status." The Society for Human Resource Management (SHRM) supported the Rule's statutory analysis, and commented that "by distancing itself from prior pronouncements espousing 'economic dependence' as the hallmark for joint employment (or suggesting that certain business models are inherently joint employment), the Department appropriately returned the focus of the joint employment inquiry to the FLSA's statutory language." Similarly, the Center for Workplace Compliance stated that "[w]hile sections 3(e)(1) and 3(g) would be relevant for determining whether an individual was an employee or independent contractor, they do not appear to be relevant to [the] determination of whether a second employer should be jointly liable under the FLSA." The U.S. Chamber of Commerce supported the focus on section 3(d) and stated that "[u]nlike the broad definition of 'employ', the definition of 'employer' contains an

active requirement that an entity be 'acting directly or indirectly in the interest of an employer in relation to an employee.'"

Having reviewed the comments and considered the issue further, the Department has concluded that the Rule's interpretation that section 3(d) is the "sole" textual basis for determining joint employer status in vertical joint employment scenarios<sup>89</sup> potentially excluded important aspects of joint employment arrangements.

As an initial matter, the statutory language of section 3(d) itself raises concerns as to whether relying on that provision as the sole textual basis encompasses all scenarios in which joint employment may arise. Section 3(d) uses the word "includes" rather than the word "means."<sup>90</sup> Under the Act, an "employer" "includes any person acting directly or indirectly in the interest of an employer in relation to an employee," "includes a public agency," but "does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization."<sup>91</sup> Thus, by its own terms, section 3(d) is not exhaustive. Throughout section 3—the "definitions" section of the FLSA—Congress chose to vary its language for each definition between "means" and "includes," and its use of "includes" when defining "employer" indicates that the definition that follows "includes" is not an exhaustive definition of "employer."<sup>92</sup>

Furthermore, the Joint Employer Rule limited joint employment in the vertical context to persons "acting directly or indirectly in the interest of the employer in relation to the employee," confining joint employment to persons acting in the interest of a single employer.<sup>93</sup> In other words, the Rule assumed that an employee had one employer and that any other person that was liable was a

<sup>89</sup> 85 FR 2825.

<sup>90</sup> 29 U.S.C. 203(d).

<sup>91</sup> *Id.* (emphases added).

<sup>92</sup> Compare, for example, sections 203(a), 203(b), and 203(e), which use the word "means" to define "person," "commerce," and "employee," respectively, with sections 203(d) and 203(g), which use the word "includes" to define "employer" and "employ," respectively. "It is a well-established canon of statutory interpretation that the use of different words or terms within a statute demonstrates that Congress intended to convey a different meaning for those words." *SEC v. McCarthy*, 322 F.3d 650, 656 (9th Cir. 2003); *see also Race Tires Am., Inc. v. Hoosier Racing Tire Corp.*, 674 F.3d 158, 165 (3d Cir. 2012) ("If possible, we must give effect to every clause and word of a statute, . . . and be reluctant to treat statutory terms as surplusage.") (internal quotation marks omitted).

<sup>93</sup> 29 CFR 791.2(a)(1) (2020) (citing 29 U.S.C. 203(d)) (emphasis added).

<sup>86</sup> 85 FR 2825, 2827–28.

<sup>87</sup> 86 FR 14042.

<sup>88</sup> Quoting 85 FR 2857.

joint employer. However, section 3(d) of the Act specifically defines a person “acting directly or indirectly in the interest of an employer in relation to the employee” as an “employer” itself.<sup>94</sup> Thus, while the Rule allowed only a single employer—“the employer”—to “suffer[, permit[, or otherwise employ[] the employee to work” in the vertical scenario,<sup>95</sup> section 3(d) itself provides for any number of other employers that can suffer, permit, or otherwise employ employees.<sup>96</sup> In light of this, the Joint Employer Rule did not even adhere to the statutory text—section 3(d)—which was its cited basis.

Additionally, there is case law indicating that section 3(d) was intended for the purpose of imposing responsibility upon the agents of employers, rather than to provide an exhaustive definition of joint employers under the Act.<sup>97</sup> The Rule acknowledged commenter arguments regarding this distinction within the Act’s “definitions” section, as well as the import of section 3(d)’s “includes” language,<sup>98</sup> but did not address these arguments. Confining the analysis to only the Act’s definition of “employer” resulted in an incomplete analysis of some potential joint employment scenarios.

The Department has also evaluated the Rule’s singular focus on section 3(d) against the backdrop of the history and purpose of the “suffer or permit” language in section 3(g). As the Rule acknowledged, the Act’s definition of

“employ” was a rejection of the common law standard for determining who is an employee under the Act in favor of a broader scope of coverage. See *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 326 (1992) (“[T]he FLSA . . . defines the verb ‘employ’ expansively to mean ‘suffer or permit to work.’ This . . . definition, whose striking breadth we have previously noted, stretches the meaning of ‘employee’ to cover some parties who might not qualify as such under a strict application of traditional agency law principles.”) (citations omitted); *Walling v. Portland Terminal Co.*, 330 U.S. 148, 150–51 (1947) (“But in determining who are ‘employees’ under the Act, common law employee categories or employer-employee classifications under other statutes are not of controlling significance. This Act contains its own definitions, comprehensive enough to require its application to many persons and working relationships, which prior to this Act, were not deemed to fall within an employer-employee category.”) (citations omitted).

Section 3(g)’s “suffer or permit” language was intended to include as employers entities that used intermediaries to shield themselves from liability.<sup>99</sup> Rather than being derived from the common law of agency, the FLSA’s definition of “employ” and its “suffer or permit” language originally came from state laws regulating child labor.<sup>100</sup> This language was “designed to reach businesses that used middlemen to illegally hire and supervise children.” *Antenor v. D & S Farms*, 88 F.3d 925, 929 n.5 (11th Cir. 1996). This standard was intended to expand coverage beyond employers who control the means and manner of performance to include entities who “suffer” or “permit” work.<sup>101</sup> Accordingly, the Rule’s reliance solely on section 3(d), to the exclusion of section 3(g), was in tension with

Congress’ well-understood intent in enacting those provisions.

Moreover, the Joint Employer Rule’s textual analysis needlessly bifurcated the statutory terms “employ” and “employer” in the vertical context. Specifically, it interpreted section 3(g) as defining who is an “employer” (person A is an employer of person B because person A suffers, permits, or otherwise employs person B to work), and section 3(d) as defining someone who is a “joint employer” (person C is a joint employer of employee B because person C acts directly or indirectly in the interest of employer A in relation to employee B). The Rule thus applied a different analytical framework to different employers. This bifurcated approach has not been used by any court nor is this stratification of employers supported by the text of the Act. Instead, all employers under the Act—joint employers or otherwise—are jointly and severally liable for wages owed. If anything, the Rule’s section 3(d) analysis was backwards to the extent that it inquired whether entities which are higher in the “vertical” structure of a particular industry (such as a general contractor or staffing agency client) are “acting . . . in the interests of” acknowledged employers which are lower in the structure (such as a subcontractor or staffing agency). This bifurcation also makes it unclear which standard—“suffer or permit” under section 3(g) or the control-based standard under section 3(d)—should apply to which entity if, for example, both potential employers deny any employment relationship with a worker.

The Joint Employer Rule discussed the Supreme Court’s decision in *Falk v. Brennan*<sup>102</sup> at length, relying on it to buttress its statutory interpretation argument. Upon further consideration, while the Court did address a joint employment situation in *Falk v. Brennan*, the Department now believes that the case’s utility is limited. In its four-sentence discussion of joint employment, the Court explicitly noted the Act’s definitions in both section 3(d) (“employer”) and section 3(e) (“employee”), and based its conclusion that a management company was a joint employer “[i]n view of the expansiveness of the Act’s definition of ‘employer’ and the extent of the [purported joint employer’s] managerial

<sup>102</sup> Notably, the district court in *New York v. Scalia* concluded that “*Falk* cuts against the Department’s argument that section 3(d) is the sole textual basis for joint employer liability” because *Falk* cited to the statutory definition of “employee” as well as “employer” and observed that the FLSA’s definition of employer is expansive. See 490 F. Supp. 3d at 783–84.

<sup>94</sup> 29 U.S.C. 203(d) (emphasis added).

<sup>95</sup> 29 CFR 791.2(a)(1) (2020). The Joint Employer Rule preamble acknowledged the possibility that “multiple employers [may] suffer, permit, or otherwise employ an employee to work,” but only in the horizontal scenario involving “separate sets of hours.” 85 FR 2823.

<sup>96</sup> 29 U.S.C. 203(d).

<sup>97</sup> See *Greenberg v. Arsenal Bldg. Corp.*, 144 F.2d 292, 294 (2d Cir. 1944) (explaining that “the section would have little meaning or effect if such were not the case”). The Supreme Court reversed an unrelated part of the Second Circuit’s holding in *Greenberg*. See 324 U.S. 697, 714–16 (1945). *Greenberg* is not alone in concluding that section 3(d)’s “includes” language was intended to impose liability on an employer’s agents. See, e.g., *Donovan v. Agnew*, 712 F.2d 1509, 1513 (1st Cir. 1983) (noting that section 3(d) was “intended to prevent employers from shielding themselves from responsibility for the acts of their agents”); *Dole v. Elliott Travel & Tours, Inc.*, 942 F.2d 962, 965–66 (6th Cir. 1991) (relying on section 3(d) to hold individually liable the owner/officer who exercised operational control of the employer); *Arias v. Raimondo*, 860 F.3d 1185, 1191–92 (9th Cir. 2017) (observing that section 3(d) “clearly means to extend [the FLSA’s] reach beyond actual employers.”); *cert. denied*, 138 S. Ct. 673 (2018); see also *Thompson v. Real Estate Mortg. Network*, 748 F.3d 142, 153–54 (3d Cir. 2014) (holding that “a company’s owners, officers, or supervisory personnel may also constitute ‘joint employers’” with the company under 3(d)).

<sup>98</sup> 85 FR 2826.

<sup>99</sup> See *Rutherford Food*, 331 U.S. at 728; *Salinas v. Commercial Interiors, Inc.*, 848 F.3d 125, 136–140 (4th Cir. 2017). When Congress enacted the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1801 *et. seq.*, it provided that “[t]he term ‘employ’ has the meaning given such term under section 3(g) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(g)) for the purposes of implementing the requirements of that Act.” 29 U.S.C. 1802(5). The committee report provides that “the Committee’s use of [section 3(g)] was deliberate and done with the clear intent of adopting the ‘joint employer’ doctrine as a central foundation of this new statute.” H.R. Rep. No. 97–885, at 6 (1982).

<sup>100</sup> See *Rutherford Food*, 331 U.S. at 728 & n.7.

<sup>101</sup> See generally *People ex rel. Price v. Sheffield Farms-Slawson-Decker Co.*, 225 N.Y. 25, 29–31 (1918).

responsibilities at each of the buildings, which gave it substantial control of the terms and conditions of the work of these employees.”<sup>103</sup> Moreover, *Falk* was an affirmation of a Fourth Circuit case, which noted that the Act’s definitions (both 3(d) and 3(g)) were “very broadly cast” and that “courts have accordingly found an employment relationship for purposes of the Act far more readily than would be dictated by common law doctrines.”<sup>104</sup> The Court commented favorably on the Fourth Circuit’s holding, stating that “the Court of Appeals was unquestionably correct in holding that [the management company] is also an employer . . . .”<sup>105</sup> The Department’s brief before the Supreme Court in *Falk v. Brennan* also argued that the petitioner building management company was a joint employer of the building’s maintenance workers based on both section 3(d) and section 3(g).<sup>106</sup> The brief further stated that “[s]ince petitioners do the hiring and firing, they ‘employ’ the workers within the plain meaning of this statutory definition.”<sup>107</sup> The Department’s brief thus concluded that it is preferable to read the relevant statutory provisions of section 3(d) and section 3(g) together because, among other reasons, section 3(g) defined “employ” as it did with the intent of including as an employer entities that used intermediaries that employed workers but disclaimed that they themselves were employers of the workers.<sup>108</sup>

Similarly, all of the circuit courts of appeals to have considered joint employment under the FLSA have looked to the economic realities test as the proper framework, and none have explicitly identified section 3(d) as the sole textual basis for joint employment. In particular, the case law heavily relied upon in the Joint Employer Rule from the First, Third, and Fifth Circuits, as well as the *Bonnette* decision itself, all apply an economic realities analysis

<sup>103</sup> 414 U.S. at 195.

<sup>104</sup> *Shultz v. Falk*, 439 F.2d 340, 344 (4th Cir. 1971).

<sup>105</sup> 414 U.S. at 195.

<sup>106</sup> Brief for Respondent Secretary of Labor, *Falk v. Brennan*, 414 U.S. 190 (1973) (No. 72–844), 1973 WL 173856, at \*10 (“The Act clearly defines an ‘employer’ to include ‘any person acting directly or indirectly in the interest of an employer in relation to an employee \* \* \*’ (Section 3(d)), a description plainly applicable to petitioners in their relation to the building personnel. The definition of the term ‘employ’ in Section 3(g) as including ‘to suffer or permit to work’ confirms this conclusion, since it is petitioners, not the building owners, who have control over the hiring, job assignments, and discharge of the building workers.”).

<sup>107</sup> *Id.* at \*26.

<sup>108</sup> *Id.*; see *Rutherford Food*, 331 U.S. at 728; *Salinas*, 848 F.3d at 136–140.

when determining joint employment under the FLSA.<sup>109</sup> The Rule’s approach also represented a significant shift from WHD’s longstanding analysis; WHD had never excluded sections 3(e) and (g) from the joint employment analysis and had instead consistently applied an economic realities framework that did not exclude the definitions of “employ” or “employee” when determining joint employer liability, as discussed above.

In view of the foregoing, limiting the statutory basis for joint employment analyses solely to section 3(d), to the exclusion of the other highly relevant definitions of “employee” in section 3(e) and “employ” in section 3(g), was problematic and inhibited compliance with the Act.

## 2. The Vertical Joint Employment Test’s Singular Emphasis on Control

For vertical joint employment scenarios, the Joint Employer Rule adopted a four-factor test focused on the actual exercise of control. Generally, it excluded factors that were not indicative of a potential joint employer’s control, directed that additional factors may be considered “only if they are indicia of whether the potential joint employer exercises significant control over the terms and conditions of the employee’s work,” and specifically excluded any consideration of the employee’s economic dependence on the potential joint employer.<sup>110</sup> The NPRM questioned whether the four-factor test’s emphasis on control was unduly narrow.<sup>111</sup> While recognizing that the tests for vertical joint employment differ among the circuit courts of appeals, the NPRM observed that “all courts consistently use a totality-of-the-circumstances economic realities approach to determine the scope of joint employment under the FLSA, rather than limiting the focus exclusively to control.”<sup>112</sup>

Organizations representing employee interests generally opposed the four-factor test’s emphasis on control and, in particular, criticized the Joint Employer Rule’s requirement that actual control be exercised. The Shriver Center, for example, commented that “[e]ven under the more restrictive common-law employment test, the [Department]’s rule is too narrow: it fails to consider the *right* to control, a cornerstone of

<sup>109</sup> See, e.g., *Baystate Alternative Staffing, Inc. v. Herman*, 163 F.3d 668, 675 (1st Cir. 1998); *In re Enterprise Rent-A-Car Wage & Hour Emp’t Practices Litig.*, 683 F.3d 462, 469–470 (3d Cir. 2012); *Gray v. Powers*, 673 F.3d 352, 357 (5th Cir. 2012); *Bonnette*, 704 F.2d at 1469.

<sup>110</sup> 29 CFR 791.2(b) and (c) (2020).

<sup>111</sup> 86 FR 14043.

<sup>112</sup> *Id.*

common-law employment determinations under long-standing Supreme Court and FLSA law.” See also Workplace Justice Project. The Construction Employers of America stated that the Rule’s analysis “replaced the historic focus on economic dependence for determining joint employment with a four-factor test for assessing the level of control the potential joint employer has over the workers at issue.” The Northwest Workers’ Justice Project noted that there is case law that presents a broader analysis than solely control, stating, “[o]f course, both *Real [v. Driscoll Strawberry Assocs.]*, 603 F.2d 748 (9th Cir. 1979)] and *Rutherford [Food Corp. v. McComb]*, 331 U.S. 722 (1947)] articulate broader factors beyond control to be considered in determining employment under the FLSA.” The State AGs also commented that the control-based test for vertical joint employment set forth by the Rule was “contrary to the FLSA’s text and case law” and that requiring the exercise of actual control was “inconsistent with the ‘suffer or permit’ language of the statute.”

Organizations representing employers generally supported the Joint Employer Rule’s four-factor test, and specifically commented that the requirement for an actual exercise of control would provide much-needed clarity for employers. The National Association of Home Builders, for instance, stated that the Rule “provides a clearer methodology for determining joint employer status with the focus on the actual exercise of power.” The U.S. Chamber of Commerce also supported the test’s emphasis on the exercise of control, explaining that “contractual reservations of control are not probative of the relationship between the employer and the putative employee—the touchstone of the joint employer analysis—if the putative employer never exercises such control.” The National Restaurant Association and Restaurant Law Center also praised the test for similar reasons, commenting that the Rule “created a more appropriate and reliable standard using a multifactor balancing test that focuses on the economic realities of the potential joint employer’s exercise of control over the employee’s terms and conditions of employment. Because this test focuses on the actual and direct control over the employee’s terms and conditions of employment, there is greater predictability and uniformity in the joint employment analysis.” See also Associated Builders and Contractors (“ABC therefore supports the



[D]epartment's rule codifying the *Bonnette* test, with an additional emphasis on 'actual,' as opposed to reserved but unexercised control by one employer over another's employees, as the test that is most consistent with the statutory definition of 'employer.'"); SHRM ("Ultimately, by ensuring that the inquiry is directed [at] a putative joint employer's actual control over critical terms of employment, the [Joint Employer Rule] stands on solid ground statutorily, and is consistent with the relevant Supreme Court authority.").

Upon consideration of the comments received, the Department has concluded that the four-factor test's exclusive focus on control—and specifically, its mandate for an actual exercise of control—was not the most appropriate standard for vertical joint employment scenarios in view of the Act and case law. It is well-settled that in enacting the FLSA, Congress rejected the common law control standard for employment. In *Darden*, the Supreme Court stated that the FLSA defines "employ" "expansively" and with "striking breadth" and "stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles."<sup>113</sup>

Although the specific factors may vary, all courts consistently use a totality-of-the-circumstances economic realities approach to determine the scope of joint employment under the FLSA. In addition to *Bonnette*, upon which the Rule heavily relied, multiple other circuit court decisions relied upon by the Rule also ground their joint employment analyses in the overarching totality-of-the-circumstances economic realities standard.<sup>114</sup> Court decisions that have not applied the *Bonnette* factors generally ground their joint employment analyses in the totality-of-the-circumstances economic realities standard as well.<sup>115</sup> Although some courts have applied an analysis that addresses only, or primarily, the potential joint employer's control,<sup>116</sup> these cases have nonetheless recognized that the control factors considered "*do not constitute an exhaustive list* of all potentially relevant facts" and "should not be 'blindly applied'"; rather, a joint

employment determination must consider the employment situation in totality, including the economic realities of the working relationship.<sup>117</sup> In contrast, the Rule provided that "[a]dditional factors may be relevant for determining joint employer status in this scenario, *but only if they are indicia of whether the potential joint employer exercises significant control over the terms and conditions of the employee's work.*"<sup>118</sup> While the exercise of "significant control" may certainly establish joint employment under the Act, no court has set this standard as the requirement for a finding of joint employment.

Especially problematic was the Rule's requirement for the actual exercise of control, a standard adopted by no court. The Rule stated that it was "not the Department's intent" to promulgate a rule narrower than the common law.<sup>119</sup> However, the Rule also plainly required an actual exercise of control, stating that "the regulation now makes clear that an actual exercise of control, directly or indirectly, is required for at least one of the factors and is the clearer indication of joint employer status."<sup>120</sup> Under the common law standard, the mere right to control indicates a common law employment relationship; in contrast, the Rule required an actual exercise of control for at least one factor.<sup>121</sup> For this reason too, the Rule's test for vertical joint employment was in tension with the economic realities analysis used by courts across the country, which was intended to be more comprehensive than the common law standard.<sup>122</sup>

<sup>117</sup> *Enterprise*, 683 F.3d at 469 (emphasis in original) (quoting *Bonnette*, 704 F.2d at 1469–1470).

<sup>118</sup> 29 CFR 791.2(b) (emphasis added).

<sup>119</sup> 85 FR 2834.

<sup>120</sup> *Id.*

<sup>121</sup> *See, e.g., Zheng*, 355 F.3d at 69 ("Measured against the expansive language of the FLSA, the four-part test [based on *Bonnette*] employed by the District Court is unduly narrow, as it focuses solely on the formal right to control the physical performance of another's work. That right is central to the common-law employment relationship, *see* Restatement of Agency section 220(1) (1933) ('A servant is a person employed to perform service for another in his affairs and who, with respect to his physical conduct in the performance of the service, is subject to the other's control or right to control.').")

<sup>122</sup> *See Falk*, 439 F.2d at 344 (observing that courts find employment under the FLSA "far more readily than would be dictated by common law doctrines"); *Portland Terminal Co.*, 330 U.S. at 150–51 (noting that the FLSA's definitions are "comprehensive enough to require its application" to many working relationships which, under the common law control standard, may not be employer-employee relationships); *Darden*, 503 U.S. at 326 (stating that the FLSA's "suffer or permit" standard for employment "stretches the meaning of 'employee' to cover some parties who might not qualify as such under a strict application of traditional agency law principles").

The Department appreciates employers' desire for clarity and certainty regarding compliance under the Act. The Rule's narrowing of the analysis of control, however, was contrary to the Act and longstanding case law and thus did not guarantee enhanced clarity. Because the Rule's test (including the requirement for the actual exercise of control) conflicted with the tests used from every circuit, there likely was more uncertainty under this new interpretation.

#### B. Taking Into Account Prior WHD Guidance

The Department's NPRM noted that the Joint Employer Rule's vertical joint employment analysis, in addition to having never before been applied by a court, had never before been applied by WHD.<sup>123</sup> The Department indicated that it tentatively shared the concern that the Rule did not sufficiently take into account and explain departures from WHD's prior joint employment guidance, including its MSPA joint employment regulation and the withdrawn Home Care AI and Joint Employment AI.<sup>124</sup> The Department further indicated that this concern provided additional support for rescinding the Rule.<sup>125</sup>

Texas RioGrande Legal Aid commented that the Joint Employer Rule conflicted with the MSPA joint employment regulation and that, "under the Rule, many agricultural employers could have been deemed joint employers under the MSPA but not under the FLSA," causing "immense confusion" in its view "among the regulated community in the agricultural sector." The State AGs stated that the Joint Employer Rule "departed from decades of agency interpretation of and guidance on [the] joint employer analysis," including the Department's vertical joint employment standard in its MSPA regulation, its Home Care AI, and its Joint Employment AI. According to the AGs, WHD's prior guidance had "rejected a 'control-based test' like the one adopted by the Rule," and the Rule did not adequately explain its departure from WHD's prior interpretations. The National Women's Law Center added that the Rule "set forth a new joint employment standard" that was different from WHD's previous enforcement approach and "departed from longstanding . . . [WHD] interpretations of covered employment and employer under the FLSA."

<sup>123</sup> *See* 86 FR 14044.

<sup>124</sup> *See id.*

<sup>125</sup> *See id.*

<sup>113</sup> 503 U.S. at 326.

<sup>114</sup> *See, e.g., Baystate*, 163 F.3d at 675; *Enterprise*, 683 F.3d at 469; *Gray*, 673 F.3d at 354–55.

<sup>115</sup> *See, e.g., Zheng*, 355 F.3d at 69–75; *Salinas*, 848 F.3d at 142–43; *Torres-Lopez*, 111 F.3d at 639–644 (noting that an economic realities analysis applies when determining joint employment and that the concept of joint employment, like employment generally, "should be defined expansively" under the FLSA).

<sup>116</sup> *See Baystate*, 163 F.3d at 675; *Enterprise*, 683 F.3d at 468–69.



Other commenters disputed the concerns raised by the Department in the NPRM. The Texas Public Policy Foundation, for example, asserted that it was “arbitrary for WHD to point to ‘inconsistencies’ between the old agency guidance and the new agency guidance and assert that those inconsistencies, by themselves, justify rescission” because “[o]therwise, an agency would never be able to offer new or updated regulatory guidance.” Noting that the Department had described its concern as tentative in the NPRM, this commenter added that “[i]t is impermissible for WHD to withdraw the Joint Employer Rule based on WHD’s ‘tentative’ concern.”

Some commenters contrasted the Department’s brief before the Second Circuit with the NPRM. The National Association of Home Builders commented that the Department’s “rationale [in the NPRM] is contrary to the arguments” that the Department made in its opening brief to the Second Circuit in the appeal of the district court’s decision vacating most of the Rule. Associated Builders and Contractors stated that the NPRM’s reliance on the district court’s decision “is arbitrary in light of the fact that, less than three months ago, the [D]epartment filed a brief to the court of appeals declaring that each of the same aspects of the district court decision was wrong and should be reversed.” It added that, “[i]n light of the pending nature of the appeal from the district court decision, at a minimum the NPRM should be held in abeyance pending the outcome of the appeal.” The International Franchise Association agreed, stating that “[n]otwithstanding the [Department’s] own pending appeal from the district court’s decision, the [Department] has proposed to rescind its [Joint Employer] Rule by relying on the same district court’s opinion that it seeks to challenge on appeal at the Second Circuit.” It added that the Department’s proposal to withdraw the Rule “should be withdrawn, or at the very least, held in abeyance until a final ruling in the pending Second Circuit appeal.” WPI also agreed, stating that “[e]ach aspect of the district court decision on which [the Department] now relies in proposing to rescind the [R]ule is refuted by [the Department]’s own brief to the Second Circuit.” It asserted that it was “arbitrary and capricious for [the Department] to rely on a court decision which it has only recently declared to be wrong, while that decision remains pending on appeal” and suggested that the Department “hold its NPRM in

abeyance pending the appeal’s outcome.”<sup>126</sup>

In response, the Department agrees that “[a]gencies are free to change their existing policies as long as they provide a reasoned explanation for the change.”<sup>127</sup> When an agency changes its position, “it need not demonstrate . . . that the reasons for the new policy are *better* than the reasons for the old one.”<sup>128</sup> “But the agency must at least ‘display awareness that it is changing position.’”<sup>129</sup> The agency’s explanation is sufficient if “the new policy is permissible under the statute, . . . there are good reasons for it, and . . . the agency *believes* it to be better, which the conscious change of course adequately indicates.”<sup>130</sup> When explaining a changed position, “an agency must also be cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’”<sup>131</sup> In such cases, the policy change itself does not need “further justification,” but “a reasoned explanation is needed for disregarding facts and circumstances that underlay or were engendered by the prior policy.”<sup>132</sup> For these reasons, “‘an unexplained inconsistency’ in agency policy is ‘a reason for holding an interpretation to be an arbitrary and capricious change from agency practice.’”<sup>133</sup>

Having considered the comments and reviewed the issue further, the Department believes that the Joint Employer Rule did not provide a reasoned explanation for the new FLSA vertical joint employment standard that

<sup>126</sup> The International Franchise Association described the “30-day window for public comment” on the NPRM proposing to withdraw the Joint Employer Rule as “insufficient.” WPI agreed, stating that “30 days is insufficient time to comment on the proposal.” The comment period was 31 days and was, in any event, a similar duration as the comment periods for some other recent Department rulemakings. See, e.g., 85 FR 60600 (Sept. 25, 2020); 86 FR 14027. Additionally, because the NPRM was published only a little over one year after the Rule was published, interested stakeholders should have been familiar with the Rule that was proposed for rescission as well as the implications of any rescission.

<sup>127</sup> *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2125 (2016) (citing *Nat’l Cable & Telecomm. Ass’n v. Brand X internet Servs.*, 545 U.S. 967, 981–82 (2005); *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 863–64 (1984)).

<sup>128</sup> *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).

<sup>129</sup> *Encino*, 136 S. Ct. at 2126 (quoting *Fox Television*, 556 U.S. at 515, and removing emphasis).

<sup>130</sup> *Fox Television*, 556 U.S. at 515.

<sup>131</sup> *Encino*, 136 S. Ct. at 2126 (quoting *Fox Television*, 556 U.S. at 515).

<sup>132</sup> *Fox Television*, 556 U.S. at 515–16.

<sup>133</sup> *Encino*, 136 S. Ct. at 2126 (quoting *Brand X*, 545 U.S. at 981).

it adopted. As explained above in Section II.A.1., there was not a reasonable basis for relying exclusively on section 3(d) and completely excluding sections 3(e) and (g) when interpreting who is a joint employer under the FLSA. As further explained in Section II.A.2., there was not a reasonable basis for adopting a narrow standard limited to control for determining who is a joint employer under the FLSA. The Rule’s stated desire to provide a uniform vertical joint employment standard may have been valid,<sup>134</sup> and the Department recognizes that there may be more than one permissible interpretive vertical joint employment standard under the FLSA; however, the standard that the Rule adopted was not permissible under the FLSA.

The Department also believes that the Joint Employer Rule did not sufficiently take into account prior WHD guidance. The Department’s MSPA joint employment regulation<sup>135</sup> and its 1997 final rule<sup>136</sup> implementing it have been in effect for about 24 years. In keeping with MSPA and its legislative history,<sup>137</sup> the MSPA regulation expressly ties its joint employment analysis to the FLSA. The MSPA regulation provides that “[j]oint employment under the Fair Labor Standards Act is joint employment under the MSPA”<sup>138</sup> and sets forth a multi-factor analysis for determining vertical joint employment that is different than the Rule’s analysis.<sup>139</sup> The Joint Employer Rule, however, did not address or account for any differences between its new regulatory standard and MSPA’s existing regulatory standard or any effects that it may have on joint employment under MSPA. In addition, the Department’s interpretive guidance in the Home Care AI and the Joint Employment AI rejected a joint employment analysis that was limited to control, and those AIs relied on FLSA sections 3(e) and (g) in addition to section 3(d).<sup>140</sup> Although the Home Care AI and the Joint Employment AI were withdrawn before the effective date of the Joint Employer Rule, the Department did not address or sufficiently account for its departures

<sup>134</sup> See *Scalia*, 490 F. Supp. 3d at 795 (making clear that its decision to vacate most of the Rule did “not imply that the Department cannot engage in rulemaking to try to harmonize joint employer standards”).

<sup>135</sup> See 29 CFR 500.20(h)(5).

<sup>136</sup> See 62 FR 11745–46.

<sup>137</sup> See note 99, *supra*.

<sup>138</sup> See 29 CFR 500.20(h)(5)(i).

<sup>139</sup> See 29 CFR 500.20(h)(5)(iv).

<sup>140</sup> See 2016 WL 284582, at \*2–4 & 9; 2014 WL 2816951, at \*2 & n.5.

from their analyses in the Rule. In summary, the Department was and is allowed to change its interpretation of joint employment under the FLSA; however, the Rule failed to account for and address inconsistencies with WHD's prior and existing guidance, which is an additional reason to rescind the Rule.

In response to comments asserting an inconsistency between the Department's opening brief to the Second Circuit in the appeal of the district court's decision vacating most of the Joint Employer Rule and its NPRM proposing to rescind the Rule, the Department's filings with the Second Circuit have been consistent with the status of this rescission rulemaking. The Department filed its opening brief with the Second Circuit on January 15, 2021—prior to any reconsideration of the Rule and well before the deadline for filing the brief. Following the Department's NPRM in March proposing to rescind the Rule, the Department requested that the Second Circuit hold the appeal in abeyance while this rulemaking progressed. Although the Second Circuit denied the request, asking it to hold the appeal in abeyance was consistent with this rulemaking.

In addition, the Department filed a reply brief with the Second Circuit on May 28, 2021, in which it took “no position” regarding “the merits of the Joint Employer Rule” in light of this pending rulemaking. In the reply brief, the Department noted that completion of this rulemaking may moot the States' challenge to the Rule and requested that the Second Circuit, if it resolves the appeal at all, reverse the district court's decision solely on the grounds that the States lacked standing to challenge the Rule. Accordingly, the Department's position in the pending Second Circuit appeal has been consistent with the status of this rescission rulemaking; the Department stopped defending the merits of the Rule before the Second Circuit consistent with its concerns with the Rule as set forth in the NPRM proposing to rescind the Rule. Finally, issuing this final rule now rather than waiting for the Second Circuit to resolve the appeal is consistent with the Department's position in its reply brief. Although the district court's decision vacating the Rule's vertical joint employment analysis was a primary consideration for proposing rescission as noted in the NPRM, the Department's decision to rescind the Rule as set forth herein is independent from the district court's decision and represents its reasoned interpretation of the FLSA as supported by case law, regardless of the Second Circuit's ultimate resolution of the appeal.

### *C. The Joint Employer Rule's Vertical Joint Employment Analysis Did Not Significantly Impact Judicial Analysis of FLSA Cases*

The NPRM stated that courts have generally declined to adopt the Joint Employer Rule's vertical joint employment analysis since its promulgation.<sup>141</sup> The NPRM further stated that, in light of this judicial landscape, rescinding the Joint Employer Rule would not be disruptive.<sup>142</sup> The NPRM added that WHD does not believe that it would be difficult or burdensome to educate and reorient its enforcement staff if the Rule is rescinded.<sup>143</sup>

The State AGs agreed in their comment that, “based on the judicial landscape,” rescinding the Joint Employer Rule “would not be disruptive.” They added that it was “not surprising” that only two district court decisions had adopted the Rule's vertical joint employment analysis given that, in their view, the Rule's analysis “runs counter to Supreme Court precedent” and “conflicts with numerous court of appeals decisions interpreting joint employment.” Texas RioGrande Legal Aid added that, “aware of the Rule's mismatch with the FLSA's text and purpose, courts would have been likely to continue to eschew the Rule's framing in favor of their established formulations of the multi-factor analysis.”

Having considered the comments and reviewed the issue further, the Department believes that courts' general non-adoption of the Joint Employer Rule's vertical joint employment analysis provides additional support for rescinding the Rule. As a general matter, courts have declined to adopt the Joint Employer Rule's analysis. In addition to the Southern District of New York's decision to vacate the Rule's vertical joint employment analysis, other courts have declined to adopt the Rule's analysis for similar reasons.<sup>144</sup> The Department is aware of two FLSA cases

in which a court has adopted and applied the Rule's vertical joint employment analysis.<sup>145</sup> Both cases were district court decisions from the Tenth Circuit, which has not issued a definitive decision regarding the analysis to apply in FLSA vertical joint employment cases. Neither case applied the rule in a uniform manner, relying on additional factors or stating them differently.

Moreover, as the Joint Employer Rule acknowledged, a number of circuit courts of appeals had previously established analytical frameworks for vertical joint employment cases, and all of these analyses are different from the analysis in the Joint Employer Rule.<sup>146</sup> Notwithstanding the Rule, district courts in those circuits have generally continued to apply binding precedent from their circuit courts of appeals when deciding FLSA vertical joint employment issues—often with little, if any, meaningful discussion of the Rule's analysis.<sup>147</sup> In sum, despite the Joint

<sup>145</sup> See *Clyde v. My Buddy The Plumber Heating & Air, LLC*, No. 2:19-cv-00756-JNP-CMR, 2021 WL 778532 (D. Utah Mar. 1, 2021); *Sanders v. Glendale Rest. Concepts, LP*, No. 19-cv-01850-NYW, 2020 WL 5569786 (D. Colo. Sept. 17, 2020). In *Clyde*, the district court found that “appropriate to rely upon the factors listed in the federal regulations interpreting the FLSA for guidance.” 2021 WL 778532, at \*2 (citing *Skidmore v. Swift & Co.*, 323 U.S. 134, 139–40 (1944)). It also relied on additional joint employment factors from the Fourth Circuit's decision in *Salinas*. See *id.* at \*3. In *Sanders*, the district court actually articulated the four factors as *Bonnette* did but applied them as a result of the Joint Employer Rule and the parties' agreement that those four factors applied instead of the factors from the Fourth Circuit's decision in *Salinas*, which some of the courts in that district “favored.” 2020 WL 5569786, at \*3–4. In addition to these two district court decisions, there is the Sixth Circuit's decision in *Rhea v. West Tennessee Violent Crime & Drug Task Force*, 825 F. App'x 272 (6th Cir. 2020). In that case, the Sixth Circuit, after applying the *Bonnette* factors to determine that one defendant was not the employee's employer under the FLSA, listed the Rule's vertical joint employment factors in a footnote, asserted that the Rule's factors “focus[] on the same factors as that of determining employer status,” and stated that “[n]either would [the defendant] be a ‘joint employer’ under the FLSA.” *Id.* at 275–77 & n.4. However, the Sixth Circuit did not engage in any substantial analysis of the Rule's factors or meaningfully apply them. See *id.* at 277 n.4.

<sup>146</sup> See 85 FR 2831 (comparing the Rule's four-factor analysis to the various analyses adopted by circuit courts of appeals).

<sup>147</sup> See, e.g., *Hamm v. Acadia Healthcare Co.*, No. 20–1515, 2021 WL 1212539, at \*5–6 (E.D. La. Mar. 31, 2021) (reciting Fifth Circuit's vertical joint employment analysis); *Zhao v. Ke Zhang Inc.*, No. 18–CV–6452 (EK) (VMS), 2021 WL 1210369, at \*4–6 (E.D.N.Y. Mar. 31, 2021) (applying Second Circuit's vertical joint employment analysis); *Gil v. Pizzarotti LLC*, No. 1:19-cv-03497–MKV, 2021 WL 1178027, at \*4–13 & n.2 (S.D.N.Y. Mar. 29, 2021) (applying Second Circuit's vertical joint employment analysis although noting in footnote in response to employer's argument that it would have reached the same result had it applied the Rule's analysis); *Blan v. Classic Limousine Transp., LLC*,

<sup>141</sup> See 86 FR 14044–45 (citing cases, including two exceptions).

<sup>142</sup> See 86 FR 14045.

<sup>143</sup> See *id.*

<sup>144</sup> See *Reyes-Trujillo v. Four Star Greenhouse, Inc.*, No. 20–11692, — F. Supp. 3d —, 2021 WL 103636, at \*6–9 (E.D. Mich. Jan. 12, 2021) (agreeing that the Joint Employer Rule's exclusive focus on the potential joint employer's control runs counter to the FLSA's expansive definition of “employer” and thus declining to adopt the Rule's analysis); *Elsayed v. Family Fare LLC*, No. 1:18–cv–1045, 2020 WL 4586788, at \*4 (M.D.N.C. Aug. 10, 2020) (finding “it unnecessary to wade into whether the DOL's [Joint Employer] Rule is entitled to *Brand X* deference or whether the [Rule] is lawful under the APA” and instead “rely[ing] on established Fourth Circuit precedent” regarding joint employment).

Employer Rule's stated purpose of "promot[ing] greater uniformity in court decisions,"<sup>148</sup> there has been no widespread adoption of the Rule's vertical joint employment analysis, and the Rule has not significantly affected judicial analysis of FLSA joint employment cases.

Additionally, rescinding the Joint Employer Rule would not be disruptive for WHD. WHD has not issued subregulatory guidance that would need to be withdrawn or modified as a result of the rescission. For all of these reasons, rescission of the Rule will have little effect on courts' and WHD's analyses in FLSA vertical joint employment cases.

#### *D. Effects on Employees of the Vertical Joint Employment Analysis*

The Joint Employer Rule acknowledged that, although it would not change the wages due an employee under the FLSA in the vertical joint employment scenario, "it may reduce the number of businesses currently found to be joint employers from which employees may be able to collect back wages due to them under the Act."<sup>149</sup> The Rule further acknowledged that, "[t]his, in turn, may reduce the amount of back wages that employees are able to collect when their employer does not comply with the Act and, for example, their employer is or becomes insolvent."<sup>150</sup> One commenter, the Economic Policy Institute (EPI), submitted a quantitative analysis of the monetary amount that it estimated would transfer from employees to employers as a result of the Rule.<sup>151</sup> In response, the Rule stated that, although it "appreciates EPI's quantitative analysis," it "does not believe there are

data to accurately quantify the impact of this [R]ule."<sup>152</sup> The Rule added that it "lacks data on the current number of businesses that are in a joint employment relationship, or to estimate the financial capabilities (or lack thereof) of these businesses and therefore is unable to estimate the magnitude of a decrease in the number of employers liable as joint employers."<sup>153</sup> The Rule discussed in a qualitative manner some potential benefits to employees, such as "promot[ing] innovation and certainty in business relationships" and encouraging businesses to engage in certain practices with an employer that "could benefit the employer's employees."<sup>154</sup> The Rule did not otherwise consider any potential costs to workers.

Many commenters expressed concerns that the Joint Employer Rule would incentivize companies to expand their use of temporary staffing agencies, contractors, and subcontractors rather than employing workers directly, which is a concern that the Department shares. Congressman Bobby Scott and 78 other Members of Congress wrote that the Rule "promotes business models that rely on subcontracting with businesses that pay lower wages to cut costs or with thinly capitalized lower level businesses that cut corners on FLSA compliance." As several commenters stated in comments that used template language, the number of workers employed through temporary staffing agencies "has increased dramatically in recent years," especially in "low-wage, 'blue-collar' occupations." The National Employment Law Project (NELP) stated that "[t]emporary and staffing agency work hours have grown 3.9 times faster than overall work hours, and temporary and staffing agency jobs have grown 4.3 times faster than jobs overall." Several commenters identified particular industries that have experienced especially high growth in outsourcing and subcontracting, including janitorial services, construction, agriculture, manufacturing, warehousing and logistics, hospitality, and waste management. In particular, NELP noted that outsourcing of janitorial services "has grown dramatically over the past two decades, resulting in an estimated 37 percent of janitorial workers hired through labor contractors rather than directly by the company at which they work." NELP also reported that 58 percent of security guard positions are outsourced.

Several commenters asserted that the increase in temporary, staffing agency, and subcontracting jobs is detrimental to workers, because on average, "temporary help agency workers earn 41 percent less" than workers in "standard work arrangements," they "experience large benefit penalties relative to their counterparts in standard work arrangements," and although their jobs tend to be more hazardous than those of "permanent, direct hires," "they often receive insufficient safety training and are more vulnerable to retaliation for reporting injuries than workers in traditional employment relationships." Some commenters, including the Public Justice Center and NELP, noted that temporary staffing agencies must compete with each other "on the one major cost they can control—labor costs," and this "competitive pressure drives down wages and incentivizes cutting corners through violating labor standards like minimum wage and health and safety laws." NELP also stated that "[t]emporary staffing agencies consistently rank among the worst large industries for the rate of wage and hour violations." The Public Justice Center described the industry's frequent use of a "triangular employment relationship through which the staffing agency acts as temp workers' employer even though the worksite company determines the assignments and working conditions," thus allowing the worksite company to gain the benefits of employing workers while avoiding many of the legal responsibilities. In addition, several commenters, including the Communications Workers of America, the Kentucky Equal Justice Center, and the Workplace Justice Project, stated that individuals who work for staffing agencies or subcontractors often have trouble identifying their actual employer when a dispute over payment or working conditions arises. Other commenters, such as the National Employment Lawyers Association, wrote that holding a company responsible as a joint employer incentivizes that company to "provide better oversight of working conditions, to ensure that child labor, minimum wage and overtime rules are followed."

Many commenters also stated that the increased use of temporary staffing agencies disproportionately impacts people of color and women. NELP, the Public Justice Center, and the State AGs reported that Black workers comprise 12.1 percent of the overall workforce, but 25.9 percent of temporary help agency workers, while Latino workers make up 16.6 percent of the total

No. 19–807, 2021 WL 1176063, at \*8 (W.D. Pa. Mar. 29, 2021) (applying Third Circuit's vertical joint employment analysis); *Yela v. Trending Media Grp., Inc.*, No. 19–21712–CIV, 2020 WL 6271047, at \*5–7 (S.D. Fla. Sept. 18, 2020) (applying Eleventh Circuit's vertical joint employment analysis); *Tombros v. Cycloware, LLC*, No. 8:19-cv-03548–PX, 2020 WL 4748458, at \*2–3 (D. Md. Aug. 17, 2020); *Williams v. Bob Evans Restaurants, LLC*, No. 2:18-cv-01353, 2020 WL 4692504, at \*4–6 (W.D. Pa. Aug. 13, 2020) (applying Third Circuit's vertical joint employment analysis); *Elsayed*, 2020 WL 4586788, at \*4–8 (applying Fourth Circuit's vertical joint employment analysis). *Cf. Pontones v. Los Tres Magueyes, Inc.*, No. 5:18–CV–87–FL, 2021 WL 1430793, at \*3–10 (E.D.N.C. Apr. 15, 2021) (applying Fourth Circuit's vertical joint employment analysis and then the Rule's analysis in the alternative); *id.* at \*8 n.18 (noting that because both analyses reached the same result and the Department had issued a proposal to rescind the Rule, "the court does not definitively resolve here the level of deference merited for the interpretative guidance in the [Joint Employer Rule]").

<sup>148</sup> 85 FR 2823.

<sup>149</sup> 85 FR 2853.

<sup>150</sup> *Id.*

<sup>151</sup> *See id.*

<sup>152</sup> *Id.*

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

workforce, but 25.4 percent of temporary help agency workers. NELP and the Public Justice Center explained that, because temporary workers “are especially vulnerable to illegal conduct such as wage theft, unsafe working conditions, and discrimination,” an increase in temporary work can “exacerbate occupational segregation, income inequality, and the wealth gap for people of color.” In addition, the National Women’s Law Center commented that women are “broadly overrepresented in low-paid jobs,” and noted that women working for “contract firms in full-time jobs typically earn 17 percent less than women in traditional employment arrangements and 42 percent less than full-time male workers provided by contract firms.” In addition, Congressman Bobby Scott and 78 other members of Congress noted that “because the Equal Pay Act of 1963 shares the FLSA’s definitions of employment, the [Joint Employer Rule] would make it harder for women to hold all responsible employers accountable when bringing equal pay claims.” The National Women’s Law Center also pointed out that the FLSA requires employers to provide breastfeeding workers with adequate time and safe space to pump at work, but in the case of temporary or subcontracted workers, the worksite is often controlled by a contracting entity, thus creating a potential barrier to the worker’s ability to pump.

Numerous organizations that provide legal representation to workers shared accounts of particular cases where, in their view, their clients would not have been able to recover back wages owed but for the fact that courts applied broader joint employer liability principles than those set forth in the Joint Employer Rule. For example, the Equal Justice Center represented approximately 30 individuals who worked for a small cleaning company to provide janitorial services at outlets of a big-box store in the Austin area. The workers sued for unpaid wages and overtime premiums, but the cleaning company went out of business. However, the workers succeeded in establishing that the big-box store was a joint employer based on the economic realities test derived from *Rutherford* and defined by the Fifth Circuit in *Wirtz v. Dr. Pepper Bottling Co.*<sup>155</sup> According to the commenter, the workers successfully asserted that because they “consistently and exclusively cleaned the [big box] company’s stores, at hours dictated by the stores’ schedules and

according to standards set by the company’s management, the [big box] company could be a joint employer under the FLSA.” In contrast, the commenter believed that the big box store likely would not have been a joint employer under the Joint Employer Rule. In another case, the North Carolina Justice Center represented “hundreds of janitorial workers” who cleaned public school buildings through a subcontractor that went bankrupt, failing to pay several weeks of wages. According to the Center, the workers were able to recover back wages from the school district and the contractor as joint employers. The Center asserted that under the Joint Employer Rule, however, “it is highly unlikely either the contractor or the district would be liable for the failure to pay minimum wage and overtime.” In addition, NELP discussed a case involving warehouses owned by Wal-Mart, which contracted with Schneider Logistics to operate the warehouses, which in turn contracted with two staffing companies to provide labor. After the warehouse workers sued for violations of the FLSA, Wal-Mart moved for summary judgment that it was not a joint employer. The district court, applying the *Bonnette* and *Torres-Lopez* factors, determined that several factors in addition to Wal-Mart’s control over the plaintiffs’ working conditions suggested that Wal-Mart could be found to be a joint employer, including that the plaintiffs performed piecework that did not require initiative, judgment, or foresight; there was permanence in the plaintiffs’ work for Wal-Mart; and the service performed by the plaintiffs was an integral part of Wal-Mart’s business.<sup>156</sup> Thus, the court denied Wal-Mart’s motion.<sup>157</sup> According to NELP, the case eventually settled, but the staffing companies could afford to pay only 7.5 percent of the settlement amount. However, “because the court took into account the realities of the workers’ relationship with Schneider and Wal-Mart, the workers were able to obtain damages from these parties.”

Other commenters also emphasized the importance that joint employment liability plays in the recovery of back wages. For example, the Northwest Workers’ Justice Project described a case in which workers who were employed

by a contractor to cut, bag, and stock fruit at H–E–B grocery stores in Texas and who sued for minimum wage and overtime violations. According to the Project, the workers, mostly immigrants and women, worked on location only at H–E–B stores, often for 50 hours or more per week, and were paid per bag of produce sold, which never amounted to minimum wage. The case was apparently brought in the U.S. District Court for the District of Texas, which applies the Fifth Circuit’s “economic realities” test requiring the consideration of several factors to determine joint employer liability.<sup>158</sup> H–E–B initially denied responsibility as a joint employer, but ultimately settled, which the Project reported would not have been possible “[w]ithout joint employment.” In addition, Justice at Work (Massachusetts), the Legal Aid Society, the Public Justice Center, the United Brotherhood of Carpenters and Joiners, and the Worker Justice Center of New York reported that they have brought or observed numerous cases in the construction industry where a subcontractor labor broker disappears or refuses to pay, and the next tier contractor denies responsibility, leaving workers without pay.

Some organizations that provide legal assistance to agricultural workers commented that joint employment is particularly important in the agricultural industry. Texas RioGrande Legal Aid reported that “[j]oint employer issues arise frequently in the agricultural sector because the sector is riddled with middlemen: Undercapitalized farm labor contractors who pay the workers while furnishing their labor to fixed-site farm operators.” The organization has found that “farmworkers’ attempts to seek unpaid wages from farm labor contractors, as opposed to fixed-site agricultural employers, are frequently futile,” in part because “[f]arm labor contractors are often undercapitalized and unable to meet their wage obligations because of disadvantageous deals made with growers.” NELP pointed to a study conducted by EPI that found that from 2005 to 2019, farm labor contractors accounted for 14 percent of agricultural jobs, but 24 percent of all employment law violations in agriculture. Texas RioGrande Legal Aid noted that DOL’s H–2A regulations require farm labor contractors petitioning for temporary labor certification to post bonds as a

<sup>155</sup> See *Rutherford*, 331 U.S. at 726; *Wirtz v. Dr. Pepper Bottling Co.*, 374 F.2d 5, 8 (5th Cir. 1967).

<sup>156</sup> *Carrillo v. Schneider Logistics Trans-Loading & Distrib., Inc.*, No. 2:11–CV–8557–CAS, 2014 WL 183956, at \*6–15 (C.D. Cal. Jan. 14, 2014) (applying *Bonnette*, 704 F.2d at 1470 and *Torres-Lopez*, 111 F.3d at 639–40). The court rejected Wal-Mart’s attempt to analogize the case to decisions applying only the *Bonnette* factors, explaining that “the *Torres-Lopez* factors form an important component of the joint employer analysis.” *Id.* at \*10.

<sup>157</sup> *Id.* at \*6, 16.

<sup>158</sup> The case appears to be *Silva v. Pastranas Produce Inc.*, No. 4:12–CV–00470 (S.D. Tex. filed Feb. 16, 2012); see also *Gray*, 673 F.3d at 354–55; *Wirtz v. Lone Star Steel Co.*, 405 F.2d 668, 669–70 (5th Cir. 1968).

“‘necessary compliance mechanism’ to ensure that the labor contractor pays the H-2A workers their wages,” because many of these contractors are unreliable. In addition, the Centro de los Derechos del Migrante explained that, while MSPA “protects many farmworkers above and beyond the FLSA floor, nearly half a million migrant agricultural workers in the H-2A program are excluded from” the protections of MSPA, “and rely instead on the FLSA.” The organization asserted, however, that “[b]y opening loopholes in the FLSA not found in [MSPA], the 2020 Rule would incentivize employers to sidestep . . . [MSPA]’s protections by hiring workers to whom only the FLSA applies, driving down standards across the entire agricultural industry.” It further noted the history of diminished legal protections for agricultural workers, which was “born of a dark history of racial discrimination,” and argued that reducing protections for these workers would perpetuate that legacy, as 92 percent of H-2A workers are Mexican.

In contrast, several commenters who oppose rescinding the Joint Employer Rule asserted that the Rule promotes job growth. WPI stated that, “[d]uring the ‘period in which [the Department] consistently applied the ‘right of control’ factors identified with the *Bonnette* test of the Ninth Circuit, significant job growth took place in the industries represented by WPI,” including temporary staffing, construction, retail, and hospitality. It is not clear what period of time WPI is referring to, as all of the statistics cited by WPI predate the effective date of the Joint Employer Rule. Moreover, the Joint Employer Rule was in effect for only a brief period of time, and WPI did not present any direct evidence that job growth during that short window of time was driven, in whole or in part, by the adoption of the Rule. Given data limitations, it would not be possible to determine whether job growth in these industries was related to the Joint Employer Rule. Further, as the comments discussed above indicate, to the extent that jobs with temporary staffing agencies or thinly capitalized subcontractors have replaced standard employment arrangements, such a trend is disadvantageous to workers in many respects, and could have a particularly negative effect on people of color and women. The Washington Legal Foundation also generally asserted that the Joint Employer Rule fosters job growth, and contended that logically, allowing the Rule to remain in place would result in increased job creation,

higher salaries, and no wage theft. However, the Department does not believe that allowing the Rule to remain in effect would have clearly led to the creation of more, higher-paying jobs free of wage theft, for the reasons discussed by the commenters above. Instead, the Department agrees with the commenters who stated that the Rule would have further incentivized companies to source labor through temporary staffing firms or subcontractors, rather than hiring employees directly, which tends to result in lower pay and fewer benefits, and can leave employees without recourse for unpaid wages when the staffing firm or subcontractor is unable or unwilling to pay.

Upon consideration of the comments, the Department concludes that the Joint Employer Rule did not satisfactorily consider the costs to employees. This conclusion is premised in part on WHD’s role as the agency responsible for enforcing the FLSA and for collecting back wages due to employees when it finds violations, as well as a recent Presidential Memorandum instructing the Director of the Office of Management and Budget to recommend new procedures for regulatory review that better “take into account the distributional consequences of regulations.”<sup>159</sup> As noted in the economic analysis, rescinding the Joint Employer Rule could help protect the well-being and economic security of workers in low-wage industries, many of whom are immigrants, people of color, and women, because FLSA violations are more severe and widespread in low-wage labor markets.<sup>160</sup> The Department believes that the Joint Employer Rule would have made it more difficult for workers to collect back wages owed and incentivized workplace fissuring,<sup>161</sup> which are serious concerns that may have a disproportionate impact on low-wage and vulnerable workers. The Rule’s failure to weigh these concerns is an additional reason for its rescission.

<sup>159</sup> Modernizing Regulatory Review: Memorandum for the Heads of Executive Departments and Agencies (Jan. 20, 2021), published at 86 FR 7223 (Jan. 26, 2021).

<sup>160</sup> Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities* (2009), available at <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

<sup>161</sup> The Joint Employer Rule described workplace fissuring as the “increased reliance by employers on subcontractors, temporary help agencies, and labor brokers rather than hiring employees directly.” 85 FR 2853 n.100.

#### *E. Effects on Other Stakeholders of the Vertical Joint Employment Analysis*

In addition to discussing the issues identified in the NPRM, commenters also noted other ways in which rescission of the Joint Employer Rule would affect various stakeholders. In particular, most commenters opposed to rescission of the Rule emphasized the importance of clarity and predictability to the business community. However, the Department generally believes that the impact of rescission on the business community and other stakeholders will not be substantial because the Rule has not been widely adopted by the courts. Furthermore, for the reasons set forth above, the Department believes that the Rule should be rescinded because it was inconsistent with the text and purpose of the FLSA.

Many commenters asserted that the Joint Employer Rule provided clarity and predictability to the regulated community, and argued that rescinding the Rule would lead to confusion and uncertainty. The U.S. Chamber of Commerce stated that the Rule “brought needed clarity and consistency to a key issue that had long vexed employers and the WHD.” The FreedomWorks Foundation wrote that a “lack of clarity surrounding issues of joint employment [is] especially harmful to small businesses, which employ almost half of Americans and often do not have the resources to secure top-notch legal advice,” a concern echoed by the National Federation of Independent Businesses (NFIB). However, the Department does not agree that leaving the Joint Employer Rule in place would have provided increased clarity and certainty to the regulated community. As discussed above, the Rule conflicted with the text and purposes of the FLSA and was not widely adopted by the courts.<sup>162</sup> Thus, even if the Second Circuit Court of Appeals were to reverse the district court decision vacating the Rule on standing grounds, it is likely that many courts would still reject the Rule and continue to rely on prior precedent. As such, leaving the Joint Employer Rule in place would not have established a uniform standard consistently applied by all courts across the country. Because it conflicted with

<sup>162</sup> See, e.g., *Reyes-Trujillo*, 2021 WL 103636, at \*6–9 (agreeing that the Joint Employer Rule’s exclusive focus on the potential joint employer’s control runs counter to the FLSA’s expansive definition of “employer” and thus declining to adopt the Rule’s analysis); *Elsayed*, 2020 WL 4586788, at \*4 (finding “it unnecessary to wade into whether the DOL’s [Joint Employer] Rule is entitled to *Brand X* deference or whether the [Rule] is lawful under the APA” and instead “rely[ing] on established Fourth Circuit precedent” regarding joint employment).

established precedent in the circuits, the Rule presented employers with the difficult choice of conducting their business in a manner consistent with circuit precedent or with the Rule. Furthermore, because employers had to consider circuit precedent as no circuit had adopted the Rule, the Rule likely provided little clarity. Accordingly, the Department does not agree that rescinding the Rule will result in significantly less clarity and uncertainty for the regulated community. More fundamentally, because the regulation conflicted with the text and purpose of the FLSA, it should be rescinded.

Other commenters expressed concerns that rescinding the Joint Employer Rule could impose additional costs on businesses. The Texas Public Policy Foundation asserted generally that rescission would “result in more employers being deemed to be joint employers, raising operating expenses for those employers.” Again, because the Rule was not widely adopted by courts, the Department does not expect that the Rule’s rescission will substantially increase prospective joint employers’ costs. In addition, the Department believes that the Rule’s rescission will continue to incentivize businesses at the top of a vertical industry structure to ensure that labor suppliers and other potential joint employers comply with the FLSA; as long as they do so, businesses at the top will not incur the additional cost of paying the joint employer’s employees. Other commenters, such as the National Retail Federation, expressed concern that rescinding the Rule would discourage businesses “from entering into beneficial contractual relationships with third-party business parties, inhibiting business-to-business collaboration.” Commenters like the National Restaurant Association and Restaurant Law Center stated that rescinding the Rule could negatively impact businesses that use a franchising model. But the vast majority of these businesses operate in jurisdictions that have not adopted the Joint Employer Rule, so their calculation of potential liability will not change. Furthermore, the current law governing joint employment allows businesses to enter into beneficial relationships without creating joint employment liability. In fact, as commenters both supporting and opposing rescission noted, the growth of temporary staffing, independent contractors, and franchise relationships outpaced standard employment in many respects in the years before the Joint Employer Rule was introduced. *See, e.g., International Franchise Association*

(asserting that after the financial crisis, from 2009–12, “employment in the franchise sector grew 7.4%, versus 1.8% growth in total U.S. employment”); NELP (asserting that since 2009, “[t]emporary and staffing agency work hours have grown 3.9 times faster than overall work hours, and temporary and staffing agency jobs have grown 4.3 times faster than jobs overall;” and noting that “staffing and temporary help services provided 11.3 percent of all manufacturing employment in 2015, up from just 2.3 percent in 1989”). This indicates that the prior legal landscape did not pose a significant hindrance to the formation of these types of relationships.<sup>163</sup>

Commenters who support the Rule also asserted that rescinding the Rule would make companies less likely to offer assistance to related companies, such as a franchisor offering sexual harassment training materials to a franchisee, for fear of becoming a joint employer. These commenters pointed out that this type of assistance can benefit workers by, for example, reducing sexual harassment in the workplace or improving workplace safety.<sup>164</sup> However, the commenters did not cite any court decision finding that a company is a joint employer primarily on this basis, while at least some courts have not regarded the provision of training assistance as strong evidence of a joint employer relationship.<sup>165</sup>

<sup>163</sup> Other commenters expressed concerns about the imposition of additional costs on particular industries in the wake of the COVID–19 pandemic. For example, the American Hotel and Lodging Association stated that “[l]eisure and hospitality account for 37% of all jobs lost since the onset of the pandemic,” and “hotels are not projected to return to pre-pandemic levels until 2024 at the earliest,” and asserted that rescinding the Rule would impose new costs that are particularly unwelcome now. However, for the reasons discussed in this paragraph, the Department does not believe that rescission of the Rule will impose substantial new costs on businesses. Moreover, workers in industries experiencing financial stress (as a result of the pandemic or otherwise) are particularly at risk of losing the wages they are owed to the extent that liability is confined to smaller businesses at the bottom of the industry.

<sup>164</sup> Commenters provided various examples of the types of assistance that a company might offer a related company. The U.S. Chamber of Commerce discussed model handbooks, apprenticeship programs, and association health plans. The Washington Legal Foundation and the American Hotel and Lodging Association cited training employees to detect human trafficking. SHRM mentioned the provision of face coverings and protective personal equipment during the COVID–19 pandemic. The discussion of whether companies will be more or less likely to assist other companies after the Rule is rescinded applies equally to the various types of assistance noted by the commenters.

<sup>165</sup> *See, e.g., Moreau v. Air France*, 356 F.3d 942, 950–53 (9th Cir. 2004) (holding that Air France was not joint employer with ground service operations companies, even though it provided some training

Furthermore, to the extent that a court might consider this type of assistance as part of the joint employer analysis, it would be merely one aspect of one factor among many that the courts use to assess whether a joint employer relationship exists, and no one factor is dispositive. Moreover, as the comments discussed above noted, the prospect of joint employer liability can incentivize a company to “provide better oversight of working conditions, to ensure that child labor, minimum wage and overtime rules are followed.” *See, e.g., National Employment Lawyers Association*. The Department agrees with this assessment.

Some commenters expressed particular concern as to how rescinding the Joint Employer Rule would affect the construction industry. The Associated Builders and Contractors wrote that the construction industry consists “primarily of specialized, separate employers who come together [to work] on specific construction projects,” and “standard construction methods require project owners and/or prime contractors to exercise routine control over the [work] site in ways that indirectly affect many employees’ terms and conditions of employment,” thus potentially leading to joint employer liability. The National Association of Home Builders asserted that the uncertainty faced by home builders due to their reliance on subcontractors could make costs less predictable, which could increase the cost of new homes. However, as noted previously, because the Joint Employer Rule was not adopted in most jurisdictions, the Department does not expect that the Rule’s rescission will significantly increase uncertainty or impose substantial new costs, including in the construction industry. In addition, current court precedent requires consideration of a variety of factors before a company can be held liable as a joint employer; a single factor standing alone, like supervision of a work site, would likely not be enough to establish joint employer liability. Furthermore, as discussed above, many commenters have noted that subcontractors’ failure to pay wages owed is a particular problem in the construction industry; rescinding the Joint Employer Rule will further incentivize project managers to select and monitor subcontractors with an emphasis on ensuring compliance with the FLSA. Such a result is

to those companies’ employees, in an FMLA case applying FLSA case law); *Martin v. Sprint United Mgmt. Co.*, 273 F. Supp. 3d 404, 427, 434 (S.D.N.Y. 2017) (finding that Sprint was not joint employer with subcontractor despite the fact that it trained subcontractor’s employees).

beneficial to workers and promotes compliance with the FLSA, helping to ensure a level playing field for responsible employers.

#### F. Horizontal Joint Employment Analysis

As described in the NPRM, horizontal joint employment may be present where one employer employs an employee for one set of hours in a workweek, and one or more other employers employs the same employee for separate hours in the same workweek. If the two (or more) employers jointly employ the employee, the hours worked by that employee for all of the employers must be aggregated for the workweek and all of the employers are jointly and severally liable.<sup>166</sup>

For horizontal joint employment, the Joint Employer Rule adopted the standard in the prior version of 29 CFR 791.2 with non-substantive revisions and set forth that standard in 29 CFR 791.2(e).<sup>167</sup> The Joint Employer Rule's horizontal joint employment standard focused on the degree of the employers' association with respect to the employment of the employee, reflected the Department's historical approach to the issue, and was consistent with the relevant case law. The NPRM stated that the Department was not considering revising its longstanding horizontal joint employment standard but proposed to rescind the entire Joint Employer Rule (including 29 CFR 791.2(e)) because the structure of the Joint Employer Rule made it impractical for the horizontal joint employment provisions to stand on their own.<sup>168</sup>

Few commenters addressed horizontal joint employment. The U.S. Chamber of Commerce noted that horizontal joint employment "relationships do not create the same level of uncertainty, or present the same level of exposure, as vertical joint employment relationships, and the provisions in the [Joint Employer Rule] addressing horizontal joint employment relationships have not been questioned." The Washington Legal Foundation stated that, although the Joint Employer Rule made only non-substantive revisions to the horizontal joint employment standard, "it was still important to issue the Final Rule about horizontal joint employment" because, in its view, the Department "provided regulatory certainty by codifying longstanding practices." It further stated that if the Department rescinds the Joint Employer Rule, the Department "will

inject uncertainty," and "[i]n these trying times the regulated community needs certainty," which "[e]xperts say . . . is important to economic growth." The State AGs commented that the Joint Employer Rule's "provisions relating to the horizontal joint employment test should be rescinded because they are inextricably intertwined with the now-vacated vertical joint employment provisions." They further commented that "[r]escinding the provisions relating to horizontal joint employment makes practical sense," "the horizontal joint employment standard has long been established," and thus "stakeholders can easily refer to DOL's earlier interpretations and relevant case law to understand their obligations."

Having considered the comments and the issue further, the Department is rescinding the Joint Employer Rule in its entirety (*i.e.*, all of 29 CFR part 791, including the horizontal joint employment standard in § 791.2(e)). The Joint Employer Rule intertwined the horizontal joint employment provisions with the vertical joint employment provisions in 29 CFR 791.2. For example, § 791.2(f) addressed the consequences of joint employment for both the vertical and horizontal scenarios, and § 791.2(g) provided 11 "illustrative examples" of how the Rule may apply to specific factual situations implicating both vertical and horizontal joint employment.<sup>169</sup> Accordingly, it would be difficult and impractical for § 791.2(e) to remain alone. In addition, § 791.2(e) would lack context alone and potentially be confusing as its references to the "second" joint employment scenario would not make sense without the rest of § 791.2 and the discussion of the "first" joint employment scenario therein.

Although the Department is rescinding the Joint Employer Rule in its entirety, it did not reconsider the substance of its longstanding horizontal joint employment analysis. The focus of a horizontal joint employment analysis will continue to be the degree of association between the potential joint employers, as it was in the Joint Employer Rule and the prior version of part 791.<sup>170</sup> As has been the Department's position for decades, the association will be sufficient to demonstrate joint employment in the following situations, among others: (1) There is an arrangement between the employers to share the employee's services; (2) one employer is acting

directly or indirectly in the interest of the other employer in relation to the employee; or (3) the employers share control of the employee, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer.<sup>171</sup>

#### G. Effect of Rescission

The NPRM stated that, if the Joint Employer Rule is rescinded as proposed, part 791 of title 29 of the Code of Federal Regulations would be removed in its entirety and reserved.<sup>172</sup> The NPRM also noted that the Department was not proposing regulatory guidance to replace the guidance located in part 791.<sup>173</sup> Because this final rule adopts and finalizes the rescission of the Joint Employer Rule, part 791 is removed in its entirety and reserved. As stated in the NPRM, the Department will continue to consider legal and policy issues relating to FLSA joint employment before determining whether alternative regulatory or subregulatory guidance is appropriate.<sup>174</sup>

### III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, and its attendant regulations, 5 CFR part 1320, require the Department to consider the agency's need for its information collections, their practical utility, as well as the impact of paperwork and other information collection burdens imposed on the public, and how to minimize those burdens. This final rule does not contain a collection of information subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act.

### IV. Executive Order 12866, Regulatory Planning and Review; and Executive Order 13563, Improved Regulation and Regulatory Review

#### A. Introduction

Under Executive Order 12866, OMB's Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the requirements of the Executive Order and OMB review.<sup>175</sup> Section 3(f) of Executive Order 12866 defines a "significant regulatory action" as a regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the

<sup>171</sup> 23 FR 5906 (29 CFR 791.2) (1958).

<sup>172</sup> See 86 FR 14046.

<sup>173</sup> See *id.*

<sup>174</sup> See *id.*

<sup>175</sup> See 58 FR 51735, 51741 (Oct. 4, 1993).

<sup>166</sup> See 86 FR 14045.

<sup>167</sup> See 85 FR 2844–45.

<sup>168</sup> See 86 FR 14045–46.

<sup>169</sup> See 85 FR 2860–62 (29 CFR 791.2(f), (g)) (2020).

<sup>170</sup> See 85 FR 2859–60 (29 CFR 791.2(e) (2020)); 23 FR 5906 (29 CFR 791.2) (1958).



economy of \$100 million or more, or adversely affect in a material way 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) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive order. OIRA has determined that this rescission is economically significant under section 3(f) of Executive Order 12866. Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), OIRA has also designated this rule as a major rule, as defined by 5 U.S.C. 804(2).

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts. The analysis below outlines the impacts that the Department anticipates may result from this rescission and was prepared pursuant to the above-mentioned Executive orders.

## B. Costs

### 1. Rule Familiarization Costs

Rescinding the Joint Employer Rule will impose direct costs on businesses that will need to review the rescission. To estimate these regulatory familiarization costs, the Department determined: (1) The number of potentially affected entities, (2) the average hourly wage rate of the employees reviewing the rescission, and (3) the amount of time required to review the rescission. It is uncertain whether these entities would incur regulatory familiarization costs at the firm or the establishment level. For example, in smaller businesses there might be just one specialist reviewing the rescission, while larger businesses

might review it at corporate headquarters and determine policy for all establishments owned by the business. To avoid underestimating the costs of this rescission, the Department uses both the number of establishments and the number of firms to estimate a potential range for regulatory familiarization costs. The lower bound of the range is calculated assuming that one specialist per firm will review the rescission, and the upper bound of the range assumes one specialist per establishment.

The most recent data on private sector entities at the time this final rule was drafted are from the 2017 Statistics of U.S. Businesses (SUSB), which reports 5,996,900 private firms and 7,860,674 private establishments with paid employees.<sup>176</sup> Because the Department is unable to determine how many of these businesses have workers with one or more joint employers, this analysis assumes all businesses will undertake review.

The Department believes ten minutes per entity, on average, to be an appropriate review time here. This rulemaking is a rescission and will not set forth any new regulations or guidance regarding joint employment. Additionally, as it believed when it issued the Joint Employer Rule, the Department believes that many entities are not joint employers and thus would not spend any time reviewing the rescission. Therefore, the ten-minute review time represents an average of no time for the majority of entities that are not joint employers, and potentially more than ten minutes for review by some entities that might be joint employers.

The Department's analysis assumes that the rescission would be reviewed by Compensation, Benefits, and Job Analysis Specialists (SOC 13-1141) or employees of similar status and comparable pay. The median hourly wage for these workers was \$32.30 per hour in 2020, the most recent year of data available.<sup>177</sup> The Department also assumes that benefits are paid at a rate of 46 percent<sup>178</sup> and overhead costs are paid at a rate of 17 percent of the base wage, resulting in a fully loaded hourly rate of \$52.65.

<sup>176</sup> Census Bureau, *Statistics of U.S. Businesses* (2017), <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>, 2016 SUSB Annual Data Tables by Establishment Industry.

<sup>177</sup> Bureau of Labor Statistics, *Occupational Employment and Wages* (May 2020), <https://www.bls.gov/oes/current/oes131141.htm>.

<sup>178</sup> The benefits-earnings ratio is derived from the Bureau of Labor Statistics' Employer Costs for Employee Compensation data using variables CMU102000000000D and CMU103000000000D.

The Department estimates that the lower bound of regulatory familiarization cost range would be \$52,728,043 (5,996,900 firms × \$52.65 × 0.167 hours), and the upper bound, \$69,115,369 (7,860,674 establishments × \$52.65 × 0.167 hours). The Department estimates that all regulatory familiarization costs would occur in Year 1.

Additionally, the Department estimated average annualized costs of regulatory familiarization with this rescission over 10 years. Over 10 years, it would have an average annual cost of \$7.0 million to \$9.2 million, calculated at a 7 percent discount rate (\$5.8 million to \$7.6 million calculated at a 3 percent discount rate). All costs are in 2020 dollars.

### 2. Other Costs

As discussed above, some commenters asserted that there may be other potential costs to the regulated community, such as reduced clarity from the lack of the Rule's regulatory guidance. Because it lacks data on the number of businesses that are in a joint employment relationship or those that changed their policies as a result of the Joint Employer Rule, the Department has not quantified these potential costs, which are expected to be de minimis. Although the rescission removes the regulations at 29 CFR part 791, the Department believes that this will not result in substantial costs or decreased clarity for the regulated community because, as discussed above, most courts apply a vertical joint employment analysis different from the analysis in the Joint Employer Rule and have not adopted the Rule's analysis. The State AGs agree with this assertion in their comment. Texas RioGrande Legal Aid asserts that the Joint Employer Rule would not have created clarity for the agricultural sector, because employers would face conflicting obligations under the different regulatory regimes of FLSA and MSPA.

WPI asserted that using an "expanded" joint employment standard instead of the standard put forth in the Joint Employer Rule would result in a loss of output of \$17.2 billion to \$33.3 billion annually for the franchise business sector. WPI cites a comment provided by the International Franchise Association to the 2019 Joint Employer NPRM. In this comment, the International Franchise Association discusses a study by Dr. Ron Bird, looking at the effects of the National Labor Relations Board's re-articulation of its joint employer standard in the *Browning-Ferris* case. The National Labor Relations Board is responsible for



enforcing the National Labor Relations Act (NLRA), which differs from the FLSA. The commenters, however, do not provide any data or information connecting this output loss to rescission of the Joint Employer Rule.

### C. Transfers

In the Joint Employer Rule's regulatory impact analysis, the Department acknowledged that the Rule could limit the ability of workers to collect wages due to them under the FLSA because when there is only one employer liable, there are fewer employers from which to collect those wages and no other options if that sole employer lacks sufficient assets to pay.<sup>179</sup> Because the Joint Employer Rule provided new criteria for determining joint employer status under the FLSA and given the specifics of those criteria, it potentially reduced the number of businesses found to be joint employers from which employees may be able to collect back wages due to them under the Act. This, in turn, potentially reduced the amount of back wages that employees were able to collect when an employer did not comply with the Act and, for example, was or became insolvent.

Like the Joint Employer Rule, this rescission will not change the amount of wages due any employee under the FLSA. However, rescinding the Joint Employer Rule could result in a transfer from employers to employees in the form of back wages owed that employees would thereafter be able to collect. The Department lacks data on the current number of businesses that are in a joint employment relationship, or to estimate the financial capabilities (or lack thereof) of these businesses and therefore is unable to estimate the magnitude of an increase in the number of employers liable as joint employers.

Although the Rule would not have changed the amount of wages due to an employee, the narrower standard for joint employment in the Rule could have incentivized "workplace fissuring." Research has shown that this type of domestic outsourcing can suppress workers' wages, especially for low-wage occupations.<sup>180</sup> The State AGs asserted, "[f]issured workplaces result in lower wages, greater wage theft, and less job security, especially for immigrants or people of color who make up a disproportionate share of low-wage

workers in nonstandard work arrangements."

In 2019, the Economic Policy Institute (EPI) submitted a comment in response to the Joint Employer NPRM in which they calculated that the Rule would result in transfers from employees to employers of over \$1 billion.<sup>181</sup> They again referenced this analysis in their comment on the proposed rescission. EPI explained that these transfers would result from both an increase in workplace "fissuring" as well as from an increase in wage theft by employers. Rescinding this standard could help mitigate any increased workplace fissuring and wage theft that would have resulted. The Department is unable to determine to what extent these transfers occurred while the Joint Employer Rule was in effect, and therefore has not provided a quantitative estimate of transfers from employers to employees because of this rescission. The Department is also unable to estimate the increase in back wages that employees will be able to collect because of this change.

This rescission could also benefit some small businesses, because the Joint Employer Rule's narrowing of the joint employment standard could have made them solely liable and responsible for complying with the FLSA without relying on the resources of a larger business in certain situations.

The Texas Public Policy Foundation commented on the Department's economic analysis, saying that the Department did not make any specific findings of the Rule's effect on workers. The Department still believes that due to lack of data on the number of joint employment relationships, as well as how these relationships would have changed under the Joint Employer Rule, it is not possible to quantify the magnitude of transfers associated with the Rule or with its rescission. Likewise, the commenter does not provide any data or information about the impact of this rescission on workers.

### D. Benefits

The Department believes that rescinding the Joint Employer Rule will result in benefits to workers and will strengthen wage and hour protections for vulnerable workers. Removing a standard for joint employment that is narrower than the standard applied by courts and WHD's prior standards may enable more workers to collect back

wages to which they would already be entitled under the FLSA. This could particularly improve the well-being and economic security of workers in low-wage industries, many of whom are immigrants and people of color, because FLSA violations are more severe and widespread in low-wage labor markets.<sup>182</sup>

### V. Regulatory Flexibility Act (RFA) Analysis

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104-121 (1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Accordingly, the Department examined this rescission to determine whether it would have a significant economic impact on a substantial number of small entities. The most recent data on private sector entities at the time this final rule was drafted are from the 2017 Statistics of U.S. Businesses (SUSB), which reports 5,996,900 private firms and 7,860,674 private establishments with paid employees.<sup>183</sup> Of these, 5,976,761 firms and 6,512,802 establishments have fewer than 500 employees. Because the Department is unable to determine how many of these businesses have workers with one or more joint employers, this analysis assumes all businesses will undertake review.

The per-entity cost for small business employers is the regulatory familiarization cost of \$8.79, or the fully loaded mean hourly wage of a Compensation, Benefits, and Job Analysis Specialist (\$52.65) multiplied by 1/6 hour (ten minutes). Because this cost is minimal for small business entities, and well below one percent of their gross annual revenues, which is typically at least \$100,000 per year for the smallest businesses, the Department certifies that this rescission will not have a significant economic impact on a substantial number of small entities.

<sup>182</sup> Annette Bernhardt et al., *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities* (2009), available at <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf>.

<sup>183</sup> Census Bureau, *Statistics of U.S. Businesses* (2017), <https://www.census.gov/data/tables/2017/econ/susb/2017-susb-annual.html>, 2016 SUSB Annual Data Tables by Establishment Industry.

<sup>179</sup> See 85 FR 2853.

<sup>180</sup> Arindrajit Dube & Ethan Kaplan, *Does Outsourcing Reduce Wages in the Low-Wage Service Occupations? Evidence from Janitors and Guards*, ILR Review 63, no. 2, 287-306 (2010).

<sup>181</sup> Celine McNicholas & Heidi Shierholz, *EPI comments regarding the Department of Labor's proposed joint-employer standard*, June 25, 2019, available at <https://www.epi.org/publication/epi-comments-regarding-the-department-of-labor-proposed-joint-employer-standard/>.

## VI. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA)<sup>184</sup> requires agencies to prepare a written statement for rules with a Federal mandate that may result in increased expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of \$165 million (\$100 million in 1995 dollars adjusted for inflation) or more in at least one year.<sup>185</sup> This statement must: (1) Identify the authorizing legislation; (2) present the estimated costs and benefits of the rule and, to the extent that such estimates are feasible and relevant, its estimated effects on the national economy; (3) summarize and evaluate state, local, and tribal government input; and (4) identify reasonable alternatives and select, or explain the non-selection, of the least costly, most cost-effective, or least burdensome alternative.

### Authorizing Legislation

This final rule is issued pursuant to the Fair Labor Standards Act of 1938, 29 U.S.C. 201–219.

### Assessment of Costs and Benefits

For purposes of UMRA, this rescission is not expected to result in increased expenditures by the private sector or by state, local, and tribal governments of \$165 million or more in at least one year. As discussed earlier, the Department believes that the rescission will not result in substantial costs for the regulated community because most courts apply a vertical joint employment analysis different from the analysis in the Joint Employer Rule and have not adopted the Rule's analysis. More detailed analysis of impacts appears above.

UMRA requires agencies to estimate the effect of a regulation on the national economy if such estimates are reasonably feasible and the effect is relevant and material.<sup>186</sup> However, OMB guidance on this requirement notes that such macroeconomic effects tend to be measurable in nationwide econometric models only if the economic effect of the regulation reaches 0.25 percent to 0.5 percent of Gross Domestic Product (GDP), or in the range of \$52.3 billion to \$104.7 billion (using 2020 GDP).<sup>187</sup> A

regulation with a smaller aggregate effect is not likely to have a measurable effect in macroeconomic terms, unless it is highly focused on a particular geographic region or economic sector, which is not the case with this rule. Given OMB's guidance, the Department has determined that a full macroeconomic analysis is not likely to show that these costs would have any measurable effect.

## VII. Executive Order 13132, Federalism

The Department has (1) reviewed this rescission in accordance with Executive Order 13132 regarding federalism and (2) determined that it does not have federalism implications. The rescission would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

## VIII. Executive Order 13175, Indian Tribal Governments

This rescission would not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### List of Subjects in 29 CFR Part 791

Wages.

### PART 791—[REMOVED AND RESERVED]

■ For the reasons set forth in the preamble, and under the authority of the FLSA, 29 U.S.C. 201–219, the Department removes and reserves 29 CFR part 791.

**Jessica Looman,**

*Principal Deputy Administrator, Wage and Hour Division.*

[FR Doc. 2021–15316 Filed 7–29–21; 8:45 am]

**BILLING CODE 4510–27–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2020–0034]

RIN 1625–AA09

### Drawbridge Operation Regulation; Chicago River, Chicago, IL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is revising the operating schedule that governs the Amtrak Railroad Bridge, mile 3.77, across the South Branch of the Chicago River, at Chicago, Illinois to be operated remotely and establish an intermediate opening position.

**DATES:** This rule is effective August 30, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG–2020–0034 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

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

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

CFR Code of Federal Regulations  
 DHS Department of Homeland Security  
 FR Federal Register  
 IGLD85 International Great Lakes Datum of 1985  
 LWD Low Water Datum based on IGLD85  
 NPRM Notice of Proposed Rulemaking (Advance, Supplemental)  
 OMB Office of Management and Budget § Section  
 TD Temporary Deviation with Request for comments  
 U.S.C. United States Code

#### II. Background Information and Regulatory History

On April 8, 2020 the Coast Guard published a TD in the **Federal Register** (85 FR 19659) to test the proposed rule and allow mariners to provide comments from June 1, 2020 through September 1, 2020. We received one unrelated comment.

On May 4, 2021, the Coast Guard published a NPRM in the **Federal Register** (86 FR 23639). There we stated why we issued the NPRM, and invited comments on proposed regulatory action. During the comment period that ended on June 3, 2021, we received zero (0) comments.

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

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Amtrak Railroad Bridge, mile 3.77, over the South Branch of the Chicago River provides a vertical clearance of 10 feet in the down position and 65 feet in the open position above LWD and a horizontal clearance of 156 feet. The bridge crosses the river on a slight skew on an “S” curve in the

<sup>184</sup> See 2 U.S.C. 1501.

<sup>185</sup> Calculated using growth in the Gross Domestic Product deflator from 1995 to 2019. Bureau of Economic Analysis. Table 1.1.9. Implicit Price Deflators for Gross Domestic Product.

<sup>186</sup> See 2 U.S.C. 1532(a)(4).

<sup>187</sup> According to the Bureau of Economic Analysis, 2020 GDP was \$20.9 trillion. [https://www.bea.gov/sites/default/files/2021-04/gdp1q21\\_adv.pdf](https://www.bea.gov/sites/default/files/2021-04/gdp1q21_adv.pdf).

river requiring longer vessels to use most of the horizontal clearance for maneuvering. The South Branch of the Chicago River is part of a network of waterways that allow vessels to travel from Chicago, IL to New Orleans, LA. Cook County described the Chicago River as the 5th largest port in the United States, hosting commercial vessels over 300 tons, recreational power and sailing vessels, several passenger vessels, water taxis, paddle boats and various paddle craft. Most vessels can pass under all of the bridges in the Chicago metropolitan area without an opening, with the exception of the Amtrak Bridge. During an average weekday, 150,000 commuters travel over the Amtrak Bridge.

In accordance with general bridge regulations a drawbridge must open promptly and fully when signaled to open. Lifting the bridge to 65 feet for every vessel when most vessels only need an additional 10 feet of clearance increases the delay experienced by all modes of transportation.

The Amtrak Bridge has been operating remotely for several years without any concerns for the mariners.

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

We received one comment to the TD that was unrelated to the bridge or proposed regulatory action. We did not receive any comments to the NPRM, and do not intend to change anything from the published NPRM.

#### **V. Discussion of Final Rule**

The Coast Guard is including in the regulations that the AMTRAK Bridge is authorized to operate remotely.

The Coast Guard is authorizing the bridge to open to an intermediate position that will provide a vertical clearance of 34 feet above LWD. A yellow light at the center of the bridge, visible to vessels approaching the bridge from both upriver and downriver sides will verify the bridge has met the intermediate height. At any time a vessel with greater air draft can radio the drawtender and request a full opening. This rule is expected to increase bridge availability to all users by 50%.

#### **VII. Regulatory Analyses**

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

#### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge without changing the bridge schedule and it keeps the maximum advertised clearance available for vessels as needed.

#### *B. Impact on Small Entities*

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by

employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

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

#### *D. Federalism and Indian Tribal Government*

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

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

#### *E. Unfunded Mandates Reform Act*

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

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on

the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

**G. Protest Activities**

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

**List of Subjects in 33 CFR Part 117**

Bridges.

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

**PART 117—DRAWBRIDGE OPERATION REGULATIONS**

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

**Authority:** 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1.

**§ 117.391 [Amended]**

■ 2. Amend § 117.391 by revising paragraph (d) to read as follows:

**§ 117.391 Chicago River.**

(d) The Amtrak Bridge, mile 3.77, is authorized to operate remotely and open to the intermediate position on signal, unless a request for a full opening is

received by the drawtender. The bridge is required to operate a marine radio.

\* \* \* \* \*

**M.J. Johnston,**

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

[FR Doc. 2021-15986 Filed 7-29-21; 8:45 am]

**BILLING CODE 9110-04-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R09-OAR-2018-0601; FRL-8689-02-R9]**

**Air Plan Revision; Limited Approval and Limited Disapproval; California; Yolo-Solano Air Quality Management District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is finalizing the limited approval and limited disapproval of a revision to the Yolo-Solano Air Quality Management District (YSAQMD) portion of the California State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOCs) from solvent cleaning and degreasing operations. Under the authority of the Clean Air Act (CAA or the Act), this action simultaneously approves a local rule that regulates these emission sources and directs California to correct rule deficiencies.

**DATES:** This rule will be effective on August 30, 2021.

**ADDRESSES:** The EPA has established a docket for this action under Docket No.

EPA-R09-OAR-2018-0601. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Arnold Lazarus, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 972-3024 or by email at [lazarus.arnold@epa.gov](mailto:lazarus.arnold@epa.gov).

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

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- I. Proposed Action
- II. Public Comments and the EPA’s Response
- III. EPA Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

**I. Proposed Action**

On February 25, 2021 (86 FR 11480), the EPA proposed a limited approval and limited disapproval of the following rule that was submitted for incorporation into the California SIP.

Local agency	Rule #	Rule title	Revised	Submitted
YSAQMD .....	2.31	Solvent Cleaning and Degreasing .....	04/12/2017	08/09/2017

We proposed a limited approval because we determined that this rule improves the SIP and is largely consistent with the relevant CAA requirements. We simultaneously proposed a limited disapproval because the following rule provision conflicts with section 110 and part D of the Act. The provision at section 110.6 of the rule exempts solvent degreasing operations that are subject to National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements at 40 CFR part 63 Subpart T regulating halogenated solvent cleaning.

CAA Section 182(b)(2) (“Reasonably available control technology”) states: “The State shall submit a revision to the applicable implementation plan to include provisions to require the implementation of reasonably available control technology . . . .” While the YSAQMD has been delegated the authority to enforce the requirements in 40 CFR 63 Subpart T, this type of delegation of authority to a district or state does not place those requirements or its emission limitations into the SIP. Thus, this rule fails to implement RACT for halogenated solvent cleaning in an

enforceable SIP regulation. Our proposed action contains more information on the basis for this rulemaking and on our evaluation of the submittal.

**II. Public Comments and the EPA’s Response**

The EPA’s proposed action provided a 30-day public comment period. During this period, we received one comment that was supportive of the proposed action.

### III. EPA Action

No comments were submitted that change our assessment of the rule as described in our proposed action. Therefore, as authorized in sections 110(k)(3) and 301(a) of the Act, the EPA is finalizing a limited approval of the submitted rule. This action incorporates the submitted rule into the California SIP, including those provisions identified as deficient. As authorized under section 110(k)(3) and 301(a), the EPA is simultaneously finalizing a limited disapproval of the rule. As a result, the EPA must promulgate a federal implementation plan under section 110(c) unless we approve subsequent SIP revisions that correct the rule deficiencies within 24 months. In addition, the offset sanction in CAA section 179(b)(2) will be imposed 18 months after the effective date of this action, and the highway funding sanction in CAA section 179(b)(1) six months after the offset sanction is imposed. A sanction will not be imposed if the EPA determines that a subsequent SIP submission corrects the identified deficiencies before the applicable deadline.

### IV. Incorporation by Reference

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

### V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <http://www.epa.gov/laws-regulations/laws-and-executive-orders>.

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

#### *B. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the PRA because this action does not

impose additional requirements beyond those imposed by state law.

#### *C. Regulatory Flexibility Act (RFA)*

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities beyond those imposed by state law.

#### *D. Unfunded Mandates Reform Act (UMRA)*

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by state law. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

#### *E. Executive Order 13132: Federalism*

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

#### *F. Executive Order 13175: Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

#### *G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not impose additional requirements beyond those imposed by state law.

#### *H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use*

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

#### *I. National Technology Transfer and Advancement Act (NTTAA)*

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

#### *K. Congressional Review Act (CRA)*

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

#### *L. Petitions for Judicial Review*

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 September 28, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

### List of Subjects in 40 CFR Part 52

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

Dated: July 22, 2021.

**Deborah Jordan,**

*Acting Regional Administrator, Region IX.*

For reasons set forth in the preamble, EPA amends Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(442)(i)(F)(4) and (c)(503)(i)(D) to read as follows:

#### § 52.220 Identification of plan-in part.

\* \* \* \* \*

(c) \* \* \*  
(442) \* \* \*  
(i) \* \* \*  
(F) \* \* \*

(4) Previously approved on April 28, 2015 in paragraph (c)(442)(i)(F)(2) of this section and now deleted with replacement in (c)(503)(i)(D)(1), Rule 2.31, “Solvent Cleaning and Degreasing,” revised on May 8, 2013.

\* \* \* \* \*

(503) \* \* \*  
(i) \* \* \*

(D) Yolo-Solano Air Quality Management District.

(1) Rule 2.31, “Solvent Cleaning and Degreasing,” revised on April 12, 2017.

(2) [Reserved]

\* \* \* \* \*

[FR Doc. 2021–16110 Filed 7–29–21; 8:45 am]

BILLING CODE 6560–50–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 622

[Docket No. 140501394–5279–02; RTID 0648–XB269]

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; 2021 Commercial Accountability Measure and Closure for South Atlantic Blueline Tilefish

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

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS implements an accountability measure (AM) for commercial blueline tilefish in the exclusive economic zone (EEZ) of the South Atlantic. Commercial landings of blueline tilefish are projected to reach the commercial sector annual catch limit (ACL) by August 1, 2021. Therefore, NMFS is closing the commercial sector for blueline tilefish in the South Atlantic EEZ on August 1, 2021, and it will remain closed until the start of the next fishing year on January 1, 2022. This closure is necessary to protect the blueline tilefish resource.

**DATES:** This temporary rule is effective at 12:01 a.m., eastern time, on August 1, 2021, until 12:01 a.m., eastern time, on January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Rick DeVictor, NMFS Southeast Regional Office, telephone: 727–824–5305, email: [rick.devictor@noaa.gov](mailto:rick.devictor@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The snapper-grouper fishery of the South Atlantic includes blueline tilefish and is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The South Atlantic Fishery Management Council and NMFS prepared the FMP, and the FMP is implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622. All weights in this temporary rule are given in round weight.

As specified at 50 CFR 622.193(z)(1)(i), the commercial sector ACL for blueline tilefish is 117,148 lb (53,137 kg). The commercial AM for blueline tilefish requires NMFS to close the commercial sector when the its ACL is reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register (50 CFR 622.193(z)(1)(i)). NMFS has projected that for the 2021 fishing year, the commercial sector ACL for South Atlantic blueline tilefish will be reached by August 1, 2021. Accordingly, the commercial sector for South Atlantic blueline tilefish is closed effective at 12:01 a.m., eastern time, on August 1, 2021, until 12:01 a.m., eastern time, on January 1, 2022.

The operator of a vessel with a valid Federal commercial vessel permit for South Atlantic snapper-grouper having blueline tilefish on board must have landed and bartered, traded, or sold such blueline tilefish prior to August 1,

2021. During the commercial sector closure, all sale or purchase of blueline tilefish is prohibited. The harvest or possession of blueline tilefish in or from the South Atlantic EEZ is limited to the recreational bag and possession limits specified in 50 CFR 622.187(b)(2) and (c)(1), respectively, while the recreational sector for blueline tilefish is open. These bag and possession limits apply in the South Atlantic on board a vessel with a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper, and apply to the harvest of blueline tilefish in both state and Federal waters.

### Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 622.193(z)(1)(i), which was issued pursuant to section 304(b) of the Magnuson-Stevens Act, and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment is unnecessary and contrary to the public interest. Such procedures are unnecessary because the regulations associated with the closure of the blueline tilefish commercial sector at 50 CFR 622.193(z)(1)(i) have already been subject to notice and public comment, and all that remains is to notify the public of the closure. Prior notice and opportunity for public comment are contrary to the public interest because there is a need to immediately implement this action to protect blueline tilefish, since the capacity of the fishing fleet allows for rapid harvest of the commercial sector ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial sector ACL.

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

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

Dated: July 26, 2021.

**Jennifer M. Wallace,**

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

[FR Doc. 2021–16207 Filed 7–26–21; 4:15 pm]

BILLING CODE 3510–22–P

# Proposed Rules

Federal Register

Vol. 86, No. 144

Friday, July 30, 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-2021-0608; Project Identifier 2019-SW-119-AD]

RIN 2120-AA64

#### Airworthiness Directives; Leonardo S.p.a. Helicopters

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for Leonardo S.p.a. Model AB139, AW139, AB412, and AB412 EP helicopters. This proposed AD was prompted by failure of an Emergency Flotation System (EFS) float compartment to inflate during maintenance of the EFS. This proposed AD would require inspecting certain EFSs and depending on the results, marking certain parts or removing certain parts from service, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 September 13, 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 EASA material that is proposed for IBR in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find the EASA material on the EASA website at <https://ad.easa.europa.eu>. For Leonardo Helicopters and Safran service information identified in this NPRM, contact Leonardo S.p.A. Helicopters, Emanuele Bufano, Head of Airworthiness, Viale G. Agusta 520, 21017 C. Costa di Samarate (Va) Italy; telephone +39-0331-225074; fax +39-0331-229046; or at <https://customerportal.leonardocompany.com/en-US/>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. The EASA material is also available in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0608.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0608; 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. Comments will be available in the AD docket shortly after receipt.

#### FOR FURTHER INFORMATION CONTACT:

Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7330; email [andrea.jimenez@faa.gov](mailto:andrea.jimenez@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-2021-0608; Project Identifier 2019-SW-119-AD" 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 proposal.

#### 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 Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7330; email [andrea.jimenez@faa.gov](mailto:andrea.jimenez@faa.gov). Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

#### Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019-0311, dated December 19, 2019 (EASA AD 2019-0311), to correct an unsafe condition for Leonardo S.p.A., formerly Finmeccanica Helicopter Division, AgustaWestland, Agusta S.p.A. Model AB139, AW139, AB412, and AB412EP helicopters.



This proposed AD was prompted failure of an EFS float compartment to inflate during maintenance of the EFS. The FAA is proposing this AD to address a blocked float supply hose. The unsafe condition, if not addressed, could result in partial inflation of an EFS float during an emergency landing on water and subsequently preventing a timely egress from the helicopter, which could result in injury to helicopter occupants. See EASA AD 2019–0311 for additional background information.

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

EASA AD 2019–0311 specifies inspecting certain EFSs and depending on the results, marking a float supply hose with a green heat shrinkable sleeve if the float supply hose passes an inspection, replacing the float supply hose with a serviceable float supply hose. EASA AD 2019–0311 also prohibits installing a float supply hose unless it passes the inspection and is re-identified.

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.

#### **Other Related Service Information**

The FAA reviewed Safran Service Bulletin 025–69–19, Revision 00, dated November 22, 2019 (SB 025–69–19), which is attached as Annex A to Leonardo Helicopters Alert Service Bulletin (ASB) No. 139–610 and Emergency ASB No. 412–157, each dated December 17, 2019. SB 025–69–19 specifies procedures for inspecting for blockage through the float supply hoses of the EFS inflation system.

#### **FAA’s Determination**

These products have been approved by the aviation authority of another country, and are approved for operation in the United States. Pursuant to the bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in EASA AD 2019–0311. The FAA is proposing this AD after evaluating all the relevant information and determining the unsafe condition described previously is likely to exist or develop in other products of these same type designs.

#### **Proposed AD Requirements in This NPRM**

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0311, described previously, as incorporated by reference, except for any differences

identified as exceptions in the regulatory text of this proposed AD and except as discussed under “Differences Between this Proposed AD and the EASA AD.

#### **Explanation of Required Compliance Information**

In the FAA’s ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2019–0311 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0311 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2019–0311 does not mean that operators need comply only with that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2019–0311. Service information specified in EASA AD 2019–0311 that is required for compliance with EASA AD 2019–0311 will be available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0608 after the FAA final rule is published.

#### **Differences Between This Proposed AD and the EASA AD**

EASA AD 2019–0311 requires inspecting each affected part in Group A within 400 flight hours (FH) or 12 months, whichever occurs first, whereas this proposed AD would require inspecting each affected part in that group within 100 hours time-in-service instead. EASA AD 2019–0311 requires inspecting each affected part in Group C within 300 FH or during the next scheduled “18 months” inspection, whichever occurs first, whereas this proposed AD would require inspecting each affected part in that group within 15 hours time-in-service instead to address the unsafe condition as soon as practical as there are no Group C aircraft registered in the U.S.; the proposed compliance time matches those same model aircraft found in Group D. Where the service information referenced in

EASA AD 2019–0311 specifies “operator able to perform the EFS maintenance in accordance with Aircraft Maintenance Manual (AMM) or Aircraft Maintenance Publication (AMP) can perform the procedure defined in this Service Bulletin,” this proposed AD would require that the work be accomplished by a mechanic that meets the requirements of 14 CFR part 65 subpart D. Where EASA AD 2019–0311 specifies replacing an affected float supply hose that fails the inspection, this proposed AD would require removing the float supply hose from service instead.

#### **Costs of Compliance**

The FAA estimates that this proposed AD affects 129 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD.

Inspecting each EFS supply hose would take about 0.25 work-hour for an estimated cost of \$21 per hose. Re-identifying each EFS supply hose would take a minimal amount of time at a nominal cost.

Replacing an EFS supply hose would take up to 8 work-hours and parts would cost between \$2,500 and \$9,500 for a set of float supply hoses, for an estimated cost of up to \$10,180 per helicopter.

According to Safran’s service information, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage by Safran; accordingly, all costs are included in this cost estimate.

#### **Authority for This Rulemaking**

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

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



develop on products identified in this rulemaking action.

### Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) 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:

**Leonardo S.p.a.:** Docket No. FAA–2021–0608; Project Identifier 2019–SW–119–AD.

#### (a) Comments Due Date

The FAA must receive comments by September 13, 2021.

#### (b) Affected Airworthiness Directives (ADs)

None.

#### (c) Applicability

This AD applies to Leonardo S.p.a. Model AB139, AW139, AB412, and AB412 EP, helicopters, certificated in any category, with an affected part as identified in European Union Aviation Safety Agency (EASA) AD 2019–0311, dated December 19, 2019 (EASA AD 2019–0311), installed.

#### (d) Subject

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

#### (e) Unsafe Condition

This AD was prompted by failure of an Emergency Flotation System (EFS) float compartment to inflate during maintenance of the EFS. The FAA is issuing this AD to address a blocked float supply hose. The unsafe condition, if not addressed, could result in partial inflation of an EFS float during an emergency landing on water and subsequently preventing a timely egress from the helicopter, which could result in injury to helicopter 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, EASA AD 2019–0311.

#### (h) Exceptions to EASA AD 2019–0311

(1) Where EASA AD 2019–0311 refers to its effective date, this AD requires using the effective date of this AD.

(2) Where EASA AD 2019–0311 requires compliance in terms of flight hours, this AD requires using hours time-in-service (TIS).

(3) Where paragraph (1) of EASA AD 2019–0311 requires inspecting each affected part within the compliance time specified in Table 2 of its AD, this AD requires:

(i) Inspecting each affected part in Group A within 100 hours TIS after the effective date of this AD.

(ii) Inspecting each affected part in Group C within 15 hours TIS after the effective date of this AD.

(4) Where the service information referenced in paragraph (1) of EASA AD 2019–0311 specifies “operator able to perform the EFS maintenance in accordance with Aircraft Maintenance Manual (AMM) or Aircraft Maintenance Publication (AMP) can perform the procedure defined in this Service Bulletin,” this AD requires that the work be accomplished by a mechanic that meets the requirements of 14 CFR part 65 subpart D.

(5) Where paragraph (2) of EASA AD 2019–0311 specifies replacing an EFS supply hose that fails the inspection, this AD requires removing the hose from service.

(6) This AD does not require the “Remarks” section of EASA AD 2019–0311.

#### (i) No Reporting Requirement

Although the service information referenced in EASA AD 2019–0311 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

#### (j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation

Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

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

#### (k) Related Information

(1) For EASA AD 2019–0311, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may find this EASA AD on the EASA website at <https://ad.easa.europa.eu>. You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0608.

(2) For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7330; email [andrea.jimenez@faa.gov](mailto:andrea.jimenez@faa.gov).

Issued on July 23, 2021.

#### Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–16168 Filed 7–29–21; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2021–0606; Project Identifier 2019–SW–070–AD]

RIN 2120–AA64

#### Airworthiness Directives; Leonardo S.p.a. Helicopters

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Leonardo S.p.a. Model A109E, A109S, and AW109SP helicopters. This proposed AD was prompted by reports of main landing gear (MLG) wheel assembly failure. This proposed AD would require repetitive inspections of each affected MLG strut assembly and, depending on the findings, replacement of an affected MLG strut assembly with a serviceable assembly, or application of corrosion preventive compound, as

specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 September 13, 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 EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://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, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110. This EASA material is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0606.

#### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0606; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

**FOR FURTHER INFORMATION CONTACT:** Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7323; email [Darren.Gassetto@faa.gov](mailto:Darren.Gassetto@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-2021-0606; Project Identifier 2019-SW-070-AD” 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 Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228-7323; email [Darren.Gassetto@faa.gov](mailto:Darren.Gassetto@faa.gov). Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

#### Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2019-0182, dated July 26, 2019 (EASA AD 2019-0182), to correct an unsafe condition for

Leonardo S.p.A. Helicopters, formerly Finmeccanica S.p.A. Helicopter Division, AgustaWestland S.p.A., Agusta S.p.A. Model A109E, A109LUH, A109S and AW109SP helicopters, all serial numbers. Model A109LUH helicopters 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 helicopters in the applicability. Although EASA AD 2019-0182 applies to Model A109E, A109S and AW109SP helicopters, all manufacturer serial numbers, this proposed AD would apply to helicopters with an affected assembly installed.

This proposed AD was prompted by reports of MLG wheel assembly failure on Model A109E helicopters. Subsequent investigations identified stress corrosion and hydrogen embrittlement on the threaded end of the MLG strut, where lack of cadmium plating was observed, and determined that a certain batch of “enhanced” MLGs may be affected. Due to design similarity Model A109S and AW109SP helicopters are also affected. The FAA is proposing this AD to address stress corrosion and hydrogen embrittlement on the threaded end of the MLG strut in the MLG wheel assembly. This condition, if not addressed, could lead to cracks on the affected MLG assembly, resulting in damage or failure of the MLG and consequent damage to the helicopter and injury to occupants. See EASA AD 2019-0182 for additional background information.

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

EASA AD 2019-0182 requires repetitive inspections of each affected MLG assembly and, depending on the findings, replacement of an affected MLG strut assembly with a serviceable assembly, or application of corrosion preventive compound. EASA AD 2019-0182 allows the installation of an affected MLG strut assembly on any helicopter, provided it is a serviceable assembly, as defined in EASA AD 2019-0182.

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

#### FAA’s Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA’s bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is

proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

**Proposed AD Requirements in This NPRM**

This proposed AD would require accomplishing the actions specified in EASA AD 2019–0182, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

**Explanation of Required Compliance Information**

In the FAA’s ongoing efforts to improve the efficiency of the AD

process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2019–0182 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2019–0182 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2019–0182 does not mean that operators need comply only with

that section. For example, where the AD requirement refers to “all required actions and compliance times,” compliance with this AD requirement is not limited to the section titled “Required Action(s) and Compliance Time(s)” in EASA AD 2019–0182. Service information required by EASA AD 2019–0182 for compliance will be available at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0606 after the FAA final rule is published.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 99 helicopters 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
Inspection and application of corrosion protective compound.	2 work-hours × \$85 per hour = \$170 per inspection cycle.	\$17 per inspection cycle.	\$187 per inspection cycle.	\$18,513 per inspection cycle.

The FAA estimates the following costs to do any necessary replacement actions that would be required based on

the results of the proposed 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
Replacement of damaged MLG strut assembly .....	3 work-hours × \$85 per hour = \$255 .....	\$28,100	\$28,355

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some 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 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:

**Leonardo S.p.a.:** Docket No. FAA–2021–0606; Project Identifier 2019–SW–070–AD.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by September 13, 2021.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to Leonardo S.p.a. Model A109E, A109S, and AW109SP helicopters, certificated in any category, with an affected assembly as identified in European Union Aviation Safety Agency (EASA) AD 2019–0182, dated July 26, 2019 (EASA AD 2019–0182) installed.

**(d) Subject**

Joint Aircraft Service Component (JASC) Code: 3213, Main Landing Gear Strut/Axle/Truck.

**(e) Unsafe Condition**

This AD was prompted by reports of main landing gear (MLG) wheel assembly failure. The FAA is issuing this AD to address stress corrosion and hydrogen embrittlement on the threaded end of the MLG strut in the MLG wheel assembly. This condition, if not addressed, could lead to cracks on the affected MLG assembly, resulting in damage or failure of the MLG and consequent damage to the helicopter and injury to 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, EASA AD 2019–0182.

**(h) Exceptions to EASA AD 2019–0182**

(1) Where EASA AD 2019–0182 refers to flight hours (FH), this AD requires using hours time-in-service.

(2) Where EASA AD 2019–0182 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2019–0182 specifies to return a certain part, this AD does not include that requirement.

(4) The “Remarks” section of EASA AD 2019–0182 does not apply to this AD.

(5) Where the service information referenced in EASA AD 2019–0182 specifies to discard certain parts, this AD requires removing those parts from service.

(6) Where Annex A of the service information referenced in EASA AD 2019–0182 specifies to contact the manufacturer if there is any indication of cracking due to “some burr”; and Annex B of the service information specifies to contact the manufacturer if there are signs of arcing or burning on a part; before further flight, the instructions or corrective actions (including part replacement if necessary) must be accomplished using a method approved by

the Manager, International Validation Branch, FAA; or EASA; or Leonardo S.p.A.’s EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

**(i) No Reporting Requirement**

Although the service information referenced in EASA AD 2019–0182 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

**(j) Alternative Methods of Compliance (AMOCs)**

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD. Information may be emailed to: [9-AVS-AIR-730-AMOC@faa.gov](mailto:9-AVS-AIR-730-AMOC@faa.gov).

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

**(k) Related Information**

(1) For EASA AD 2019–0182, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email [ADs@easa.europa.eu](mailto:ADs@easa.europa.eu); internet [www.easa.europa.eu](http://www.easa.europa.eu). You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA–2021–0606.

(2) For more information about this AD, contact Darren Gassetto, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Suite 410, Westbury, NY 11590; telephone (516) 228–7323; email [Darren.Gassetto@faa.gov](mailto:Darren.Gassetto@faa.gov).

Issued on July 21, 2021.

**Gaetano A. Sciortino,**

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

[FR Doc. 2021–16169 Filed 7–29–21; 8:45 am]

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. FAA–2021–0610; Project Identifier AD–2021–00126–R]

RIN 2120–AA64

**Airworthiness Directives; Brantly Helicopters Industries U.S.A. Co., Ltd., and Brantly International, Inc., Helicopters**

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Brantly Helicopters Industries U.S.A. Co., Ltd., Model 305 helicopters and Brantly International, Inc., Model B–2, B–2A, and B–2B helicopters. This proposed AD was prompted by a report of a crack in the tail rotor (T/R) hub. This proposed AD would require repetitive inspections of the T/R hub and depending on the results, removing the T/R hub from service. 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 September 13, 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 Brantly International, Inc., Bill Ross, 621 S Royal Lane, Suite 100, Coppell, TX 75019; phone: (972) 829–4699; email: [bross@superiorairparts.com](mailto:bross@superiorairparts.com). You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

### Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0610; 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:** Marc Belhumeur, Senior Project Engineer, Certification Section, Fort Worth ACO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5177; email [9-ASW-FWACO@faa.gov](mailto:9-ASW-FWACO@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-2021-0610; Project Identifier AD-2021-00126-R" 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 Marc Belhumeur, Senior Project Engineer, Certification Section, Fort Worth ACO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5177; email [9-ASW-FWACO@faa.gov](mailto:9-ASW-FWACO@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 proposes to adopt a new AD for Brantly Helicopters Industries U.S.A. Co., Ltd., Model 305 helicopters and Brantly International, Inc., Model B-2, B-2A, and B-2B helicopters with T/R hub part number (P/N) 161-1 or 2951 installed. This proposed AD was prompted by a report of a crack in T/R hub P/N 2951. The crack is considered fatigue cracking caused by corrosion pitting. T/R hub P/N 161-1 is also affected by this unsafe condition due to design similarity. This condition, if not addressed, could result in loss of T/R control and subsequent loss of control of the helicopter.

#### 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

The FAA reviewed Brantly Helicopter Service Letter No. 102, dated July 11, 1974 (SL 102). SL 102 specifies repetitively cleaning and inspecting the areas where each T/R blade attaching arm extends from the T/R hub for a crack. SL 102 also specifies repetitively cleaning and dye penetrant inspecting the radius at the shoulder of each T/R hub spindle for a crack. If there is a crack, SL 102 specifies replacing the part and reporting any cracks to Brantly Operators, Inc.

#### Proposed AD Requirements in This NPRM

This proposed AD would require repetitively cleaning, and using a 10X or higher power magnifying glass, inspecting the areas where each T/R blade attaching arm extends from the T/R hub for a crack, corrosion, and pitting, and depending on the results, removing the T/R hub from service. This proposed AD would also require repetitively cleaning and dye penetrant inspecting the radius at the shoulder of each T/R hub spindle for a crack and pitting, and

depending on the results, removing the T/R hub from service.

#### Differences Between This Proposed AD and the Service Information

SL 102 applies to all Brantly helicopters, whereas this proposed AD would apply to helicopters with T/R hub P/N 2591 or 161-1 installed. This proposed AD would require using a 10X or higher power magnifying glass when inspecting the area where the T/R blade attaching arm extends from the T/R hub for a crack, corrosion, and pitting, whereas SL 102 does not specify using a magnifying glass and only specifies inspecting for a crack in that area. This proposed AD would require dye penetrant inspecting the radius at the shoulder of each T/R spindle for a crack and pitting, whereas SL 102 only specifies dye penetrant inspecting for a crack in those areas. SL102 specifies reporting any cracks to Brantly Operators, Inc., whereas this proposed AD would not require reporting any information.

#### Costs of Compliance

The FAA estimates that this AD affects 57 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this proposed AD.

Cleaning and inspecting the T/R hub with a magnifying glass would take about 1 work-hour for an estimated cost of \$85 per helicopter and \$4,845 for the U.S. fleet, per inspection cycle. Cleaning and dye penetrant inspecting the T/R hub would take about 2 work-hours for an estimated cost of \$170 per helicopter and \$9,690 for the U.S. fleet, per inspection cycle. If required, replacing a T/R hub would take about 0.5 work-hour and parts would cost about \$500 for an estimated cost of \$543 per replacement.

#### 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:

**Brantly Helicopters Industries U.S.A. Co., Ltd., and Brantly International, Inc.:**  
Docket No. FAA-2021-0610; Project Identifier AD-2021-00126-R.

#### (a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by September 13, 2021.

#### (b) Affected ADs

None.

#### (c) Applicability

This AD applies to Brantly Helicopters Industries U.S.A. Co., Ltd., Model 305 helicopters and Brantly International, Inc., Model B-2, B-2A, and B-2B helicopters, certificated in any category, with a tail rotor

(T/R) hub part number 161-1 or 2951, installed.

#### (d) Subject

Joint Aircraft System Component (JASC) Code 6420, Tail Rotor Head.

#### (e) Unsafe Condition

This AD was prompted by a report of crack in the T/R hub. The FAA is issuing this AD to address cracking of the T/R hub. The unsafe condition, if not addressed, could result in loss of T/R control and subsequent loss of control of the helicopter.

#### (f) Compliance

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

#### (g) Required Actions

Within 100 hours time-in-service (TIS) or at the next annual inspection after the effective date of this AD, whichever occurs first, and thereafter at intervals not to exceed 100 hours TIS and at each annual inspection:

- (1) Clean, and using a 10X or higher power magnifying glass, inspect the areas where each T/R blade attaching arm extends from the T/R hub for a crack, corrosion, and pitting. If there is a crack, corrosion, or pitting, before further flight, remove the T/R hub from service.
- (2) Clean and dye penetrant inspect the radius at the shoulder of each T/R hub spindle for a crack and pitting. If there is a crack or pitting, before further flight, remove the T/R hub from service.

#### (h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (i) of this AD.

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

#### (i) Related Information

For more information about this AD, contact Marc Bellhumeur, Senior Project Engineer, Certification Section, Fort Worth ACO Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5177; email 9-ASW-FWACO@faa.gov.

Issued on July 26, 2021.

#### Lance T. Gant,

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

[FR Doc. 2021-16219 Filed 7-29-21; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 71

[Docket No. FAA-2021-0596; Airspace Docket No. 20-AGL-15]

RIN 2120-AA66

### Proposed Amendment of V-6, V-10, V-30, V-100, and V-233 in the Vicinity of Litchfield, MI

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

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend VHF Omnidirectional Range (VOR) Federal airways V-6, V-10, V-30, V-100, and V-233 in the vicinity of Litchfield, MI. The air traffic service (ATS) route modifications are necessary due to the planned decommissioning of the VOR portion of the Litchfield, MI, VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Litchfield VOR/DME NAVAID provides navigational guidance for portions of the affected VOR Federal airways listed above and is planned to be decommissioned as part of the FAA's VOR Minimum Operational Network (MON) program.

**DATES:** Comments must be received on or before September 13, 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; telephone: (800) 647-5527, or (202) 366-9826. You must identify FAA Docket No. FAA-2021-0596; Airspace Docket No. 20-AGL-15 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>.

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

**FOR FURTHER INFORMATION CONTACT:**

Colby Abbott, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

**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 the 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 modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

**Comments Invited**

Interested parties are invited to participate in 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 (FAA Docket No. FAA-2021-0596; Airspace Docket No. 20-AGL-15) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at <https://www.regulations.gov>.

Commenters 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-2021-0596; Airspace Docket No. 20-AGL-15." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may

be changed in light of 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/](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 **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 during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX, 76177.

**Availability and Summary of Documents for Incorporation by Reference**

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**Background**

The FAA is planning decommissioning activities for the VOR portion of the Litchfield, MI, VOR/DME in May 2022. The Litchfield, MI, VOR is a candidate VOR identified for discontinuance by the FAA's VOR MON program and listed in the final policy statement notice, "Provision of Navigation Services for the Next Generation Air Transportation System (NextGen) Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR Minimum Operational Network)," published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA-2011-1082.

Although the VOR portion of the Litchfield VOR/DME is planned for decommissioning, the co-located DME

portion of the NAVAID is being retained.

The existing ATS route dependencies to the Litchfield, MI, VOR/DME NAVAID are VOR Federal airways V-6, V-10, V-30, V-100, and V-233. With the planned decommissioning of the VOR portion of the Litchfield VOR/DME, the remaining ground-based NAVAID coverage in the area is insufficient to enable the continuity of the affected airways. As such, proposed modifications to the affected VOR Federal airways would result in expanding the existing gaps in four of the airways (V-6, V-10, V-30, and V-233) and redefining an airway end point in the remaining airway (V-100).

To overcome the expanded gaps in four of the airways and the loss of the airway segment on the end of the fifth airway, instrument flight rules (IFR) traffic may request air traffic control (ATC) radar vectors to fly through or circumnavigate the affected area. Additionally, IFR pilots equipped with RNAV capabilities may also navigate point to point using the existing fixes that will remain in place as fixes or waypoints to support continued operations through the affected area. Visual flight rules (VFR) pilots who elect to navigate via the airways through the affected area could also take advantage of the ATC services listed previously.

Prior to this NPRM, the FAA published a rule for Docket No. FAA-2020-0709 in the **Federal Register** (85 FR 79117; December 9, 2020), amending VOR Federal airways V-6 and V-30 by removing the airway segments between the Clarion, PA, VOR/DME and the Philipsburg, PA, VOR/Tactical Air Navigation (VORTAC) for each airway. Those airway amendments, effective February 25, 2021, are included in this NPRM.

Also prior to this NPRM, the FAA published a rule for Docket No. FAA-2020-0667 in the **Federal Register** (85 FR 79422; December 10, 2020), amending VOR Federal airway V-100 by removing the airway segment between the O'Neill, NE, VORTAC and the Fort Dodge, IA, VORTAC. That airway amendment, effective February 25, 2021, is also included in this NPRM.

**The Proposal**

The FAA is proposing an amendment to 14 CFR part 71 by modifying VOR Federal airways V-6, V-10, V-30, V-100, and V-233. The planned decommissioning of the VOR portion of the Litchfield, MI, VOR/DME has made this action necessary.

The proposed VOR Federal airway changes are outlined below.



V-6: V-6 currently extends between the Oakland, CA, VOR/DME and the DuPage, IL, VOR/DME; between the intersection of the Chicago Heights, IL, VORTAC 358° and Gipper, MI, VORTAC 271° radials (NILES fix) and the intersection of the Gipper, MI, VORTAC 092° and Litchfield, MI, VOR/DME 196° radials (MODEM fix); and between the Philipsburg, PA, VORTAC and the La Guardia, NY, VOR/DME. The FAA proposes to remove the airway segment between the Gipper, MI, VORTAC and the intersection of the Gipper, MI, VORTAC 092° and Litchfield, MI, VOR/DME 196° radials (MODEM fix). The unaffected portions of the existing airway would remain as charted.

V-10: V-10 currently extends between the Pueblo, CO, VORTAC and the intersection of the Bradford, IL, VORTAC 058° and Joliet, IL, VOR/DME 287° radials (PLANO fix); between the intersection of the Chicago Heights, IL, VORTAC 358° and Gipper, MI, VORTAC 271° radials (NILES fix) and the Litchfield, MI, VOR/DME; and between the Youngstown, OH, VORTAC and the Lancaster, PA, VOR/DME. The FAA proposes to remove the airway segment between the intersection of the Chicago Heights, IL, VORTAC 358° and Gipper, MI, VORTAC 271° radials (NILES fix) and the Litchfield, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V-30: V-30 currently extends between the Badger, WI, VOR/DME and the Litchfield, MI, VOR/DME; and between the Philipsburg, PA, VORTAC and the Solberg, NJ, VOR/DME. The FAA proposes to remove the airway segment between the Pullman, MI, VOR/DME and the Litchfield, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

V-100: V-100 currently extends between the Medicine Bow, WY, VOR/DME and the O'Neill, NE, VORTAC; and between the Fort Dodge, IA, VORTAC and the Litchfield, MI, VOR/DME. The FAA proposes to remove the airway segment between the Keeler, MI, VOR/DME and the Litchfield, MI, VOR/DME. Additional changes to other portions of the airway have been proposed in a separate NPRM. The unaffected portions of the existing airway would remain as charted.

V-233: V-233 currently extends between the Spinner, IL, VORTAC and the Litchfield, MI, VOR/DME; and between the Mount Pleasant, MI, VOR/DME and the Pellston, MI, VORTAC. The FAA proposes to remove the airway segment between the Goshen, IN,

VORTAC and the Litchfield, MI, VOR/DME. The unaffected portions of the existing airway would remain as charted.

All radials listed in the VOR Federal airway descriptions below are unchanged and stated in True degrees.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11E, dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be published subsequently in the Order.

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

### Regulatory Notices and Analyses

The FAA has determined that this 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 Department of Transportation (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.

### List 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 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

*Paragraph 6010(a) Domestic VOR Federal Airways.*

\* \* \* \* \*

### V-6 [Amended]

From Oakland, CA; INT Oakland 039° and Sacramento, CA, 212° radials; Sacramento; Squaw Valley, CA; Mustang, NV; Lovelock, NV; Battle Mountain, NV; INT Battle Mountain 062° and Wells, NV, 256° radials; Wells; 5 miles, 40 miles, 98 MSL, 85 MSL, Lucin, UT; 43 miles, 85 MSL, Ogden, UT; 11 miles, 50 miles, 105 MSL, Fort Bridger, WY; Rock Springs, WY; 20 miles, 39 miles, 95 MSL, Cherokee, WY; 39 miles, 27 miles, 95 MSL, Medicine Bow, WY; INT Medicine Bow 106° and Sidney, NE, 291° radials; Sidney; North Platte, NE; Grand Island, NE; Omaha, IA; Des Moines, IA; Iowa City, IA; Davenport, IA; INT Davenport 087° and DuPage, IL, 255° radials; to DuPage. From INT Chicago Heights, IL, 358° and Gipper, MI, 271° radials; to Gipper. From Philipsburg, PA; Selingsgrove, PA; Allentown, PA; Solberg, NJ; INT Solberg 107° and Yardley, PA, 068° radials; INT Yardley 068° and La Guardia, NY, 213° radials; to La Guardia.

\* \* \* \* \*

### V-10 [Amended]

From Pueblo, CO; 18 miles, 48 miles, 60 MSL, Lamar, CO; Garden City, KS; Dodge City, KS; Hutchinson, KS; Emporia, KS; INT Emporia 063° and Napoleon, MO, 243° radials; Napoleon; Kirksville, MO; Burlington, IA; Bradford, IL; to INT Bradford 058° and Joliet, IL, 287° radials. From Youngstown, OH; INT Youngstown 116° and Revloc, PA, 300° radials; Revloc; INT Revloc 107° and Lancaster, PA, 280° radials; to Lancaster.

\* \* \* \* \*

### V-30 [Amended]

From Badger, WI; INT Badger 102° and Pullman, MI, 303° radials; to Pullman. From Philipsburg, PA; Selingsgrove, PA; East Texas, PA; INT East Texas 095° and Solberg, NJ, 264° radials; to Solberg.

\* \* \* \* \*

### V-100 [Amended]

From Medicine Bow, WY; Scottsbluff, NE; Alliance, NE; Ainsworth, NE; to O'Neill, NE. From Fort Dodge, IA; Waterloo, IA; Dubuque, IA; Rockford, IL; INT Rockford 074° and Janesville, WI, 112° radials; INT Janesville 112° and Northbrook, IL, 291° radials; Northbrook; INT Northbrook 095° and Keeler, MI, 271° radials; to Keeler.

\* \* \* \* \*



**V-233 [Amended]**

From Spinner, IL; INT Spinner 061° and Roberts, IL, 233° radials; Roberts; Knox, IN; to Goshen, IN. From Mount Pleasant, MI; INT Mount Pleasant 351° and Gaylord, MI, 207° radials; Gaylord; to Pellston, MI.

\* \* \* \* \*

Issued in Washington, DC, on July 26, 2021.

**George Gonzalez,**

*Acting Manager, Rules and Regulations Group.*

[FR Doc. 2021-16140 Filed 7-29-21; 8:45 am]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF JUSTICE****28 CFR Part 16**

[CPCLO Order No. 008-2021]

**Privacy Act of 1974; Implementation**

**AGENCY:** Justice Management Division (JMD), United States Department of Justice.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of Justice (Department or DOJ), Justice Management Division (JMD), in the Notices section of this issue of the **Federal Register**, is publishing a new system of records, “Security Monitoring and Analytics Service Records,” JUSTICE/JMD-026. In this notice of proposed rulemaking, DOJ proposes to exempt this system of records from certain provisions of the Privacy Act to avoid interference with efforts to prevent the unauthorized access, use, disclosure, disruption, modification, or destruction of information, information systems, and networks of DOJ and external federal agency subscribers. For the reasons provided below, the Department proposes to amend its Privacy Act regulations by establishing an exemption from certain provisions of the Privacy Act for this system of records. Public comment is invited.

**DATES:** Comments must be received by August 30, 2021.

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

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. When submitting comments electronically, you must include the CPCLO Order No. in the subject box. Please note that the Department is requesting that electronic comments be submitted before midnight Eastern Standard Time on the day the comment period closes because <http://www.regulations.gov> terminates the public’s ability to submit comments at that time. Commenters in time zones other than Eastern Standard Time may

want to consider this so that their electronic comments are received.

- **Mail:** United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, Office of Privacy and Civil Liberties, 145 N St. NE, Suite 8W.300, Washington, DC 20530. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes. To ensure proper handling, please reference the CPCLO Order No. in your correspondence.

**Posting of Public Comments:** Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule by one of the methods and by the deadline stated above. All comments must be submitted in English, or accompanied by an English translation. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at [www.regulations.gov](http://www.regulations.gov). Such information includes personally identifying information (PII) (such as your name, address, etc.). Interested persons are not required to submit their PII in order to comment on this rule. However, any PII that is submitted is subject to being posted to the publicly-accessible [www.regulations.gov](http://www.regulations.gov) site without redaction.

Confidential business information clearly identified in the first paragraph of the comment as such will not be placed in the public docket file.

The Department may withhold from public viewing information provided in comments that they determine 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 <http://www.regulations.gov>. To inspect the agency’s public docket file in person, you must make an appointment with the agency. Please see the **FOR FURTHER INFORMATION CONTACT** paragraph, below, for agency contact information.

**FOR FURTHER INFORMATION CONTACT:** Nickolous Ward, DOJ Chief Information

Security Officer, (202) 514-3101, 145 N Street NE, Washington, DC 20530.

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal Information Security Modernization Act of 2014, among other authorities, agencies are responsible for complying with information security policies and procedures requiring information security protections commensurate with the risk and magnitude of harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of DOJ information and information systems. *See, e.g.*, 44 U.S.C. 3554 (2018). Executive Order No. 13800, Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure (May 2017), directs agency heads to show preference in their procurement for shared IT services, to the extent permitted by law, including email, cloud, and cybersecurity services. Office of Management and Budget (OMB) Memorandum M-19-16, Centralized Mission Support Capabilities for the Federal Government (April 26, 2019), establishes the framework for implementing the “Sharing Quality Services” across agencies. The Economy Act of 1932, as amended, 31 U.S.C. 1535, authorizes agencies to enter into agreements to obtain supplies or services from another agency. Consistent with these authorities, the JMD, Office of the Chief Information Officer (OCIO), Cybersecurity Services Staff (CSS), developed the Security Monitoring and Analytics Service (SMAS) system to provide DOJ-managed information technology service offerings to other federal agencies wishing to leverage DOJ’s cybersecurity services, referred to as “external federal agency subscribers.” This system provides external federal agency subscribers with the technical capability to protect their data from malicious or accidental threats using a DOJ-managed system. Elsewhere in the **Federal Register**, JMD published a notice of a new system of records titled, “Security Monitoring and Analytics Service Records,” JUSTICE/JMD-026, to provide the public notice of the records maintained by DOJ while implementing SMAS.

In this rulemaking, the Department proposes to exempt JUSTICE/JMD-026 from certain provisions of the Privacy Act in order to avoid interference with the responsibilities of the Department to prevent the unauthorized access, use, disclosure, disruption, modification, or destruction of external federal agency subscribers’ information and information systems. Additionally, the

Department proposes to exempt JUSTICE/JMD–026 from certain provisions to assist DOJ and external federal agency subscribers with protecting such data and ensuring the secure operation of information systems.

#### **Executive Orders 12866 and 13563—Regulatory Review**

In accordance with 5 U.S.C. 552a(j) and 552a(k), this proposed action is subject to formal rulemaking procedures by giving interested persons an opportunity to participate in the rulemaking process “through submission of written data, views, or arguments,” pursuant to 5 U.S.C. 553. This proposed rule will promulgate certain Privacy Act exemptions for a DOJ system of records titled, “Security Monitoring and Analytics Service Records,” JUSTICE/JMD–026. This proposed rule does not raise novel legal or policy issues, nor does it adversely affect the economy, the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of recipients thereof in a material way. The Department of Justice has determined that this rule is not a “significant regulatory action” under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Information and Regulatory Affairs within the Office of Management and Budget pursuant to Executive Order 12866.

#### **Regulatory Flexibility Act**

This proposed rule will only impact Privacy Act-protected records, which are personal and generally do not apply to an individual’s entrepreneurial capacity, subject to limited exceptions. Accordingly, the Chief Privacy and Civil Liberties Officer, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

#### **Small Business Regulatory Enforcement Fairness Act of 1996 (Subtitle E-Congressional Review Act)**

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, 5 U.S.C. 801 *et seq.*, requires the Department to comply with small entity requests for information and advice about compliance with statutes and regulations within the Department’s jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT** paragraph, above. Persons can obtain further information regarding SBREFA on the Small

Business Administration’s web page at <https://www.sba.gov/advocacy>. This proposed rule is not a major rule as defined by 5 U.S.C. 804 of the Congressional Review Act.

#### **Executive Order 13132—Federalism**

This proposed 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. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### **Executive Order 12988—Civil Justice Reform**

This proposed regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

#### **Executive Order 13175—Consultation and Coordination With Indian Tribal Governments**

This proposed rule will have no implications for Indian Tribal governments. More specifically, it does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Therefore, the consultation requirements of Executive Order 13175 do not apply.

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

This proposed rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000, as adjusted for inflation, or more in any one 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.

#### **Paperwork Reduction Act**

The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), requires the Department to consider the impact of paperwork and other information collection burdens imposed on the public. There are no current or new

information collection requirements associated with this proposed rule.

#### **List of Subjects in 28 CFR Part 16**

Administrative Practices and Procedures, Courts, Freedom of Information, and the Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order 2940–2008, the Department of Justice proposes to amend 28 CFR part 16 as follows:

#### **PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION**

- 1. The authority citation for part 16 continues to read as follows:

**Authority:** 5 U.S.C. 301, 552, 552a, 553; 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717.

#### **Subpart E—Exemption of Records Systems Under the Privacy Act**

- 2. Amend § 16.76 by adding paragraphs (e) and (f) to read as follows:

#### **§ 16.76 Exemption of Justice Management Division.**

\* \* \* \* \*

(e) The following system of records is exempted from 5 U.S.C. 552a(c)(3); (d); (e)(1), (e)(4)(G), (H), and (I); and (f): Department of Justice Security Monitoring and Analytics System (JUSTICE/JMD–025). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k)(2). Where DOJ determines compliance would not appear to interfere with or adversely affect the purpose of this system to ensure that the Department can track information system access and implement information security protections commensurate with the risk and magnitude of harm that could result from the unauthorized access, use, disclosure, disruption, modification, or destruction of DOJ information and information systems, the applicable exemption may be waived by the DOJ in its sole discretion.

(f) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3), the requirement that an accounting be made available to the named subject of a record, because this system is exempt from the access provisions of subsection (d). Also, because making available to a record subject the accounting of disclosures of records concerning the subject would specifically reveal investigative interests in the records by the DOJ, external federal agency

subscribers, or other entities that are recipients of the disclosures. Revealing this information could compromise sensitive information or interfere with the overall law enforcement process by revealing a pending sensitive cybersecurity investigation. Revealing this information could also permit the record subject to obtain valuable insight concerning the information obtained during any investigation and to take measures to impede the investigation, e.g., destroy evidence or alter techniques to evade discovery.

(2) From subsection (d)(1), (2), (3) and (4), (e)(4)(G) and (H), and (f) because these provisions concern individual access to and amendment of certain law enforcement and sensitive records, compliance of which could alert the subject of an authorized law enforcement activity about that particular activity and the interest of the DOJ, external federal agency subscribers, and/or other entities that are recipients of the disclosure. Providing access could compromise sensitive information, or reveal sensitive cybersecurity investigative techniques; provide information that would allow a subject to avoid detection; or constitute a potential danger to the health or safety of law enforcement personnel or confidential sources.

(3) From subsection (e)(1) because it is not always possible to know in advance what information is relevant and necessary for law enforcement purposes. The relevance and utility of certain information that may have a nexus to cybersecurity threats may not always be fully evident until and unless it is vetted and matched with other information necessarily and lawfully maintained by the DOJ, external federal agency subscribers, or other entities.

(4) From subsection (e)(4)(I), to the extent that this subsection is interpreted to require more detail regarding the record sources in this system than has been published in the **Federal Register**. Should the subsection be so interpreted, exemption from this provision is necessary to protect the sources of law enforcement information.

Dated: July 20, 2021.

**Peter A. Winn,**

*Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.*

[FR Doc. 2021-15884 Filed 7-29-21; 8:45 am]

**BILLING CODE 4410-NW-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket No. USCG-2021-0305]

RIN 1625-AA08

#### Special Local Regulations; Patuxent River, Solomons, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** The Coast Guard is withdrawing its proposed rule to establish temporary special local regulations for certain waters of the Patuxent River. The rulemaking was initiated to establish a special local regulation during the “Chesapeake Challenge/Solomons Offshore Grand Prix,” a marine event to be held on certain waters of the Patuxent River, between the Governor Thomas Johnson (MD Route 4) Bridge and the West Patuxent Basin at U.S. Naval Air Station Patuxent River, MD. The proposed rule is being withdrawn because it is no longer necessary. The event sponsor has cancelled the power boat racing event.

**DATES:** The Coast Guard is withdrawing the proposed rule for the event scheduled on August 29, 2021, from 9 a.m. to 5 p.m. published on June 7, 2021 (86 FR 30224) as of July 30, 2021.

**ADDRESSES:** To view the docket for this withdrawn rulemaking, go to <https://www.regulations.gov>, type USCG-2021-0305 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice, call or email Mr. Ron Houck, Waterways Management Division, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410-576-2674, email [Ronald.L.Houck@uscg.mil](mailto:Ronald.L.Houck@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

#### Background Information and Regulatory History

On June 7, 2021, we published an NPRM entitled “Special Local Regulations; Patuxent River, Solomons, MD” in the **Federal Register** (86 FR 30224). The proposed rulemaking concerned the Coast Guard’s establishment of a temporary special local regulation for certain navigable waters of the Patuxent River, effective from 8 a.m. through 6 p.m. on August 29, 2021. This action was necessary to provide for the safety of life on these

waters during a power boat racing event. This rulemaking would have prohibited persons and vessels from entering the regulated area unless authorized by the Captain of the Port Maryland-National Capital Region or the Coast Guard Event Patrol Commander.

#### Withdrawal

The proposed rule is being withdrawn due to the regulated area no longer being necessary following a cancellation of the power boat racing event by the event sponsor.

#### Authority

We issue this notice of withdrawal under the authority of 46 U.S.C. 70041.

Dated: July 26, 2021.

**David E. O’Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2021-16259 Filed 7-29-21; 8:45 am]

**BILLING CODE 9110-04-P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3050

[Docket No. RM2021-7; Order No. 5945]

#### Periodic Reporting

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is acknowledging a recent filing requesting the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Four). This document informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 23, 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:

#### Table of Contents

- I. Introduction
- II. Proposal Four
- III. Notice and Comment
- IV. Ordering Paragraphs

## I. Introduction

On July 22, 2021, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate a rulemaking proceeding to consider changes to analytical principles relating to periodic reports.<sup>1</sup> The Petition identifies the proposed analytical changes filed in this docket as Proposal Four.

## II. Proposal Four

**Background.** The Postal Service currently develops the distribution factors used for the Special Purpose Route (SPR) city carrier cost pools based on manual data collection through the City Carrier Costing System SPR subsystem (CCCS–SPR). The Commission approved the use of this subsystem in Order No. 339, and it has been used each year since FY 2009.<sup>2</sup>

**Proposal.** With Proposal Four, the Postal Service seeks to replace the CCCS–SPR subsystem with a new system called the Special Purpose Carrier Cost System (SPCCS). The Postal Service cites two objectives for this new system: “to replace manual sampling with scan data from Product Tracking and Reporting (PTR) combined with the clock rings from the Time and Attendance Collection System (TACS)” and to “separate the weekday SPR cost pool into peak and non-peak pools and provide separate distribution factors for each cost pool.” Petition, Proposal Four at 2.

With respect to the first objective, the Postal Service plans to use PTR delivery scans that occur within time blocks when a city carrier is clocked to Management Operating Data System (MODS) Operating Codes specific to Special Purpose Routes. *Id.* The Postal Service proposes to use a sample of time blocks “[d]ue to the disproportionate resources required to obtain a complete nationwide census.” *Id.*

Regarding the second objective, the Postal Service proposes to disaggregate the volume variabilities used for the SPR Monday through Saturday cost pool in order to create separate non-peak and peak weekday SPR cost pools. *Id.* at 3. The Postal Service also proposes annual updates to the hours used to weight the new weekday non-peak SPR cost pool variabilities. *Id.*

**Impact.** The impacts of Proposal Four are outlined in Table 1 of the proposal.

<sup>1</sup> Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Four), July 22, 2021 (Petition).

<sup>2</sup> See Docket No. RM2009–10, Order on Analytical Principles Used in Periodic Reporting (Proposals Three through Nineteen), November 13, 2009 (Order No. 339); Petition, Proposal Four at 1.

*Id.* at 7. The most significant change in unit costs is a decrease of \$0.1743 for Collect on Delivery Service. *Id.* The unit cost of USPS Marketing Mail Parcels would increase by \$0.0151, from \$0.238 to \$0.254 per unit. *Id.* The unit cost for total domestic market dominant services would decrease by \$0.0144 per unit. *Id.*

## III. Notice and Comment

The Commission establishes Docket No. RM2021–7 for consideration of matters raised by the Petition. More information on the Petition may be accessed via the Commission’s website at <http://www.prc.gov>. Interested persons may submit comments on the Petition and Proposal Four no later than August 23, 2021. Pursuant to 39 U.S.C. 505, Manon Boudreault is designated as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

## IV. Ordering Paragraph

*It is ordered:*

1. The Commission establishes Docket No. RM2021–7 for consideration of the matters raised by the Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Four), filed July 22, 2021.

2. Comments by interested persons in this proceeding are due no later than August 23, 2021.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Manon Boudreault to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

**Erica A. Barker,**

*Secretary.*

[FR Doc. 2021–16294 Filed 7–29–21; 8:45 am]

**BILLING CODE 7710–FW–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 35

[EPA–R09–OAR–2021–0359; FRL–8699–01–R9]

### Clean Air Act Grant; Santa Barbara County Air Pollution Control District; Opportunity for Public Hearing

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notification; proposed determination with request for

comments and notice of opportunity for public hearing.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to determine that the reduction in expenditures of non-Federal funds for the Santa Barbara County Air Pollution Control District (SBCAPCD) in support of its continuing air program under section 105 of the Clean Air Act (CAA), for the calendar year 2020 are a result of non-selective reductions in expenditures. This determination, when final, will permit the SBCAPCD to receive grant funding for fiscal year (FY) 2021 from the EPA under section 105 of the CAA.

**DATES:** Comments and/or requests for a public hearing must be received by the EPA at the address stated below on or before August 30, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2021–0359 at <https://www.regulations.gov>. For comments submitted at [Regulations.gov](https://www.regulations.gov), follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from [Regulations.gov](https://www.regulations.gov). The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Proprietary Business Information (PBI) or Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Angela Latigue, EPA Region IX, Grants and Program Integration Office, Air Division, 75 Hawthorne Street, San Francisco, CA 94105; phone at (415)

947–4170 or email address at [latigue.angela@epa.gov](mailto:latigue.angela@epa.gov).

**SUPPLEMENTARY INFORMATION:** Section 105 of the CAA provides grant funding for the continuing air programs of eligible state, local, and tribal agencies. In accordance with 40 CFR 35.145(a), the Regional Administrator may provide air pollution control agencies up to three-fifths of the approved costs of implementing programs for the prevention and control of air pollution. CAA Section 105 grants require a cost share (also referred to as a match requirement) and a maintenance of effort (MOE). An eligible agency must meet a minimum 40% match. In addition, to remain eligible for section 105 funds, an eligible agency must meet an MOE requirement under section 105(c)(1) of the CAA, 42 U.S.C. 7405.

Program activities relevant to the match consist of both recurring and non-recurring (unique, one-time only) expenses. The MOE provision requires that a state or local agency spend at least the same dollar level of funds as it did in the previous grant year, but only for the costs of recurring activities. Specifically, section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that, “No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year.” However, pursuant to CAA section 105(c)(2), 42 U.S.C. 7405(c)(2), the EPA may still award a grant to an agency not meeting the requirements of section 105(c)(1), “. . . if the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government.” These statutory requirements are repeated in the EPA’s implementing regulations at 40 CFR 35.140–35.148. The EPA issued additional guidance to recipients on what constitutes a nonselective reduction on September 30, 2011. In consideration of legislative history, the

guidance clarified that a non-selective reduction does not necessarily mean that each Executive branch agency needs to be reduced in equal proportion. However, it must be clear to the EPA, from the weight of evidence, that a recipient’s CAA-related air program is not being disproportionately impacted or singled out for a reduction.

A section 105 grant recipient must submit a final federal financial report no later than 90 days from the close of its grant period that documents all of its federal and non-federal expenditures for the completed period. The recipient seeking an adjustment to its MOE for that period must provide the rationale and the documentation necessary to enable the EPA to determine that a nonselective reduction has occurred. In order to expedite that determination, the recipient must provide details of the budget action and the comparative fiscal impacts on all the jurisdiction’s executive branch agencies, the recipient agency itself, and the agency’s air program. The recipient should identify any executive branch agencies or programs that should be excepted from comparison and explain why. The recipient must provide evidence that the air program is not being singled out for a reduction or being disproportionately reduced. Documentation in key areas will be needed: Budget data specific to the recipient’s air program, and comparative budget data between the recipient’s air program, the agency containing the air program, and the other executive branch agencies. The EPA may also request information from the recipient about how impacts on its program operations will affect its ability to meet its CAA obligations and requirements; and documentation that explains the cause of the reduction, such as legislative changes or the issuance of a new executive order.

In fiscal year (FY) 2020, the EPA awarded the SBCAPCD \$519,277, which represented approximately 7% of the SBCAPCD budget. In FY2021, the EPA intends to award the SBCAPCD approximately \$522,315, which represents approximately 7% of the SBCAPCD budget.

SBCAPCD’s final federal financial report for FY2019 indicated that

SBCAPCD’s MOE level was \$8,551,345. SBCAPCD’s final federal financial report for FY2020 indicates that SBCAPCD’s MOE level is at \$7,890,365. The reduced MOE is not sufficient to meet the MOE requirements under the CAA Section 105 because it is not equal to or greater than the MOE for the previous fiscal year.

In order for the SBCAPCD to be eligible to receive its FY2021 CAA section 105 grant, the EPA must make a determination (after notice and an opportunity for a public hearing) that the reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of the SBCAPCD.

The SBCAPCD is a single-purpose air pollution control agency. It is the unit of government for CAA section 105(c)(2) purposes.

On March 25, 2021, the SBCAPCD submitted a request to the EPA seeking a reduction for the required MOE for FY2020. The SBCAPCD explained that it was unable to meet its MOE requirement due in large part to a budget increase of 21.1% from pass-through monies from the California Air Resources Board (CARB) for multiple state projects. The State Legislature, through the budget adoption process, placed a strong emphasis on the use of funding for voluntary emission reduction programs through the network of local air districts. This action resulted in a total of over \$2.7 million for Santa Barbara County projects in FY2019–2020, a 21.1% budget increase received from the previous fiscal year. These funds were used to continue expanding the reach of the grant programs initiated in FY2018–2019, including the Carl Moyer program, Community Air Protection legislation (AB617), the Funding Agricultural Replacement Measures for Emissions Reductions (FARMER) program, and the Wood Smoke Reduction program. In addition, the District experienced a significant reduction in filling vacant positions due to the conditions caused by the COVID–19 pandemic. The following table illustrates the District’s actual expenditures from Federal Fiscal Years (FFY) 2017 through 2020.

Description	Actual FFY 17–18	Actual FFY 18–19	Difference	Actual FFY 18–19	Actual FFY 19–20	Difference
Grant Revenues .....	\$594,385	\$2,694,441.77	\$2,100,056.77	\$2,694,441.77	\$2,421,089.07	–\$273,352.70
Services and Supplies .....	\$3,547,624.73	\$3,731,165.03	\$183,540.30	\$3,731,165.03	\$4,494,987.02	\$763,821.99
Salaries and Benefits .....	\$5,306,547.86	\$5,751,339.84	\$444,791.98	\$5,751,339.84	\$5,915,694.33	\$164,354.49
Funded Full Time Equivalent .....	43	37	–6	37	36	–1
Program Cost .....	\$6,776,864	\$8,551,345	N/A	\$8,551,345	\$7,890,365	N/A
EPA Funding .....	\$497,683	\$508,027	N/A	\$508,027	\$519,277	N/A

Description	Actual FFY 17–18	Actual FFY 18–19	Difference	Actual FFY 18–19	Actual FFY 19–20	Difference
Non-Recurrent Expenses .....	\$1,925,596	\$1,986,234	\$60,638	\$1,986,234	\$3,349,440	\$1,363,206
Total Program Cost .....	\$9,200,143	\$11,045,606	N/A	\$11,045,606	\$11,759,083	N/A
Amount Over/Under MOE Goal *	\$34,940	\$1,774,481	.....	\$1,774,481	–\$660,979	.....

The request for a reset of SBCAPCD's MOE meets the requirements for a non-selective reduction determination. The SBCAPCD's MOE reduction resulted from a loss of revenues due to a significant cut back on expenditures caused by the current COVID-19 pandemic, the inability to fill vacant positions created by retirements, and the addition of State funding for grant pass-throughs, which increased the SBCAPCD's grant non-recurring activity.

The EPA proposes to determine that the SBCAPCD lower the FY2020 MOE level to \$7,790,365 to meet the CAA section 105(c)(2) criteria as it resulted from a non-selective reduction of expenditures.

This notice constitutes a request for public comment and an opportunity for public hearing as required by the CAA. All written comments received by August 30, 2021 on this proposal will be considered. The EPA will conduct a public hearing on this proposal only if a written request for such is received by the EPA by August 30, 2021. If no written request for a hearing is received, the EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Angela Latigue at the above address.

Dated: July 8, 2021.

**Elizabeth Adams,**

*Acting Regional Administrator, Region IX.*

[FR Doc. 2021-15843 Filed 7-29-21; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R07-OAR-2021-0360; FRL-8707-01-R7]

#### Air Plan Approval; Approval of Missouri Air Quality Implementation Plans; Revisions to St. Louis 2008 8-Hour Ozone Maintenance Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Missouri on November 12, 2019, revising the 2008 8-hour ozone maintenance plan previously approved by EPA on September 20, 2018, demonstrating continued maintenance of the 2008 ozone National Ambient Air Quality Standard (NAAQS), the 1979 1-Hour and 1997 8-Hour ozone standards in the St. Louis area. This revision states that the St. Louis area no longer needs to rely on the Inspection and Maintenance (I/M) program, and Reformulated Gasoline (RFG) for continued maintenance throughout the maintenance period for the 2008 8-Hour ozone NAAQS, the 1979 1-Hour ozone NAAQS and 1997 8-Hour ozone NAAQS. EPA is proposing to determine that this revision meets the requirements of the Clean Air Act.

**DATES:** Comments must be received on or before August 30, 2021.

**ADDRESSES:** You may send comments, identified by Docket ID No. EPA-R07-OAR-2021-0360 to <https://www.regulations.gov>. Follow the online instructions for submitting comments.

**Instructions:** All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the "Written Comments" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Steven Brown, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7718; email address: [brown.steven@epa.gov](mailto:brown.steven@epa.gov).

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

#### Table of Contents

- I. Written Comments
- II. What is being addressed in this document?
- III. Have the requirements for approval of a SIP revision been met?

IV. What action is the EPA taking?

V. Statutory and Executive Order Reviews

#### I. Written Comments

Submit your comments, identified by Docket ID No. EPA-R07-OAR-2021-0360, at <https://www.regulations.gov>. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.*, on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

#### II. What is being addressed in this document?

The EPA is proposing to approve SIP revisions submitted by the State of Missouri on November 12, 2019, revising the 2008 8-hour ozone maintenance plan previously approved on September 20, 2018 (83 FR 47572). This SIP revision demonstrates continued maintenance of the 2008 8-Hour ozone NAAQS, the 1979 1-Hour ozone NAAQS and 1997 8-Hour ozone NAAQS in the St. Louis area through the future year of 2030. Since the 2008 ozone standard is more stringent than the 1979 and 1997 ozone standards, and the boundary area for all three designations are identical, Missouri is requesting through this SIP revision to also replace the previously approved maintenance plans under those older standards. The maintenance boundary for these three standards includes the Missouri counties of Franklin, Jefferson,

St. Charles, and St. Louis along with the City of St. Louis.

On May 12, 2003 EPA published a final rule stating the St. Louis area attained the 1979 1-hour ozone standard, redesignated the area to attainment, and approved the state's plan for maintaining the 1-hour ozone NAAQS (68 FR 25413). On June 15, 2005 the 1-Hour Ozone NAAQS was revoked for all areas except the 8-Hour Ozone nonattainment Early Action Compact (EAC) areas. (70 FR 44470). Due to the revocation of the 1-Hour Ozone standard 1-Hour Ozone designations and classifications were removed for all areas except EAC areas that had deferred effective dates for their designations under the 8-Hour Ozone 1997 standard. The St. Louis area did not participate in the EAC and therefore, the 1-hour ozone standard was revoked effective June 15, 2005 for all areas in Missouri (70 FR 44470).

On February 20, 2015, EPA issued a final rulemaking approving the State of

Missouri's request to redesignate the Missouri portion of the St. Louis nonattainment area to attainment and their demonstration for maintaining the 1997 8-hour ozone NAAQS through the ten-year maintenance period (2025). (80 FR 9207).

This SIP revision we are acting on in this proposal, removes the reliance on the St. Louis Inspection and Maintenance (I/M) program, and Reformulated Gasoline (RFG) for continued maintenance of the 2008, 1979 and 1997 standard. To support this revision, Missouri utilized EPA's 2014 Motor Vehicle Emissions Simulator (MOVES2014b) emission modeling system to project revised mobile source emissions by removing emissions reductions related to I/M and RFG throughout the maintenance period to the future year of 2030.

Tables 1 and 2 below compare ozone season day (OSD) precursor pollutants of nitrogen oxide (NO<sub>x</sub>) and volatile organic compound (VOC) emissions for

the attainment year 2014 to the projection year 2030 for point, area, onroad and nonroad source categories of the five counties in the St. Louis area. Missouri's emissions analysis show decreases in mobile source emissions and a decrease in total source category NO<sub>x</sub> and VOC emissions through the maintenance period of 2030. The projections show that NO<sub>x</sub> emissions will decrease by a total of 135.68 tons per OSD (43.1%), while VOC emissions will be reduced by 41.36 tons per OSD (20.5%) between 2014 and 2030. These decreases in precursor pollutants demonstrate the area will continue to meet the 2008, 1979 and 1997 ozone standard throughout the maintenance period without relying on the I/M program or RFG requirements in the Missouri portion of the maintenance area.

TABLE 1—2014 TOTAL EMISSIONS

Source Category	NO <sub>x</sub>	VOC
St. Louis Area NO <sub>x</sub> & VOC Emissions in Tons Per Ozone Season Day (OSD):		
Point Source .....	81.70	13.86
Area Source .....	6.47	69.81
Onroad Source .....	111.76	38.21
Nonroad Source .....	38.44	33.42
Total Emissions Tons/OSD .....	238.37	155.30
Illinois Area:		
Point Source .....	23.29	9.38
Area Source .....	1.53	19.06
Onroad Source .....	26.94	10.11
Nonroad Source .....	24.62	7.47
Total Emissions Tons/OSD .....	76.38	46.02
Grand Total Emissions .....	314.75	201.32

TABLE 2—2030 TOTAL EMISSIONS

Source Category	NO <sub>x</sub>	VOC
St. Louis Area NO <sub>x</sub> & VOC Emissions in Tons Per Ozone Season Day (OSD):		
Point Source .....	93.08	14.31
Area Source .....	6.58	68.60
Onroad Source .....	26.01	16.12
Nonroad Source .....	16.79	22.45
Total Emissions Tons/OSD .....	142.61	121.48
Illinois Area:		
Point Source .....	16.93	8.53
Area Source .....	1.51ENT≤ 18.05	
Onroad Source .....	6.71	3.76
Nonroad Source .....	11.31	5.09
Total Emissions Tons/OSD .....	36.46	35.43

TABLE 2—2030 TOTAL EMISSIONS—Continued

Source Category	NO <sub>x</sub>	VOC
Grand Total Emissions .....	179.07	156.91

It is important to note approval of this maintenance plan revision does not remove the I/M program or the RFG program requirements from the SIP.

In addition, the motor vehicle emissions budgets (MVEBs) from the previously SIP approved Maintenance Plan for the 2008 ozone NAAQS<sup>1</sup> and this SIP submittal remain the same. Therefore, there are no new MVEBs being created for this SIP revision. EPA found the previously approved MVEBs adequate for use with transportation conformity on June 22, 2018 (83 FR 26598). Therefore, the State of Missouri is required to use the MVEBs from the February 16, 2018, Redesignation Request and Maintenance Plan for future transportation conformity determinations for the St. Louis area until new budgets are created and formally found adequate or approved. The finding is available at EPA's conformity website: <https://www.epa.gov/state-and-local-transportation>.

EPA is proposing approval of the revised maintenance plan based on information provided in the emissions projections, modeling results and an evaluation of quality assured air monitoring data submitted as part of this revision and in a previously reviewed analysis as part of the St. Louis Nonattainment Area 2008 8-hour Ozone NAAQS Redesignation rulemaking on September 20, 2018 (83 FR 47572). Current and future projections of air quality and emissions data for this revision demonstrates maintenance for the 2008, 1979 and 1997 ozone NAAQS.

This revision only affects maintenance for the 2008, 1979 and 1997 ozone standards, only removes the reliance upon the I/M program and RFG programs and meets the requirements of the Clean Air Act.

The full text of the plan revisions including Missouri's technical demonstration can be found in the State's submission, which is included in the docket for this action.

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

The State submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied

the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice on this SIP revision from July 29, 2019 to September 5, 2019 and received one comment from the Missouri Petroleum Marketers and Convenience Store Association, one comment from Abel Realty, and twelve comments from EPA. After receiving comments, the state revised the submittal language prior to submitting the plan to EPA. In addition, as explained above and in more detail in the Missouri submittal document, which is part of the docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

### IV. What action is the EPA taking?

We are proposing to approve a SIP revision submitted by the State of Missouri on November 12, 2019, revising the 2008 8-hour ozone maintenance plan. EPA is proposing to determine that this revision would not interfere with attainment or maintenance of the NAAQS or with any other CAA requirement. We are processing this as a proposed action because we are soliciting comments on this proposed action. Final rulemaking will occur after consideration of any comments.

### V. Statutory and Executive Order Reviews

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

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this proposed rulemaking does not involve technical standards; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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 proposed 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).

### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone.

Dated: July 19, 2021.

**Edward H. Chu,**

*Acting Regional Administrator, Region 7.*

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

### PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

<sup>1</sup> 83 FR 47572, Sept. 20, 2018.



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

“(79)” in numerical order to read as follows:

(e) \* \* \*

**Subpart AA—Missouri**

■ 2. In § 52.1320, the table in paragraph (e) is amended by adding the entry

**§ 52.1320 Identification of plan.**

\* \* \* \* \*

**EPA-APPROVED MISSOURI NONREGULATORY SIP PROVISIONS**

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Explanation
(79) Revisions to St. Louis 2008 8-Hour Ozone Maintenance Plan.	St. Louis Area: Missouri counties of Franklin, Jefferson, St. Charles, and St. Louis along with the City of St. Louis.	11/12/2019	[Date of publication of the final rule in the <b>Federal Register</b> ], [Federal Register citation of the final rule].	This action replaces Maintenance plans for the following ozone NAAQS: 1979 1-hour (68 FR 25413), 1997 8-hour (80 FR 9207), 2008 8-hour (83 FR 47572).

[FR Doc. 2021-15731 Filed 7-29-21; 8:45 am]

BILLING CODE 6560-50-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 25, and 52**

[FAR Case 2021-008; Docket No. FAR-2021-0008, Sequence No. 1]

RIN 9000-AO22

**Federal Acquisition Regulation: Amendments to the FAR Buy American Act Requirements**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Proposed rule.

**SUMMARY:** DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement an Executive order (E.O.) addressing domestic preferences in Government procurement.

**DATES:** Interested parties should submit comments to the Regulatory Secretariat Division at one of the addresses shown below on or before September 28, 2021 to be considered in the formulation of a final rule.

*Public Meeting:* A virtual public meeting will be held on August 26, 2021, from 9 a.m. to 3 p.m., Eastern Standard Time. The public meeting will end at the stated time, or when the discussion ends, whichever comes first. For more details, see section V of the preamble.

**ADDRESSES:** Submit comments in response to FAR Case 2021-008 to <https://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by searching for “FAR Case 2021-008”. Select the link “Comment Now” that corresponds with “FAR Case 2021-008.” Follow the instructions provided on the screen. Please include your name, company name (if any), and “FAR Case 2021-008” on your attached document. If your comment cannot be submitted using <https://www.regulations.gov>, call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

*Instructions:* Please submit comments only and cite “FAR Case 2021-008” in all correspondence related to this case.

Comments submitted in response to this notice will be made publicly available and are subject to disclosure under the Freedom of Information Act. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information, or any information that you would not want publicly disclosed unless you follow the instructions below for confidential comments. Summary information of the public comments received, including any specific comments, will be posted on [regulations.gov](https://www.regulations.gov).

All filers using the portal should use the name of the person or entity submitting comments as the name of their files, in accordance with the instructions below. Anyone submitting business confidential/proprietary information should clearly identify any business confidential/proprietary portion at the time of submission, file a statement justifying nondisclosure and referencing the specific legal authority

claimed, and provide a non-confidential/non-proprietary version of the submission.

Any business confidential information should be in an uploaded file that has a file name beginning with the characters “BC.” Any page containing business confidential information must be clearly marked “BUSINESS CONFIDENTIAL/ PROPRIETARY” on the top of that page. The corresponding non-confidential/non-proprietary version of those comments must be clearly marked “PUBLIC.” The file name of the non-confidential version should begin with the character “P.” The “BC” and “P” should be followed by the name of the person or entity submitting the comments or rebuttal comments. All filers should name their files using the name of the person or entity submitting the comments. Any submissions with file names that do not begin with a “BC” will be assumed to be public and will be made publicly available through <https://www.regulations.gov>.

To confirm receipt of your comment(s), please check <https://www.regulations.gov>, approximately two to three days after submission to verify posting.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mahruba Uddowla, Procurement Analyst, at 703-605-2868 or by email at [mahruba.uddowla@gsa.gov](mailto:mahruba.uddowla@gsa.gov), for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202-501-4755 or [GSARegSec@gsa.gov](mailto:GSARegSec@gsa.gov). Please cite FAR Case 2021-008.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On January 25, 2021, the President signed Executive Order (E.O.) 14005,

Ensuring the Future Is Made in All of America by All of America's Workers (86 FR 7475, January 28, 2021). The E.O. contemplates a series of actions to enable the United States Government to maximize the use of goods, products, and materials produced in the United States in order to strengthen and diversify domestic supplier bases and create new opportunities for U.S. firms and workers. These actions include (i) regulatory amendments to the implementation of the Buy American Act in FAR part 25 to fit the current realities of the American economy; (ii) the creation of a Made in America Office within the Office of Management and Budget to provide centralized, strategic, and holistic management of domestic sourcing activities across Federal procurement, Federal financial assistance, and maritime policies; (iii) a public website with information on all proposed waivers to the Buy American Act and other Buy American Laws, as defined in the E.O., that helps more U.S. firms access Federal contracting and provides data to the Made in America Office to inform policy development for domestic sourcing; and (iv) a review by the Federal Acquisition Regulatory Council (FAR Council), in consultation with the Made in America Office, of the longstanding statutory exemption from the Buy American Act for commercial information technology (IT) to determine if the original purpose or other goals of the exemption remain relevant in the current economic and national security environment. Collectively, these and other efforts called for by the E.O. will promote greater economic and national security and further the Administration's commitment to build back a stronger domestic manufacturing base, create good jobs, and ensure the U.S. economy remains strong, resilient, and ready to meet the challenges of the future. Strengthening implementation of the Buy American Act will send clear demand signals to domestic producers, spurring strategic investments in domestic supply chains.

This proposed rule addresses section 8 of the E.O., which requires the FAR Council to strengthen the impact of the Buy American Act. The dollars the Federal Government spends on goods and services are a powerful tool to support American workers and manufacturers. Contracting alone accounts for nearly \$600 billion in Federal spending. Federal law requires government agencies, in some circumstances, to give preferences to American firms; however, these preferences have not always been

implemented consistently or effectively. Congress passed the Buy American Act during the Great Depression to foster American industry by protecting it from foreign competition for Federal procurement contracts. The Buy American Act is codified at 41 U.S.C. chapter 83 as the Buy American statute and requires public agencies to procure articles, materials, and supplies that were mined, produced, or manufactured in the United States, substantially all from domestic components, subject to exceptions for nonavailability of domestic products, unreasonable cost of domestic products, and when it would not be in the public interest to buy domestic products. Additional exceptions have been added over time, such as where trade agreements apply, and for commissary resale, micro-purchases, and commercial information technology.

Currently FAR part 25, which implements the Buy American statute and all related Executive Orders, provides guidance on determining whether solicited "construction material" or "end products" are "domestic"—that is, whether they were mined, produced, or manufactured in the United States, substantially from components mined, produced, or manufactured in the United States. The determination of whether a manufactured end product or construction material qualifies as domestic is made using a two-part test:

1. The end product or construction material must be manufactured in the United States.
2. A certain percentage of all component parts (determined by cost of the components) must also be mined, produced, or manufactured in the United States—a requirement known as the "component test" until early 2021, when it was redesignated the "domestic content test" to be consistent with terminology used in E.O. 13881, Maximizing Use of American-Made Goods, Products, and Materials. For an end product that does not consist wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 55 percent of the cost of all components; the test is waived for acquisitions of commercially available off-the-shelf (COTS) items. For an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of foreign iron and steel must constitute less than 5 percent of the cost of all the components. That test is not waived for COTS items, except for COTS fasteners.

The Buy American statute does not prohibit the purchase of foreign end

products or use of foreign construction material. Instead, it encourages the use of domestic end products and construction material by imposing a price preference for them. Under the current FAR, large businesses offering domestic supplies receive a 20 percent price preference, and small businesses receive a 30 percent price preference.

The Buy American restrictions do not apply to acquisitions subject to certain trade agreements (see FAR subpart 25.4). For these acquisitions, end products and construction materials from certain countries receive nondiscriminatory treatment when evaluated alongside domestic offers. Generally, the dollar value of the acquisition determines whether and which trade agreement applies to the acquisition. For example, the World Trade Organization—Government Procurement Agreement (WTO GPA) applies to acquisitions starting at \$182,000 for supply contracts, and at \$7,008,000 for construction contracts. Exceptions to the applicability of the trade agreements are described in FAR subpart 25.4.

The percentages for the domestic content test and the price preference were increased in the FAR on January 19, 2021, through FAR case 2019–016, Maximizing Use of American-Made Goods, Products, and Materials (86 FR 6180). However, the concept of the domestic content test (formerly referred to as the component test) has been in the FAR since it was first created and published in 1983.

Section 8 of E.O. 14005 requires the FAR Council to consider amending the FAR to—

(1) Replace the component test used to identify domestic end products and domestic construction materials with a test under which domestic content is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity;

(2) Increase the threshold for the domestic content requirement; and

(3) Increase the price preferences for domestic end products and domestic construction materials.

As explained above, the purpose of the amendments is to promote the procurement by the Government of goods, products, and materials from sources that will help American businesses compete in strategic industries and help America's workers thrive. Improved Buy American rules will help ensure that Federal procurement plays an important role as part of the Administration's policy to build back the American economy so it can continue to lead the global

marketplace, supporting U.S.-based businesses—small and large, urban and rural, including those that have been historically disadvantaged. In pursuit of those goals, this proposed rule would provide for—

- An increase to the domestic content threshold, a schedule for future increases, and a fallback threshold that would allow for products meeting a specific lower domestic content threshold to qualify as domestic products under certain circumstances;
- A framework for application of an enhanced price preference for a domestic product that is considered a critical product or made up of critical components; and
- A postaward domestic content reporting requirement for contractors.

The proposed rule does not seek to replace the “component test” in FAR Part 25 at this time. Instead, the FAR Council seeks additional information regarding the strengths and shortcomings of the “component test,” as currently structured, and requests public comment on how domestic content might be better calculated to support America’s workers and businesses, strengthening our economy, workers, and communities across the country (see related questions below).

## II. Discussion and Analysis

### A. Increase to the Domestic Content Threshold

This rule proposes to increase the domestic content threshold initially from 55 percent to 60 percent, to increase the threshold to 65 percent in two years, and to increase the threshold to 75 percent five years after the second increase. A supplier holding a contract with a period of performance that spans the schedule of threshold increases will be required to comply with each increased threshold for the items in the year of delivery. For example, a supplier awarded a contract in 2027 will have to comply with the 65 percent domestic content threshold initially, but in 2029 will have to supply products with 75 percent domestic content. The domestic content threshold is implemented in the FAR through the definitions of “domestic construction material” and “domestic end product.” As such, this rule proposes to make amendments throughout FAR part 25 and to FAR clauses 52.225–1, 52.225–3, 52.225–9, and 52.225–11 to reflect the increases to the domestic content threshold.

### B. Fallback Threshold

This rule also proposes to allow, until one year after the increase of the domestic content threshold to 75

percent, for the acceptance of the former domestic content threshold in instances where end products or construction materials that meet the new domestic content threshold are not available or are of unacceptable cost. For example, if a domestic end product that exceeds the 60 percent domestic content threshold is determined to be of unreasonable cost after application of the price preference, then for evaluation purposes the Government will treat an end product that is manufactured in the United States and exceeds 55 percent domestic content, but not 60 percent domestic content, as a domestic end product. In order to implement this fallback threshold, the rule proposes to require offerors to indicate which of their foreign end products exceed 55 percent domestic content. The fallback threshold only applies to construction material that does not consist wholly or predominantly of iron or steel or a combination of both and to end products that do not consist wholly or predominantly of iron or steel or a combination of both. Amendments are proposed throughout FAR part 25, to FAR provisions 52.212–3, 52.225–2, and 52.225–4, and to FAR clauses 52.225–9 and 52.225–11 to reflect the fallback threshold.

### C. Enhanced Price Preference for Critical Products and Critical Components

The rule provides for a framework through which higher price preferences will be applied for end products and construction material deemed to be critical or made up of critical components. The definitions for critical component and/or critical item are added to FAR 25.003 and to the FAR provisions and clauses at 52.212–3, 52.225–1, 52.225–2, 52.225–3, 52.225–9, and 52.225–11. The list of critical items and components is being added to newly-designated FAR 25.105; existing FAR 25.105 is proposed to be redesignated as 25.106. Procedures for applying the price preferences associated with critical items and components are added to the redesignated FAR 25.106 for supply contracts and 25.204 for construction contracts. The rule requires offerors to identify in their offer domestic end products that contain a critical component, so that contracting officers can apply the higher price preferences when appropriate. Without such information, contracting officers would not know when a proposed domestic end product contains a critical component. An explicit requirement to provide this information is added to

FAR provisions 52.212–3, 52.225–2, and 52.225–4.

The process for identifying critical items and critical components to receive the price preference would use the quadrennial critical supply chain review instituted in E.O. 14017, America’s Supply Chains (86 FR 11849), as well as the National COVID Strategy. OMB will lead a subsequent assessment to further distill the list of products designated critical to those products for which procurement is likely to make a meaningful difference toward strengthening U.S. supply chains. The products that will receive a price preference will be determined in a separate rulemaking, to allow time for the supply chain review and trade pact waiver review to be completed first. Not all critical products identified through the supply chain review will necessarily qualify for the preference. The process for determining critical products will also determine the enhanced price preference for each critical item or end product with critical components.

Once the list is established in the FAR, the list will be published in the **Federal Register** for public comment no less frequently than once every four years to reflect changes to the list.

### D. Postaward Reporting Requirement

In order to gain insight into the actual domestic content of products sold under contract and thereby support the Administration’s broader supply chain security initiatives, this rule requires contractors to provide the specific domestic content of critical items, domestic end products containing a critical component, and domestic construction material containing a critical component, that were awarded under a contract. Contractors are not required to report the domestic content of COTS items. Two new FAR clauses were created to implement the reporting requirement. One clause is for supplies and one is for construction materials; prescriptions were added to FAR 25.1101 and 25.1102 to capture this requirement. Since specific critical items or critical components will not be added to the FAR until the separate rulemaking referenced in section II.C of this preamble, these clauses will not be operational until finalization of that separate rule.

## III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercially Available Off-the-Shelf (COTS) Items

This rule amends the provisions and clauses at FAR—

- 52.212–3, Offeror Representations and Certifications—Commercial Items;
- 52.225–1, Buy American—Supplies;
- 52.225–2, Buy American Certificate;
- 52.225–3, Buy American—Free Trade Agreements—Israeli Trade Act;
- 52.225–4, Buy American—Free Trade Agreements—Israeli Trade Act Certificate;
- 52.225–9, Buy American—Construction Materials; and
- 52.225–11, Buy American—Construction Materials Under Trade Agreements.

Those provisions and clauses continue to apply, or not apply, to acquisitions at or below the SAT and to acquisitions for commercial and COTS items as they did prior to this rule.

This rule proposes to add two clauses at FAR 52.225–XX, Domestic Content Reporting Requirement—Supplies, and FAR 52.225–YY, Domestic Content Reporting Requirement—Construction Materials. The clauses are prescribed at FAR 25.1101 for solicitations and contracts containing the clause at 52.225–1 or 52.225–3 for supply contracts, and at FAR 25.1102 for solicitations and contracts containing the clause at 52.225–9 or 52.225–11 for construction contracts. The clauses are applicable to acquisitions at or below the SAT and to acquisitions for commercial items, excluding COTS items.

The clause will apply to acquisitions at or below the SAT and to acquisitions for commercial items because exempting those acquisitions would severely limit the use of the provision. Considering the threshold at which certain trade agreements apply, the Buy American statute predominantly applies to acquisitions below the SAT. Also, according to procurement data, almost half of the acquisitions to which the Buy American statute currently applies use commercial acquisition procedures.

With respect to COTS items, the Administrator for Federal Procurement Policy, using authorities provided at 41 U.S.C. 1907 to reduce administrative burdens imposed by Government-unique requirements, waived the component test of the Buy American statute for the acquisition of COTS items in 2009. For this reason, it is not expected at this time that the clause will apply to that class of acquisitions. However, as explained in OMB Memorandum M–21–26, *Increasing Opportunities for Domestic Sourcing and Reducing the Need for Waivers from Made in America Laws*, the Made in America Office, in collaboration with the Administrator, other members of the FAR Council, and interested parties,

will review the findings and conclusions of the 2009 determination. The results of that review will help to inform if and the extent to which the component test should be restored.

#### IV. Expected Impact of the Rule

This rule proposes three sets of changes to the FAR's implementation of the Buy American statute:

- An increase to the domestic content threshold required to be met for a product to be defined as “domestic,” a schedule for future increases, and a fallback threshold that would allow for products meeting a specific lower domestic content threshold to qualify as a domestic product under certain circumstances;
- A framework for application of an enhanced price preference for a domestic product that is considered a critical product or made up of critical components; and
- A postaward domestic content reporting requirement for contractors.

The impact of each set of changes is addressed individually below.

##### Scheduled Increase to the Domestic Content Threshold and the Use of a Fallback Threshold

The fundamental goal of the rule is to increase the share of American-made content in a domestic end product or construction material. The graduated increase is intended to drive to this goal in a proactive but measured fashion so that contractors have adequate time to make adjustments in their supply chains. When this rule is implemented, domestic industries supplying domestic end products are likely to benefit from a competitive advantage.

Federal Procurement Data System (FPDS) data for fiscal year 2020 indicate there were 121,063 new contract awards for products and construction, valued over the micro-purchase threshold through the threshold at which the WTO GPA applies, to which the Buy American statute applied. It is estimated that 37,503 of these awards were for commercially available off-the-shelf (COTS) items and since the domestic content threshold test does not apply to COTS items (except those involving iron/steel), those awards were subtracted from the 121,063 total eligible awards. After removing potential COTS item acquisitions from the data, there are estimated to be 83,560 contract awards to 14,163 unique contractors.

It is unclear if the pool of qualified suppliers would be reduced, resulting in less competition (and a possible increase in prices that the Government will pay to procure these products). The

fallback threshold is intended to: (1) Help prevent scheduled increases in the content threshold from taking work away from domestic suppliers who are actively adjusting their supply chains; and (2) avoid unintentionally raising the foreign content of Federal purchases through increased use of waivers while domestic suppliers adjust. The fallback threshold would be a temporary measure designed to limit foreign content while contractors transition to U.S.-based supply chains.

In response to public comment, the FAR Council will consider larger or smaller increases in the content threshold as well as differently timed increases in the final rule. See questions for the public, below. These determinations will be based on considerations such as potential impact on competition, potential impact on supplier diversity, including participation of small disadvantaged businesses and businesses in other underserved communities, lost opportunities for American workers, and other considerations identified by public comment and other interested parties.

At least three arguments point to the possibility that any increased burden with regard to the timed increase to the domestic content threshold, on contractors in particular, could be small, if not de minimis.

First, DoD, GSA, and NASA do not anticipate significant cost from contractor familiarization with the rule given the history of rulemaking and E.O.s in this area. The basic mechanics of the Buy American statute (e.g., general definitions, certifications required of offerors to demonstrate end products are domestic) remain unchanged and continue to reflect processes that are decades old. Under the proposed rule, when deciding whether to pursue a procurement or what kind of product mix (i.e., domestic or foreign) and pricing to propose in response to a solicitation, offerors now will have to plan for future changes to the domestic content threshold during the period of performance of the contemplated contract. Those offerors that make a business decision not to modify their supply chains over time to comply with the scheduled increases to the domestic content threshold will still be able to propose an offer for Federal contracts but will generally no longer enjoy a price preference.

Second, some, if not many, contractors may already be able to comply with the higher domestic content requirement needed to meet the definition of domestic end product under E.O. 14005 and the proposed rule.

Laws such as the SECURE Technology Act, Public Law 115–390, which requires a series of actions to strengthen the Federal infrastructure for managing supply chain risks, are placing significantly increased emphasis on the need for Federal agencies and Federal Government contractors to identify and reduce risk in their supply chains. One way to reduce supply chain risk is to increase domestic sourcing of content. A

U.S. Bureau of Economic Analysis study using 2015 data, [https://www.commerce.gov/sites/default/files/migrated/reports/2015-what-is-made-in-america\\_0.pdf](https://www.commerce.gov/sites/default/files/migrated/reports/2015-what-is-made-in-america_0.pdf), found that on average, 82 percent of the value of U.S. manufacturing output is comprised of domestic content. This seems to indicate that a domestic content threshold of 60 percent would not inflict additional burden on contractors.

In addition, a preliminary analysis of available data in FPDS on the impact of an increase earlier this year in the domestic content threshold from 50 percent to 55 percent did not appear to trigger an uptick in waivers, suggesting companies may already be incorporating content that can meet at least the 55 percent level:

	Feb–April 2021	Feb–April 2020	Feb–April 2019	Feb–April 2018
	Total spend (millions of \$)	Total spend (millions of \$)	Total spend (millions of \$)	Total spend (millions of \$)
Total .....	\$2,861	\$7,578	\$7,570	\$7,635
Buy American Waived * .....	\$15	\$78	\$70	\$63
Percent Waived .....	0.5%	1.0%	0.9%	0.8%

\*Waivers included here are Commercial Information Technology, Domestic Non-availability, Public Interest Determination, Resale, or Unreasonable Cost. They do not include waivers due to trade agreements or DoD qualifying country, which would not be impacted by a change in the content threshold.

Third, it is anticipated that some contractors’ products and construction materials may not meet the definition of domestic end product and construction material unless the contractors take steps to adjust their supply chains to increase the domestic content. Those contractors that make a business decision not to modify their supply chains will still be able to bid on Federal contracts and could still enjoy a price preference if their end product meets the prior definition of domestic end product (*i.e.*, exceeding 55 percent). In the event that the Government does not receive any offers of domestic end products or the domestic end products are of unreasonable cost, the Government will treat the end products that have at least 55 percent domestic content as a domestic end product for evaluation purposes. Offerors now have an information collection burden of identifying when a foreign end product meets the fallback threshold (see section VIII of this preamble), but that burden should be offset by the benefit of potentially still receiving a price preference for these end products that would have been considered domestic prior to the increases to the domestic content threshold proposed in this rule.

Offerors have an option to increase the domestic content and continue to offer domestic products, in which case they may benefit from the price preference for domestic products, or they may continue to offer the same product, which will now be evaluated as foreign but may still benefit from a price preference. DoD, GSA, and NASA do not have any data on how many currently domestic products would fall into this category or have any knowledge

as to which option an offeror of such products would select, since this is a business decision for each offeror to make.

**Enhanced Price Preference for Critical Items**

The goal of the enhanced price preference for critical items and components is to provide a steady source of demand for domestically produced critical products. As explained above, the rule only creates a framework. Separate rulemaking will be undertaken to add critical products and components to the FAR and to establish the associated preferences. Therefore, the impact associated with this concept will be captured in the subsequent rulemaking.

There is an information collection burden associated with offerors identifying when a domestic end product or domestic construction material contains a critical component (see section VIII of this preamble), but that burden should be offset by the larger price preference received for these items.

**Postaward Reporting Requirement for Contractors**

Today, the acquisition community has limited direct information on the overall level of domestic content of the items it buys, other than whether or not the content meets the required threshold. The data on the amount of actual domestic content provided in the contractors’ reports is expected to provide the Made in America Office in the Office of Management and Budget valuable insight on the domestic content of the manufactured products that are

integral to U.S. national and economic security. Separate rulemaking will be undertaken to add critical items and components to the FAR and to establish the associated preferences. Therefore, the impact associated with postaward reporting for these items will be captured in the subsequent rulemaking.

This postaward reporting requirement for critical items and critical components is a step in building the Government’s capability in collecting data that will enable more informed decisions in this arena, *e.g.*, how and when to increase domestic content thresholds, what enhanced price preference level for critical items is most efficient, etc. This phased approach will provide an opportunity for the Government to evaluate the impact of this information collection, with potential expansion in future years.

There is an information collection burden associated with the reporting requirement. See section VIII of this preamble. The calculation provided in section VIII is a broad estimate since there is no specified list of critical items or components at this time.

**Request for Comments**

Based on the above, DoD, GSA, and NASA do not expect a significant cost impact on the public, but lack data to make a definitive determination and seek information from the public to assist with this analysis and to help further inform the regulatory drafters as they develop the final rule and carry out other responsibilities under the E.O. Feedback is requested on the following questions pertaining to this proposed rule:

(1) *Increased Domestic Content Thresholds*: Do products you make or sell to the Federal Government currently meet the proposed increased domestic content thresholds of 60 percent, 65 percent, or 75 percent?

(a) Would you be willing and able to adjust your supply chain to meet the proposed new thresholds given the scheduled phase-in? Why or why not? Please discuss any obstacles that might interfere with, or opportunities—including actions by the Federal Government—that might support, your ability to meet the proposed increases in domestic content thresholds.

(b) If you are willing to make supply chain adjustments, please provide an overview of associated costs and benefits to making these changes. Explain to what extent any costs may be offset by increased Federal Government sales or price preferences. If relevant, provide an overview of expected increased economic activity through the increased use of domestic suppliers and domestic labor.

(2) *Fallback Threshold*: Please address the utility of the proposed fallback threshold, including whether it would give your company time to adjust to a higher domestic content threshold; whether the fallback threshold should increase as the domestic content threshold increases; whether the existence of the fallback threshold would delay the ability to increase Made in America content in Federal procurement; the process by which the fallback threshold should be eliminated in order to maximize the use of Made in America content; and any challenges posed by the complexity of employing a fallback threshold.

(3) *Price Preferences*: Please comment on the effectiveness of current price preference levels at promoting domestic economic activity and employment and strengthening domestic supply chains for critical items; address whether increased price preferences would be more, less, or equally as effective, and, if more effective, at what level.

(4) *Enhanced Price Preferences*: Please comment on the anticipated effectiveness of providing enhanced price preferences to strengthen the domestic supply chains for items and components deemed “critical”. In particular—

(a) Which specific items or components or combination thereof, if any, should receive an enhanced price preference and why?

(b) What process should the Office of Management and Budget use to determine which of the critical items identified through the critical supply chain review under E.O. 14017 and the

National COVID Strategy are likely to make a meaningful difference toward strengthening domestic supply chains such that an enhanced preference is merited? In addition to national and economic security, should the process identify items and components that are critical to other factors such as national public health and sustainability? Should the process consider the impact on the creation of well-paying jobs in identifying critical items or components?

(c) Is four years a reasonable interval for updating the critical components or item list? Why or why not?

(d) How should enhanced price preferences be applied? For example, if a finished product includes multiple critical components, what is the most effective way to apply an enhanced price preference (e.g., a single time, once per component)?

(e) Please address whether and how enhanced price preferences should be considered for commercial items that have been identified as critical and currently are subject to either a full statutory Buy American waiver (in the case of information technology) or a partial regulatory Buy American waiver (in the case of COTS items) and the reasons for your response.

(f) If particular vendors can supply products that exceed the minimum domestic content threshold by significant margins, should the Federal Government consider whether and how to incentivize such practices to maximize the use of taxpayer dollars on domestic content?

(5) *Content Calculation*: Section 8(i) of the E.O. directed the FAR Council to consider replacing the “component test” in FAR Part 25 with a test under which domestic content is measured by a “value added” calculation. Please comment on (a) how such “value” could be calculated in order to promote U.S.-based production or U.S. job-supporting economic activity; (b) whether a “value added” calculation would be superior to the current approach and why or why not; and (c) whether approaches other than a “value added” calculation should be employed to achieve the goals of the E.O. (for example, should the definition of “cost of components” in FAR 25.003 be changed).

(6) *Content Reporting*: Will the proposed requirement to report on the actual level of domestic content included in designated critical products sold to the Federal Government provide greater compliance with Made in America Laws? Why or why not?

(a) Will the requirement negatively impact small or disadvantaged businesses, such as those who are

resellers or distributors? How can these impacts be mitigated?

(b) What other procedures can the Federal Government employ to better monitor compliance with Made in America Laws?

(7) *Contracting with small and disadvantaged businesses*: What specific steps should the Federal Government consider to maximize opportunities for small and disadvantaged businesses and avoid unintended barriers to entry as it works to strengthen the impact of Made in America Laws, diversify domestic supplier bases, and create new opportunities for U.S. firms and workers?

## V. Public Meeting

The Made in America Office and the FAR Council are co-hosting a virtual public meeting to obtain the views of experts and interested parties in the private sector regarding implementation of section 8, as well as other sections, of E.O. 14005. The meeting will be recorded and a transcript of the meeting will be posted to [regulations.gov](https://www.acquisition.gov/publicmeeting_FAR_proposedrule-2021-008_BuyAmericanAct), under the “FAR Case 2021–008” docket. For more details on the public meeting, such as the agenda, visit [https://www.acquisition.gov/publicmeeting\\_FAR\\_proposedrule-2021-008\\_BuyAmericanAct](https://www.acquisition.gov/publicmeeting_FAR_proposedrule-2021-008_BuyAmericanAct).

*Registration*: Individuals wishing to participate in the virtual meeting must register at [https://gsa.zoomgov.com/webinar/register/WN\\_HXrvVS0hS1-pksKSNrEKIA](https://gsa.zoomgov.com/webinar/register/WN_HXrvVS0hS1-pksKSNrEKIA). There is limited capacity of 3,000 attendees and registration will be on a first-come, first-served basis. Early registration is encouraged. Members of the press, in addition to registering for this event, must also RSVP to [press@gsa.gov](mailto:press@gsa.gov) by August 16, 2021. For any questions regarding registration, please email [gsaombudsman@gsa.gov](mailto:gsaombudsman@gsa.gov).

*Presentations*: If you wish to make a presentation, instructions for submitting presentations will be posted at [https://www.acquisition.gov/publicmeeting\\_FAR\\_proposedrule-2021-008\\_BuyAmericanAct](https://www.acquisition.gov/publicmeeting_FAR_proposedrule-2021-008_BuyAmericanAct). Presentations will be posted to [regulations.gov](https://www.acquisition.gov/publicmeeting_FAR_proposedrule-2021-008_BuyAmericanAct), under the “FAR Case 2021–008” docket.

*Other means of submitting public comments*: In lieu of, or in addition to, participating in the public meeting, interested parties may also submit written comments on the rule and responses to the questions contained in this preamble to [regulations.gov](https://www.acquisition.gov/publicmeeting_FAR_proposedrule-2021-008_BuyAmericanAct) via the Federal eRulemaking Portal in accordance with the instructions in the **DATES** and **ADDRESSES** sections of this document.

*Questions for the public:* In addition to the questions in Section IV above specific to FAR case 2021–008, public feedback is also requested on the following questions pertaining to other sections of E.O. 14005:

(1) *Commercial IT:* Acquisitions of commercial IT are exempt by statute from the requirements of the Buy American statute. Section 10 of the Executive Order requires a review of the impact of this exception, which has been in effect for more than 15 years. To help inform this review, the FAR Council seeks input on the extent to which the original purpose of the exception, or other goals of the exception, remain relevant. Under what situations, if any, do current marketplace conditions support narrowing or lifting the statutory waiver? Please be specific in your description, which might identify market segments or specific items, anticipated benefits and drawbacks of the rollback, and steps the FAR Council or other Government stakeholders might take to mitigate potential unintended consequences.

(2) *Commercially Available Off-the-Shelf Items:* In 2009, the Office of Federal Procurement Policy (OFPP), using authorities provided by Congress to reduce administrative burdens imposed by Government-unique requirements, waived the component test of the Buy American statute for acquisition of COTS items. In making the decision, OFPP concluded, in part, that manufacturers' component purchasing decisions are based on factors such as cost, quality, availability, and maintaining the state of the art, not the country of origin, making it difficult for a manufacturer to guarantee the source of its components over the term of a contract. OFPP further concluded that continued application of the content requirement created a barrier to entry which may limit the Government's ability to purchase products already in the commercial distribution systems. OFPP and the other members of the FAR Council seek to understand the extent to which the original purpose of the partial waiver remains relevant.

i. How has the application of the COTS waiver since 2009 been consistent or inconsistent with its stated purpose? For example, has the use of COTS expanded (or narrowed) since 2009 in ways that may not have been originally contemplated? If applicable, provide specific examples of the application of the COTS waiver that demonstrate inconsistency with its original purpose.

ii. Has the COTS waiver benefitted domestic firms and their employees? Why or why not?

iii. Under what situations, if any, do current marketplace conditions support narrowing or lifting the partial waiver? Please be specific in your description, which might identify critical industries, specific market segments, or specific items; please discuss anticipated benefits and drawbacks of a rollback, including impacts on small and disadvantaged business enterprises, and steps the FAR Council or other Federal entities could take to mitigate potential unintended consequences.

iv. Regardless of any other changes to the COTS partial waiver, should the Federal Government gather data on the domestic content of all COTS items, some COTS items or categories of COTS items to inform future policy making? If so, what items or categories should be addressed? How might this be accomplished consistent with the intent of the COTS partial waiver to reduce administrative burdens?

v. Please provide any recommendations to maintain and increase domestic production of COTS items (both manufacturing of the end product and its components) in critical industries.

(3) *Services:* How can the Federal Government promote the use of Made in America services? What standards or methodologies might be considered that could be easily adapted by commercial sellers? Are there critical services that should be accorded price preferences, and if so, why?

(4) *Trade agreements:* Because of the World Trade Organization—Government Procurement Agreement (WTO GPA) and the Trade Agreements Act (TAA), domestic content rules do not currently apply to most non-DoD goods acquisitions over \$182,000. Thus, the newly proposed domestic content threshold will not apply to many purchases that the Government makes. Under the TAA, a purchase is treated as U.S.-made if it is mined, produced, or manufactured in the United States or substantially transformed in the United States, even if it is made of 100 percent foreign content. As a result, a substantially transformed U.S.-made product may have far less domestic content when compared to a domestic end product acquired under the Buy American statute. While U.S. trade obligations are beyond the scope of this rulemaking, the Made in America Office and the FAR Council seek to understand more about the impact of the substantial transformation test and potential lost opportunities for American workers.

i. To the best of your knowledge, what specific types of products are sold to the Federal Government that count as being made in America under the Trade

Agreements Act (“U.S.-made end product”), but contain less than the current 55 percent U.S. content threshold required under the Buy American statute? Do the differing standards provide a benefit to domestic firms?

ii. Is “substantial transformation” a useful tool to promote good domestic jobs and domestic manufacturing? Why or why not?

iii. What steps could the Federal Government take, consistent with its trade obligations, to acquire useful information about the content of goods procured pursuant to trade obligations, including in critical supply chains? Useful information might include the percentage of domestic content and country of origin for certain components identified by the agency.

iv. Please provide any recommendations to maintain and increase domestic production in critical industries in acquisitions subject to trade obligations.

(5) *Additional ideas:* Please provide any additional recommendations for:

i. Strengthening content standards under the Buy American statute, including recommendations for how content is calculated and whether and why certain products or categories of products should have more stringent content standards than others.

ii. The use of waivers and exceptions to the Buy American statute, including proposals to narrow or expand the scope of existing waivers; ensure appropriate interpretation of existing waivers; and policies or practices to ensure that unnecessary waivers are not granted.

iii. Improving the Federal Government's ability to enforce the content standards in the Buy American statute, including by verifying domestic content levels.

## VI. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.



## VII. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801–808) before an interim or final rule takes effect, DoD, GSA, and NASA will send the rule and the “Submission of Federal Rules Under the Congressional Review Act” form to each House of Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not anticipated to be a major rule under 5 U.S.C. 804.

## VIII. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This rule changes the existing minimum domestic content percentages and introduces a discretionary proposal evaluation strategy. This rule proposes to amend the required percentage of domestic content and the existing percentages for the price evaluation preferences in an effort to decrease the amount of foreign-sourced content in a U.S. manufactured product to promote economic and national security, help stimulate economic growth, and create jobs. An Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

This rule proposes to amend the FAR to implement an Executive Order regarding ensuring the future is made in all of America by all of America’s workers.

The objective of this rule is to strengthen domestic preferences under the Buy American statute, as required by E.O. 14005, Ensuring the Future is Made in All of America by All of America’s Workers, by providing—

- An increase to the domestic content threshold required to be met for a product to be defined as “domestic,” a schedule for future increases, and a fallback threshold which would allow for products meeting a specific lower domestic content threshold to qualify as a domestic product under certain circumstances;

- A framework for application of an enhanced price preference for a domestic product that is considered a critical product or made up of critical components; and

- A postaward domestic content reporting requirement for contractors.

Different parts of the rule are expected to apply to a different number and universe of small entities. The impacted small entities, by portion of the rule, are described below. But in general, the rule will apply to contracts subject to the Buy American statute. The statute does not apply to services, or overseas, nor does it apply to acquisitions to which certain trade agreements apply (e.g., World Trade Organization Government Procurement

Agreement (WTO–GPA)). The maximum possible number of small entities to which the rule will apply are the 31,103 active small business registrants in the System for Award Management (SAM) who do not provide services.

—*Timed increase to the domestic content threshold and allowance of a fallback threshold.* Federal Procurement Data System (FPDS) data for fiscal year 2020 indicates there were 86,490 new contract awards to small business for products and construction, valued over the micro-purchase threshold through the threshold at which the WTO–GPA applies, to which the Buy American statute applied. It is estimated that 24,459 of these awards were for commercially available off-the-shelf (COTS) items. Because the domestic content threshold test does not apply to COTS items (except those involving iron/steel), those awards were subtracted from the 86,490 total eligible awards. After removing potential COTS item acquisitions from the data, there are estimated to be 62,031 contract awards to 11,704 unique small businesses.

—*Enhanced price preference for a critical product or component.* This rule only creates a framework. Separate rulemaking will be done to add critical products and components to the FAR and to establish the associated preferences. However, the Government assumes that 10 percent of the contract awards subject to the Buy American statute will be for critical products or components. Therefore, the Government estimates that 8,649 (10 percent of 86,490) of awards to small businesses may be impacted. This translates to 1,632 unique small businesses.

—*Postaward reporting requirement.* The number of impacted small businesses for this part of the rule is similar to the number of those impacted by the enhanced price preference for critical products or components: The postaward reporting requirement applies to contracts awarded for critical products that are subject to the Buy American statute. However, unlike the enhanced price preference, the postaward reporting requirement will not apply to COTS item acquisitions, which results in a lower estimate of 1,170 impacted small businesses.

The proposed rule will strengthen domestic preferences under the Buy American statute and provide small businesses the opportunity and incentive to deliver U.S. manufactured products from domestic suppliers. It is expected that this rule will benefit U.S. manufacturers.

This proposed rule does not include any new recordkeeping or other compliance requirements for small businesses. However, the proposed rule does contain a few additional reporting requirements for certain offerors, including small businesses.

Small businesses who submit an offer for a solicitation subject to the Buy American statute already have to list the foreign end products included in their offer. This proposed rule will require that the offeror also identify which of these foreign end products meet or exceed the fallback

domestic content threshold. This rule will also require proposals to identify which offered domestic end products contain a critical component. Without that information, contracting officers will not be able to apply the “enhanced price preference” when applicable. These reporting requirements are not specific to small businesses, so data does not exist to estimate the number of small business subject to these requirements. However, the data suggests that there will be approximately 8,800 impacted respondents total, small and other than small.

Small businesses awarded a contract containing the new clause requiring postaward reporting will need to provide to the Made in America Office domestic content information for end products that are critical products, domestic end products containing a critical component, or domestic construction material containing a critical component, if those items are awarded under the contract. Based on fiscal year 2020 data from FPDS, it is estimated that there will be 6,203 contracts awarded to 1,170 unique small businesses that would be subject to this reporting requirement.

This rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD, GSA, and NASA were unable to identify any significant alternatives.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2021–008), in correspondence.

## IX. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C 3501–3521) applies because the proposed rule contains information collection requirements. Some of those information collection requirements are additional to the paperwork burden previously approved under OMB Control Number 9000–0024, Buy American, Trade Agreements, and Duty-Free Entry. The proposed rule also contains a new information collection requirement. Accordingly, the Regulatory Secretariat Division has submitted a request for approval of a revised information collection requirement concerning information collection 9000–0024 to the Office of Management and Budget as well as a request for approval of a new



information collection requirement concerning "Domestic Content Reporting Requirement" to the Office of Management and Budget.

With regard to existing information collection 9000-0024:

A. Public reporting burden for this collection of information is estimated to average 0.63 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

- Respondents: 16,478.
Total Annual Responses: 69,165.
Total Burden Hours: 43,469.

B. Request for Comments Regarding Paperwork Burden. Submit comments on this collection of information no later than September 28, 2021 through https://www.regulations.gov and follow the instructions on the site. All items submitted must cite OMB Control No. 9000-0024, Buy American, Trade Agreements, and Duty-Free Entry. Comments received generally will be posted without change to https://www.regulations.gov, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check https://www.regulations.gov, approximately two to three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

With regard to the new information collection for clauses 52.225-XX and 52.225-YY:

A. Public reporting burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden estimated as follows:

- Respondents: 1,393.
Total Annual Responses: 8,356.
Total Burden Hours: 25,068.

B. Request for Comments Regarding Paperwork Burden.

Submit comments on this collection of information no later than September 28, 2021 through https://www/regulations.gov and follow the instructions on the site. All items submitted must cite OMB Control No. 9000-XXXX, Domestic Content Reporting Requirement. Comments received generally will be posted without change to https://

www.regulations.gov, including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check https://www.regulations.gov, approximately two to three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202-501-4755 or GSARegSec@gsa.gov.

C. For both sets of information collections, public comments are particularly invited on:

- The necessity of this collection of information for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility;
The accuracy of the estimate of the burden of this collection of information;
Ways to enhance the quality, utility, and clarity of the information to be collected; and
Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Requesters may obtain a copy of the supporting statement from the General Services Administration, Regulatory Secretariat Division by calling 202-501-4755 or emailing GSARegSec@gsa.gov. Please cite OMB Control Number 9000-XXXX, Domestic Content Reporting Requirement or OMB Control Number 9000-0024, Buy American, Trade Agreements, and Duty-Free Entry, in all correspondence.

List of Subjects in 48 CFR Parts 1, 25, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 25, and 52 as set forth below:

- 1. The authority citation for 48 CFR parts 1, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

PART 1— FEDERAL ACQUISITION REGULATION SYSTEM

- 2. In section 1.106 amend in the table following the introductory text, by adding in numerical order, entries for "52.225-XX" and "52.225-YY" to read as follows.

1.106 OMB approval under the Paperwork Reduction Act.

\* \* \* \* \*

Table with FAR segment and OMB Control No. columns. Rows include 52.225-XX and 52.225-YY with corresponding OMB Control No. 9000-XXXX.

PART 25—FOREIGN ACQUISITION

- 3. Amend section 25.003 by—
a. Adding, in alphabetical order, the definitions "Critical component" and "Critical item";
b. In the definition "Domestic construction material" revising the first sentence of paragraph (1)(i)(B)(1); and
c. In the definition "Domestic end product" revising the first sentence of paragraph (1)(ii)(A).

The additions and revisions reads as follows:

25.003 Definitions.

\* \* \* \* \*

Critical component means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at 25.105.

Critical item means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at 25.105.

\* \* \* \* \*

Domestic construction material means—

- (1) \* \* \*
(i) \* \* \*
(B) \* \* \*

(1) The cost of the components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028, and 75 percent for items delivered starting in calendar year 2029.

\* \* \*

\* \* \* \* \*

Domestic end product means—

- (1) \* \* \*
(ii) \* \* \*

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029.

\* \* \*

\* \* \* \* \*

- 4. Amend section 25.100 by—
- a. Removing the word “and” at the end of paragraph (a)(3);
- b. Redesignating paragraph (a)(4) as (a)(5); and
- c. Adding a new paragraph (a)(4).  
The addition reads as follows:

**25.100 Scope of subpart.**

(a) \* \* \*

(4) Executive Order 14005, January 25, 2021; and

\* \* \* \* \*

- 5. Amend section 25.101 by—
- a. Removing from paragraph (a) the phrase “the Buy American statute and E.O. 13881 use” and adding in its place the phrase “the Buy American statute, E.O. 13881, and E.O. 14005 use”; and
- b. Revising the first sentence of paragraph (a)(2)(i).

The revision reads as follows:

**25.101 General.**

(a) \* \* \*

(2)(i) Except for an end product that consists wholly or predominantly of iron or steel or a combination of both, the cost of domestic components shall exceed 60 percent of the cost of all the components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. \* \* \*

\* \* \* \* \*

**25.103 [Amended]**

- 6. Amend section 25.103 by removing from paragraph (c) “25.105” and “Subpart 25.5” and adding “25.106” and “subpart 25.5” in their places, respectively.

**25.105 [Redesignated]**

- 7. Redesignate section 25.105 as section 25.106.
- 8. Add a new section 25.105 to read as follows:

**25.105 Critical components and critical items.**

(a) The following is a list of articles that have been determined to be a critical component or critical item and their respective preference factor(s):

- (1) [Reserved]
- (2) [Reserved]

(b) The list of articles and preference factors in paragraph (a) of this section will be published in the **Federal Register** for public comment no less frequently than once every 4 years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see 1.502).

(c) For determining reasonableness of cost for domestic end products that

contain critical components or are critical items, see 25.106(c).

- 9. Amend newly redesignated section 25.106 by—

- a. In paragraph (a)(1) removing the phrase “paragraph (b) of this section” and adding the phrase “paragraphs (b) and (c) of this section” in its place;
- b. In paragraph (a)(2) remove the word “Subpart” and adding the word “subpart” in its place;
- c. Revise paragraph (b); and
- d. Revising paragraph (c).

The added and revised text reads as follows:

**25.106 Determining reasonableness of cost.**

\* \* \* \* \*

(b) *For end products that are not critical items and do not contain critical components.* (1)(i) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American statute apply to the low offer, the contracting officer must determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

(A) 20 percent, if the lowest domestic offer is from a large business concern; or

(B) 30 percent, if the lowest domestic offer is from a small business concern. The contracting officer must use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see subpart 19.5).

(ii) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b)(1)(i) of this section. See evaluation procedures at subpart 25.5.

(2)(i) For end products that do not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (b)(1)(i) of this section result in an unreasonable cost determination for the domestic offer or there is no domestic offer received, and the low offer is for a foreign end product that does not exceed 55 percent domestic content, the contracting officer shall—

(A) Treat the lowest offer of a foreign end product that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer; and

(B) Determine the reasonableness of the cost of this offer by applying the evaluation factors listed in paragraph (b)(1)(i) to the low offer.

(ii) The price of the lowest offer of a foreign end product that exceeds 55

percent domestic content is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b)(1)(i) of this section. See evaluation procedures at subpart 25.5.

(iii) The procedures in this paragraph (b)(2) will no longer apply as of January 1, 2030.

(c) *For end products that are critical items or contain critical components.* (1)(i) If there is a domestic offer that is not the low offer, and the restrictions of the Buy American statute apply to the low offer, the contracting officer shall determine the reasonableness of the cost of the domestic offer by adding to the price of the low offer, inclusive of duty—

(A) 20 percent, plus the additional preference factor identified for the critical item or end product containing critical components listed at section 25.105, if the lowest domestic offer is from a large business concern; or

(B) 30 percent, plus the additional preference factor identified for the critical item or end product containing critical components listed at section 25.105, if the lowest domestic offer is from a small business concern. The contracting officer shall use this factor, or another factor established in agency regulations, in small business set-asides if the low offer is from a small business concern offering the product of a small business concern that is not a domestic end product (see subpart 19.5).

(ii) The price of the domestic offer is reasonable if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. See evaluation procedures at subpart 25.5.

(2)(i) For end products that do not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (c)(1)(ii) of this section result in an unreasonable cost determination for the domestic offer or there is no domestic offer received, and the low offer is for a foreign end product that does not exceed 55 percent domestic content, the contracting officer shall—

(A) Treat the lowest offer of a foreign end product that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer; and

(B) Determine the reasonableness of the cost of this offer by applying the evaluation factors listed in paragraph (c)(1) to the low offer.

(ii) The price of the lowest offer of a foreign end product that exceeds 55 percent domestic content is reasonable

if it does not exceed the evaluated price of the low offer after addition of the appropriate evaluation factor in accordance with paragraph (a) or (b) of this section. See evaluation procedures at subpart 25.5.

(iii) The procedures in this paragraph (c)(2) will no longer apply as of January 1, 2030.

■ 10. Amend section 25.200 by—

- a. In paragraph (a)(3) removing the word “and”;
- b. Redesignating paragraph (a)(4) as paragraph (a)(5);
- c. Adding a new paragraph (a)(4); and
- d. In paragraph (c) removing the word “Subpart” and adding the word “subpart” in its place.

The addition reads as follows:

**25.200 Scope of subpart.**

(a) \* \* \*

(4) Executive Order 14005, January 25, 2021; and

\* \* \* \* \*

■ 11. Amend section 25.201 by—

- a. In paragraph (b) removing the phrase “statute and E.O. 13881 use” and adding the phrase “statute, E.O. 13881, and E.O. 14005 use” in its place; and
- b. Revising the first sentence of paragraph (b)(2)(i).

The revision reads as follows.

**25.201 Policy.**

\* \* \* \* \*

(b) \* \* \*

(2)(i) Except for construction material that consists wholly or predominantly of iron or steel or a combination of both, the cost of domestic components must exceed 60 percent of the cost of all the components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. \* \* \*

\* \* \* \* \*

■ 12. Amend section 25.204 by revising paragraph (b) to read as follows:

**25.204 Evaluating offers of foreign construction material.**

\* \* \* \* \*

(b)(1) *For construction materials that are not critical items and do not contain critical components.* (i) Unless the head of the agency specifies a higher percentage, the contracting officer shall add to the offered price 20 percent of the cost of any foreign construction material proposed for exception from the requirements of the Buy American statute based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer shall give preference to an offer that does not include foreign construction material excepted at the request of the

offeror on the basis of unreasonable cost.

(ii) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (b)(1)(i) of this section result in an unreasonable cost determination for the domestic construction material offer or there is no domestic construction material offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the contracting officer shall—

(A) Treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer; and

(B) Determine the reasonableness of the cost of this offer by applying the evaluation factor listed in paragraph (b)(1)(i) to the low offer.

(iii) The procedures in paragraph (b)(1)(ii) will no longer apply as of January 1, 2030.

(2) *For construction material that are critical items or contain critical components.* (i) The contracting officer shall add to the offered price 20 percent, plus the additional preference factor identified for the critical item or construction material containing critical components listed at section 25.105, of the cost of any foreign construction material proposed for exception from the requirements of the Buy American statute based on the unreasonable cost of domestic construction materials. In the case of a tie, the contracting officer shall give preference to an offer that does not include foreign construction material excepted at the request of the offeror on the basis of unreasonable cost. See 25.105 for list of critical components and critical items.

(ii) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the procedures in paragraph (b)(2)(i) of this section result in an unreasonable cost determination for the domestic construction material offer or there is no domestic construction material offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the contracting officer shall—

(A) Treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer; and

(B) Determine the reasonableness of the cost of this offer by applying the evaluation factors listed in paragraph (b)(2) to the low offer.

(iii) The procedures in paragraph (c)(1)(ii) will no longer apply as of January 1, 2030.

\* \* \* \* \*

**25.501 [Amended]**

■ 13. Amend section 25.501 by—

- a. In paragraph (c) removing the word “Subpart” and adding the word “subpart” in its place; and
- b. In paragraph (d) removing the word “Must” and adding the phrase “When trade agreements are involved, shall” in its place.

■ 14. Amend section 25.502 by revising paragraphs (c)(2), (3), and (4) to read as follows:

**25.502 Application.**

\* \* \* \* \*

(c) \* \* \*

(2) If the low offer is a noneligible offer and there were no domestic offers (see 25.103(b)(3)), award on the low offer. The procedures at 25.106(b)(2) and 25.106(c)(2) do not apply.

(3) If the low offer is a noneligible offer and there is an eligible offer that is lower than the lowest domestic offer, award on the low offer. The procedures at 25.106(b)(2) and 25.106(c)(2) do not apply.

(4) Otherwise, apply the appropriate evaluation factor provided in 25.106 to the low offer. The procedures at 25.106(b)(2) and 25.106(c)(2) do not apply.

\* \* \* \* \*

■ 15. Amend section 25.503 by—

- a. In paragraph (a)(1) removing the word “Subpart” and adding the word “subpart” in its place; and
- b. Adding paragraph (d) to read as follows:

**25.503 Group offers.**

\* \* \* \* \*

(d) If no trade agreement applies to a solicitation and the solicitation specifies that award will be made only on a group of line items or all line items contained in the solicitation, determine the category of end products on the basis of each line item, but determine whether to apply an evaluation factor on the basis of the group of items (see 25.504–4(c), Example 3).

(1) If the proposed price of domestic end products exceeds 50 percent of the total proposed price of the group, evaluate the entire group as a domestic offer. Evaluate all other groups as foreign offers.

(2) Apply the evaluation factor to the entire group in accordance with 25.502, except where 25.502(c)(4) applies and the evaluated price of the low offer remains less than the lowest domestic offer. Where the evaluated price of the

low offer remains less than the lowest domestic offer, treat as a domestic offer any group where the proposed price of end products with a domestic content of at least 55 percent exceeds 50 percent of the total proposed price of the group.

(3) Apply the evaluation factor to the entire group in accordance with 25.502(c)(4).

- 16. Amend section 25.504–1 by—
- a. In paragraph (a)(1), in the table revising the entry for “Offer C”;
- b. Revising paragraph (a)(2); and

■ c. Adding paragraph (c).

The revised and added text reads as follows:

**25.504–1 Buy American statute.**

(a)(1) \* \* \*

*	*	*	*	*	*	*
Offer C .....	\$10,100	U.S.-made end product (not domestic), small business.				

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American statute applies. Since the acquisition value is less than \$25,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in 25.502(a).

Offer C is evaluated as a foreign end product, because it is the product of a small business but is not a domestic end product because the offer is of 50% domestic content (see 25.502(c)(4)). Since Offer B is a domestic offer, apply the 30 percent factor to Offer C (see 25.106(b)(2)). The resulting evaluated

price of \$13,130 remains lower than Offer B. The cost of Offer B is therefore unreasonable (see 25.106(b)(1)(ii)). The 25.106(b)(2) procedures do not apply. Award on Offer C at \$10,100 (see 25.502(c)(4)(i)).

\* \* \* \* \*  
(c)(1) Example 3.

Offer A .....	\$14,000	Domestic end product (complies with the required domestic content), small business.
Offer B .....	12,500	U.S.-made end product (not domestic, exceeds 55% domestic content), small business.
Offer C .....	10,100	U.S.-made end product (not domestic, with less than 55% domestic content), small business.

(2) *Analysis:* This acquisition is for end products for use in the United States and is set aside for small business concerns. The Buy American statute applies. Since the acquisition value is less than \$25,000 and the acquisition is set aside, none of the trade agreements apply. Perform the steps in 25.502(a). Offers B and C are initially evaluated as foreign end products, because they are the products of small businesses but are

not domestic end products (see 25.502(c)(4)). Offer C is the low offer. After applying the 30 percent factor, the evaluated price of Offer C is \$13,130. The resulting evaluated price of \$13,130 remains lower than Offer A. The cost of Offer A is therefore unreasonable. Offer B is then treated as a domestic offer, because it is for a U.S.-made end product that exceeds 55 percent domestic content (see 25.106(b)(2)).

Offer B is determined reasonable because it is lower than the \$13,130 evaluated price of Offer C. Award on Offer B at \$12,500.

■ 17. Amend section 25.504–4 by adding paragraph (c) to read as follows:

**25.504–4 Group award basis.**

\* \* \* \* \*  
(c) Example 3.

Item	Offers		
	A	B	C
1 .....	DO = \$17,800 .....	FO (>55%) = \$16,000 .....	FO (<55%) = \$11,200
2 .....	FO (>55%) = \$9,000 .....	FO (>55%) = \$8,500 .....	DO = \$10,200
3 .....	FO (<55%) = \$11,200 .....	FO (>55%) = \$12,000 .....	FO (<55%) = \$11,000
4 .....	DO = \$10,000 .....	DO = \$9,000 .....	FO (<55%) = \$6,400
<b>Total .....</b>	<b>\$48,000 .....</b>	<b>\$45,500 .....</b>	<b>\$38,800</b>

*Key:*  
DO=Domestic end product (complies with the required domestic content).  
FO >55% = Foreign end product with domestic content exceeding 55%.  
FO <55% = Foreign end product with domestic content of 55% or less.

*Problem:* The solicitation specifies award on a group basis. Assume only the Buy American statute applies (i.e., no trade agreements apply) and the

acquisition cannot be set aside for small business concerns. All offerors are large businesses.

*Analysis:* (see 25.503(d)).

*STEP 1:* Determine which of the offers are domestic (see 25.503(d)(1)):

	Domestic (percent)	Determination
A .....	\$17,800 (Offer A1) + \$10,000 (Offer A4) = \$27,800 ..... \$27,800/\$48,000 (Offer A Total) = 58%	Domestic.
B .....	\$9,000 (Offer B4)/\$45,500 (Offer B Total) = 19.8% .....	Foreign.
C .....	\$10,200 (Offer C2)/\$38,800 (Offer C Total) = 26.3% .....	Foreign.

STEP 2: Determine which offer, domestic or foreign, is the low offer. If the low offer is a foreign offer, apply the evaluation factor (see 25.503(d)(2)). The low offer (Offer C) is a foreign offer.

Therefore, apply the factor to the low offer. Addition of the 20 percent factor (use 30 percent if Offer A is a small business) to Offer C yields an evaluated

price of \$46,560 (\$38,800 + 20 percent). Offer C remains the low offer.  
STEP 3: Determine if there is a foreign offer that could be treated as a domestic offer (see 25.106(b)(2) and 25.503(d)(2)).

	Amount of domestic content (percent)	Determination
A .....	N/A .....	N/A.
B .....	\$9,000 (Offer B4)/\$45,500 (Offer B Total) = 19.8% is domestic AND \$16,000 (Offer B1) + \$8,500 (Offer B2) + \$12,000 (Offer B3) = \$36,500. \$36,500/\$45,500 (Offer B Total) = 80.2% can be treated as domestic. 19.8% + 80.2% = 100% is domestic or can be treated as domestic.	Can be treated as domestic.
C .....	\$10,200 (Offer C2)/\$38,800 (Offer C Total) = 26.3% is domestic .....	Foreign.

STEP 4: If there is a foreign offer that could be treated as a domestic offer, compare the evaluated price of the low offer to the price of the offer treated as domestic (see 25.503(d)(3)). Offer B can be treated as a domestic offer (\$45,500). The evaluated price of the low offer (Offer C) is \$46,560. Award on Offer B.

**25.1101 Acquisition of supplies.**

\* \* \* \* \*

(g) Insert the clause at 52.225-XX, Domestic Content Reporting Requirement—Supplies, in solicitations and contracts containing the clause at 52.225-1 or 52.225-3.

19. Amend section 25.1102 by adding paragraph (f) to read as follows:

**25.1102 Acquisition of construction.**

\* \* \* \* \*

(f) Insert the clause at 52.225-YY, Domestic Content Reporting Requirement—Construction Materials, in solicitations and contracts containing the clause at 52.225-9 or 52.225-11.

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

20. Amend section 52.212-3 by—

a. Revising the date of the provision;

b. In paragraph (f)(1)(i) removing the word “product.” and adding the phrase “product and that each domestic end product listed in paragraph (f)(3) of this provision contains a critical component.” in its place;

c. Adding two sentences to the end of paragraph (f)(1)(ii);  
d. Redesignating paragraph (f)(1)(iii) as paragraph (f)(1)(iv) and adding a new paragraph (f)(1)(iii);

e. Removing from the newly redesignated paragraph (f)(1)(iv) “The terms “domestic end product,” and adding “The terms “critical component,” “domestic end product,” in its place;

f. Revising the table in paragraph (f)(2);

g. Redesignating paragraph (f)(3) as paragraph (f)(4) and adding a new paragraph (f)(3);

h. In newly redesignated paragraph (f)(4) remove the word “Part” and adding the word “part” in its place;  
i. In paragraph (g)(1)(i)(A) removing the word “product.” and adding the phrase “product and that each domestic end product listed in paragraph (g)(1)(iv) of this provision contains a critical component.” in its place;

j. In paragraph (g)(1)(i)(B) removing the phrases “Peruvian end product,” and “domestic end product,” and

adding in their place “Peruvian end product,” “critical component,” “domestic end product,”;

k. Adding two sentences at the end of paragraph (g)(1)(iii) and revising the table;

l. Redesignating paragraph (g)(1)(iv) as paragraph (g)(1)(v) and adding a new paragraph (g)(1)(iv); and

m. In newly redesignated paragraph (g)(1)(v) removing the word “Part” and adding the word “part” in its place.

The revisions and additions read as follows:

**52.212-3 Offeror Representations and Certifications—Commercial Items.**

\* \* \* \* \*

**Offeror Representations and Certifications—Commercial Items (DATE)**

\* \* \* \* \*

(f) \* \* \*

(1) \* \* \*

(ii) \* \* \* The Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content. If the percentage of the domestic content is unknown, select “no”.

(iii) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component.

\* \* \* \* \*

(2) \* \* \*

Line item No.	Country of origin	Exceeds 55% domestic content (yes/no)

(3) Domestic end products containing a critical component:

Line Item No. \_\_\_\_\_

[List as necessary]

(g)(1) \* \* \*

(iii) \* \* \* The Offeror shall also indicate whether these foreign end products exceed

55 percent domestic content. If the percentage of the domestic content is unknown, select “no”.

Other Foreign End Products:

Line item No.	Country of origin	Exceeds 55% domestic content (yes/no)

(iv) The Offeror shall list the line item numbers of domestic end products that contain a critical component.

Line Item No. \_\_\_\_\_  
 [List as necessary]  
 \* \* \* \* \*

- 21. Amend section 52.212–5 by—
- a. Revising the date of the clause;
- b. Removing from paragraph (b)(48) “(JAN 2021)” and adding “(DATE)” in its place; and
- c. Removing from paragraph (b)(49)(i) “(JAN 2021)” and adding “(DATE)” in its place; and
- d. Redesignating paragraphs (b)(53) through (b)(63) as paragraphs (b)(54) through (b)(64) and adding a new paragraph (b)(53).

The revision and addition reads as follows:

**52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.**  
 \* \* \* \* \*

**Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (DATE)**  
 \* \* \* \* \*

(b) \* \* \*  
 (53) 52.225–XX, Domestic Content Reporting Requirement—Supplies (DATE) (Executive Order 14005).  
 \* \* \* \* \*

- 22. Amend section 52.213–4 by—
- a. Revising the date of the clause;
- b. In paragraph (b)(1)(xvii) removing the words “(JAN 2021)” and adding the word “(DATE)” in its place;
- c. Redesignating paragraphs (b)(1)(xviii) through (b)(1)(xxi) as paragraphs (b)(1)(xx) through (b)(1)(xxiii) and adding new paragraphs (b)(1)(xviii) and (b)(1)(xix).

The revisions and additions read as follows:

**52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).**  
 \* \* \* \* \*

**Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (DATE)**

- (b) \* \* \*
- (1) \* \* \*
- (xviii) 52.225–XX, Domestic Content Reporting Requirement—Supplies (DATE) (Executive Order 14005) (Applies to contracts containing the clause at 52.225–1 or 52.225–3).
- (xix) 52.225–YY, Domestic Content Reporting Requirement—Construction Materials (DATE) (Executive Order 14005) (Applies to contracts containing the clause at 52.225–9).  
 \* \* \* \* \*

- 23. Amend section 52.225–1 by—
- a. Revising the date of the clause;
- b. Adding, in alphabetical order, the definition of “Critical component”; and
- c. In the definition of “Domestic end product” revising the first sentence of paragraph (1)(ii)(A).

The addition and revision read as follows:

**52.225–1 Buy American—Supplies.**  
 \* \* \* \* \*

**Buy American—Supplies (DATE)**

- (a) \* \* \*
- Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.
- Domestic end product* means—
- (1) \* \* \*
- (ii) \* \* \*
- (A) The cost of its components mined, produced, or manufactured in the United

States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. \* \* \*

- 24. Amend section 52.225–2 by—
- a. Revising the date of the provision;
- b. Revising paragraph (a)(1);
- c. Adding two sentences at the end of paragraph (a)(2);
- d. Redesignating paragraph (a)(3) as paragraph (a)(4) and adding a new paragraph (a)(3);
- e. In newly redesignated paragraph (a)(4) removing the phrase “The terms” and adding the phrase “The terms “critical component,”” in its place;
- f. Revising the table in paragraph (b);
- g. Redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c).

The revisions and additions read as follows:

**52.225–2 Buy American Certificate.**  
 \* \* \* \* \*

**Buy American Certificate (DATE)**

- (a)(1) The Offeror certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product and that each domestic end product listed in paragraph (c) of this provision contains a critical component.
- (2) \* \* \* The Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content. If the percentage of the domestic content is unknown, select “no”.
- (3) The Offeror shall separately list the line item numbers of domestic end products that contain a critical component.  
 \* \* \* \* \*
- (b) \* \* \*

Line item No.	Country of origin	Exceeds 55% domestic content (yes/no)

(c) Domestic end products containing a critical component:

Line Item No. \_\_\_\_\_

[List as necessary]  
 \* \* \* \* \*

- 25. Amend section 52.225–3 by—

- a. Revising the date of the clause;
- b. Adding, in alphabetical order, the definition of “Critical component”;

■ c. In the definition “Domestic end product” revising the first sentence of paragraph (1)(ii)(A).

The addition and revision read as follows:

**52.225-3 Buy American—Free Trade Agreements—Israeli Trade Act.**

\* \* \* \* \*

**Buy American—Free Trade Agreements—Israeli Trade Act (DATE)**

(a) \* \* \* *Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

*Domestic end product* means—

(1) \* \* \*

(ii) \* \* \*

(A) The cost of its components mined, produced, or manufactured in the United

States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029. \* \* \*

\* \* \* \* \*

■ 26. Amend section 52.225-4 by—

■ a. Revising the date of the provision;

■ b. Revising paragraph (a)(1);

■ c. In paragraph (a)(2) removing the phrases “Peruvian end product,” “domestic end product,” and adding in their place “Peruvian end product,” “critical component,” “domestic end product,”;

■ d. Redesignating paragraph (c) as paragraph (c)(1) and adding two sentences at the end of newly designated paragraph (c)(1);

■ e. Revising the table in newly designated paragraph (c)(1); and

■ f. Adding paragraph (c)(2).

The revisions and additions read as follows:

**52.225-4 Buy American—Free Trade Agreements—Israeli Trade Act Certificate.**

\* \* \* \* \*

**Buy American—Free Trade Agreements—Israeli Trade Act Certificate (DATE)**

(a)(1) The Offeror certifies that each end product, except those listed in paragraph (b) or (c)(1) of this provision, is a domestic end product and that each domestic end product listed in paragraph (c)(2) of this provision contains a critical component.

\* \* \* \* \*

(c)(1) \* \* \* The Offeror shall also indicate whether these foreign end products exceed 55 percent domestic content. If the percentage of the domestic content is unknown, select “no”.

\* \* \* \* \*

Line item No.	Country of origin	Exceeds 55% domestic content (yes/no)

\* \* \* \* \*

(2) The Offeror shall list the line item numbers of domestic end products that contain a critical component.

Line Item No. \_\_\_\_\_

[List as necessary]

\* \* \* \* \*

■ 27. Amend section 52.225-9 by—

■ a. Revising the date of the clause;

■ b. Adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;

■ c. In the definition “Domestic construction material” revising the first sentence of paragraph (1)(ii)(A); and

■ d. Revising paragraph (b)(3)(i).

The revisions and additions read as follows:

**52.225-9 Buy American—Construction Materials.**

\* \* \* \* \*

**Buy American—Construction Materials (DATE)**

(a) \* \* \*

*Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

*Critical item* means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

*Domestic construction material* means—

(1) \* \* \*

(ii) \* \* \*

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029.

\* \* \* \* \*

(b) \* \* \*

(3) \* \* \*

(i) The cost of domestic construction material would be unreasonable.

(A) *For domestic construction material that are not critical items or do not contain critical components.*

(1) The cost of a particular domestic construction material subject to the requirements of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that is manufactured in the United States and does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(A)(1) of this clause.

(3) The procedures in paragraph (b)(3)(i)(A)(2) will no longer apply as of January 1, 2030.

(B)(1) *For domestic construction material that are critical items or contain critical components.* The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest foreign offer of construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(3)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(3)(i)(B)(2) will no longer apply as of January 1, 2030.

\* \* \* \* \*

■ 28. Amend section 52.225-11 by—

■ a. Revising the date of the clause;

■ b. Adding, in alphabetical order, the definitions of “Critical component” and “Critical item”;

- c. In the definition “Domestic construction material” revising the first sentence of paragraph (1)(ii)(A); and
- d. Revising paragraph (b)(4)(i).

The revisions and additions read as follows:

**52.225-11 Buy American—Construction Materials Under Trade Agreements.**

\* \* \* \* \*

**Buy American—Construction Materials Under Trade Agreements (DATE)**

(a) \* \* \*

*Critical component* means a component that is mined, produced, or manufactured in the United States and deemed critical to the U.S. supply chain. The list of critical components is at FAR 25.105.

*Critical item* means a domestic construction material or domestic end product that is deemed critical to U.S. supply chain resiliency. The list of critical items is at FAR 25.105.

\* \* \* \* \*

*Domestic construction material* means—

(1) \* \* \*

(ii) \* \* \*

(A) The cost of its components mined, produced, or manufactured in the United States exceeds 60 percent of the cost of all its components, except that the percentage will be 65 percent for items delivered in calendar years 2024 through 2028 and 75 percent for items delivered starting in calendar year 2029.

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(i) The cost of domestic construction material would be unreasonable.

(A) *For domestic construction material that are not critical items or do not contain critical components.*

(1) The cost of a particular domestic construction material subject to the restrictions of the Buy American statute is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent;

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(A)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(A)(2) do not apply effective January 1, 2030.

(B) *For domestic construction material that are critical items or contain critical components.* (1) The cost of a particular domestic construction material that is a critical item or contains critical components, subject to the requirements of the Buy American statute, is unreasonable when the cost of such material exceeds the cost of foreign material by more than 20 percent plus the additional preference factor identified for the critical item or construction material containing critical components listed at FAR 25.105.

(2) For construction material that does not consist wholly or predominantly of iron or steel or a combination of both, if the cost of a particular domestic construction material is determined to be unreasonable or there is no domestic offer received, and the low offer is for foreign construction material that does not exceed 55 percent domestic content, the Contracting Officer will treat the lowest offer

of foreign construction material that is manufactured in the United States and exceeds 55 percent domestic content as a domestic offer, and determine whether the cost of that offer is unreasonable by applying the evaluation factor listed in paragraph (b)(4)(i)(B)(1) of this clause.

(3) The procedures in paragraph (b)(4)(i)(B)(2) will no longer apply as of January 1, 2030.

\* \* \* \* \*

- 29. Add section 52.225-XX to read as follows:

**52.225-XX Domestic Content Reporting Requirement—Supplies.**

As prescribed in 25.1101(g), insert the following clause:

**Domestic Content Reporting Requirement—Supplies (DATE)**

(a) Definitions. As used in this clause—

*Critical item* means a domestic construction material or domestic end product that is deemed critical to the U.S. supply chain. The list of critical items is at FAR 25.105.

The terms *Critical component*, *Domestic end product*, and *End product* are defined in the clause of this solicitation entitled “Buy American-Supplies” or “Buy American-Free Trade Agreements-Israeli Trade Act”.

(b) *Applicability.* This clause does not apply to commercially available off-the-shelf (COTS) items.

(c) *Reporting requirement.* Within 15 days of award, the Contractor shall provide the contract number, the amount of domestic content in each critical item, and the amount of domestic content in each domestic end product containing a critical component, to the Made in America Office under the Office of Management and Budget via [MadeInAmerica@omb.eop.gov](mailto:MadeInAmerica@omb.eop.gov):

Line item No.	Critical component/end product	Percentage of domestic content

[List as necessary]  
(End of clause)

- 30. Add section 52.225-YY to read as follows:

**52.225-YY Domestic Content Reporting Requirement—Construction Materials.**

As prescribed in 25.1102(f), insert the following clause:

**Domestic Content Reporting Requirement—Construction Materials (DATE)**

(a) Definitions. As used in this clause—

The terms *Critical component*, *Critical item*, and *Domestic construction material*, are defined in the clause of this contract entitled “Buy American-Construction Materials” or “Buy American-Construction Materials under Trade Agreements”.

(b) *Applicability.* This clause does not apply to commercially available off-the-shelf (COTS) items.

(c) *Reporting requirement.* Within 15 days of award, the Contractor shall provide the contract number, the amount of domestic content in each critical item, and the amount of domestic content in each domestic construction material containing a critical component, to the Made in America Office under the Office of Management and Budget via [MadeInAmerica@omb.eop.gov](mailto:MadeInAmerica@omb.eop.gov):

Line item No.	Critical component/end product	Percentage of domestic content



Line item No.	Critical component/end product	Percentage of domestic content

[List as necessary]

(End of clause)

[FR Doc. 2021-15881 Filed 7-29-21; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R4-ES-2020-0125; FF09E22000 FXES1113090000 212]

RIN 1018-BE41

**Endangered and Threatened Wildlife and Plants; Removing *Adiantum vivesii* From the Federal List of Endangered and Threatened Plants**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to remove the plant *Adiantum vivesii* (no common name) from the Federal List of Endangered and Threatened Plants (List). Our review of the best available scientific and commercial data, including peer reviewer comments received on the 5-year status review (2008), indicate that *A. vivesii* is not a distinct species, but rather a sterile hybrid that does not have the capacity to establish a lineage that could be lost to extinction. Therefore, *A. vivesii* is not a listable entity under the Endangered Species Act of 1973, as amended (Act).

**DATES:** We will accept comments received or postmarked on or before September 28, 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 September 13, 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 FWS-R4-ES-2020-0125, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on

the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on “Comment.”

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS-R4-ES-2020-0125, 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).

*Availability of supporting materials:* This proposed rule and supporting documents, including the 5-year review, are available at <https://www.fws.gov/southeast/caribbean/> and <http://www.regulations.gov> under Docket No. FWS-R4-ES-2020-0125.

**FOR FURTHER INFORMATION CONTACT:** Edwin Muñoz, Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; telephone 787-851-7297. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800-877-8339.

**SUPPLEMENTARY INFORMATION:**

**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, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not remove *A. vivesii* from the List of Endangered and Threatened Plants.

(2) The location and characteristics of any additional populations not considered in previous work that might have bearing on the current taxonomic interpretation.

(3) Additional information concerning range, distribution, and population sizes, particularly if it would assist in

the evaluation of the accuracy of the current taxonomic interpretation.

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 substantial comments and information received during the comment period, our final determinations 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 a valid listable entity and should remain listed as endangered, or be reclassified from endangered to threatened.

*Public Hearing*

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address

shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. For the immediate future, we will provide these public hearings using webinars that will be announced on the Service's website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulations 50 CFR 424.16(c)(3).

#### Peer Review

In accordance with our policy, "Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities," which was published on July 1, 1994 (59 FR 34270), and our August 22, 2016, Director's Memorandum "Peer Review Process," we will seek the expert opinion of at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will ensure that the opinions of peer reviewers are objective and unbiased by following the guidelines set forth in the Director's Memo, which updates and clarifies Service policy on peer review (U.S. Fish and Wildlife Service 2016). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, our final decision may differ from this proposal.

#### Previous Federal Actions

*A. vivesii* was recommended for Federal listing in an interagency workshop held to discuss candidate plants in September 1988. The species was subsequently included as a "category 1" species (species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) in our February 21, 1990, notice of review (55 FR 6184). We listed *A. vivesii* as endangered under the Act on June 9, 1993 (58 FR 32308). We assigned the species a recovery priority number of 5, which reflected a high degree of threat and low recovery potential. We did not designate critical habitat for *A. vivesii*.

We completed two 5-year reviews for *A. vivesii*, the first on June 10, 2008 (see the announcement initiating the review at 70 FR 53807, September 12, 2005), and the second on September 25, 2018 (see the announcement initiating the

review at 82 FR 29916, June 30, 2017). Both 5-year reviews recommended delisting due to the entity not meeting the Act's definition of a species.

#### Background

##### Entity Description

*A. vivesii* is found growing in colonies (clusters) where the rhizome (rootstock or underground stem) spreads horizontally. The fronds (leaves) are distichous (arranged in one plane) and erect-spreading with broad and irregular lance-oblong blades. The blades have two or three alternate or occasionally subopposite pinnae (segment of leaf), with a larger terminal pinna. The terminal pinnae are stalked often somewhat inequilateral with approximately 10 to 13 pairs of alternate, narrowly oblong-falcate pinnules (smaller segments of a leaf), shaped unequally cuneate at the base. The irregularly-branched stalks are lustrous purple-black with hairlike scales. The rachis (axis of a fern leaf) and costae (central vein of a leaf) are more densely covered with hairlike scales than the stipe. The outer sterile margins of the pinna are irregularly serrulate (serrated teeth), and the tissue is dull green on both sides. Five elliptic to linear sori (sacks of spores) are borne along the basal half of the acroscopic (facing the apex) margin. The sori are also close or contiguous, but remain distinct, and the indusium flap (tissue covering the sori) is gray-brown and turgid, with an erose (irregular) margin (Proctor 1989, p. 140; USFWS 1995, pp. 1–2).

##### Distribution and Habitat

*A. vivesii* is found in the limestone or karst region of northwestern Puerto Rico. This region is underlain by limestone rocks of the Oligocene or Miocene age. Topography varies throughout the karst region, from extremely rugged to gentle rolling hills. Canyons, sinkholes, and subterranean rivers, as well as these rolling hills, are the most common features of the region. Soils in the limestone hills are shallow, well-drained, alkaline, and interspersed between limestone outcrops (Lugo *et al.* 2001, pp. 13–26; USFWS 1995, pp. 6–7). *A. vivesii* occurs within the semi-evergreen seasonal forests of the subtropical moist forest life zone (Ewel and Whitmore 1973, p. 20). This life zone, which covers 58 percent of the total area of Puerto Rico and the U.S. Virgin Islands, is delineated by a mean annual rainfall of between 1,000 to 1,100 mm (40 to 44 in) and about 2,000 to 2,200 mm (80 to 88 in) and a mean temperature between about 18 and 24

degrees Centigrade (64.4 and 75.2 degrees Fahrenheit) (Ewel and Whitmore 1973, p. 20). *A. vivesii* occurs in a deeply shaded hollow at the base of a limestone hill in Quebradillas (USFWS 1995, p. 7).

When the species was listed in 1993, it was known from only one population on a privately owned limestone hill in Quebradillas. That population was estimated at 1,000 plants or growing apices by Proctor (1991, p. 5). The population was later documented at the same location occurring in an area of 21 meters (m) by 10 m (68.9 feet (ft) by 32.8 ft) by Sepúlveda-Orengo (2000, p. 21). In the vicinity of this area, eight other species of the genus *Adiantum* were found (*A. cristatum*, *A. fragile*, *A. latifolium*, *A. melanoleucum*, *A. pulverulentum*, *A. tenerum*, *A. tetraphyllum*, and *A. wilsonii*). The fern *A. tetraphyllum* was growing intermixed within the area occupied by *A. vivesii* (Sepúlveda-Orengo 2000, p. 22). Surveys conducted in 2017 at the type locality (the location where the specimen was first identified) were unable to identify material that morphologically matched the original type specimen (despite similarities), nor any clonal stand of *Adiantum* material as it had been described there in 1991 and 2000 (Possley *et al.* 2020, p. 6). These results suggest that *A. vivesii* is extirpated from the only known location.

#### Taxonomy

*A. vivesii* was believed to be a fern of the family Pteridaceae. It was described by Dr. George R. Proctor in 1985, from specimens collected by Miguel Vives and William Estremera at San Antonio Ward in the municipality of Quebradillas, Puerto Rico (Proctor 1989, p. 140). Non-genetic research on *A. vivesii* after it was described as a species suggested this fern is actually a single sterile hybrid plant, rather than a population of individuals of a species (Sepúlveda-Orengo 2000, *entire*). Excavations at different points throughout the entire "population" of *A. vivesii* found rhizome, or underground stem, connections between most of the apparent individual ferns (Sepúlveda-Orengo 2000, p. 21). Plantings of two 10-centimeter (4-inch) rhizome segments (planted in pots using the same soil from the colony location) of *A. vivesii* grew into healthy plants within about 3 months (Sepúlveda-Orengo 2000, p. 21). Production of sporangia (structures from which the reproductive gametophytes arise) was observed throughout the year, but actual gametophytes (structures containing sperm and eggs, or gametes) were not

observed. The lack of gamete production but growth of fronds from rhizome segments suggests that the *A. vivesii* “population” consists of only one individual with rhizome proliferations (below-ground stems).

A morphometric analysis of *A. vivesii* and the co-occurring species, *A. tetraphyllum*, was conducted on 21 vegetative characters and one spore character (Sepúlveda-Orengo 2000, p. 22). In conjunction with the morphometric analysis, the following studies of *A. vivesii* and *A. tetraphyllum* were conducted: Chromosome counts; light microscopy observations of fresh or dried pinnules, sori, and sporangia; and scanning electron microscopy (SEM) of rhizomes, fertile pinnules, and spores. The morphometric analysis showed significant differences between *A. vivesii* and *A. tetraphyllum* for 16 of the vegetative characters as well as spore size, revealing that *A. vivesii* is morphologically different. Based on the results, the morphological features that best distinguish *A. vivesii* from *A. tetraphyllum* are the number of lateral pinnae and the number of pinnules on each lateral pinna, which are fewer in *A. vivesii*. Although there are morphological differences, chromosome number in each taxon appears to be similar (Sepúlveda-Orengo 2000, p. 23), indicating *A. vivesii* is not a polyploid (possesses more than two sets of chromosomes), a common cause of sterility in plants.

Based on spore observations in the light microscopy and SEM studies, *A. vivesii* appears to be a sterile hybrid (Sepúlveda-Orengo 2000, p. 31). The greater variation in spore size in *A. vivesii* observed in these studies was mainly produced by spore abortion. These observations of sori containing abortive sporangia and spores suggested *A. vivesii* is indeed a hybrid (Sepúlveda-Orengo 2000, p. 29). Further, the forms of the spores of *A. vivesii* are different from *A. tetraphyllum* because of the collapse of the exospore (outer layer of the spore membrane) that is associated with the absence of the protoplast (plant cell with no cell wall). Mature spores of *A. vivesii* are more compactly constructed than those of *A. tetraphyllum*, with the sporangia appearing as more or less globular objects tightly grouped together, which is consistent with the sorus (spore producing structure) of a hybrid (Sepúlveda-Orengo 2000, p. 28).

Based on the initial taxonomic analysis discussed above, *A. vivesii* does not appear to be a distinct species (Sepúlveda-Orengo 2000, entire). This analysis showed that sporangia and spores were produced throughout the

year, but signs of sexual reproduction as gametophytes or small plants were not observed. The plant instead reproduces vegetatively (asexually), and the entire colony seems to be the result of vegetative reproduction via rhizomes from a single, sterile individual (Sepúlveda-Orengo 2000, pp. 26–31).

More recently, the Fairchild Tropical Botanical Garden (Fairchild) has been collaborating with the Service on the assessment of endangered ferns including *A. vivesii* (Possley and Lange, 2016 and 2017, p. 4; Possley et al. 2020, pp. 5–11). In 2017, fieldwork was conducted to assess the colony of *A. vivesii* and collect material for genetic analyses. Fairchild engaged Dr. Emily Sessa from the University of Florida (UF) to assist on a genetic study to validate whether *A. vivesii* is a hybrid as indicated by Sepúlveda-Orengo (2000, p. 29).

Leaf material for DNA extraction was collected in the field in Puerto Rico in February 2017, and from herbarium specimens, including the isotype (duplicate or very similar type specimen) for *A. vivesii*. A total of 27 specimens were sampled: 5 identified as *A. latifolium*, 2 as *A. obliquum*, 3 as *A. petiolatum*, 4 as *A. pyramidale*, 5 as *A. tetraphyllum*, 4 as *A. vivesii*, and 4 unidentified *Adiantum* individuals (Possley et al. 2020, p. 6).

The analysis found that five samples, including the *A. vivesii* isotype, had sequence variants that fell in different groups, which indicate their hybrid origin (Possley et al. 2020, p. 10). The genetic sequencing further indicates that *A. vivesii* is of hybrid origin with *A. petiolatum* as one parent and the other parent likely being *A. tetraphyllum* (Possley et al. 2020, p. 10).

The Act and supporting regulations define a species as any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any vertebrate species that interbreeds when mature, but do not further define the terms “species” or “subspecies” used in this definition. Rather, per 50 CFR 424.11(a), the Service shall rely on standard taxonomic distinctions and the biological expertise of the agency and the scientific community in determining whether a particular taxon or population is a species for the purposes of the Act. The standard biological definition of a “species” is a group of organisms that are capable of interbreeding when mature. The application of this definition becomes more complicated with plant species, as many can exhibit asexual reproduction (NRC 1995, p. 50). For this reason, we consulted with experts to assist in determining the appropriate treatment

for this entity (Riibe 2020, pers. comm.; Sessa 2020, pers. comm). Based upon expert input, here we are considering a species to be a distinct unit with a natural evolutionary trajectory, meaning that it has the ability to establish a lineage that could be lost to extinction (NRC 1995, p. 54; Riibe 2020, pers. comm.; Sessa 2020, pers. comm.). In the case of *A. vivesii*, it was determined to be a sterile hybrid by Sepúlveda-Orengo (2000, entire), indicating that *A. vivesii* is unable to sexually reproduce and is unlikely to perpetuate into the future. This research also demonstrated that the only known population was comprised of clonal individuals resulting from rhizome proliferations, some of which eventually fragmented. Despite the extensive botanical research and inventories in Puerto Rico by the late Dr. George Proctor (former authority on ferns across the Caribbean) and other experts, *A. vivesii* remains only known from the type locality. Additionally, during the latest field surveys at the type locality (2017), the Fairchild team was unable to locate material that morphologically matched the type specimen (despite similarities), nor any clonal stand of *Adiantum* material as described by Proctor and Sepúlveda-Orengo (Possley et al. 2020, p. 6). The team collected a variety of morphotypes from the type locality for genetic sequencing at the University of Florida; however, none of the material was a genetic match to *A. vivesii*. These results suggest that *A. vivesii* is extirpated from the only known location. Recent research has confirmed that *A. vivesii* is a sterile hybrid that does not have the capacity to establish a lineage that could be lost to extinction; consequently, we have determined that it does not qualify as a listable entity under the Act.

#### Determination of *Adiantum vivesii*'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 adding species to, removing species from, or reclassifying species on the Lists. Our regulations (50 CFR 424.11(e)) state that the Secretary shall delist a species if the Secretary finds that, after conducting a status review based on the best scientific and commercial data available:

- (1) The species is extinct;
- (2) The species does not meet the definition of an endangered species or a threatened species. In making such a determination, we consider the same five factors and apply the same standards set forth as for listing and reclassification; or

(3) The listed entity does not meet the statutory definition of a species.

Under section 3 of the Act and our implementing regulations at 50 CFR 424.02, a “species” includes any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature. As such, a species under the Act may include any taxonomically defined species of fish, wildlife, or plant; any taxonomically defined subspecies of fish, wildlife, or plant; or any distinct population segment of any vertebrate species as determined by us per our Policy Regarding the Recognition of District Vertebrate Population Segments Under the Endangered Species Act (61 FR 4722; February 7, 1996).

Our implementing regulations provide further guidance on determining whether a particular taxon or population is a species or subspecies for the purposes of the Act; under 50 CFR 424.11(a), the Service shall rely on standard taxonomic distinctions and the biological expertise of the agency and the scientific community in determining whether a particular taxon or population is a species for the purposes of the Act. For each species, section 4(b)(1)(A) of the Act mandates that we use the best scientific and commercial data available for each individual species under consideration. Given the wide range of taxa and the multitude of situations and types of data that apply to species under review, the application of a single set of criteria that would be applicable to all taxa is not practical or useful. In addition, because of the wide variation in kinds of available data for a given circumstance, we do not assign a priority or weight to any particular type of data, but must consider it in the context of all the available data for a given species.

To determine what constitutes a listable entity under the Act, we evaluate and consider all available types of data, which may or may not include genetic information, to determine whether a taxon is a distinguishable species or subspecies. As a matter of practice, and in accordance with our regulations, in deciding which alternative taxonomic interpretations to recognize, the Service rely on the professional judgment available within the Service and the scientific community to evaluate the most recent taxonomic studies and other relevant information available for the subject species. Therefore, we continue to make listing decisions based solely on the best scientific and commercial data available for each species under consideration on a case-by-case basis.

In making our determination whether we recognize *A. vivesii* as a listable entity, we considered all available data that may inform the taxonomy of *A. vivesii*, such as ecology, morphology, and genetics, as well as expert opinion (Riibe 2020, pers. comm.; Sessa 2020, pers. comm). Here, we considered the ability of an entity to establish a lineage that could be lost to extinction in our determination of whether the species constituted a listable entity.

After a review of all information available, we propose to remove *A. vivesii* from the List of Endangered and Threatened Plants at 50 CFR 17.12. Since the time of listing, additional studies have shown that *A. vivesii* is not a distinct species, but rather consists of a sterile hybrid with rhizome proliferations that lacks the ability to establish a lineage that could be lost to extinction. As a result, we have determined that the entity is not a listable entity under the Act.

#### *Determination of Status*

Our review of the best available scientific and commercial information available indicates that *A. vivesii* is not a valid taxonomic entity and, therefore, does not meet the definition of a species under the Act. Accordingly, we propose to remove *A. vivesii* from the List of Endangered and Threatened Plants per 50 CFR 424.11(e)(3).

#### **Effects of This Rule**

This proposed rule, if made final, would revise 50 CFR 17.12(h) by removing *A. vivesii* from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to *A. vivesii*. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect *A. vivesii*. There is no critical habitat designated for *A. vivesii*, so there would be no effect to 50 CFR 17.96.

#### **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 determining a species' listing status under the 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. We have determined that there are no Tribal lands that may be affected by this proposal.

#### **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 Caribbean Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

## Authors

The primary authors of this proposed rule are the staff members of the Fish and Wildlife Service's Species Assessment Team and the Caribbean 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.

#### § 17.12 [Amended]

■ 2. In § 17.12(h) amend the table by removing the entry for “*Adiantum vivesii*” under “FERNS AND ALLIES” from the List of Endangered and Threatened Plants.

#### Martha Williams,

*Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2021–16248 Filed 7–29–21; 8:45 am]

**BILLING CODE 4333–15–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0015; FF09E21000 FXES1111090000 212]

RIN 1018–BB27

#### Endangered and Threatened Wildlife and Plants; Lesser Prairie-Chicken; Threatened Status With Section 4(d) Rule for the Northern Distinct Population Segment and Endangered Status for the Southern Distinct Population Segment

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule; extension of comment period.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are extending the comment period on our June 1, 2021, proposed rule to list two distinct

population segments (DPSs) of the lesser prairie-chicken (*Tympanuchus pallidicinctus*), a grassland bird known from southeastern Colorado, western Kansas, eastern New Mexico, western Oklahoma, and the Texas Panhandle under the Endangered Species Act of 1973, as amended (Act). We are extending the proposed rule's comment period for 30 days to give all interested parties an additional opportunity to comment on the proposed rule. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rule.

**DATES:** The comment period on the proposed rule that published June 1, 2021, at 86 FR 29432, is extended. We will accept comments received or postmarked on or before September 1, 2021.

**ADDRESSES:** *Comment submission:* 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 the 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–R2–ES–2021–0015, 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 Public Comments, below, for more information).

#### FOR FURTHER INFORMATION CONTACT:

Debra Bills, Field Supervisor, Arlington Ecological Services Field Office, 2005 NE Green Oaks Blvd. Suite 140, Arlington, TX 76006; telephone 817–277–1129. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service at 800–877–8339.

#### SUPPLEMENTARY INFORMATION:

## Background

On June 1, 2021, we published a proposed rule (86 FR 29432) to list the Southern DPS of the lesser prairie-chicken as endangered and the Northern DPS of the lesser prairie-chicken as threatened with a rule issued under section 4(d) of the Act. The proposed rule opened a 60-day comment period, ending August 2, 2021, and announced public hearings on July 8 and 14, 2021. On June 11, 2021, we received a request to extend the public comment period. With this document, we extend the public comment period for an additional 30 days, as specified above in **DATES**.

## Public Comments

We will accept written comments and information during the extended comment period on our proposed rule to list the Southern and Northern DPSs of the lesser prairie-chicken. We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposal will be based on the best scientific and commercial data available and will be as accurate and as effective as possible. Our final determination will take into consideration all comments and any additional information we receive during the open comment period on the proposed rule.

Because we will consider all comments and information we receive during the open comment period, our final determinations may differ from our June 1, 2021, proposed rule (86 FR 29432). Based on the new information we receive (and any comments on that new information), we may conclude that the Southern DPS is threatened instead of endangered, or that the Northern DPS is endangered instead of threatened, or we may conclude that either DPS does not warrant listing as either an endangered species or a threatened species. In addition, we may change the parameters of the prohibitions or the exceptions to those prohibitions in the proposed rule issued under section 4(d) of the Act (*i.e.*, the “proposed 4(d) rule”) for the Northern DPS if we conclude it is appropriate in light of comments and new information received. For example, we may expand the prohibitions in the proposed 4(d) rule for the Northern DPS to include prohibiting additional activities if we conclude that those additional activities are not compatible with conservation of the species. Conversely, we may establish additional exceptions to the prohibitions in the final rule if we conclude that the activities would facilitate or are

compatible with the conservation and recovery of the species.

If you already submitted comments or information on the June 1, 2021, proposed rule, please do not resubmit them. Any such comments are incorporated as part of the public record of the rulemaking proceeding, and we will fully consider them in the preparation of our final determinations.

Comments should be as specific as possible. 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 assert.

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 species 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 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 your 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 the proposed rule, will be available for public inspection on <http://www.regulations.gov> at FWS–R2–ES–2021–0015.

#### **Authors**

The primary authors of this document are the staff members of the Fish and Wildlife Service’s Species Assessment Team and the Arlington Ecological Services Field Office.

#### **Authority**

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

#### **Martha Williams,**

*Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2021–16260 Filed 7–29–21; 8:45 am]

**BILLING CODE 4333–15–P**

# Notices

Federal Register

Vol. 86, No. 144

Friday, July 30, 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

### National Agricultural Statistics Service

#### Notice of Intent To Request Revision and Extension of a Currently Approved Information Collection

**AGENCY:** National Agricultural Statistics Service, Agriculture (USDA).

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 this notice announces the intention of the National Agricultural Statistics Service (NASS) to request revision and extension of a currently approved information collection, the Stocks Reports. Revision to burden hours will be needed due to changes in the size of the target population, sampling design, and/or questionnaire length.

**DATES:** Comments on this notice must be received by September 28, 2021 to be assured of consideration.

**ADDRESSES:** You may submit comments, identified by docket number 0535-0007, by any of the following methods:

- *Email:* [OMBOfficer@nass.usda.gov](mailto:OMBOfficer@nass.usda.gov). Include docket number above in the subject line of the message.
- *E-fax:* (855) 838-6382.
- *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250-2024.

• *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250-2024.

**FOR FURTHER INFORMATION CONTACT:**

Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-2707. Copies of

this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690-2388 or at [ombofficer@nass.usda.gov](mailto:ombofficer@nass.usda.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Stocks Reports.

*OMB Control Number:* 0535-0007.

*Expiration Date of Approval:* March 31, 2022.

*Type of Request:* Intent to Seek Approval to Revise and Extend an Information Collection for 3 years.

*Abstract:* The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, stocks, disposition, and prices. The *Stocks Report* surveys, provide estimates of stocks of grains, hops, oilseeds, peanuts, potatoes, and rice that are stored off-farm. These off-farm stocks are combined with on-farm stocks to estimate stocks in all positions. The grain *Stocks Reports* are a principle economic indicator as defined by OMB. Stocks statistics are used by the U.S. Department of Agriculture to help administer programs; by State agencies to develop, research, and promote the marketing of products; and by producers and buyers to find their best market opportunity(s). The *Stocks Reports* are instrumental in providing timely, accurate data to help grain market participants. Since the previous approval, NASS made minor adjustments to the number of respondents contacted and the overall respondent burden based on regular list maintenance activities. The current expiration date for this docket is March 31, 2022. NASS intends to request that the survey be approved for another 3 years.

*Authority:* These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995, Public Law 104-13 (44 U.S.C. 3501, *et seq.*), and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance,

“Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA),” **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

*Estimate of Burden:* This information collection comprises 14 individual surveys that are conducted either 1, 4, 5, or 12 times a year for an estimated total of 23,880 responses. Average reporting burden for this collection of information ranges from 10 to 25 minutes per response.

*Respondents:* Farms and businesses.  
*Estimated Number of Respondents:* 6,340.

*Estimated Total Annual Burden on Respondents:* 5,000 hours.

*Comments:* Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, July 26, 2021.

**Kevin L. Barnes,**

*Associate Administrator.*

[FR Doc. 2021-16257 Filed 7-29-21; 8:45 am]

**BILLING CODE 3410-20-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Fremont and Winema Resource Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Fremont and Winema 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 Fremont—Winema National Forest within Klamath and Lake counties, 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/fremont-winema/workingtogether/advisorycommittees>.

**DATES:** The meeting will be held on August 19, 2021, 9:00 a.m.–4:00 p.m., Pacific Daylight Time.

All RAC meetings are subject to cancellation. For status of meetings 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. 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:** RAC Coordinator Avery Kool by phone at 541-219-0372 or via email at [avery.kool@usda.gov](mailto:avery.kool@usda.gov).

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

**SUPPLEMENTARY INFORMATION:** The purpose of the meeting is to:

1. Elect a Chair and Vice Chair;
2. Hear from Title II project proponents and discuss project proposals;
3. Make funding recommendations on Title II projects; and
4. Schedule the next meeting.

This meeting is open to the public. The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement at any of the meetings should request in writing by August 18, 2021, 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 RAC Coordinator Avery Kool, 303 OR-31, Paisley, Oregon, 97636; or by email to [avery.kool@usda.gov](mailto:avery.kool@usda.gov).

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

Dated: July 26, 2021.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2021-16334 Filed 7-29-21; 8:45 am]

**BILLING CODE 3411-15-P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### Information Collection: Forest Service Pilot and Aircraft Record Forms

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice; request for comment; correction.

**SUMMARY:** The Forest Service published a document in the **Federal Register** on July 20, 2021, concerning request for comments on a renewal with revisions of a currently approved information collection. The document contained an incorrect telephone number with updated contact information and text:

**ADDRESSES:**

- *Email:* [paul.linse@usda.gov](mailto:paul.linse@usda.gov).
- *Telephone:* 202-557-1545.
- *Mail:* Paul Linse, Assistant Director Aviation, Fire and Aviation Management, USDA Forest Service, 1400 Independence Avenue SW, Mailstop 1107, Washington DC 20250-1107.
- *Hand Delivery/Courier:* Paul Linse, Assistant Director Aviation, USDA Forest Service, Fire and Aviation Management, 1400 Independence Avenue SW, Mailstop 1107, Washington DC 20250-1107.

The public may inspect comments received at USDA Forest Service, Fire and Aviation Management, 1400 Independence Avenue SW, Washington DC 20250, during normal business

hours. Visitors are encouraged to call ahead to 202-205-1483 to facilitate entry into the building.

#### Correction

In the **Federal Register** of July 20, 2021, in FR Doc. 2021, Vol. 86, No. 136, on page 38265, in the third column, correct under the **ADDRESSES** caption to read:

- *Email:* [paul.linse@usda.gov](mailto:paul.linse@usda.gov).
- *Telephone:* 202-205-1410.
- *Mail:* John Nelson, Airworthiness Branch Chief, Fire and Aviation Management, USDA Forest Service, National Interagency Fire Center, 3833 South Development Avenue, Boise, ID 83705.
- *Hand Delivery/Courier:* John Nelson, Airworthiness Branch Chief, Fire and Aviation Management, USDA Forest Service, National Interagency Fire Center, 3833 South Development Avenue, Boise, ID 83705.

The public may inspect comments received at USDA Forest Service, Fire and Aviation Management, USDA Forest Service, National Interagency Fire Center, 3833 South Development Avenue, Boise, ID 83705, during normal business hours. Visitors are encouraged to call ahead to 208-387-5356 to facilitate entry into the building.

**FOR FURTHER INFORMATION CONTACT:** Paul Linse, Assistant Director Aviation, Fire and Aviation Management, 202-205-1410. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays

**Correction:** On page 38265, in the third column, correct under the **FOR FURTHER INFORMATION CONTACT** caption to read:

**FOR FURTHER INFORMATION CONTACT:** Paul Linse, Assistant Director Aviation, Fire and Aviation Management, 202-205-1410. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 twenty-four hours a day, every day of the year, including holidays.

**Jaelith Rivera,**

*Acting Deputy Chief, State & Private Forestry.*

[FR Doc. 2021-16322 Filed 7-29-21; 8:45 am]

**BILLING CODE 3411-15-P**



**DEPARTMENT OF AGRICULTURE****Office of Partnerships and Public Engagement**

[FOA No.: OPPE-016]

**Catalog of Federal Domestic Assistance (CFDA) No.: 10.443—  
Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers and Veteran Farmers and Ranchers****Correction**

In notice document 2021-15702 beginning on page 39990 in the issue of Monday, July 26, 2021, make the following correction:

On page 39990, in the third column, under **FOR FURTHER INFORMATION CONTACT**., in the tenth line “Email: 501Grants@usda.gov” should read “Email: 2501Grants@usda.gov”.

[FR Doc. C1-2021-15702 Filed 7-29-21; 8:45 am]

BILLING CODE 0099-10-D

**DEPARTMENT OF AGRICULTURE****Rural Business-Cooperative Service**

[Docket #: RBS-21-BUSINESS-0021]

**Notice of Solicitation of Applications for Inviting Applications for the Rural Microentrepreneur Assistance Program for Fiscal Year 2022**

**AGENCY:** Rural Business-Cooperative Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Rural Business-Cooperative Service (Agency), an agency of the United States Department of Agriculture (USDA), is making an initial announcement to invite applications for loans and grants under the Rural Microentrepreneur Assistance Program (RMAP) for fiscal year (FY) 2022, subject to the availability of funding. This notice is being issued in order to allow applicants sufficient time to leverage financing, prepare and submit their applications, and give the Agency time to process applications within FY22. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. RMAP provides the following types of support: loan only, combination loan and technical assistance grant, and subsequent technical assistance grants to Microenterprise Development Organizations (MDO). An announcement will be made on the Agency website: <https://www.rd.usda.gov/> regarding any amount received in the FY22 appropriations. All

applicants are responsible for any expenses incurred in developing their applications or any costs incurred prior to the obligation date.

**DATES:** The deadlines for completed applications to be received in the USDA Rural Development State Office for quarterly funding competitions are no later than 4:30 p.m. (local time) on: First Quarter, September 30, 2021; Second Quarter, December 31, 2021; Third Quarter, March 31, 2022; and Fourth Quarter, June 30, 2022.

The subsequent microlender technical assistance grant (existing MDOs with a microentrepreneur revolving loan fund) will be made, non-competitively, based on the microlender's microlending activity and availability of funds. To determine the microlender technical assistance grant awards for FY22, if available, the Agency will use the microlender's outstanding balance of microloans as of June 30, 2022, to calculate the eligible grant amount. MDOs that are in compliance with the terms of their loan agreement may apply for this annual grant.

**ADDRESSES:** Applications must be submitted electronically to the USDA Rural Development State Office for the state where the project is located. Applicants are encouraged to contact their respective Rural Development State Office for an email contact to submit an electronic application prior to the submission deadline date(s). A list of the USDA Rural Development State Office contacts can be found at: <http://www.rd.usda.gov/contact-us/state-offices>.

This funding opportunity will be made available for informational purposes on [Grants.gov](https://www.grants.gov).

**FOR FURTHER INFORMATION CONTACT:** Shamika Johnson at [shamika.johnson@usda.gov](mailto:shamika.johnson@usda.gov), Program Management Division, Business Programs, Rural Business-Cooperative Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Mail Stop 3226, Room 5160-S, Washington, DC 20250-3226, or call (202) 720-1400. For further information on this notice, please contact the USDA Rural Development State Office in the State in which the applicant's headquarters is located. A list of Rural Development State Office contacts is provided at the following link: <http://www.rd.usda.gov/contact-us/state-offices>.

**SUPPLEMENTARY INFORMATION:** Pursuant to Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (also known as the Congressional Review Act or CRA), 5 U.S.C. 801 *et seq.*, the Office of Information and Regulatory Affairs in the Office of

Management and Budget designated this action as a major rule, as defined by 5 U.S.C. 804(2), because it is likely to result in an annual effect on the economy of \$100,000,000 or more. Accordingly, there is a 60-day delay in the effective date of this action. Application rating, ranking and selection will not begin until after September 30, 2021. Therefore, the 60-day delay required by the CRA is not expected to have a material impact upon the administration and/or implementation of the RMAP Program.

**Overview**

**Federal Agency Name:** Rural Business-Cooperative Service.

**Funding Opportunity Title:** Rural Microentrepreneur Assistance Program.

**Announcement Type:** Initial Announcement.

**Assistance Listing (formally Catalog of Federal Domestic Assistance Number):** 10.870.

**Funding Opportunity Number (grants.gov):** RD-RBS-21-01-RMAP.

**Dates:** The deadlines for completed applications to be received in the USDA Rural Development State Office for quarterly funding competitions are no later than 4:30 p.m. (local time) on: First Quarter, September 30, 2021; Second Quarter, December 31, 2021; Third Quarter, March 31, 2022, and Fourth Quarter, June 30, 2022.

**Administrative:** If two or more applications have the same score and funds are not available to fund both projects, the Administrator may prioritize applications to help the program achieve overall geographic diversity. The Agency encourages applicants to consider projects that will advance the following key priorities:

- Assisting Rural communities recover economically from the impacts of the COVID-19 pandemic, particularly disadvantaged communities;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

**I. Program Description**

**A. Purpose of the Program.** The purpose of RMAP is to support the development and ongoing success of rural Microentrepreneurs and Microenterprises, each as defined in 7 CFR 4280.302. The regulation can be accessed online at <https://www.ecfr.gov>. To accomplish this purpose, RMAP provides direct loans and grants to MDOs. Loan funds are used by the MDO to establish or recapitalize a revolving

loan program for making microloans to a rural microentrepreneur business. Grant funds are used by the MDO to provide technical assistance and entrepreneurship training to rural individuals and businesses.

**B. Statutory Authority.** RMAP is authorized by Section 379E of the Consolidated Farm and Rural Development Act (Pub. L. 87–128), as amended, and is codified as 7 U.S.C. 2008s. Regulations are contained in 7 CFR part 4280, subpart D and can be found online at <https://www.ecfr.gov>. Assistance provided to rural areas under this program may include the provision of loans and grants to rural MDOs for the provision of microloans to rural microenterprises and microentrepreneurs; provision of business-based training and technical assistance to rural microborrowers and potential microborrowers; and other such activities as deemed appropriate by the Secretary to ensure the development and ongoing success of rural microenterprises. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart D.

**C. Definition of Terms.** The definitions applicable to this notice are published at 7 CFR 4280.302.

**D. Application Awards.** The Agency will review, evaluate, and score applications received in response to this notice based on the provisions found in 7 CFR part 4280, subpart D, and as indicated in this notice. However, the Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this notice whether or not funding is appropriated for this program in FY 22. Information required to be in the application is specified in 7 CFR 4280.315. For entities applying for program loan funds to become an RMAP microlender only, the following items are also required: (1) Form RD 1910–11, “Applicant Certification Federal Collection Policies for Consumer or Commercial Debts;” (2) Demonstration that the applicant is eligible to apply to participate in this program; and (3) Certification by the applicant that it cannot obtain sufficient credit elsewhere to fund the activities called for under this program with similar rates and terms.

Current MDO entities may be eligible for subsequent annual microlender technical assistance grants that are awarded subject to funding availability and determined non-competitively based on Agency appropriations for the FY. The MDO must submit a prescribed worksheet, listing the outstanding balance of their microloans and

unexpended grant funds as of June 30, 2022, and a letter certifying that their organization still meets all the requirements set forth in 7 CFR part 4280, subpart D, and that no significant changes have occurred within the last year that would affect its ability to carry out the MDO functions. In addition, all MDOs who request Subsequent Annual Microlender Technical Assistance Grants must complete their reporting into the Lenders Interactive Network Connection (LINC) for the Federal fiscal quarter ending June 30, 2022 which will verify the outstanding balance of their microloans as stated in their request for grant funds. The deadline for reporting into LINC and requesting a technical assistance grant is no later than 4:30 p.m. (local time) on August 1, 2022.

## II. Federal Award Information

**Type of Awards:** Loans and/or Grants.  
**Fiscal Year Funds:** FY 2022.

**Available Funds.** Anyone interested in submitting an application for funding under these Programs is encouraged to consult the Rural Development Notices of Solicitation of Applications website at <http://www.rd.usda.gov/newsroom/notices-solicitation-applications-nosas>.

**Maximum Award:** The Agency anticipates the following maximum amounts per award: Loans—\$500,000; Grants—\$100,000.

**Application Funding Competition Dates:** First Quarter, September 30, 2021; Second Quarter, December 31, 2021; Third Quarter, March 31, 2022 and Fourth Quarter, June 30, 2022.

## III. Eligibility Information

**A. Eligible Applicants.** Eligible applicants are domestic organizations that are non-profit entities, Indian tribes, or public institutions of higher education, and eligible applicants must provide training and technical assistance, make microloans, facilitate access to capital, or have an effective plan or program to deliver such services. The applicant must meet the eligibility requirements in 7 CFR 4280.310 and must not be delinquent on any Federal debt or otherwise disqualified from participation in this program to be eligible to apply. The Agency will check the System for Award Management (SAM) to determine if the applicant has been debarred or suspended at the time of application and also prior to funding any grant award. All other restrictions in this notice will apply.

**B. Cost Sharing or Matching.** The Federal share of the eligible project cost of a microborrower’s project funded under this notice shall not exceed 75 percent. The cost share requirement

shall be met by the microlender in accordance with the requirements specified in 7 CFR 4280.311(d).

The MDO is required to provide a match of not less than 15 percent of the total amount of the grant in the form of matching funds, indirect costs, or in-kind goods or services.

**C. Other Eligibility Requirements.** Applications will only be accepted from eligible MDOs. Eligible MDOs must score a minimum of 60 points out of 100 points to be considered to receive an award. Awards for each Federal fiscal quarter will be based on ranking with the highest-ranking applications being funded first, subject to available funding.

**D. Completeness Eligibility.** All applications must be submitted as a complete application, in one package. Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are otherwise not suitable for evaluation. Such applications will be withdrawn.

## IV. Application and Submission Information

**A. Address to Request Application Package.** For further information, entities wishing to apply for assistance should contact the Rural Development State Office as identified in the **ADDRESSES** section of this notice to obtain electronic copies of the application package.

An MDO may submit an initial application for a loan with a microlender technical assistance grant, or an initial or subsequent loan-only (without a microlender technical assistance grant). Loan applications must be submitted electronically to the State Office where the project is located and must be organized in the same order set forth in 7 CFR 4280.315. Applicants are strongly encouraged to contact their respective Rural Development State Office for an email contact to submit an electronic application prior to the submission deadline date(s).

**B. Content and Form of Application Submission.** An application must contain all of the required elements outlined in 7 CFR 4280.315. Each application must address the applicable scoring criteria presented in 7 CFR 4280.316 for the type of funding being requested.

**C. Dun and Bradstreet Data Universal Numbering System and System for Award Management.** All applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at (866) 705–5711 or at <http://fedgov.dnb.com/>

*webform* or any subsequent unique entity identifier number. Each applicant applying for loan or grant funds must (i) be registered in the System for Award Management (SAM) before submitting its application and (ii) provide a valid unique entity identifier in its application, unless determined exempt under 2 CFR 25.110. Applicants must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

The Agency will not make an award until the applicant has complied with all applicable DUNS (unique entity identifier) and SAM requirements. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

**D. Submission Dates and Times.** Competitions for the available loan and grant funds will be made quarterly for applications that are received no later than 11:59 p.m. (local time) on: First Quarter, September 30, 2021; Second Quarter, December 31, 2021; Third Quarter, March 31, 2022; and Fourth Quarter, June 30, 2022.

Unless withdrawn by the applicant, completed applications that receive a score of at least 60 (the minimum required to be considered for funding), but have not yet been funded, will be retained by the Agency for consideration in subsequent reviews through a total of four consecutive quarterly reviews. Applications that remain unfunded after four quarterly reviews, including the initial quarter in which the application was competed, will not be considered further for an award.

**E. Explanation of Dates.** Applications must be in the USDA Rural Development State Office by the dates and times as indicated above to compete for available funds in that fiscal quarter. If the due date falls on a Saturday, Sunday, or Federal holiday, the application is due the next business day.

**F. Intergovernmental Review.** This program is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. Intergovernmental consultation will

occur for the assistance to MDOs in accordance with the process and procedures outlined in 2 CFR part 415, subpart C. Assistance to rural microenterprises will not require intergovernmental review. Applications from Federally recognized Indian tribes are not subject to this requirement.

Rural Development will conduct intergovernmental consultation using RD Instruction 1970–I “Intergovernmental Review,” available in any Rural Development office, on the internet at <http://www.rd.usda.gov/sites/default/files/1970i.pdf> and in 2 CFR part 415, subpart C. Note that not all States have chosen to participate in the intergovernmental review process. A list of participating States is available at the following website: <https://www.whitehouse.gov/omb/management/office-federal-financial-management/>.

**G. Funding Restrictions.** No funds made available under this notice shall be used for those ineligible purposes outlined in 7 CFR 4280.313(e).

## V. Application Review Information

**A. Criteria.** All eligible and complete applications for new loan and grant funds will be evaluated and scored based on the selection criteria and weights contained in 7 CFR part 4280, subpart D. A copy of the regulation can be accessed online at <https://www.ecfr.gov>. Failure to address any one of the criteria by the application deadline will result in the application being determined ineligible and the application will not be considered for funding. An application must receive at least 60 points to be considered for funding in the quarter in which it is scored.

**B. Review and Selection Process.** The State Offices will review applications to determine if they are eligible for assistance based on requirements contained in 7 CFR part 4280, subpart D. If determined eligible, the application will be submitted to the National Office, where it will be reviewed and prioritized by ranking each application received in that quarter, in highest to lowest score order. All applications will be funded from the highest to lowest score until funds have been exhausted for each funding cycle. Funding of projects is subject to the MDO’s satisfactory submission of the additional items required by that subpart and the USDA Rural Development Letter of Conditions.

## VI. Federal Award Administration Information

**A. Award Notices.** Successful applicants will receive notification for

funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the award will be approved. Provided the application and eligibility requirements have not changed, an application not selected will be reconsidered for three subsequent funding competitions for a total of four competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application. Unsuccessful applications will receive notification by mail, detailing why the application was unsuccessful.

**B. Administrative and National Policy Requirements.** Additional requirements that apply to MDOs selected for this program can be found in 7 CFR part 4280, subpart D. The USDA and the Agency have adopted the USDA grant regulations at 2 CFR chapter IV. This regulation incorporates the new Office of Management and Budget regulations 2 CFR part 200 and 2 CFR part 400 for monitoring and servicing RMAP funding.

**C. Reporting.** In addition to any reports required by 2 CFR part 200 and 2 CFR part 400, the MDO must provide reports as required by 7 CFR part 4280, subpart D. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

Intermediaries must collect and maintain data provided by Ultimate Recipients on race, sex, and national origin and must also ensure that Ultimate Recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with Office of Management and Budget (OMB) **Federal Register** notice, “Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity” (62 FR 58782), October 30, 1997. Sex data will be collected in accordance with Title IX of the Education Amendments of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the Ultimate Recipients must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975,

Executive Order 12250, Executive Order 13166 Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

**VII. Federal Awarding Agency Contacts**

For general questions about this notice, please contact your USDA Rural Development State Office as provided in the **ADDRESSES** section of this notice.

**VIII. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995, the information collection requirements associated with the Rural Microentrepreneur Assistance Program, as covered in this notice, have been approved by OMB under OMB Control Number 0570-0062.

**IX. Nondiscrimination Statement**

In accordance with Federal civil rights law and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, 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.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (e.g., Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720-2600 (voice and TTY); or the Federal Relay Service at (800) 877-8339.

To file a program discrimination complaint, a complainant should complete a Form AD-3027, *USDA Program Discrimination Complaint Form*, which can be obtained online at <https://www.ocio.usda.gov/document/ad-3027>, from any USDA office, by calling (866) 632-9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD-3027 form or letter must be submitted to USDA by:

- (1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410;
- (2) *Fax:* (833) 256-1665 or (202) 690-7442; or
- (2) *Email:* [program.intake@usda.gov](mailto:program.intake@usda.gov).

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

**Mark Brodziski,**

*Acting Administrator, Rural Business-Cooperative Service, USDA Rural Development.*

[FR Doc. 2021-16246 Filed 7-29-21; 8:45 am]

**BILLING CODE 3410-XY-P**

**DEPARTMENT OF COMMERCE**

**Economic Development Administration**

**Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance**

**AGENCY:** Economic Development Administration, U.S. Department of Commerce.

**ACTION:** Notice and opportunity for public comment.

**SUMMARY:** The Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of the firms contributed importantly to the total or partial separation of the firms' workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

**SUPPLEMENTARY INFORMATION:**

**LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION OF ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE**

[7/9/2021 through 7/22/2021]

Firm name	Firm address	Date accepted for investigation	Product(s)
Peripheral Visions, Inc .....	30741 3rd Avenue, Black Diamond, WA 98010.	7/13/2021	The firm manufactures parts for clinical laboratory equipment.
Utley's, LLC .....	31-23 61st Street, Woodside, NY 11377	7/13/2021	The firm manufactures prototypes of product packaging.
Heavy Metals, LLC d/b/a Ideal Industries, Inc.	1705 E Street West, Vinton, IA 52349 ....	7/20/2021	The firm manufactures miscellaneous metal parts for industrial equipment.
Burgess South Tacoma Way, LLC d/b/a Custom Comfort Mattress, LLC.	1635 East Portland Avenue, Tacoma, WA 98421.	7/22/2021	The firm manufactures mattresses.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication

of this notice. These petitions are received pursuant to section 251 of the Trade Act of 1974, as amended.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.8 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which

these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

**Bryan Borlik,**

*Director.*

[FR Doc. 2021-16225 Filed 7-29-21; 8:45 am]

**BILLING CODE 3510-WH-P**

**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board****[Order No. 2115]****Reorganization of Foreign-Trade Zone 114 Under Alternative Site Framework Peoria, Illinois**

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones (FTZ) Act provides for “. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,” and authorizes the Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

*Whereas*, the Board adopted the alternative site framework (ASF) (15 CFR 400.2(c)) as an option for the establishment or reorganization of zones;

*Whereas*, the Economic Development Council, Inc., grantee of Foreign-Trade Zone 114, submitted an application to the Board (FTZ Docket B–1–2021, docketed January 8, 2021) for authority to reorganize under the ASF with a service area of Peoria, Cass, Champaign, Dewitt, Ford, Fulton, Knox, Livingston, Logan, Macon, Marshall, Mason, McDonough, McLean, Menard, Piatt, Putnam, Sangamon, Schuyler, Stark, Tazewell, Woodford Counties and portions of Bureau and LaSalle Counties, Illinois, in and adjacent to the Peoria Customs and Border Protection port of entry, FTZ 114’s existing Sites 7 and 8 would be categorized as magnet sites, existing Site 9 would be removed from the zone, existing Sites 1, 2, 4, 5 and 6 would be categorized as usage-driven sites, and the grantee proposes an initial ASF Subzone with three sites (Subzone 114H);

*Whereas*, notice inviting public comment was given in the **Federal Register** 86 FR 3117, January 14, 2021) and the application has been processed pursuant to the FTZ Act and the Board’s regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner’s report, and finds that the requirements of the FTZ Act and the Board’s regulations are satisfied;

*Now, therefore*, the Board hereby orders:

The application to reorganize FTZ 114 under the ASF is approved, subject to

the FTZ Act and the Board’s regulations, including Section 400.13, to the Board’s standard 2,000-acre activation limit for the zone, to an ASF sunset provision for magnet sites that would terminate authority for Sites 7 and 8 if not activated within five years from the month of approval, and to an ASF sunset provision for subzone/usage-driven sites that would terminate authority for Sites 1, 2, 4, 5 and 6 as well as Sites 1–3 of Subzone 114H if no foreign-status merchandise is admitted for a *bona fide* customs purpose within three years from the month of approval.

Dated: July 26, 2021.

**Christian B. Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 2021–16251 Filed 7–29–21; 8:45 am]

**BILLING CODE 3510–DS–P**

**DEPARTMENT OF COMMERCE****Foreign-Trade Zones Board****[B–55–2021]****Foreign-Trade Zone (FTZ) 22—Chicago, Illinois; Notification of Proposed Production Activity; AbbVie, Inc. (Pharmaceutical Products); North Chicago and Lake County, Illinois**

AbbVie, Inc. (AbbVie), submitted a notification of proposed production activity to the FTZ Board for its facilities in North Chicago and Lake County, Illinois. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on July 16, 2021.

AbbVie already has authority to produce pharmaceutical products within Subzone 22S. The current request would add a finished product and foreign status materials to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and specific finished product described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt AbbVie from customs duty payments on the foreign-status materials/components used in export production. On its domestic sales, for the foreign-status materials/components noted below and in the existing scope of authority, AbbVie would be able to choose the duty rates during customs entry procedures that apply to upadacitinib intermediate material (duty rate 6.5%). AbbVie would be able to avoid duty on foreign-status

components which become scrap/waste. Customs duties also could possibly be deferred or reduced on foreign-status production equipment.

The materials sourced from abroad are 2-Amino-3,5-dibromopyrazine and potassium tert-butylate (duty rate ranges from 3.7 to 6.5%). The request indicates that the foreign-status materials are subject to duties under Section 301 of the Trade Act of 1974 (Section 301), depending on the country of origin. The applicable Section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board’s Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The closing period for their receipt is September 8, 2021.

A copy of the notification will be available for public inspection in the “Reading Room” section of the Board’s website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Christopher Wedderburn at [Chris.Wedderburn@trade.gov](mailto:Chris.Wedderburn@trade.gov).

Dated: July 27, 2021.

**Andrew McGilvray,**

*Executive Secretary.*

[FR Doc. 2021–16295 Filed 7–29–21; 8:45 am]

**BILLING CODE 3510–DS–P**

**DEPARTMENT OF COMMERCE****International Trade Administration****[A–821–831]****Investigation of Urea Ammonium Nitrate Solutions From the Russian Federation: Opportunity To Comment on the Russian Federation’s Status as a Market Economy Country Under the Antidumping Duty Laws**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As part of the less-than-fair-value investigation of urea ammonium nitrate solutions (UAN) from the Russian Federation (Russia), we found that the petitioner has provided sufficient evidence for the Department of Commerce (Commerce) to examine whether to continue to treat Russia as a market economy (ME) country for purposes of the antidumping duty law. As a result, Commerce is seeking public comment and information with respect to the relevant statutory factors.

**DATES:** To be assured of consideration, written comments and information must

be received no later than August 30, 2021.

**ADDRESSES:** You may submit comments and information at the Federal eRulemaking Portal: [www.Regulations.gov](http://www.Regulations.gov). The identification number is ITA–2021–0003.

**Instructions:** You must submit comments by the above method to ensure that the comments are received and considered. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments and information received are a part of the public record and will generally be posted to <http://www.regulations.gov> without change. All Personal Identifying Information (for example, name, address, *etc.*) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information. Any comments and information must be in English or be accompanied by English translations to be considered. Commerce will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only. Supporting documents and any comments we receive on this docket may be viewed at <http://www.regulations.gov/ITA-2021-0003>.

**FOR FURTHER INFORMATION CONTACT:** Leah Wils-Owens, Office of Policy, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4203.

**SUPPLEMENTARY INFORMATION:**

**Background**

Following a detailed economic analysis, Commerce has treated Russia as a market economy country since 2002.<sup>1</sup> On June 30, 2021, Commerce received a petition on imports of UAN from Russia filed in proper form by CF Industries Nitrogen, LLC and its subsidiaries, Terra Nitrogen, Limited Partnership and Terra International (Oklahoma) LLC (collectively, the petitioner). In accordance with section 732(b) of the Tariff Act of 1930, as amended (the Act), the petitioner alleged that imports of UAN from Russia are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the

Act, and that such imports are materially injuring and threaten to injure an industry in the United States. The petition also alleged that Russia should be treated as a non-market economy country for purposes of this investigation. Based upon our examination of the petition on UAN from Russia, the petition met the requirements of section 732 of the Act and Commerce subsequently initiated an AD investigation on July 20, 2021.

**Opportunity for Public Comment and Information**

Commerce invites public comment (including arguments, facts, and/or other information) on any aspect of Russia’s status as a market economy with regard to the factors listed in section 771(18)(B) of the Act, which are as follows:

- (i) The extent to which the currency of the foreign country is convertible into the currency of other countries;
- (ii) The extent to which wage rates in the foreign country are determined by free bargaining between labor and management;
- (iii) The extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country;
- (iv) The extent of government ownership or control of the means of production;
- (v) The extent of government control over allocation of resources and over price and output decisions of enterprises; and
- (vi) Such other factors as the administering authority considers appropriate.

Any comments and information must be received no later than August 30, 2021.

**Notification to Interested Parties**

This determination is issued and published in accordance with sections 751(b) and 771(18)(C)(ii) of the Act.

Dated: July 23, 2021.

**Ryan Majerus,**

*Deputy Assistant Secretary for Policy and Negotiations.*

[FR Doc. 2021–16252 Filed 7–29–21; 8:45 am]

**BILLING CODE 3510–DS–P**

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

[A–122–855, A–570–024, A–533–861, A–523–810]

**Polyethylene Terephthalate Resin From Canada, China, India, and Oman: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders**

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** As a result of these expedited sunset reviews, the Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on polyethylene terephthalate (PET) resin from Canada, the People’s Republic of China (China), India, and the Sultanate of Oman (Oman) would likely lead to the continuation or recurrence of dumping at the levels indicated in the “Final Results of Review” section of this notice.

**DATES:** Applicable July 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Thomas Martin, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3936.

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 6, 2016, the Department of Commerce (Commerce) published AD orders on imports of PET resin from Canada, China, India, and Oman.<sup>1</sup> On April 1, 2021, Commerce published the notice of initiation of the first sunset reviews of the *AD Orders*, pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).<sup>2</sup>

In April 2021, Commerce received notices of intent to participate within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i) from DAK Americas, LLC, Indorama Ventures USA Inc., Nan Ya Plastics Corporation America (collectively, domestic interested parties).<sup>3</sup> These domestic interested parties claim interested party status under section 771(9)(C) of the Act, as

<sup>1</sup> See *Certain Polyethylene Terephthalate Resin from Canada, the People’s Republic of China, India, and the Sultanate of Oman: Amended Final Affirmative Antidumping Determination (Sultanate of Oman) and Antidumping Duty Orders*, 81 FR 27979 (May 6, 2016) (*AD Orders*).

<sup>2</sup> See *Institution of Five-Year (Sunset) Reviews*, 86 FR 17197 (April 1, 2021).

<sup>3</sup> See Domestic Interested Parties’ Letter, “Domestic Interested Parties’ Notice of Intent to Participate,” dated April 15, 2021.

<sup>1</sup> See *Inquiry into the Status of the Russian Federation as a Non-Market Economy Country Under the U.S. Antidumping Law* (A–821–816), dated June 6, 2002.

manufacturers in the United States of the domestic like product. On April 30, 2021, Commerce received timely and adequate substantive responses to the notice of initiation from the domestic interested parties within the 30-day deadline specified in 19 CFR 351.218(d)(3).<sup>4</sup>

On May 3, 2021, two respondent interested parties, CG Roxane LLC (CG Roxane) and Niagara Bottling LLC (Niagara) filed substantive responses. Commerce determined that the respondent interested parties did not establish that they met the requirement in 19 CFR 351.218(e)(1)(ii)(A) and, thus, determined that their responses were inadequate.<sup>5</sup> On May 21, 2021, Commerce notified the U.S. International Trade Commission that we did not receive an adequate substantive response from respondent interested parties.<sup>6</sup> As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted expedited (120-day) sunset reviews of the *AD Orders*.

#### Scope of the Orders

The merchandise covered by the *AD Orders* is PET resin having an intrinsic viscosity of at least 0.70, but not more than 0.88, deciliters per gram. The scope includes blends of virgin PET resin and recycled PET resin containing 50 percent or more virgin PET resin content by weight, provided such blends meet the intrinsic viscosity requirements above. The scope includes all PET resin meeting the above specifications regardless of additives introduced in the manufacturing process. The merchandise subject to the *AD Orders* is properly classified under subheading 3907.60.00.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the *AD Orders* is dispositive.

<sup>4</sup> See Domestic Interested Parties' Letter, "Domestic Interested Parties' Substantive Response to Notice of Initiation," dated April 30, 2021.

<sup>5</sup> See CG Roxane's Letter, "Sunset Review of Polyethylene Terephthalate Resin from China and Oman: Response to Notice of Institution," dated May 3, 2021; see also Niagara's letter, "Sunset Review of Polyethylene Terephthalate Resin from China: Response to Notice of Institution," dated May 3, 2021. For details regarding the submissions of CG Roxane and Niagara, see Memorandum, "Issues and Decision Memorandum for the Expedited First Sunset Reviews of the Antidumping Duty Orders on Certain Polyethylene Terephthalate Resin from Canada, the People's Republic of China, India, and the Sultanate of Oman," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>6</sup> See Commerce's Letter, "Sunset Reviews Initiated on March 31, 2021", dated May 21, 2021.

#### Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews, including the likelihood of continuation or recurrence of dumping in the event of revocation of the *AD Orders* and the magnitude of the margins likely to prevail if the *AD Orders* were to be revoked, is provided in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn>.

#### Final Results of Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of the *AD Orders* would be likely to lead to the continuation or recurrence of dumping, and the magnitude of the weighted-average dumping margins likely to prevail are up to 13.60 percent for Canada, 19.41 percent for India, 126.58 percent for China, and 7.62 percent for Oman.

#### Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

#### Notification to Interested Parties

We are issuing and publishing the final results and this notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act, and 19 CFR 351.218(e)(1)(ii)(C)(2) and 351.221(c)(5).

Dated: July 23, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Topics Discussed in the Issues and Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Orders
- IV. History of the Orders
- V. Legal Framework
- VI. Discussion of the Issues
  1. Likelihood of Continuation or Recurrence of Dumping
  2. Magnitude of the Dumping Margins Likely to Prevail
- VII. Final Results of Sunset Reviews
- VIII. Recommendation

[FR Doc. 2021–16253 Filed 7–29–21; 8:45 am]

**BILLING CODE 3510-DS-P**

#### DEPARTMENT OF COMMERCE

##### International Trade Administration

[A–580–897]

#### Large Diameter Welded Pipe From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018–2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that sales of large diameter welded pipe (welded pipe) from the Republic of Korea (Korea) were not made at less than normal value during the period of review (POR) August 27, 2018, through April 30, 2020. We invite interested parties to comment on these preliminary results.

**DATES:** Applicable July 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Kate Johnson or Sergio Balbontin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4929 or (202) 482–6478, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On May 2, 2019, Commerce published the antidumping duty order on welded pipe from Korea.<sup>1</sup> On July 10, 2020, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an

<sup>1</sup> See *Large Diameter Welded Pipe from the Republic of Korea: Amended Final Affirmative Antidumping Determination and Antidumping Duty Order*, 84 FR 18767 (May 2, 2019) (*Order*).



administrative review of the *Order*, covering twenty companies.<sup>2</sup>

On July 21, 2020, Commerce tolled all preliminary and final results deadlines in administrative reviews by 60 days.<sup>3</sup>

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), on March 10, 2021, Commerce determined that it was not practicable to complete the preliminary results of this review within 245 days and extended the deadline for the preliminary results of this review by 120 days, until July 30, 2021.<sup>4</sup>

For a detailed description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.<sup>5</sup>

### Scope of the Order

The product covered by this *Order* is welded pipe from Korea. For a full description of the scope, see the Preliminary Decision Memorandum.

### Methodology

Commerce is conducting this review in accordance with section 751(a) of the Act. For a full description of the methodology underlying these preliminary results, see the Preliminary Decision Memorandum. A list of topics included in the Preliminary Decision Memorandum is included as an appendix to this notice.

The Preliminary Decision Memorandum is a public document and is available via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum is available at <http://enforcement.trade.gov/frn/>.

### Rate for Non-Selected Companies

The statute and Commerce's regulations do not address the establishment of a weighted-average dumping margin to be determined for companies not selected for individual examination when Commerce limits its

examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the weighted-average dumping margin for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

In this review, we have preliminarily calculated a weighted-average dumping margin for each of the mandatory respondents, Hyundai RB Co., Ltd. (Hyundai RB) and Hyundai Steel Company (Hyundai Steel), that is zero percent. Where the rates for the individually examined companies are all zero, *de minimis*, or determined entirely using facts available, section 735(c)(5)(B) of the Act instructs that Commerce "may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated." One such reasonable method is to weight average the zero and *de minimis* rates, and the rates determined entirely pursuant to facts available. In fact, the SAA states that this is the "expected" method in such circumstances.<sup>6</sup> Accordingly, we have determined the weighted-average dumping margin for the eighteen companies that were not selected for individual examination based on the weighted average of the weighted-average dumping margins calculated for Hyundai RB and Hyundai Steel, *i.e.*, zero percent, consistent with section 735(c)(5)(B) of the Act. These are the only rates determined in this review for individually examined companies, and, thus, are applied to the eighteen firms not selected for individual examination.

### Preliminary Results of the Review

We preliminarily determine that the following weighted-average dumping margins exist for the period of August 27, 2018, through April 30, 2020:

Exporter and/or producer	Weighted-average dumping margin (percent)
Hyundai RB Co., Ltd .....	0.00
Hyundai Steel Company .....	0.00
Non-Examined Companies <sup>7</sup> .....	0.00

### Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results to parties within five days after the date of public announcement of the preliminary results.<sup>8</sup>

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice.<sup>9</sup> Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.<sup>10</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>11</sup> Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions to Commerce must be filed using ACCESS<sup>12</sup> and must be served on interested parties.<sup>13</sup> An electronically filed document must be received successfully in its entirety by Commerce's electronic records system, ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due. Note

<sup>7</sup> See Appendix II.

<sup>8</sup> See 19 CFR 351.224(b).

<sup>9</sup> See 19 CFR 351.309(c)(1)(ii).

<sup>10</sup> See 19 CFR 351.309(d)(1) and (2); see also *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

<sup>11</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>12</sup> See 19 CFR 351.303.

<sup>13</sup> See 19 CFR 351.303(f).

<sup>2</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 41540 (July 10, 2020).

<sup>3</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews," dated July 21, 2020.

<sup>4</sup> See Memorandum, "Extension of Deadline for Preliminary Results of 2018–2020 Antidumping Duty Administrative Review," dated March 10, 2021.

<sup>5</sup> See Memorandum, "Large Diameter Welded Pipe from the Republic of Korea: Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review; 2018–2020," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>6</sup> See Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103–316, vol. 1 (1994) (SAA) at 873.



that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>14</sup>

#### Assessment Rates

Pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1), Commerce will determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this administrative review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

For an individually examined respondent whose weighted-average dumping margin is not *de minimis* (*i.e.*, less than 0.50 percent), upon completion of the final results, Commerce intends to calculate importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales to the total entered value of those sales. Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific, per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.<sup>15</sup> To determine whether an importer-specific, per-unit assessment rate is *de minimis*, in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where either a respondent's weighted-average dumping margin is zero or *de minimis*, or an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>16</sup> For entries of

subject merchandise during the POR produced by each individually examined respondent for which it did not know its merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>17</sup>

For the companies which were not selected for individual examination, we intend to direct CBP to assess antidumping duties at a rate equal to their weighted-average dumping margin determined in the final results.

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future cash deposits of estimated duties, where applicable.<sup>18</sup>

#### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently-completed segment of this proceeding in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior completed review, or the less-than-fair value (LTFV) investigation, but the producer is, then the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of subject merchandise; and (4) the cash deposit rate for all other producers and exporters will continue to be 7.08 percent, the all-others rate established in the LTFV investigation.<sup>19</sup>

These cash deposit requirements, when imposed, shall remain in effect until further notice.

#### Final Results of Review

Unless otherwise extended, Commerce intends to issue the final results of this administrative review, including the results of our analysis of issues raised by the parties in the written comments, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(1).

#### Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

#### Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: July 26, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

#### Appendix I

##### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Scope of the Order
- IV. Discussion of the Methodology
- V. Currency Conversion
- VI. Recommendation

#### Appendix II

##### Review-Specific Average Rate Applicable to Companies Not Selected for Individual Review

1. AJU Besteel Co., Ltd.
2. Chang Won Bending Co., Ltd.
3. Daiduck Piping Co., Ltd.
4. Dong Yang Steel Pipe Co., Ltd.
5. Dongbu Incheon Steel Co., Ltd.
6. EEW KHPC Co., Ltd.
7. EEW Korea Co., Ltd.
8. Histeel Co., Ltd.
9. Husteel Co., Ltd.
10. Kiduck Industries Co., Ltd.
11. Kum Kang Kind. Co., Ltd.
12. Kumsoo Connecting Co., Ltd.
13. Nexteel Co., Ltd.
14. SeAH Steel Corporation
15. Seonghwa Industrial Co., Ltd.
16. SIN-E B&P Co., Ltd.
17. Steel Flower Co., Ltd.

<sup>14</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

<sup>15</sup> See 19 CFR 351.212(b)(1).

<sup>16</sup> See 19 CFR 352.106(c)(2); see also *Antidumping Proceeding: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification*, 77 FR 8101, 8103 (February 14, 2012).

<sup>17</sup> See *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>18</sup> See section 751(a)(2)(C) of the Act.

<sup>19</sup> See *Order*.

18. WELTECH Co., Ltd.

[FR Doc. 2021-16325 Filed 7-29-21; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[C-570-140]

#### Certain Mobile Access Equipment and Subassemblies Thereof From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers and exporters of certain mobile access equipment and subassemblies thereof (mobile access equipment) from the People's Republic of China (China). The period of investigation is January 1, 2020, through December 31, 2020. Interested parties are invited to comment on this preliminary determination.

**DATES:** Applicable July 30, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Theodore Pearson or Michael Romani, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-2631 or (202) 482-0198, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

This preliminary determination is made in accordance with section 703(b) of the Trade Act of 1930, as amended (the Act). Commerce published the notice of initiation of this investigation on March 25, 2021.<sup>1</sup> On May 4, 2021,

Commerce postponed the preliminary determination of this investigation, and the revised deadline is now July 26, 2021.<sup>2</sup>

For a complete description of the events that followed the initiation of this investigation, see the Preliminary Decision Memorandum.<sup>3</sup> A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <http://access.trade.gov>.

#### Scope of the Investigation

The products covered by this investigation are certain mobile access equipment from China. For a complete description of the scope of this investigation, see Appendix I.

#### Scope Comments

In accordance with the preamble to Commerce's regulations,<sup>4</sup> the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage (*i.e.*, scope).<sup>5</sup> We received comments regarding the scope, which we have addressed in the Preliminary Scope Memorandum.<sup>6</sup>

#### Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each of the subsidy programs found countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.*, a financial contribution by an "authority" that gives rise to a benefit to the recipient, and that the subsidy is specific.<sup>7</sup>

Commerce notes that, in making these findings, it relied, in part, on facts available and, because it finds that one

or more respondents did not act to the best of their ability to respond to Commerce's requests for information, it drew an adverse inference where appropriate in selecting from among the facts otherwise available.<sup>8</sup> For further information, see "Use of Facts Otherwise Available and Adverse Inferences" in the Preliminary Decision Memorandum.

#### All-Others Rate

Sections 703(d) and 705(c)(5)(A) of the Act provide that, in the preliminary determination, Commerce shall determine an estimated all-others rate for companies not individually examined. The rate shall be an amount equal to the weighted average of the estimated subsidy rates established for those companies individually examined, excluding any rates that are zero, *de minimis*, or rates based entirely under section 776 of the Act.

In this investigation, as discussed in the Preliminary Decision Memorandum, Commerce calculated individual estimated countervailable subsidy rates for Lingong Group Jinan Heavy Machinery Co., Ltd. (LGMG) and Zhejiang Dingli Machinery Co., Ltd. (Dingli) that were not zero, *de minimis*, or based entirely under section 776 of the Act. For the companies not individually examined,<sup>9</sup> we are applying to the non-selected companies the average of the net subsidy rates calculated for LGMG and Dingli, which we calculated using the publicly ranged sales data submitted by LGMG and Dingli.<sup>10</sup> This methodology to establish the all-others subsidy rate is consistent with our practice and section 705(c)(5)(A) of the Act.

#### Preliminary Determination

Commerce preliminarily determines that the following estimated countervailable subsidy rates exist:

<sup>1</sup> See *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Initiation of Countervailing Duty Investigation*, 86 FR 15905 (March 25, 2021) (*Initiation Notice*).

<sup>2</sup> See *Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Postponement of Preliminary Determination in the Countervailing Duty Investigation*, 86 FR 23681 (May 4, 2021).

<sup>3</sup> See Memorandum, "Decision Memorandum for the Preliminary Determination in the Countervailing Duty Investigation of Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>4</sup> See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27323 (May 19, 1997).

<sup>5</sup> See *Initiation Notice*.

<sup>6</sup> See Memorandum, "Certain Mobile Access Equipment and Subassemblies Thereof from the People's Republic of China: Scope Comments Decision Memorandum for the Preliminary Determination," dated concurrently with, and hereby adopted by, this notice (Preliminary Scope Memorandum).

<sup>7</sup> See sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

<sup>8</sup> See sections 776(a) and (b) of the Act.

<sup>9</sup> Excluding companies determined to be non-responsive. See Preliminary Determination Memorandum at section "Application of AFA: Non-Responsive Companies" for details.

<sup>10</sup> With two respondents under examination, Commerce normally calculates (A) a weighted-average of the estimated subsidy rates calculated for the examined respondents; (B) a simple average of the estimated subsidy rates calculated for the examined respondents; and (C) a weighted-average of the estimated subsidy rates calculated for the examined respondents using each company's publicly-ranged U.S. sale quantities for the merchandise under consideration. Commerce then compares (B) and (C) to (A) and selects the rate closest to (A) as the most appropriate rate for all other producers and exporters. See, *e.g.*, *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53663 (September 1, 2010).

Company	Subsidy rate (percent)
Lingong Group Jinan Heavy Machinery Co., Ltd <sup>11</sup> .....	4.09
Zhejiang Dingli Machinery Co., Ltd <sup>12</sup> .....	23.43
Jinan Zhongtian International Trading <sup>13</sup> .....	435.06
Zhongshan Shiliwang Machinery Co., LTD <sup>14</sup> .....	435.06
Yantai Empire Industry and Trade <sup>15</sup> .....	435.06
Shandong Lede Machinery <sup>16</sup> .....	435.06
Shandong Huifeng Auto Fittings <sup>17</sup> .....	435.06
Jinan Zhongtang Mechanical Equipment <sup>18</sup> .....	435.06
Lingong Group Jinan Heavy Machinery (Mobile Elevating Work Platforms) <sup>19</sup> .....	435.06
All Others .....	20.47

**Suspension of Liquidation**

In accordance with section 703(d)(1)(B) and (d)(2) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of entries of subject merchandise as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Further, pursuant to 19 CFR 351.205(d), Commerce will instruct CBP to require a cash deposit equal to the rates indicated above.

**Disclosure**

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of this notice in accordance with 19 CFR 351.224(b).

**Verification**

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination. Normally, Commerce verifies information using standard procedures, including an on-site examination of original accounting, financial, and sales documentation. However, due to current travel restrictions in response to the global COVID-19 pandemic, Commerce may be unable to conduct on-site verification in this investigation. While we consider the possibility of conducting an on-site

verification for some of the information submitted by the respondents, we may also need to verify the information relied upon in making the final determination through alternative means in lieu of an on-site verification. Commerce intends to notify parties of its verification procedures.

**Public Comment**

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Commerce will notify interested parties of the deadline for the submission of case briefs. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than seven days after the deadline date for case briefs.<sup>20</sup> Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this investigation are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce within 30 days after the date of publication of this notice. Requests should contain the party's name, address, and telephone number, the number of participants, whether any participant is a foreign national, and a list of the issues to be discussed. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date and time

of the hearing two days before the scheduled date.

Parties are reminded that briefs and hearing requests are to be filed electronically using ACCESS and that electronically filed documents must be received successfully in their entirety by 5 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.<sup>21</sup>

**International Trade Commission Notification**

In accordance with section 703(f) of the Act, Commerce will notify the International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination.

**Notification to Interested Parties**

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act and 19 CFR 351.205(c).

Dated: July 26, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

**Appendix I**

**Scope of the Investigation**

The merchandise covered by this investigation consists of certain mobile access equipment, which consists primarily of boom lifts, scissor lifts, and material telehandlers, and subassemblies thereof. Mobile access equipment combines a mobile (self-propelled or towed) chassis, with a lifting device (e.g., scissor arms, boom assemblies) for mechanically lifting persons, tools and/or materials capable of reaching a working height of ten feet or more, and a coupler that provides an attachment point for the lifting device, in addition to other components. The scope of this investigation covers mobile access equipment and subassemblies thereof whether finished or

<sup>21</sup> See *Temporary Rule*.

<sup>11</sup> Cross-owned affiliate is Linyi Lingong Machinery Group Co., Ltd.

<sup>12</sup> Cross-owned affiliates are Zhejiang Green Power Machinery Co., Ltd. and Shengda Fenghe Automotive Equipment Co., Ltd.

<sup>13</sup> See Preliminary Decision Memorandum at section "Application of AFA: Non-Responsive Companies."

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> See 19 CFR 351.309; see also 19 CFR 351.303 (for general filing requirements); *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19*, 85 FR 17006 (March 26, 2020) (*Temporary Rule*); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 29615 (May 18, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

unfinished, whether assembled or unassembled, and whether the equipment contains any additional features that provide for functions beyond the primary lifting function.

Subject merchandise includes, but is not limited to, the following subassemblies:

- Scissor arm assemblies, or scissor arm sections, for connection to chassis and platform assemblies. These assemblies include: (1) Pin assemblies that connect sections to form scissor arm assemblies, and (2) actuators that power the arm assemblies to extend and retract. These assemblies may or may not also include blocks that allow sliding of end sections in relation to frame and platform, hydraulic hoses, electrical cables, and/or other components;

- boom assemblies, or boom sections, for connection to the boom turntable, or to the chassis assembly, or to a platform assembly or to a lifting device. Boom assemblies include telescoping sections where the smallest section (or tube) can be nested in the next larger section (or tube) and can slide out for extension and/or articulated sections joined by pins. These assemblies may or may not include pins, hydraulic cylinders, hydraulic hoses, electrical cables, and/or other components;

- chassis assemblies, for connection to scissor arm assemblies, or to boom assemblies, or to boom turntable assemblies. Chassis assemblies include: (1) Chassis frames, and (2) frame sections. Chassis assemblies may or may not include axles, wheel end components, steering cylinders, engine assembly, transmission, drive shafts, tires and wheels, crawler tracks and wheels, fuel tank, hydraulic oil tanks, battery assemblies, and/or other components;

- boom turntable assemblies, for connection to chassis assemblies, or to boom assemblies. Boom turntable assemblies include turntable frames. Boom turntable assemblies may or may not include engine assembly, slewing rings, fuel tank, hydraulic oil tank, battery assemblies, counterweights, hoods (enclosures), and/or other components.

Importation of any of these subassemblies, whether assembled or unassembled, constitutes unfinished mobile access equipment for purposes of this investigation.

Processing of finished and unfinished mobile access equipment and subassemblies such as trimming, cutting, grinding, notching, punching, slitting, drilling, welding, joining, bolting, bending, beveling, riveting, minor fabrication, galvanizing, painting, coating, finishing, assembly, or any other processing either in the country of manufacture of the in-scope product or in a third country does not remove the product from the scope. Inclusion of other components not identified as comprising the finished or unfinished mobile access equipment does not remove the product from the scope.

The scope excludes forklifts, vertical mast lifts, mobile self-propelled cranes and motor vehicles that incorporate a scissor arm assembly or boom assembly. Forklifts are material handling vehicles with a working attachment, usually a fork, lifted along a vertical guide rail with the operator seated or

standing on the chassis behind the vertical mast. Vertical mast lifts are person and material lifting vehicles with a working attachment, usually a platform, lifted along a vertical guide rail with an operator standing on the platform. Mobile self-propelled cranes are material handling vehicles with a boom attachment for lifting loads of tools or materials that are suspended on ropes, cables, and/or chains, and which contain winches mounted on or near the base of the boom with ropes, cables, and/or chains managed along the boom structure. The scope also excludes motor vehicles (defined as a vehicle driven or drawn by mechanical power and manufactured primarily for use on public streets, roads, and highways, but does not include a vehicle operated only on a rail line pursuant to 49 U.S.C. 30102(a)(7)) that incorporate a scissor arm assembly or boom assembly. The scope further excludes vehicles driven or drawn by mechanical power operated only on a rail line that incorporate a scissor arm assembly or boom assembly. The scope also excludes: (1) Rail line vehicles, defined as vehicles with hi-rail gear or track wheels, and a fixed (non-telescopic) main boom, which perform operations on rail lines, such as laying rails, setting ties, or other rail maintenance jobs; and (2) certain rail line vehicle subassemblies, defined as chassis subassemblies and boom turntable subassemblies for rail line vehicles with a fixed (non-telescopic) main boom.

Certain mobile access equipment subject to this investigation is typically classifiable under subheadings 8427.10.8020, 8427.10.8030, 8427.10.8070, 8427.10.8095, 8427.20.8020, 8427.20.8090, 8427.90.0020 and 8427.90.0090 of the Harmonized Tariff Schedule of the United States (HTSUS). Parts of certain mobile access equipment are typically classifiable under subheading 8431.20.0000 of the HTSUS. While the HTSUS subheadings are provided for convenience and customs purposes only, the written description of the merchandise under investigation is dispositive.

## Appendix II

### List of Topics Discussed in the Preliminary Decision Memorandum

- I. Summary
- II. Background
- III. Period of Investigation
- IV. Injury Test
- V. Scope Comments
- VI. Scope of the Investigation
- VII. Diversification of China's Economy
- VIII. Use of Facts Otherwise Available and Application of Adverse Inferences
- IX. Subsidies Valuation
- X. Interest Rate Benchmarks, Discount Rates, Input, Electricity, and Land Benchmarks
- XI. Analysis of Programs
- XII. Recommendation

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**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-580-870]

#### Certain Oil Country Tubular Goods From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2018-2019

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) determines that certain oil country tubular goods (OCTG) from the Republic of Korea (Korea) are being sold in the United States at prices below normal value. The period of review (POR) is September 1, 2018, through August 31, 2019.

**DATES:** Applicable July 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Davina Friedmann, Mark Flessner, or Frank Schmitt, 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) 482-0698, (202) 482-6312, or (202) 482-4880, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Background

On January 25, 2021, Commerce published the *Preliminary Results* of this administrative review.<sup>1</sup> We invited interested parties to comment on the *Preliminary Results*. Between February 25 and March 4, 2021, Commerce received timely filed case briefs and rebuttal briefs from various interested parties.<sup>2</sup> On April 28, 2021, we

<sup>1</sup> See *Certain Oil Country Tubular Goods from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2018-2019*, 86 FR 6868 (January 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

<sup>2</sup> See Maverick Tube Corporation, Tenaris Bay City, Inc., and IPSCO Tubulars Inc. (collectively, Maverick's) Letter, "Oil Country Tubular Goods from the Republic of Korea: Case Brief of Maverick Tube Corporation, Tenaris Bay City, Inc., and IPSCO Tubulars Inc.," dated February 25, 2021; United States Steel Corporation (U.S. Steel)'s Letter, "Oil Country Tubular Goods from the Republic of Korea: Case Brief of United States Steel Corporation," dated February 26, 2021; Hyundai Steel Company (Hyundai Steel)'s Letter, "Certain Oil Country Tubular Goods from the Republic of Korea—Case Brief," dated February 25, 2021; SeAH Steel Corporation (SeAH)'s Letter, "Administrative Review of the Antidumping Order on Oil Country Tubular Goods from Korea—Case Brief of SeAH Steel Corporation," dated February 25, 2021; Husteel Co., Ltd. (Husteel)'s Letter, "Oil Country Tubular Goods from the Republic of Korea, Case No. A-580-870: Husteel's Case Brief," dated February 25, 2021; AJU Besteel's Letter, "Certain

Continued

extended the deadline for the final results until July 23, 2021.<sup>3</sup>

For a complete description of the events that followed the *Preliminary Results* of this administrative review, see the Issues and Decision Memorandum.<sup>4</sup> The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at <http://enforcement.trade.gov/frn/index.html>.

These final results cover 53 companies.<sup>5</sup> Based on an analysis of the comments received, we have made changes to the weighted-average dumping margins determined for the respondents. The weighted-average dumping margins are listed in the "Final Results of Review" section, below. Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

#### Scope of the Order<sup>6</sup>

The merchandise covered by the *Order* is certain OCTG, which are

Oil Country Tubular Goods from the Republic of Korea—Letter in Support of Case Briefs," dated February 25, 2021; ILJIN's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea—Letter in Support of Case Briefs," dated February 25, 2021; Maverick's Letter, "Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of Maverick Tube Corporation, Tenaris Bay City, Inc. and IPSCO Tubular Inc.," dated March 4, 2021; U.S. Steel's Letter, "Oil Country Tubular Goods from the Republic of Korea: Rebuttal Brief of United States Steel Corporation," dated March 5, 2021; Hyundai Steel's Letter, "Certain Oil Country Tubular Goods from the Republic of Korea—Rebuttal Brief," dated March 4, 2021; SeAH's Letter, "Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Korea—Rebuttal Brief of SeAH Steel Corporation," dated March 5, 2021; and Husteel's Letter, "Oil Country Tubular Goods from Republic of Korea, Case No. A-580-870: Letter in Support of Respondents' Rebuttal Briefs," dated March 4, 2021.

<sup>3</sup> See Memorandum, "Oil Country Tubular Goods from the Republic of Korea: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review, 2018–2019," dated April 28, 2021.

<sup>4</sup> See Memorandum, "Issues and Decision Memorandum for the Final Results of the 2018–2019 Administrative Review of the Antidumping Duty Order on Certain Oil Country Tubular Goods from the Republic of Korea," dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

<sup>5</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 84 FR 61011 (November 12, 2021). The 53 companies consist of two mandatory respondents and 51 companies not individually examined.

<sup>6</sup> See *Certain Oil Country Tubular Goods from India, the Republic of Korea, Taiwan, the Republic*

hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish (e.g., whether or not plain end, threaded, or threaded and coupled) whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished (including limited service OCTG products) or unfinished (including green tubes and limited service OCTG products), whether or not thread protectors are attached. The scope of the *Order* also covers OCTG coupling stock. For a complete description of the scope of the *Order*, see the Issues and Decision Memorandum.

#### Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this review are addressed in the Issues and Decision Memorandum. The issues are identified in Appendix I to this notice.

#### Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the margin calculations for SeAH and Hyundai Steel. For a discussion of these changes, see the "Margin Calculations" section of the Issues and Decision Memorandum.

#### Rate for Non-Examined Companies

The statute and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}."

For these final results, we calculated a weighted-average dumping margin

of Turkey, and the Socialist Republic of Vietnam: *Antidumping Duty Orders; and Certain Oil Country Tubular Goods from the Socialist Republic of Vietnam: Amended Final Determination of Sales at Less Than Fair Value*, 79 FR 53691 (September 10, 2014) (*Order*).

that is not zero, *de minimis*, or determined entirely on the basis of facts available for SeAH. Accordingly, Commerce has assigned to the companies not individually examined (see Appendix II for a full list of these companies) a margin of 0.77 percent, which is SeAH's calculated weighted-average dumping margin for these final results.

#### Final Results of Review

Commerce determines that the following weighted-average dumping margins exist for the period September 1, 2018, through August 31, 2019:

Producer/exporter	Weighted-average dumping margins (percent)
Hyundai Steel Company .....	0.00
SeAH Steel Corporation .....	0.77
Non-examined companies <sup>7</sup> .....	0.77

#### Disclosure

Commerce intends to disclose the calculations performed for these final results of review within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

#### Assessment

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Where the respondent reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).<sup>8</sup> Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.<sup>9</sup> Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (i.e., 0.50 percent),

<sup>7</sup> See Appendix II for a full list of these companies.

<sup>8</sup> See 19 CFR 351.212(b)(1).

<sup>9</sup> *Id.*

Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.<sup>10</sup> Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis*, Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.<sup>11</sup>

For the companies which were not selected for individual review, we will assign an assessment rate based on the methodology described in the “Rates for Non-Examined Companies” section, above.

Consistent with Commerce’s assessment practice, for entries of subject merchandise during the POR produced by SeAH, Hyundai Steel, or the non-examined companies for which the producer did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>12</sup>

Consistent with its recent notice,<sup>13</sup> Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

### Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the companies listed in these final results will be equal to the weighted-average dumping margins established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior segment of this proceeding, the cash deposit rate will continue to be the company-specific rate

published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review or the original less-than-fair-value (LTFV) investigation, but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 5.24 percent,<sup>14</sup> the all-others rate established in the LTFV investigation. These cash deposit requirements, when imposed, shall remain in effect until further notice.

### Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce’s presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

### Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

### Notification to Interested Parties

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213.

Dated: July 23, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

### Appendix I—List of Topics Discussed in the Issues and Decision Memorandum

#### I. Summary

<sup>14</sup> See *Certain Oil Country Tubular Goods from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Determination*, 81 FR 59603 (August 30, 2016).

- II. Background
- III. Scope of the Order
- IV. Changes Since the *Preliminary Results*
- V. Rate for Non-Examined Companies
- VI. Discussion of the Issues

#### General Issues

- Comment 1–A: Lawfulness of Commerce’s Interpretation of the Particular Market Situation (PMS) Provision
- Comment 1–B: Evidence of a PMS
- Comment 1–C: Quantification of PMS Adjustment
- Comment 2: Differential Pricing
- Comment 3: Calculation of Constructed Value (CV) Profit and Selling Expenses

#### Hyundai Steel-Specific Issues

- Comment 4: Arm’s Length Adjustment for Services from Affiliate
- Comment 5: Transportation of OCTG from Affiliate
- Comment 6: Cost of Prime Products Sold in the United States
- Comment 7: Transfer Price as an Indirect Selling Expense
- Comment 8: Correcting Drafting Errors
- Comment 9: Hyundai Steel’s Entered Value
- Comment 10: U.S. Warehousing Expense
- Comment 11: Reallocating an Input as a Packing Expense

#### SeAH-Specific Issues

- Comment 12: PMS Adjustment in the Sales-Below-Cost Test
- Comment 13: Freight Revenue Cap
- Comment 14: Calculation of General and Administrative (G&A) Expenses Incurred by SeAH’s U.S. Affiliate
- Comment 15: Correction of a Ministerial Error in SeAH’s Preliminary Margin Program
- Comment 16: SeAH’s Kuwait Sales to Calculate Normal Value
- Comment 17: CEP Offset

#### VII. Recommendation

### Appendix II—List of Companies Not Individually Examined

1. AJU Besteel Co., Ltd.
2. Blue Sea Precision Tube Co., Ltd.
3. Bo Myung Metal Co., Ltd.
4. BUMA CE Co., Ltd.
5. Busung Steel Co., Ltd.
6. Chang Won Bending Co., Ltd.
7. Daeho P&C Co., Ltd.
8. Daou Precision Ind. Co.
9. Dongyang Steel Pipe Co., Ltd.
10. Dongbu Incheon Steel Co., Ltd.
11. Dongkuk Steel Mill Co., Ltd.
12. EEW Korea Co., Ltd.
13. Global Solutions Co., Ltd.
14. Hansol Metal Co., Ltd.
15. HiSteel Co., Ltd.
16. HPP Co., Ltd.
17. Husteel Co., Ltd.
18. Hyundai Group
19. Hyundai Corporation
20. Hyundai HYSCO
21. Hyundai RB Co., Ltd.
22. ILJIN Steel Corporation
23. Keonwoo Metals Co., Ltd.
24. K Steel Corporation
25. KF UBIS Co., Ltd.
26. Korea Steel Co., Ltd.
27. Kukje Steel Co., Ltd.
28. KPF Co., Ltd.
29. Kumkang Kind Co., Ltd.

<sup>10</sup> *Id.*

<sup>11</sup> See 19 CFR 351.106(c)(2).

<sup>12</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

<sup>13</sup> See *Notice of Discontinuation Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings*, 86 FR 3995 (January 15, 2021).

30. Kumsoo Connecting Co., Ltd.
31. Master Steel Corporation
32. MCK Co., Ltd.
33. MS Pipe Co., Ltd.
34. Msteel Co., Ltd.
35. Nexen Corporation
36. NEXTEEL Co., Ltd.
37. Pneumatic Plus Korea Co., Ltd.
38. POSCO International Corporation
39. PSG Co., Ltd.
40. Pusan Fitting Corporation
41. SeAH FS Co., Ltd.
42. Sejong Ind. Co., Ltd.
43. Seokyoung Steel & Technology Co., Ltd.
44. SIC Tube Co., Ltd.
45. ST Tubular Inc.
46. Sungkwang Bend Co., Ltd.
47. TGS Pipe Co., Ltd.
48. TJ Glovsteel Co., Ltd.
49. TSP Corporation
50. Union Pipe MFG Co., Ltd.
51. WSG Co., Ltd.

[FR Doc. 2021-16250 Filed 7-29-21; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-588-869]

#### Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products From Japan: Preliminary Results of Antidumping Duty Administrative Review; 2019-2020

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** The Department of Commerce (Commerce) preliminarily determines that diffusion-annealed, nickel-plated flat-rolled steel products (nickel-plated steel products) from Japan are being, or are likely to be, sold in the United States at less than normal value (NV) during the period of review (POR) May 1, 2019, through April 30, 2020.

**DATES:** Applicable July 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** Amaris Wade, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; (202) 482-3874, email: [amaris.wade@trade.gov](mailto:amaris.wade@trade.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

On July 10, 2020, based on timely requests for review, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review on nickel-plated steel products from Japan.<sup>1</sup> This review covers one producer/exporter of the

<sup>1</sup> See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 85 FR 41540 (July 10, 2020) (*Initiation Notice*).

subject merchandise, Toyo Kohan Co., Ltd. (Toyo Kohan).

On July 21, 2020, Commerce tolled all deadlines in administrative reviews by 60 days.<sup>2</sup> In March 2021, Commerce extended the preliminary results of this review to no later than July 30, 2021.<sup>3</sup> For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.<sup>4</sup>

#### Scope of the Order

The merchandise subject to the order is diffusion-annealed, nickel-plated flat-rolled steel products from Japan. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7212.50.0000 and 7210.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description remains dispositive.<sup>5</sup>

#### Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Tariff Act of 1930, as amended (the Act). Export price is calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at <https://access.trade.gov>. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at <http://enforcement.trade.gov/frn/>. A list of the topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice.

<sup>2</sup> See Memorandum, "Tolling of Deadlines for Antidumping and Countervailing Duty Administrative Reviews,"

dated July 21, 2020.

<sup>3</sup> See Memorandum, "Extension of the Deadline for Preliminary Results of the 2019-2020 Antidumping Duty Administrative Review," dated March 9, 2021.

<sup>4</sup> See Memorandum, "Decision Memorandum for the Preliminary Results of the 2019-2020 Administrative Review of the Antidumping Duty Order on Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan," dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

<sup>5</sup> For a complete description of the scope of the Order, see Preliminary Decision Memorandum.

#### Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margin exists for the period May 1, 2019, through April 30, 2020:

Producer or exporter	Weighted-average dumping margin (percent)
Toyo Kohan Co., Ltd .....	7.21%

#### Disclosure and Public Comment

Commerce intends to disclose the calculations performed in connection with these preliminary results to interested parties within five days after the date of publication of this notice.<sup>6</sup> Interested parties may submit case briefs to Commerce no later than 30 days after the date of publication of this notice.<sup>7</sup> Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the deadline for filing case briefs.<sup>8</sup> Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.<sup>9</sup> Case and rebuttal briefs should be filed using ACCESS.<sup>10</sup>

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically via ACCESS within 30 days after the date of publication of this notice.<sup>11</sup> Hearing requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.<sup>12</sup>

An electronically-filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Time on the established deadline.

Commerce intends to issue the final results of this administrative review, including the results of its analysis of

<sup>6</sup> See 19 CFR 351.224(b).

<sup>7</sup> See 19 CFR 351.309(c).

<sup>8</sup> See *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID-19; Extension of Effective Period*, 85 FR 41363 (July 10, 2020).

<sup>9</sup> See 19 CFR 351.309(c)(2) and (d)(2).

<sup>10</sup> See 19 CFR 351.303.

<sup>11</sup> See 19 CFR 351.310(c).

<sup>12</sup> See 19 CFR 351.310(d).



issues raised in any written briefs, not later than 120 days after the date of publication of this notice, unless otherwise extended.<sup>13</sup>

#### Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.<sup>14</sup>

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where either the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.<sup>15</sup>

Commerce's "automatic assessment" will apply to entries of subject merchandise during the POR produced by Toyo Kohan for which Toyo Kohan did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.<sup>16</sup>

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

#### Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or

withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for the companies listed above will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not covered in this review, the cash deposit rate will continue to be the company-specific cash deposit rate published for the most recently completed segment in which the company was reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the producer is, then the cash deposit rate will be the cash deposit rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 45.42 percent, the all-others rate established in the LTFV investigation.<sup>17</sup> These deposit requirements, when imposed, shall remain in effect until further notice.

#### Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

#### Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: July 26, 2021.

**Christian Marsh,**

*Acting Assistant Secretary for Enforcement and Compliance.*

#### Appendix

##### List of Topics Discussed in the Preliminary Decision Memorandum

##### I. Summary

<sup>17</sup> See *Diffusion-Annealed, Nickel-Plated Flat-Rolled Steel Products from Japan: Antidumping Duty Order*, 79 FR 30816 (May 29, 2014).

II. Background  
III. Scope of the Order  
IV. Discussion of the Methodology  
V. Currency Conversion  
VI. Recommendation

[FR Doc. 2021-16298 Filed 7-29-21; 8:45 am]

BILLING CODE 3510-DS-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB268]

#### Fisheries of the U.S. Caribbean; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

**ACTION:** Notice of SEDAR 80 Indices Topical Working Group Webinar I for U.S. Caribbean Queen Triggerfish.

**SUMMARY:** The SEDAR 80 stock assessment of U.S. Caribbean queen triggerfish will consist of a series of data webinars. See **SUPPLEMENTARY INFORMATION**.

**DATES:** The SEDAR 80 Indices Topical Working Group Webinar I will be held from 1 p.m. to 3 p.m. Eastern, August 19, 2021.

#### ADDRESSES:

*Meeting address:* The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

*SEDAR address:* 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

**FOR FURTHER INFORMATION CONTACT:** Julie A. Neer, SEDAR Coordinator; (843) 571-4366; email: [Julie.neer@safmc.net](mailto:Julie.neer@safmc.net).

**SUPPLEMENTARY INFORMATION:** The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data

<sup>13</sup> See section 751(a)(3)(A) of the Act.

<sup>14</sup> See 19 CFR 351.212(b).

<sup>15</sup> See section 751(a)(2)(C) of the Act.

<sup>16</sup> For a full discussion of this practice, see *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).



Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in the webinar are as follows:

- Participants will discuss and make recommendations regarding what indices data may be included in the assessment of U.S. Caribbean Queen Triggerfish.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

#### Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 5 business days prior to each workshop.

**Note:** The times and sequence specified in this agenda are subject to change.

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

Dated: July 27, 2021.

**Tracey L. Thompson,**

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

[FR Doc. 2021-16267 Filed 7-29-21; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB277]

#### Marine Mammals; File No. 25739

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

**ACTION:** Notice; receipt of application.

**SUMMARY:** Notice is hereby given that New England Aquarium, Central Wharf, Boston, MA 02110 (Responsible Party: Vikki Spruill), has applied in due form for a permit to conduct research on North Atlantic right whales (*Eubalaena glacialis*).

**DATES:** Written, telefaxed, or email comments must be received on or before August 30, 2021.

**ADDRESSES:** The application and related documents are available for review by selecting "Records Open for Public Comment" from the "Features" box on the Applications and Permits for Protected Species (APPS) home page, <https://apps.nmfs.noaa.gov>, and then selecting File No. 25739 from the list of available applications. These documents are also available upon written request via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov).

Written comments on this application should be submitted via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). Please include File No. 25739 in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request via email to [NMFS.Pr1Comments@noaa.gov](mailto:NMFS.Pr1Comments@noaa.gov). The request should set forth the specific reasons why a hearing on this application would be appropriate.

#### FOR FURTHER INFORMATION CONTACT:

Shasta McClenahan, Ph.D. or Amy Hapeman, (301) 427-8401.

**SUPPLEMENTARY INFORMATION:** The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing

the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

The applicant proposes to conduct research on North Atlantic right whales in U.S. and international waters of the North Atlantic Ocean. The objectives of the research are to assess, quantify, and track trends in the demographic characteristics of North Atlantic right whales, as well as identifying, quantifying and monitoring the long term trends in anthropogenic impacts on the species. North Atlantic right whales may be taken during vessel and aerial surveys, including an unmanned aircraft system, for counts, photo-identification, photography, videography, photogrammetry, thermal imaging, behavioral observations, passive acoustic recordings, and biological sampling (exhaled air, feces, sloughed skin, and skin and blubber biopsies). Samples may be imported and exported for analysis. Fin whales (*Balaenoptera physalus*), humpback whales (*Megaptera novaeangliae*), Atlantic white-sided dolphins (*Lagenorhynchus acutus*), and harbor porpoise (*Phocoena phocoena*) may be unintentionally harassed during right whale research. See the application for complete numbers of animals requested by species, life stage, and procedure. The permit is requested for 5 years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: July 26, 2021.

**Julia Marie Harrison,**

*Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2021-16300 Filed 7-29-21; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB262]

#### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Region, NMFS, has made a preliminary determination that an Exempted Fishing Permit application from the Commercial Fisheries Research Foundation contains all of the required information and warrants further consideration. Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed Exempted Fishing Permits.

**DATES:** Comments must be received on or before August 16, 2021.

**ADDRESSES:** You may submit written comments by the following method:

- *Email: nmfs.gar.efp@noaa.gov.*

Include in the subject line "Commercial Fisheries Research Foundation N-Viro Dredge EFP."

**FOR FURTHER INFORMATION CONTACT:**

Shannah Jaburek, Fishery Management Specialist, *shannah.jaburek@noaa.gov*, (978) 281-9135.

**SUPPLEMENTARY INFORMATION:** The Commercial Fisheries Research Foundation (CFRF) submitted a complete application for an Exempted Fishing Permit (EFP) to conduct commercial fishing activities that the Atlantic Sea Scallop Fishery Management Plan regulations would otherwise restrict. This EFP would exempt the participating vessels from: Observer program requirements at 50 CFR 648.11; days-at-sea (DAS) requirements at § 648.53; crew size restrictions at § 648.51(c); scallop fishing restrictions in Closed Area II—East at § 648.59(b)(2) and (g)(1); scallop trawl and dredge gear restrictions at § 648.51; and minimum size and possession restrictions for onboard sampling and scallop transplanting in § 648 subparts B and D through O.

The project was funded as part of the 2021 Atlantic Sea Scallop Research Set-Aside (RSA) Program, and is the second phase of a project funded by the 2019 Scallop RSA Program. This project would compare scallop catch rates, bycatch rates, and fuel savings from new designs of the N-Viro dredge to the standard New Bedford style dredge, as well as the version of the N-Viro dredge used in the 2019 study.

Experimental fishing will take place on four limited access general category (LAGC) vessels and one limited access (LA) scallop vessel. The LAGC vessels will target a total of 90 60-minute tows

using the N-Viro dredge in Statistical Areas 537, 539, and 611 over approximately 12 days of fishing. The LA vessel will conduct one, 6-day trip in Closed Area II—East. This area has a large population of small scallops and would allow for testing the effects of the N-Viro dredge on small scallop bycatch. The LA vessel will conduct 90 paired tows using the N-Viro dredge and a standard New Bedford dredge. Forty-five tows will be at the optimal speed for the N-Viro dredge, and 45 tows at the optimal speed for the New Bedford dredge.

The N-Viro dredge design will vary slightly between the LAGC and LA vessels participating in the project. For the LAGC vessels, the dredge will consist of a tow bar with four small dredges attached, while the LA vessel will use six small dredges attached to a tow bar. CFRF may test several modifications to the small dredge on the LAGC, including: (1) Increasing the number of tines on each frame from 9 to 12; (2) adding a pressure plate to the frame opening; (3) substituting a cutting bar in place of the adjustable tine bar on the dredge frames; (4) changing the twine top hang ration and attachment points; (5) moving a set of float cans to the front of the bag; (6) removing chain links between tow bar and individual frames to change frame tow angles; and (7) adding rubber chafing gear. Two of the small dredges will be standard. Results from the LAGC portion of the research will inform the design of the dredge used on the LA vessel.

Researchers from CFRF would accompany each trip taken under the EFP and direct all sampling activities. On all vessels, catch will be sorted into baskets after each tow. On LAGC vessels, catch from the standard and modified N-Viro dredges will be kept separate. On the LA vessel, catch from the N-Viro dredge and New Bedford dredge will be kept separate. The total number and weight of scallops and rocks will be recorded. Sub-legal scallops will then be separated from legal scallops, and both categories will be counted and weighed. A random subsample of each will be measured. All incidental catch will be identified to the species level, and will be counted, weighed, and measured.

On the LAGC trips, scallop catch would be kept for sale in accordance with current regulations. On the LA trips, catch would not be landed for sale unless the vessel has used 2021 Scallop RSA quota.

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: July 27, 2021.

**Jennifer M. Wallace,**

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

[FR Doc. 2021-16292 Filed 7-29-21; 8:45 am]

**BILLING CODE 3510-22-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Tornado Watch/Warning Post-Event Evaluation

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 January 15, 2021, (86 FR 3998) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* National Oceanic and Atmospheric Administration (NOAA), Commerce.

*Title:* Tornado Watch/Warning Post Event Evaluation.

*OMB Control Number:* 0648-XXXX.

*Form Number(s):* None.

*Type of Request:* Regular (New information collection).

*Number of Respondents:* 1,500.

*Average Hours per Response:* 0.1hrs.

*Total Annual Burden Hours:* 150.

*Needs and Uses:* This is a request for a new collection of information.

Each year over 1000 tornadoes affect communities across the United States, yet very little is known about how individuals receive, interpret, and respond to information from NOAA

relating to this hazard. In fact, only a small sample of tornadoes ever receive study, and most often those are only the largest tornadoes. No generalizable information on tornado warning response after real-world events exists. The National Weather Service (NWS) and National Severe Storms Laboratory have designed this data collection instrument to allow for more routine collection of this information. Respondents will include members of the U.S. public who have recently (within the previous 30 days) been in or near a tornado, and they will be asked questions about the ways they received, understood, and responded to NWS watch/warning information. The information would be collected by NWS forecasters using their Damage Assessment Tool (DAT) and also by members of the public who voluntarily access a web tool developed by the National Severe Storms Laboratory. The information will be used as part of a pilot study to explore methods for more systematically collecting post-event data in support of program evaluation for NOAA's tornado watch/warning system.

*Affected Public:* Individual Households.

*Frequency:* Whenever a tornado impacts an individual anywhere within the United States of America.

*Respondent's Obligation:* Voluntary.

*Legal Authority:* This information collection request may be viewed at [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function and entering the title of the collection.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021-16217 Filed 7-29-21; 8:45 am]

**BILLING CODE 3510-KE-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[RTID 0648-XB281]

**New England Fishery Management Council; Public Meeting**

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The New England Fishery Management Council (Council) is scheduling a public meeting of its Groundfish Committee via webinar to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from this group will be brought to the full Council for formal consideration and action, if appropriate.

**DATES:** This webinar will be held on Wednesday, August 18, 2021 at 9:30 a.m. Webinar registration URL information: <https://attendee.gotowebinar.com/register/5983603167717034766>.

**ADDRESSES:** Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

**FOR FURTHER INFORMATION CONTACT:** Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465-0492.

**SUPPLEMENTARY INFORMATION:**

**Agenda**

The Groundfish Committee will meet to discuss development of draft Framework Adjustment 63/ Specifications and Management Measures: Set 2022 total allowable catches for US/Canada management units of Eastern Georges Bank (GB) cod and Eastern GB haddock, and 2022-23 specifications for the GB yellowtail flounder stock: Set 2022-24 specifications for GB cod and Gulf of Maine (GOM) cod, and possibly adjust 2022 specifications for GB haddock and GOM haddock. They will adjust 2022 specifications for white hake based on the rebuilding plan. They will adopt additional measures to promote stock rebuilding, and develop alternatives to the current default system. Also on the agenda is discussion of progress on 2021 Council priorities for groundfish. There will be a preliminary discussion of possible 2022 Council priorities for groundfish. Other business will be discussed as necessary.

Although non-emergency issues not contained on the agenda may come before this Council for discussion, those issues may not be the subject of formal action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency. The public also should be aware that the meeting will be recorded. Consistent with 16 U.S.C. 1852, a copy of the recording is available upon request.

**Special Accommodations**

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, Executive Director, at (978) 465-0492, at least 5 days prior to the meeting date.

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

Dated: July 27, 2021.

**Tracey L. Thompson,**

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

[FR Doc. 2021-16272 Filed 7-29-21; 8:45 am]

**BILLING CODE 3510-22-P**

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

[RTID 0648-XB230]

**Determination of Overfishing or an Overfished Condition**

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

**ACTION:** Notice.

**SUMMARY:** This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has found that Southern Atlantic gag is now subject to overfishing and is now overfished; Southern Atlantic snowy grouper and Gulf of Mexico greater amberjack are now subject to overfishing and are still overfished; Klamath River fall-run Chinook salmon, Queets coho salmon, Strait of Juan de Fuca coho salmon, Northwestern Atlantic Coast ocean pout, Gulf of Maine/Georges Bank Atlantic wolffish, and Pribilof Island blue king crab are still overfished; Southern Atlantic red snapper is still subject to overfishing and overfished; and Hood Canal coho salmon is now approaching

an overfished condition. NMFS, on behalf of the Secretary, notifies the appropriate regional fishery management council (Council) whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Frens, (301)–427–8523.

**SUPPLEMENTARY INFORMATION:** Pursuant to section 304(e)(2) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1854(e)(2), NMFS, on behalf of the Secretary, must notify Councils, and publish a notice in the **Federal Register**, whenever it determines that a stock or stock complex is subject to overfishing, overfished, or approaching an overfished condition.

NMFS has determined that Gulf of Mexico greater amberjack is now subject to overfishing and is still overfished. This determination is based on the most recent assessment, completed in 2021 and using data through 2018, which indicates that this stock is subject to overfishing because the fishing mortality rate was above the threshold, and is still overfished because the biomass is below the threshold. NMFS has notified the Gulf of Mexico Fishery Management Council of the requirement to end overfishing and to rebuild this stock.

NMFS has determined that Southern Atlantic gag is now both subject to overfishing and overfished, that Southern Atlantic snowy grouper is now subject to overfishing and is still overfished, and that Southern Atlantic red snapper is still both subject to overfishing and overfished. The determinations for gag and red snapper are based on the most recent assessments, completed in 2021 using data through 2019, which indicate that these stocks are subject to overfishing because the fishing mortality rates are above the respective thresholds and the biomasses are below the respective thresholds. The determination for snowy grouper is based on the most recent update assessment, completed in 2021 using data through 2018, which indicates that the stock is subject to overfishing because the fishing mortality rate is above the threshold, and is still overfished because the biomass is below the threshold. NMFS has notified the South Atlantic Fishery Management Council of the requirement to end overfishing and to rebuild these stocks.

NMFS has determined that Northwestern Atlantic Coast ocean pout

and Gulf of Maine/Georges Bank Atlantic wolffish are still overfished. These determinations are based on the most recent assessments, completed in 2020 using data through 2019, which indicate that the stocks are overfished because their biomasses are below the respective thresholds. NMFS continues to work with the New England Fishery Management Council to rebuild these stocks.

NMFS has determined that Klamath River fall-run Chinook salmon, Queets coho salmon, and Strait of Juan de Fuca coho salmon are still overfished, and that Hood Canal coho salmon is now approaching an overfished condition. These determinations are based on the most recent assessments, completed in 2021 and using data from 2018–2020 for Klamath River fall-run Chinook salmon, data from 2017–2019 for Queets and Juan de Fuca coho salmon, and data from 2018–2019 and 2021 for Hood Canal coho salmon. The determination of overfished for the first three stocks is based on the three-year geometric mean of the annual spawning escapement for each stock falling below its respective overfished threshold. The determination of approaching an overfished condition for Hood Canal coho salmon is based on the three-year geometric mean of the two most recent postseason estimates of spawning escapement (2018–2019), and the current preseason forecast of spawning escapement (2021), falling below the threshold. Of these four salmon stocks, only the Chinook stock is domestically managed. The Council has limited ability to control fisheries for the three internationally-managed coho stocks in waters outside its jurisdiction. NMFS continues to work with the Pacific Council to rebuild these stocks, and has notified the Pacific Council of the requirement to prevent the Hood Canal coho salmon stock from becoming overfished.

NMFS has determined that Pribilof Island blue king crab is still overfished. This determination is based on the most recent assessment, completed in 2021 using data through 2021, which indicates that the stock is overfished because the biomass estimate remains below its threshold. NMFS continues to work with the North Pacific Fishery Management Council to rebuild this stock.

Dated: July 27, 2021.

**Jennifer M. Wallace,**

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

[FR Doc. 2021–16293 Filed 7–29–21; 8:45 am]

**BILLING CODE 3510–22–P**

## COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

### Procurement List; Proposed Additions and Deletions

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Proposed additions to and deletions from the Procurement List.

**SUMMARY:** The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) previously furnished by such agencies.

**DATES:** Comments must be received on or before: August 29, 2021.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, Virginia 22202–4149.

**FOR FURTHER INFORMATION CONTACT:** For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:** This notice is published pursuant to 41 U.S.C. 8503(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

### Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

*Service(s)*

*Service Type:* Contractor Operated Civil Engineer Supply Store.

*Mandatory for:* U.S. Air Force, 9th Civil Engineering Squadron, Beale AFB, CA.

*Designated Source of Supply:* Industries for the Blind and Visually Impaired, Inc., West Allis, WI.

*Contracting Activity:* DEPT OF THE AIR FORCE, FA4686 9 CONS LGC.

### Deletions

The following product(s) are proposed for deletion from the Procurement List:

*Product(s)*

*NSN(s)—Product Name(s):* 7520–00–286–1725—File, Sorter, Legal, A–Z, Blue

*Designated Source of Supply:* Exceptional Children's Foundation, Culver City, CA  
*Contracting Activity:* GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

*NSN(s)—Product Name(s):*

MR 921—Roller Mop, Angled Head, 10.5" Head  
 MR 399—Set, Cookie Cutter, Assorted, 3PC  
 MR 391—Slotted Turner, Red

*Designated Source of Supply:* Industries for the Blind and Visually Impaired, Inc., West Allis, WI

*Contracting Activity:* Military Resale-Defense Commissary Agency

*NSN(s)—Product Name(s):*

MR 13111—Cookie Spatula, Slip N' Serve  
 MR 11103—Pan, Roasting, Oval, Includes Shipper 21103  
 MR 10640—Bowl, Dressing Dispenser, Salad

*Designated Source of Supply:* Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC

*Contracting Activity:* Military Resale-Defense Commissary Agency

*NSN(s)—Product Name(s):* 4240-01-390-3057—Head Harness, Skull Cap

*Contracting Activity:* W4GG HQ US ARMY TACOM, ROCK ISLAND, IL

*NSN(s)—Product Name(s):* 6530-00-NIB-0069—Catheter, External, Male, Self-Adhering, Wide-band, Extra Large

*Designated Source of Supply:* The Lighthouse for the Blind, St. Louis, MO

*Contracting Activity:* STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

*NSN(s)—Product Name(s):* 8455-00-292-9558—Insignia, Embroidered, Marine PFC

*Designated Source of Supply:* Georgia Industries for the Blind, Bainbridge, GA

*Contracting Activity:* DLA TROOP SUPPORT, PHILADELPHIA, PA

*NSN(s)—Product Name(s):* 8465-00-001-6474—Entrenching Tool Carrier, Plastic Resin, Olive Drab

*Designated Source of Supply:* Dallas Lighthouse for the Blind, Inc., Dallas, TX  
*Contracting Activity:* DLA TROOP SUPPORT, PHILADELPHIA, PA

**Michael R. Jurkowski,**

*Deputy Director, Business Operations.*

[FR Doc. 2021-16277 Filed 7-29-21; 8:45 am]

**BILLING CODE 6353-01-P**

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

**Procurement List; Deletions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Deletions from the Procurement List.

**SUMMARY:** This action deletes products and service(s) from the Procurement List that were furnished by nonprofit

agencies employing persons who are blind or have other severe disabilities.

**DATES:** *Date deleted from the Procurement List:* August 29, 2021.

**ADDRESSES:** Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202-4149.

**FOR FURTHER INFORMATION CONTACT:** Michael R. Jurkowski, Telephone: (703) 785-6404, or email [CMTEFedReg@AbilityOne.gov](mailto:CMTEFedReg@AbilityOne.gov).

**SUPPLEMENTARY INFORMATION:**

**Deletions**

On 6/25/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51-2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501-8506 and 41 CFR 51-2.4.

*Regulatory Flexibility Act Certification*

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501-8506) in connection with the product(s) and service(s) deleted from the Procurement List.

*End of Certification*

Accordingly, the following products and service(s) are deleted from the Procurement List:

*Product(s)*

*NSN(s)—Product Name(s):*

7520-01-451-9178—Pen, Ballpoint, Retractable, Essential LVX, Black, Medium Point

*Designated Source of Supply:* Industries for the Blind and Visually Impaired, Inc., West Allis, WI.

*Contracting Activity:* GSA/FAS ADMIN SVCS ACQUISITION BR(2, NEW YORK, NY

*NSN(s)—Product Name(s):*

8440-00-000-0000—Belt, Trousers  
*Designated Source of Supply:* Travis Association for the Blind, Austin, TX  
*Contracting Activity:* DLA TROOP SUPPORT, PHILADELPHIA, PA

*NSN(s)—Product Name(s):*

AF335—Jacket, USAF, Unisex, Cold Weather Waist Length Insulated, Blue, Sizes S thru 2XL  
 AF340—Turtleneck, USAF, Unisex, Dark Navy Blue, Numerous Sizes  
 AF330—Jacket, USAF, Waist Length, Unisex, Dark Navy Blue, Numerous Sizes  
 AF320—Pants, USAF, Unisex, Rain, Dark Navy Blue, Numerous Sizes  
 AF310—Jacket, USAF, ¾ Length, Unisex, Dark Navy Blue, Numerous Sizes  
 AF380—Over Pants, USAF, Unisex, Cold Weather, Dark Navy Blue, Numerous Sizes  
 AF420—Nameplate, Class A, USAF, Metal, Polished Nickel Finish with black Lettering  
 AF412B—Belt, Class B/Primary Duty, USAF, Unisex, Black Leather, Numerous Sizes  
 AF411A—Belt, Class A/Primary Duty, USAF, Unisex, Black Leather, Numerous Sizes  
 AF9440—Badge, USAF, "DEPUTY CHIEF", Metallic Polished Nickel Finish, 1"x7/8"  
 AF9450—Badge, USAF, "ASSISTANT TO THE OPERATIONS OFFICER", Metallic Polished Nickel Finish, 1"x7/8"  
 AF9460—Badge, USAF, "SHIFT SUPERVISOR", Metallic Polished Nickel Finish, 1"x7/8"  
 AF9470—Badge, USAF, "TRAINING SUPERVISOR", Metallic Polished Nickel Finish, 1"x7/8"  
 AF9490—Necktie, USAF, Unisex, Dark Navy Blue  
 AF9483—Insignia, USAF, Collar Chevrons Officer (3 Stripes), USAF Metallic Silver or Polished Nickel Finish  
 AF9482—Insignia, USAF, Collar Chevrons Officer (2 stripes), USAF, Metallic Silver or Polished Nickel Finish  
 AF9412—Badge, "Police", USAF, Nickel Finish, 3"x2"  
 AF9411—Patch, USAF, Longevity Stripe, Blue and Gold  
 AF110—Shirt, Class A/Primary Duty, USAF, Men's, Long Sleeve, Dark Navy Blue, Numerous Sizes  
 AF111—Shirt, Class A/Primary Duty, USAF, Women's, Long Sleeve, Dark Navy Blue, Numerous Sizes  
 AF9415—Hat Badge, Formal, USAF, Nickel Finish  
 AF9410P—Patch, "Police", USAF, Half Size, 3"x2"  
 AF9414G—Patch, "Guard", USAF, Half Size, 3"x2"  
 AF9413P—Patch, "Police", USAF, Full Size, 4"x5/8"  
 AF9413G—Patch, "Guard", USAF, Full Size, 4"x5/8"  
 AF230—Trousers, class B/Utility, USAF, Unisex, Dark Navy Blue, Numerous Sizes  
 AF220—Shirt, Class B/Utility, USAF, Short Sleeve, Unisex, Dark Navy Blue, Numerous Sizes  
 AF210—Shirt, Class B/Utility, USAF, Long Sleeve, Unisex, Dark Navy Blue, Numerous Sizes

AF150—Hat, Formal, USAF, Unisex, Dark Navy Blue, S;M;L;XL

AF140—Ballcap, Standard, USAF, Unisex, Dark Navy Blue, M/L;L/XL

AF131—Pants, Class A/Primary Duty, USAF, Women's, Flex Waist, Dark Navy Blue, Numerous Sizes

AF130—Pants, Class A/Primary Duty, USAF, Men's, Flex Waist, Dark Navy Blue, Numerous Sizes

AF120—Shirt, Class A/Primary Duty, USAF, Men's, Short Sleeve, Dark Navy Blue, Numerous Sizes

AF121—Shirt, Class A/Primary Duty, USAF, Women's Short Sleeve, Dark Navy Blue, Numerous Sizes

AF9410—Necktie Bar Clasp, USAF, Metal, Polished Nickel Finish

AF430—Nameplate, Class B, USAF, Cloth, Dark Navy Blue with Silver/Gray Thread Lettering

AF390—Coveralls/Jumpsuit, USAF, Unisex, Lightweight, Dark Navy Blue, Numerous Sizes

AF370—Parka, USAF, Unisex, Cold Weather, Dark Navy Blue, Numerous Sizes

AF350—Fleece Liner, USAF, Unisex, Dark Navy Blue, Liner for Jacket, Numerous Sizes

AF360—Cap, USAF, Unisex, Lined Weather Watch, Dark Navy Blue, One Size Fits All

*Designated Source of Supply:* Human Technologies Corporation, Utica, NY  
*Contracting Activity:* FA8003 AFICA DD, WRIGHT PATTERSON AFB, OH

*NSN(s)—Product Name(s):* 2945-00-019-0280—Kit, Fuel & Oil Filter Element

*Designated Source of Supply:* SVRC Industries, Inc., Saginaw, MI

*Contracting Activity:* DLA AVIATION, RICHMOND, VA

*NSN(s)—Product Name(s):* 2540-00-575-8391—Mirror and Bracket Assembly

*Designated Source of Supply:* The Opportunity Center Easter Seal Facility—The Ala ES Soc, Inc., Anniston, AL

*Contracting Activity:* DLA LAND AND MARITIME, COLUMBUS, OH

*Service(s)*

*Service Type:* Assembly of Food Packet  
*Mandatory for:* Food Packet, Survival, Abandon Ship: NSN 8970-00-299-1365

*Designated Source of Supply:* National Industries for the Blind, Alexandria, VA

*Contracting Activity:* DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

*Service Type:* Prime Vendor support for Foreign Military Sales

*Mandatory for:* RDECOM Contracting Center—Aberdeen, MD (Off-site: 507 Kent Street, Utica NY), 507 Kent Street, Utica, NY

*Designated Source of Supply:* Central Association for the Blind & Visually Impaired, Utica, NY

*Contracting Activity:* DEPT OF THE ARMY, W6QK ACC-APG

*Service Type:* Assembly of Food Packet  
*Mandatory for:* Defense Supply Center Philadelphia, Philadelphia, PA

*Designated Source of Supply:* Cincinnati

Association for the Blind, Cincinnati, OH  
*Contracting Activity:* DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT

**Michael R. Jurkowski,**

*Deputy Director, Business & PL Operations.*

[FR Doc. 2021-16278 Filed 7-29-21; 8:45 am]

**BILLING CODE 6353-01-P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

[Docket Number DARS-2021-0009; OMB Control Number 0704-0187]

### Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements)

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

**ACTION:** Notice.

**SUMMARY:** The Defense Acquisition Regulations System has submitted to OMB for clearance the following proposed revision and extension of a collection of information under the provisions of the Paperwork Reduction Act.

**DATES:** Consideration will be given to all comments received by August 30, 2021.

#### SUPPLEMENTARY INFORMATION:

*Title and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS), Information Collection in Support of the DoD Acquisition Process (Various Miscellaneous Requirements), OMB Control Number 0704-0187.

*Type of Request:* Revision and extension.

*Affected Public:* Businesses or other for-profit and not-for profit institutions.

*Respondent's Obligation:* Required to obtain or retain benefits.

*Number of Respondents:* 469.

*Responses per Respondent:* 1.29.

*Annual Responses:* 601.

*Hours per Response:* 1.68, approximately.

*Annual Burden Hours:* 1,010.

*Reporting Frequency:* On occasion.

*Needs and Uses:* This information collection requirement pertains to information required in DFARS parts 208, 209, 235, and associated solicitation provision and contract clauses in part 252 that offerors and contractors must submit to DoD in response to a request for proposals or an invitation for bids or a contract requirement. The estimates of the

number of respondents and responses are revised to correct a typographical error. DoD uses this information to—

- Determine whether to provide precious metals as Government-furnished material;
- Determine whether a foreign government owns or controls the offeror to prevent access to proscribed information;
- Determine whether there is a compelling reason for a contractor to enter into a subcontract in excess of \$35,000 with a firm, or subsidiary of a firm, that is identified in the System for Award Management Exclusions as ineligible for award of Defense subcontracts because it is owned or controlled by the government of a country that is a state sponsor of terrorism;
- Evaluate claims of indemnification for losses or damages occurring under a research and development contract; and
- Keep track of radio frequencies on electronic equipment under research and development contracts so that the user does not override or interfere with the use of that frequency by another user.

Comments and recommendations on the proposed information collection should be sent to Ms. Susan Minson, DoD Desk Officer, at *Oira\_submission@omb.eop.gov*. Please identify the proposed information collection by DoD Desk Officer and the Docket ID number and title of the information collection.

You may also submit comments, identified by docket number and title, by the following method: *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

*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*.

**Jennifer D. Johnson,**

*Editor/Publisher, Defense Acquisition Regulations System.*

[FR Doc. 2021-16153 Filed 7-29-21; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

[Docket ID: DoD-2021-OS-0078]

### Privacy Act of 1974; System of Records

**AGENCY:** Defense Information Systems Agency (DISA), Department of Defense (DoD).

**ACTION:** Notice of a modified system of records.

**SUMMARY:** In accordance with the Privacy Act of 1974, the DoD is modifying and reissuing a current system of records titled “Identity Synchronization Services (IdSS),” K890.14. This system of records was originally established by the DISA to populate and maintain persona-based user objects in DoD enterprise-level Domain Controllers, such as the Enterprise Application and Services Forest (EASF) implemented by DISA to provide DoD Enterprise E-Mail, DoD Enterprise Portal Service (DEPS), etc. In addition, the DISA uses the IdSS to populate and maintain persona data elements in DoD Component networks and systems, such as directory services and account provisioning systems. This system of records notice (SORN) is being updated to make various changes, including expanding the individuals covered and adding DoD’s standard routine uses.

**DATES:** This system of records is effective upon publication; however, comments on the Routine Uses will be accepted on or before August 30, 2021. The Routine Uses are effective at the close of the comment period.

**ADDRESSES:** You may submit comments, identified by docket number and title, by any of the following methods:

*Federal Rulemaking Portal:* <https://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 and docket number 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 <https://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Jeanette M. Weathers-Jenkins, DISA Privacy Officer, 6914 Cooper Ave., Fort Meade, MD 20755-7090, or by phone at (301) 225-8158.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The DISA is modifying the K890.14 IdSS system of records, to provide DoD Enterprise E-Mail, DEPS, etc. In

addition, it will allow the IdSS to populate and maintain persona data elements in DoD Component networks and systems, such as directory services and account provisioning systems to provide DoD Enterprise E-Mail. Subject to public comment, the DoD proposes to update this SORN to add the standard DoD routine uses (routine uses A through I) and to allow for additional disclosures outside DoD related to the purpose of this system of records.

Additionally, the following sections of this SORN are being modified as follows: (1) System Location and System Manager(s), to provide instructions on obtaining a list of system location(s); (2) Authority for Maintenance of the System, to update citation(s) and add additional authorities; (3) Purpose(s) of the System, to clarify the system’s purpose for the general public; (4) Categories of Individuals Covered by the System, to expand the individuals covered, and Categories of Records, to clarify how the records relate to the revised Category of Individuals; (5) Record Source Categories, to provide clarity; (6) Routine Uses, to align with DoD’s standard routine uses; (7) Record Access Procedures, to reflect the need for individuals to identify the appropriate DoD office or component to which their request should be directed; and (8) Contesting Records Procedures and Notification Procedures, to update the appropriate citation for contesting records. Additionally, the sections containing the policies on storage, retrieval of records, retention and disposal of records, and safeguards have been modified to improve clarity generally and for compliance with National Archives and Records Administration approved records schedules. This notice also includes non-substantive changes to simplify the formatting and text of the previously published notice.

DoD SORNs have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT** or at the Defense Privacy, Civil Liberties, and Transparency Division (DPCLTD) website at <https://dpcltd.defense.gov/privacy>.

**II. Privacy Act**

Under the Privacy Act, a “system of records” is a group of records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. In the Privacy Act, an individual is defined as a U.S. citizen or lawful permanent resident.

In accordance with 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) Circular No. A-108, DPCLTD has provided a report of this system of records to the OMB and to Congress.

Dated: July 26, 2021.

**Aaron T. Siegel,**

*Alternate OSD Federal Register, Liaison Officer, Department of Defense.*

**SYSTEM NAME AND NUMBER:**

Identity Synchronization Services (IdSS), K890.14

**SECURITY CLASSIFICATION:**

Unclassified

**SYSTEM LOCATION:**

System locations may be obtained from the system manager at the Defense Information Systems Agency (DISA), Services Directorate, 6910 Cooper Ave., Fort Meade, MD 20755-7090.

**SYSTEM MANAGER(S):**

Chief, Enterprise Directory Services, Defense Information Systems Agency (DISA), Services Directorate, Applications Division, Infrastructure Applications Branch, 6910 Cooper Ave., Fort Meade, MD 20755-7090, telephone number 301-225-9201, email: [disa.meade.se.list.idss-product-management@mail.mil](mailto:disa.meade.se.list.idss-product-management@mail.mil).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. Chapter 8, Defense Agencies and Department of Defense Field Activities; DoD Directive 5105.19, Defense Information Systems Agency (DISA); DoD Instruction (DoDI) 1000.25, DoD Personnel Identity Protection (PIP) Program; DoDI 5200.46, DoD Investigative and Adjudicative Guidance for Issuing the Common Access Card (CAC); and DoDI 8520.03, Identity Authentication for Information Systems.

**PURPOSE(S) OF THE SYSTEM:**

A. To populate and maintain persona-based user objects in DoD enterprise-level Domain Controllers, such as the Enterprise Application Services Forest (EASF) implemented by DISA to provide DoD Enterprise Email, DoD Enterprise Portal Service (DEPS), etc.

B. To populate and maintain persona data elements in DoD Component networks and systems, such as directory services and account provisioning systems to provide DoD Enterprise Email.

C. To populate and maintain persona data elements in DoD Component (including the United States Coast Guard (USCG) networks and systems,



such as directory services and account provisioning systems.

D. To utilize enterprise services to establish a reliable and uniform secure data portal for the transmittal of shared information between DoD and the U.S. Department of Veterans Affairs (VA).

E. To populate and maintain persona data elements to support continuous data exchange between DoD and its Coalition Partners and partner Five Eyes Nations to enable current and future information sharing capabilities that are used by the respective warfighters for conducting mission supporting operations.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

A. DoD personnel, meaning those who have been issued DoD Common Access Cards (CAC) or a DoD Class 3 Public Key Infrastructure (PKI) certificate, to include civilian employees, military personnel, contractors and other individuals detailed or assigned to DoD Components.

B. VA Personal Identity Verification (PIV) card holders identified by the VA's Interagency Care Coordination Committee (IC3).

**CATEGORIES OF RECORDS IN THE SYSTEM:**

A. For DoD personnel: Individuals name, unique identifiers including DoD ID number, other unique identifier, Federal Agency Smart Credential Number (FASC-N), login name, legacy login name, and persona username, object class, rank, title, job title, persona type code (PTC), persona display name (PDN), address, email, phone, and other contact information for work and home locations, non-US government agency object common name; user account control, information technology service entitlements, Unit Identification Code (UIC), and PKI certificate information. Administrative Organization Code, DoD component, DoD sub-component, Non-DoD agency, Directory publishing restrictions, Reserve Component Code, Billet Code, Pay Grade, type of investigation, date of investigation, and security clearance level.

B. For VA personnel: Individual's name, other unique identifier, primary and other work email addresses, administrative organization code, duty sub-organization code persona email address, email encryption certificate, and driver's license number.

*Note:* This system does not collect or maintain the individual's Social Security Number.

**RECORD SOURCE CATEGORIES:**

Records and information stored in this system of records are obtained from: DoD Component directories such as the Defense Eligibility Enrollment Reporting System (DEERS), Person Data Repository (PDR) for DoD person and persona data, the DISA DoD PKI Global Directory Service (GDS) for user PKI email certificates, partner Five Eyes Nations, and the Coalition partners.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, as amended, the records contained herein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

A. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the federal government when necessary to accomplish an agency function related to this system of records.

B. To the appropriate Federal, State, local, territorial, tribal, foreign, or international law enforcement authority or other appropriate entity where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law, whether criminal, civil, or regulatory in nature.

C. To any component of the Department of Justice for the purpose of representing the DoD, or its components, officers, employees, or members in pending or potential litigation to which the record is pertinent.

D. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body or official, when the DoD or other Agency representing the DoD determines that the records are relevant and necessary to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

E. To the National Archives and Records Administration for the purpose of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

F. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

G. To appropriate agencies, entities, and persons when (1) the DoD suspects or confirms a breach of the system of records; (2) the DoD determines as a result of the suspected or confirmed breach there is a risk of harm to individuals, the DoD (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the DoD's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

H. To another Federal agency or Federal entity, when the DoD determines information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

I. To such recipients and under such circumstances and procedures as are mandated by Federal statute or treaty.

J. To the USCG to share DoD information to ensure it maintains a state of readiness to function as a specialized military Service in the Department of Navy in a time of war or national emergency.

K. To DoD-approved Coalition Partners for the purposes of routine mission supporting activities.

L. To partner Five Eyes (FVEY) Nations to provide information pursuant to existing bilateral agreement(s) in order to populate the information into the FVEY national directory.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records may be stored electronically or on paper in secure facilities in a locked drawer behind a locked door. The records may be stored on magnetic disc, tape, or digital media; in agency-owned cloud environments; or in vendor Cloud Service Offerings certified under the Federal Risk and Authorization Management Program (FedRAMP).

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

These records are retrieved by individual name, DoD ID Number, or email address.



**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

System's sole function is to receive and integrate data from two or more other systems and export the resultant product to yet another independent system. These records are maintained as temporary which may be destroyed upon verification of successful creation of the final document or file, or when no longer needed for business use, whichever is later.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Access to the type and amount of data is governed by privilege management software and policies developed and enforced by Federal government personnel. Data is protected by repository and interfaces, including, but not limited to multi-layered firewalls, Secure Sockets Layer/Transport Layer Security (SSL/TLS) connections, access control lists, file system permissions, intrusion detection and prevention systems and log monitoring. Complete access to all records is restricted to and controlled by certified system management personnel, who are responsible for maintaining the IdSS system integrity and the data confidentiality. Access to computerized data is restricted by CAC.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to their records should follow the procedures in 32 CFR part 310. Individuals should address written inquiries to the FOIA Service Center, Defense Information Systems Agency, ATTN: Headquarters FOIA Requester Service Center, P.O. Box 549, Ft. Meade, MD 20755-0549. Signed, written requests should include the individual's full name, current address, telephone number, and the name and number of this system of records notice. In addition, the requester must provide either a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

**CONTESTING RECORD PROCEDURES:**

The DoD rules for accessing records, contesting contents, and appealing

initial Component determinations are contained in 32 CFR part 310, or may be obtained from the system manager.

**NOTIFICATION PROCEDURES:**

Individuals seeking to determine whether information about themselves is contained in this system of records should follow the instructions for Record Access Procedures above.

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

None.

**HISTORY:**

December 8, 2010, 75 FR 76428.

[FR Doc. 2021-16304 Filed 7-29-21; 8:45 am]

**BILLING CODE 5001-06-P**

**DEPARTMENT OF THE DEFENSE****Department of the Army, Corps of Engineers****Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement for the Carpinteria Shoreline, a Feasibility Study in the City of Carpinteria, Santa Barbara County, CA**

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Notice of intent; withdrawal.

**SUMMARY:** The U.S. Army Corps of Engineers, Los Angeles District, Planning Division is notifying interested parties that it has withdrawn the Notice of Intent (NOI) to develop an environmental impact statement (EIS) for the proposed Carpinteria Shoreline General Investigation (GI) feasibility study. The original NOI to prepare a EIS was published in the **Federal Register** on September 11, 2003. The proposed Carpinteria Shoreline GI feasibility study is being converted to a Continuing Authority Program (CAP) study.

**DATES:** The notice of intent to prepare an EIS published in the **Federal Register** on September 11, 2003 (68 FR 53598), is withdrawn as of July 30, 2021.

**ADDRESSES:** U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, (CESPL-PDR), 915 Wilshire Blvd., Suite 930, Los Angeles, CA 90017-3489.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the withdrawal of this NOI should be addressed to Mr. Kirk Brus, 213-452-3876, or [kirk.c.brus@usace.army.mil](mailto:kirk.c.brus@usace.army.mil).

**SUPPLEMENTARY INFORMATION:** Study efforts in the Carpinteria study area will be converted to the Continuing Authorities Program (CAP) Section 103 which addresses projects of limited size,

cost and complexity for Hurricane and Storm Damage Reduction.

**Antoinette R. Gant,**

*Colonel, U.S. Army, Division Commander.*

[FR Doc. 2021-16327 Filed 7-29-21; 8:45 am]

**BILLING CODE 3720-58-P**

**DEPARTMENT OF THE DEFENSE****Department of the Army, Corps of Engineers****Withdrawal of the Notice of Intent To Prepare an Environmental Impact Statement the Lower Santa Cruz River Flood Risk Management Feasibility Study, Pinal County, Arizona**

**AGENCY:** Army Corps of Engineers, DoD.

**ACTION:** Notice of intent; withdrawal.

**SUMMARY:** The U.S. Army Corps of Engineers, Los Angeles District is notifying interested parties that it has withdrawn the notice of intent (NOI) to develop an environmental impact statement (EIS) for the proposed Lower Santa Cruz River Flood Risk Management Feasibility Study. The original NOI to prepare a EIS was published in the **Federal Register** on November 9, 2015. The proposed Lower Santa Cruz River Flood Risk Management Feasibility Study is being converted to a Continuing Authority Program (CAP) study.

**DATES:** The notice of intent to prepare an EIS published in the **Federal Register** on November 9, 2015 (80 FR 69201), is withdrawn as of July 30, 2021.

**ADDRESSES:** U.S. Army Corps of Engineers, Los Angeles District, Environmental Resources Branch, (CESPL-PDR), 915 Wilshire Boulevard, Los Angeles, CA 90017.

**FOR FURTHER INFORMATION CONTACT:** Questions regarding the withdrawal of this NOI should be addressed to Mr. Kenneth Wong, [kenneth.wong@usace.army.mil](mailto:kenneth.wong@usace.army.mil), (213) 452-3847.

**SUPPLEMENTARY INFORMATION:** Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, Los Angeles District, in partnership with the Pinal County Flood Control District, intended to prepare an Integrated Feasibility Report and EIS for the Lower Santa Cruz River Flood Risk Management Feasibility Study.

The study's purpose is to evaluate methods for minimizing flood risks along the Lower Santa Cruz River and its major tributaries within an approximately 1,400 square mile study

area in Pinal County, Arizona. After the NOI's publication, the geographic scope of the study was reduced such that the study will be converted to a CAP Section 205 study which address Flood Risk Management projects of limited size, cost, and complexity.

**Antoinette R. Gant,**

*Colonel, U.S. Army, Division Commander.*

[FR Doc. 2021-16324 Filed 7-29-21; 8:45 am]

**BILLING CODE 3720-58-P**

## DEPARTMENT OF ENERGY

### Basic Energy Sciences Advisory Committee

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of renewal.

**SUMMARY:** Pursuant to the Federal Advisory Committee Act, the Code of Federal Regulations, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee's (BESAC) charter will be renewed for a two-year period. The Committee will provide advice and recommendations to the Office of Science on the Basic Energy Sciences program. Additionally, the renewal of the BESAC has been determined to be essential to conduct business of the Department of Energy and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy, by law and agreement. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act, and the rules and regulations in implementation of that Act.

**FOR FURTHER INFORMATION CONTACT:** Dr. Linda Horton at (301) 903-3081 or email: [linda.horton@science.doe.gov](mailto:linda.horton@science.doe.gov).

### Signing Authority

This document of the Department of Energy was signed on July 27, 2021, by Miles Fernandez, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This

administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on July 27, 2021.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S.*

*Department of Energy.*

[FR Doc. 2021-16273 Filed 7-29-21; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

*Docket Numbers:* CP21-475-000.

*Applicants:* NEXUS Gas Transmission, LLC, and Texas Eastern Transmission, LP.

*Description:* Joint Abbreviated Application of NEXUS Gas Transmission, LLC, and Texas Eastern Transmission, LP, for Amendment to Certificate of Public Convenience and Necessity and Authorization to Abandon by Lease.

*Filed Date:* 7/20/21.

*Accession Number:* 20210720-5093.

*Comments Due:* 5 p.m. ET 8/3/21.

*Docket Numbers:* RP20-1097-002.

*Applicants:* Dominion Energy Questar Pipeline, LLC.

*Description:* Compliance filing Request for Rejection of Filed Tariff Records.

*Filed Date:* 7/22/21.

*Accession Number:* 20210722-5089.

*Comments Due:* 5 p.m. ET 8/3/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Dated: July 26, 2021.

**Debbie-Anne A. Reese,**

*Deputy Secretary.*

[FR Doc. 2021-16268 Filed 7-29-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

#### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG21-204-000.

*Applicants:* Minco Wind Energy III, LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Minco Wind Energy III, LLC.

*Filed Date:* 7/26/21.

*Accession Number:* 20210726-5130.

*Comments Due:* 5 p.m. ET 8/16/21.

*Docket Numbers:* EG21-205-000.

*Applicants:* Crossett Power Management LLC.

*Description:* Notice of Self-Certification of Exempt Wholesale Generator of Crossett Power Management LLC.

*Filed Date:* 7/26/21.

*Accession Number:* 20210726-5143.

*Comments Due:* 5 p.m. ET 8/16/21.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10-2127-020.

*Applicants:* Invenergy TN LLC.

*Description:* Supplement to December 31, 2020 Triennial Market Power Analysis for the Southeast Region of Invenergy TN LLC.

*Filed Date:* 7/21/21.

*Accession Number:* 20210721-5191.

*Comments Due:* 5 p.m. ET 8/11/21.

*Docket Numbers:* ER16-1720-016.

*Applicants:* Invenergy Energy Management LLC.

*Description:* Supplement to December 31, 2020 Triennial Market Power Analysis for the Southeast Region of Invenergy Energy Management LLC.

*Filed Date:* 7/21/21.

*Accession Number:* 20210721-5190.

*Comments Due:* 5 p.m. ET 8/11/21.

*Docket Numbers:* ER20-2125-001.

*Applicants:* WGP Redwood Holdings, LLC.

*Description:* Compliance filing: Compliance Filing Re: Order Accepting MBR Tariff (ER20-2125-000) to be effective 7/14/2021.

*Filed Date:* 7/26/21.

*Accession Number:* 20210726-5061.

*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–1006–001.  
*Applicants:* El Paso Electric Company.  
*Description:* Tariff Amendment: Service Agreement No. 347, Nonconforming LGIA with Hecate to be effective 1/7/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5076.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–1007–001.  
*Applicants:* El Paso Electric Company.  
*Description:* Tariff Amendment: Service Agreement No. 348, Nonconforming LGIA with Hecate 2 to be effective 1/7/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5081.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–1973–001.  
*Applicants:* PacifiCorp.  
*Description:* Compliance filing: BPA NITSA (Clark PUD) Rev 3 Compliance to be effective 5/1/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5100.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2092–001.  
*Applicants:* Pacific Gas and Electric Company.  
*Description:* Tariff Amendment: Amendment to Berry Petroleum Tannehill Cogen SGIA (SA 413) to be effective 6/8/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5079.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2093–001.  
*Applicants:* Pacific Gas and Electric Company.  
*Description:* Tariff Amendment: Amendment to Berry Petroleum University Cogen LGIA (SA 414) to be effective 6/8/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5080.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2498–000.  
*Applicants:* Versant Power.  
*Description:* Compliance filing: Order No. 676–I Compliance Filing and Request for Waivers to be effective 10/27/2021.  
*Filed Date:* 7/23/21.  
*Accession Number:* 20210723–5184.  
*Comments Due:* 5 p.m. ET 8/13/21.  
*Docket Numbers:* ER21–2499–000.  
*Applicants:* Duke Energy Progress, LLC, Duke Energy Florida, LLC, Duke Energy Carolinas, LLC.  
*Description:* Compliance filing: Duke Energy—Order 676–I Compliance Filing to be effective 12/31/9998.

*Filed Date:* 7/23/21.  
*Accession Number:* 20210723–5192.  
*Comments Due:* 5 p.m. ET 8/13/21.  
*Docket Numbers:* ER21–2501–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 4794; Queue No. AC1–116 to be effective 8/22/2017.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5036.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2502–000.  
*Applicants:* Performance Materials NA, Inc.  
*Description:* Compliance filing: Revisions to Market-Based Rate Tariff to be effective 9/24/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5039.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2503–000.  
*Applicants:* Alabama Power Company.  
*Description:* § 205(d) Rate Filing: Hobnail Solar LGIA Amendment Filing to be effective 7/12/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5086.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2504–000.  
*Applicants:* Alabama Power Company.  
*Description:* Tariff Cancellation: Randolph County Solar LGIA Termination Filing to be effective 7/26/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5089.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2505–000.  
*Applicants:* Basin Electric Power Cooperative.  
*Description:* Tariff Cancellation: Basin Electric Notice of Cancellation for Service Agreement No. 32 to be effective 2/24/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5116.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2506–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6111; Queue No. AD1–016 to be effective 6/25/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5126.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2507–000.

*Applicants:* Basin Electric Power Cooperative.  
*Description:* § 205(d) Rate Filing: Submission of Amendment to Service Agreement No. 100 to be effective 5/11/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5138.  
*Comments Due:* 5 p.m. ET 8/16/21.  
*Docket Numbers:* ER21–2508–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Original WMPA, Service Agreement No. 6114; Queue No. AD1–129 to be effective 6/25/2021.  
*Filed Date:* 7/26/21.  
*Accession Number:* 20210726–5140.  
*Comments Due:* 5 p.m. ET 8/16/21.  
 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: July 26, 2021.  
**Debbie-Anne A. Reese,**  
 Deputy Secretary.  
 [FR Doc. 2021–16270 Filed 7–29–21; 8:45 am]  
**BILLING CODE 6717–01–P**

**DEPARTMENT OF ENERGY**  
**Federal Energy Regulatory Commission**

**Notice of Amendment Application To Incorporate Species Protection Plan Into The Project Licenses and Soliciting Comments, Motions To Intervene, and Protests**

Brookfield White Pine Hydro, LLC .....	Project No. 2325–100.
Merimil Limited Partnership .....	Project No. 2574–092.
Hydro-Kennebec, LLC .....	Project No. 2611–091.

Take notice that the following amendment application has been filed with the Commission and is available for public inspection:

a. *Application Type*: Amendment of Licenses.

b. *Project Nos*: P-2325-100; P-2574-092; P-2611-091.

c. *Date Filed*: June 1, 2021.

d. *Applicants*: Brookfield White Pine Hydro, LLC; Merimil Limited Partnership; Hydro-Kennebec, LLC.

e. *Name of Projects*: Weston, Lockwood, and Hydro-Kennebec Hydroelectric Projects.

f. *Locations*: The projects are located on the lower Kennebec River in Kennebec and Somerset Counties, Maine.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact*: Kelly Maloney, Licensing and Compliance Manager, Brookfield White Pine Hydro, LLC, 150 Main Street, Lewiston, ME 04240; telephone: (207) 755-5605.

i. *FERC Contact*: Marybeth Gay, (202) 502-6125, [Marybeth.Gay@ferc.gov](mailto:Marybeth.Gay@ferc.gov).

j. *Deadline for filing comments, motions to intervene, and protests*: August 25, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). 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. The first page of any filing should include docket numbers P-2325-100, P-2574-092, and P-2611-091. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the

official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request*: Brookfield Power US Asset Management, LLC (Brookfield), on behalf of the affiliated licensees for the Lockwood (P-2574), Hydro-Kennebec (P-2611), and Weston (P-2325) Projects, requests Commission approval to amend the project licenses to incorporate the provisions of a Species Protection Plan for Atlantic salmon, Atlantic sturgeon, and shortnose sturgeon (Final Plan). The Final Plan identifies proposed upstream and downstream fish passage measures, as well as monitoring and management measures designed to avoid or minimize the potential adverse effects of continued operation of the projects on endangered Atlantic salmon, threatened Atlantic sturgeon, and endangered shortnose sturgeon, and the designated critical habitat for Atlantic salmon and Atlantic sturgeon.

l. *Locations of the Application*: This filing may be viewed on the Commission's website at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or email [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), for TTY, call (202) 502-8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene*: Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents*: Any filing must (1) bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE" as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: July 26, 2021.

**Debbie-Anne A. Reese**,  
Deputy Secretary.

[FR Doc. 2021-16269 Filed 7-29-21; 8:45 am]

**BILLING CODE 6717-01-P**

## ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-9057-6]

### Environmental Impact Statements; Notice of Availability

*Responsible Agency*: Office of Federal Activities, General Information 202-564-5632 or <https://www.epa.gov/nepa>.

### Weekly receipt of Environmental Impact Statements (EIS)

*Filed July 19, 2021 10 a.m. EST Through July 26, 2021 10 a.m. EST*

Pursuant to 40 CFR 1506.9.

*Notice*: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: <https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search>.

*EIS No. 20210101, Final, NOAA, HI, Enhancing Protections for Hawaiian Spinner Dolphins to Prevent Disturbance, Review Period Ends: 08/30/2021, Contact: Kevin Brindock 808-725-5146.*

*EIS No. 20210102, Draft Supplement, FERC, PA, Atlantic Coast Pipeline and Supply Header Project, Comment Period Ends: 09/13/2021, Contact: Office of External Affairs 866-208-3372.*

*EIS No. 20210103, Draft, FTA, CA, West Santa Ana Branch Transit Corridor Project Draft Environmental Impact*

Statement/Environmental Impact Report, Comment Period Ends: 09/13/2021, Contact: Rusty Whisman 213-202-3956.

Dated: July 26, 2021.

**Candi Schaedle,**

Acting Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021-16258 Filed 7-29-21; 8:45 am]

BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

[EPA-HQ-OPP-2017-0751; FRL-8677-01-OCSPP]

**Pesticide Registration Review; Interim Decisions and Case Closures for Several Pesticides; Notice of Availability**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** This notice announces the availability of EPA’s interim registration review decisions for the following chemicals: 10, 10’-oxybisphenoxarsine (OBPA), acetochlor, coumaphos, citric acid, dimethenamid/-p, fenamidone, fenazaquin, haloxydantoin, insect viruses, myclobutanil, polixetonium chloride (Busan 77), and propylene oxide (PPO). In addition, it announces the closure of the registration review case for *Pseudomonas aureofaciens* because the last U.S. registrations for this pesticide have been canceled.

**FOR FURTHER INFORMATION CONTACT:**

For pesticide specific information, contact: The Chemical Review Manager for the pesticide of interest identified in the Table in Unit IV.

For general information on the registration review program, contact: Melanie Biscoe, Pesticide Re-evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (703) 305-7106; email address: [biscoe.melanie@epa.gov](mailto:biscoe.melanie@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. General Information**

*A. Does this action apply to me?*

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the pesticide specific contact person listed in the Table in Unit IV.

*B. How can I get copies of this document and other related information?*

The dockets these cases, identified by the docket identification (ID) number for the specific pesticide of interest provided in the Table in Unit IV., are available at <http://www.regulations.gov> or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460-0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPP Docket is (703) 305-5805.

Due to the public health concerns related to COVID-19, the EPA Docket Center (EPA/DC) and Reading Room is closed to visitors with limited exceptions. The staff continues to provide remote customer service via email, phone, and webform. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

**II. Registration Review**

Registration review is EPA’s periodic review of pesticide registrations to ensure that each pesticide continues to satisfy the statutory standard for registration, that is, the pesticide can perform its intended function without unreasonable adverse effects on human health or the environment. As part of the registration review process, the Agency has completed interim decisions for all pesticides listed in the Table in Unit IV. Through this program, EPA is ensuring that each pesticide’s registration is based on current scientific and other knowledge, including its effects on human health and the environment.

**III. Authority**

EPA is conducting its registration review of the chemicals listed in the Table in Unit IV. pursuant to section 3(g) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Procedural Regulations for Registration Review at 40 CFR part 155, subpart C. Section 3(g) of FIFRA provides, among other things, that the registrations of pesticides are to be reviewed every 15 years. Under FIFRA, a pesticide product may be registered or remain registered only if it meets the statutory standard for registration given in FIFRA section 3(c)(5) (7 U.S.C. 136a(c)(5)). When used in accordance with widespread and commonly recognized practice, the pesticide product must perform its intended function without unreasonable adverse effects on the environment; that is, without any unreasonable risk to man or the environment, or a human dietary risk from residues that result from the use of a pesticide in or on food.

**IV. What action is the Agency taking?**

Pursuant to 40 CFR 155.58, this notice announces the availability of EPA’s interim registration review decisions for the pesticides shown in Table 1. The interim registration review decisions are supported by rationales included in the docket established for each chemical.

TABLE 1—REGISTRATION REVIEW INTERIM DECISIONS BEING ISSUED

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
10, 10’-Oxybisphenoxarsine (OBPA), Case Number 0044.	EPA-HQ-OPP-2009-0618	Megan Snyderman, <a href="mailto:snyderman.megan@epa.gov">snyderman.megan@epa.gov</a> , 703-347-0671.
Acetochlor, Case Number 7230 .....	EPA-HQ-OPP-2016-0298	Anna Romanovsky, <a href="mailto:romanovsky.anna@epa.gov">romanovsky.anna@epa.gov</a> , 703-347-0203.
Coumaphos, Case Number 0018 .....	EPA-HQ-OPP-2008-0023	Michelle Nolan, <a href="mailto:nolan.michelle@epa.gov">nolan.michelle@epa.gov</a> , 703-347-0258.
Citric acid, Case Number 4024 .....	EPA-HQ-OPP-2008-0855	SanYvette Williams, <a href="mailto:williams.sanyvette@epa.gov">williams.sanyvette@epa.gov</a> , 703-305-7702.
Dimethenamid/-p, Case Number 7223 .....	EPA-HQ-OPP-2015-0803	Lauren Weissenborn, <a href="mailto:weissenborn.lauren@epa.gov">weissenborn.lauren@epa.gov</a> , 703-347-8601.

TABLE 1—REGISTRATION REVIEW INTERIM DECISIONS BEING ISSUED—Continued

Registration review case name and No.	Docket ID No.	Chemical review manager and contact information
Fenamidonone, Case Number 7033 .....	EPA-HQ-OPP-2014-0048	Christian Bongard, <a href="mailto:bongard.christian@epa.gov">bongard.christian@epa.gov</a> , 703-347-0337.
Fenazaquin, Case Number 7447 .....	EPA-HQ-OPP-2020-0081	Katherine Atha, <a href="mailto:atha.katherine@epa.gov">atha.katherine@epa.gov</a> , 703-347-0183.
Halohydantoin, Case Number 3055 .....	EPA-HQ-OPP-2013-0220	Peter Bergquist, <a href="mailto:berquist.peter@epa.gov">berquist.peter@epa.gov</a> , 703-347-8563.
Insect Viruses, Case Number 4106 .....	EPA-HQ-OPP-2011-0694	Jennifer Odom, <a href="mailto:odom.jennifer@epa.gov">odom.jennifer@epa.gov</a> , 703-347-0565.
Myclobutanil, Case Number 7006 .....	EPA-HQ-OPP-2015-0053	Anitha Kisanga, <a href="mailto:kisanga.anitha@epa.gov">kisanga.anitha@epa.gov</a> , 703-347-0540.
Polixetonium chloride, (Busan 77) .....	EPA-HQ-OPP-2015-0256	Peter Bergquist, <a href="mailto:berquist.peter@epa.gov">berquist.peter@epa.gov</a> , 703-347-8563.
Case Number 3034 .....		
Propylene Oxide (PPO), Case Number 2560 .....	EPA-HQ-OPP-2013-0156	Jonathan Williams, <a href="mailto:williams.jonathanr@epa.gov">williams.jonathanr@epa.gov</a> , 703-347-0670.
Pseudomonas aureofaciens, Case Number 6009 .....	EPA-HQ-OPP-2012-0421	Susanne Cerrelli, <a href="mailto:cerrelli.susanne@epa.gov">cerrelli.susanne@epa.gov</a> , 703-308-8077.

The proposed interim registration review decisions for the chemicals in the Table 1 were posted to the docket and the public was invited to submit any comments or new information. EPA addressed the comments or information received during the 60-day comment period for the proposed interim decisions in the discussion for each pesticide listed in the table. Comments from the 60-day comment period that were received may or may not have affected the Agency's interim decision. Pursuant to 40 CFR 155.58(c), the registration review case docket for the chemicals listed in the Table will remain open until all actions required in the interim decision have been completed.

This document also announces the closure of the registration review case for *Pseudomonas aureofaciens* (Case Number 6009, Docket ID Number EPA-HQ-OPP-2012-0421) because the last U.S. registrations for these pesticides have been canceled.

Background on the registration review program is provided at: <http://www.epa.gov/pesticide-reevaluation>.

Authority: 7 U.S.C. 136 *et seq.*

Dated: July 26, 2021.

**Mary Reaves,**

Acting Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2021-16318 Filed 7-29-21; 8:45 am]

BILLING CODE 6560-50-P

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part

225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at <https://www.federalreserve.gov/foia/request.htm>. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)).

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551-0001, not later than August 30, 2021.

*A. Federal Reserve Bank of Boston* (Prabal Chakrabarti, Senior Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02210-2204. Comments can also be sent electronically to [BOS.SRC.Applications.Comments@bos.frb.org](mailto:BOS.SRC.Applications.Comments@bos.frb.org):

1. *Eastern Bankshares Inc., Boston, Massachusetts*; to acquire Century Bancorp, Inc., Medford, Massachusetts, and thereby indirectly acquire Century Bank and Trust Company, Somerville, Massachusetts.

Board of Governors of the Federal Reserve System, July 27, 2021.

**Michele Taylor Fennell,**

Deputy Associate Secretary of the Board.

[FR Doc. 2021-16285 Filed 7-29-21; 8:45 am]

BILLING CODE P

## FEDERAL RESERVE SYSTEM

### Privacy Act of 1974; System of Records

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of a modified system of records.

**SUMMARY:** Pursuant to the provisions of the Privacy Act of 1974, notice is given that the Board of Governors of the Federal Reserve System (Board) proposes to modify an existing system of records entitled, BGFRS-17, "FRB—Municipal or Government Securities Principals and Representatives." BGFRS-17 contains the regulatory filings (*i.e.*, applications) for individuals seeking to become municipal securities principals or representatives associated with a municipal securities dealer or government securities principals or representatives associated with a government securities broker or dealer. The filings also include notifications of termination of activities for municipal securities principals or representatives. **DATES:** Comments must be received on or before August 30, 2021. This new system of records will become effective August 30, 2021, without further notice, unless comments dictate otherwise.

The Office of Management and Budget (OMB), which has oversight responsibility under the Privacy Act, requires a 30-day period prior to publication in the **Federal Register** in which to review the system and to

provide any comments to the agency. The public is then given a 30-day period in which to comment, in accordance with 5 U.S.C. 552a(e)(4) and (11).

**ADDRESSES:** You may submit comments, identified by *BGFRS-17: "FRB—Municipal or Government Securities Principals and Representatives"* by any of the following methods:

- **Agency website:** <https://www.federalreserve.gov>. Follow the instructions for submitting comments at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx>.

- **Email:** [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include SORN name and number in the subject line of the message.

- **Fax:** (202) 452-3819 or (202) 452-3102.

- **Mail:** Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's website at <https://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons or to remove sensitive personally identifiable information. Public comments may also be viewed electronically or in paper in Room 146, 1709 New York Avenue NW, Washington, DC 20006, between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** David B. Husband, Counsel, (202) 530-6270, or [david.b.husband@frb.gov](mailto:david.b.husband@frb.gov); Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869.

**SUPPLEMENTARY INFORMATION:** The Board is modifying the system to update the system manager, to clarify the category of individuals covered, and to change the category of records in the system to reflect that the Board is no longer collecting date of birth, place of birth, or social security numbers. The Board is also updating the authority section to eliminate a reference to Executive Order 9397, which addresses collection of social security numbers as no longer necessary. The Board has modified the category of individuals to separately identify the individuals who seek to be principals or representatives associated with a municipal securities dealer from those who seek to be principals or representatives associated with a government securities broker or dealer. The Board is also changing the term "persons" throughout the system of

record notice to instead refer to "individuals."

The Board is also making technical changes to BGFRS-17 consistent with the template laid out in OMB Circular No. A-108. Accordingly, the Board has made technical corrections and non-substantive language revisions to the following sections: "Policies and Practices for Storage of Records," "Policies and Practices for Retrieval of Records," "Policies and Practices for Retention and Disposal of Records," "Administrative, Technical and Physical Safeguards," "Record Access Procedures," "Contesting Record Procedures," and "Notification Procedures." The Board has also created the following new sections: "Security Classification" and "History."

**SYSTEM NAME AND NUMBER:**

BGFRS-17 "FRB—Municipal or Government Securities Principals and Representatives"

**SECURITY CLASSIFICATION:**

Unclassified.

**SYSTEM LOCATION:**

Records are maintained at the Board's central offices located at: Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

**SYSTEM MANAGER(S):**

The manager is located at the Board's central offices in Washington, DC. The manager for this system is Lindsay Steedman, Manager, Supervision and Regulation Division, (202) 912-4322, or [lindsay.a.steedman@frb.gov](mailto:lindsay.a.steedman@frb.gov).

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Sections 3, 15B, 15C, 17, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78c, 78o-4, 78o-5, 78q, and 78w), and section 11 of the Federal Reserve Act (12 U.S.C. 248).

**PURPOSE(S) OF THE SYSTEM:**

These records are collected and maintained to permit the Board to perform its responsibilities under the securities laws with regard to the individuals described in this system of records.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Individuals who are, or seek to be: (1) Principals or representatives associated with a municipal securities dealer that is a state member bank of the Federal Reserve System, a bank holding company, a savings and loan holding company, a foreign bank, an uninsured State branch or agency of a foreign bank, a commercial lending company owned

or controlled by a foreign bank, or an Edge Act corporation; or (2) principals or representatives associated with a government securities broker or dealer that is a state member bank of the Federal Reserve System, a foreign bank, an uninsured State branch or agency of a foreign bank, a foreign bank-owned or controlled commercial lending company, or an Edge Act or agreement corporation.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Identifying information (*e.g.*, name, address); educational, employment, criminal history, and disciplinary information; scores on professional qualification examinations; and, where applicable, information regarding termination of employment of individuals covered by the system. Historical records may also include the individual's date of birth, place of birth, and social security number.

**RECORD SOURCE CATEGORIES:**

Information is provided by the individual to whom the record pertains as well as municipal or government securities dealers with whom the individuals are associated, and federal, state, local, and foreign governmental authorities, and self-regulatory organizations that regulate the securities industry.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:**

General routine uses, A, C, D, E, G, I, and J apply to this system. These general routine uses are located at <https://www.federalreserve.gov/files/SORN-page-general-routine-uses-of-board-systems-of-records.pdf> and are published in the **Federal Register** at 83 FR 43872 (August 28, 2018) at 43873-74. In addition, records may also be used to disclose information to a federal, state, local, or foreign governmental authority or a self-regulatory organization if necessary in order to obtain information relevant to a Federal Reserve Board inquiry concerning an individual who is or seeks to be associated with a municipal or government securities dealer.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are stored in paper and electronic form.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Records can be retrieved by an individual's name.



**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

The retention period for these records is currently under review. Until the review is completed, the records will not be destroyed.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Access to records is limited to those whose official duties require it. Paper records are secured by lock and key.

**RECORD ACCESS PROCEDURES:**

The Privacy Act allows individuals the right to access records maintained about them in a Board system of records. Your request for access must: (1) Contain a statement that the request is made pursuant to the Privacy Act of 1974; (2) provide either the name of the Board system of records expected to contain the record requested or a concise description of the system of records; (3) provide the information necessary to verify your identity; and (4) provide any other information that may assist in the rapid identification of the record you seek.

Current or former Board employees may make a request for access by contacting the Board office that maintains the record. The Board handles all Privacy Act requests as both a Privacy Act request and as a Freedom of Information Act request. The Board does not charge fees to a requestor seeking to access or amend his/her Privacy Act records.

You may submit your Privacy Act request to the—

Secretary of the Board, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

You may also submit your Privacy Act request electronically through the Board's FOIA "Electronic Request Form" located here: <https://www.federalreserve.gov/secure/forms/efoiaform.aspx>.

**CONTESTING RECORD PROCEDURES:**

The Privacy Act allows individuals to seek amendment of information that is erroneous, irrelevant, untimely, or incomplete and is maintained in a system of records that pertains to them. To request an amendment to your record, you should clearly mark the request as a "Privacy Act Amendment Request." You have the burden of proof for demonstrating the appropriateness of the requested amendment and you must provide relevant and convincing evidence in support of your request.

Your request for amendment must: (1) Provide the name of the specific Board system of records containing the record

you seek to amend; (2) identify the specific portion of the record you seek to amend; (3) describe the nature of and reasons for each requested amendment; (4) explain why you believe the record is not accurate, relevant, timely, or complete; and (5) unless you have already done so in a related Privacy Act request for access or amendment, provide the necessary information to verify your identity.

**NOTIFICATION PROCEDURES:**

Same as "Access procedures" above. You may also follow this procedure in order to request an accounting of previous disclosures of records pertaining to you as provided for by 5 U.S.C. 552a(c).

**EXEMPTIONS PROMULGATED FOR THE SYSTEM:**

No exemptions are claimed for this system.

**HISTORY:**

This system was previously published in the **Federal Register** at 73 FR 24984 at 24999 (May 6, 2008).

Board of Governors of the Federal Reserve System.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2021-16287 Filed 7-29-21; 8:45 am]

**BILLING CODE P****OFFICE OF GOVERNMENT ETHICS**

**Agency Information Collection Activities: Information Collection Renewal; Comment Request; Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery**

**AGENCY:** Office of Government Ethics (OGE).

**ACTION:** Notice and request for comments.

**SUMMARY:** After publication of this second round notice, the Office of Government Ethics (OGE) intends to submit a renewed Generic Information Collection Request for the collection of qualitative feedback on agency service delivery for review and approval of a three-year extension under the Paperwork Reduction Act.

*Comments:* Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Grant Anderson at the U.S. Office of Government Ethics; telephone: 202-482-9318; TTY: 800-877-8339; Email: [Grant.Anderson@oge.gov](mailto:Grant.Anderson@oge.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery.

*Abstract:* The proposed information collection provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the agency's commitment to improving service delivery. Qualitative feedback means information that provides useful insights on perceptions and opinions, but is not a statistical survey that yields quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences, and expectations, provide an early warning of issues with service, or focus attention on areas where communication, training, or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative, and actionable communications between the agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

OGE expects to use various methods (e.g., focus groups, customer satisfaction surveys, comment cards) to solicit feedback. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public and other agency stakeholders. If this information is not collected, vital feedback from customers and stakeholders on the agency's services will be unavailable.

The agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are non-controversial;
- The collections are focused on the awareness, understanding, attitudes, preferences, or experiences of the public or other stakeholders in order to improve existing or future services, products, or communication materials;
- Personally identifiable information (PII) is collected only to the extent necessary;



- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release to the public;

- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and

- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential non-response bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections submitted under this generic clearance will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

A **Federal Register** Notice with a 60-day comment period soliciting comments on this information collection was published on May 19, 2021 (86 FR 27088). OGE did not receive any comments in response.

*OMB Number:* 3209-0010.

*Type of Request:* Extension.

*Affected Public:* Individuals; Business or Other For-Profit Institutions; Not-For-Profit Institutions; State, Local, or Tribal Government.

*Projected average burden estimates for the next three years:*

*Estimated Annual Number of Respondents:* 91,425.

*Average Expected Annual Number of Activities:* 39.

*Average Number of Respondents per Activity:* 2,344.

*Responses per Respondent:* 1.

*Annual Responses:* 91,425.

*Average Minutes per Response:* 3 minutes.

*Annual Burden Hours:* 3,900 hours.

*Frequency:* On occasion.

*Request for Comments:* Agency and public comment is invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). Comments will become a matter of public record.

Approved: July 26, 2021.

**Emory Rounds,**

*Director, U.S. Office of Government Ethics.*

[FR Doc. 2021-16221 Filed 7-29-21; 8:45 am]

**BILLING CODE 6345-03-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Agency for Healthcare Research and Quality**

**Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) reapprove the proposed information collection project "*Patient Safety Organization Certification for Initial Listing and Related Forms, Patient Safety Confidentiality Complaint Form, and Common Formats.*" This proposed information collection was previously published in the **Federal Register** on May 12, 2021 and allowed 60 days for public comment. AHRQ did not receive substantive comments from members of the public. The purpose of this notice is to allow an additional 30 days for public comment.

**DATES:** Comments on this notice must be received by August 30, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this

notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

**FOR FURTHER INFORMATION CONTACT:**

Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427-1477, or by email at [doris.lefkowitz@ahrq.hhs.gov](mailto:doris.lefkowitz@ahrq.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**Proposed Project**

*"Patient Safety Organization Certification for Initial Listing and Related Forms, Patient Safety Confidentiality Complaint Form, and Common Formats"*

AHRQ invites the public to comment on this proposed information collection. The Patient Safety and Quality Improvement Act of 2005 (Patient Safety Act), signed into law on July 29, 2005, was enacted in response to growing concern about patient safety in the United States and the Institute of Medicine's 1999 report, *To Err is Human: Building a Safer Health System*. The goal of the statute is to create a national learning system. By providing incentives of nation-wide confidentiality and legal privilege, the Patient Safety Act learning system improves patient safety and quality by providing an incentive for health care providers to work voluntarily with experts in patient safety to reduce risks and hazards to the safety and quality of patient care. The Patient Safety Act signifies the Federal Government's commitment to fostering a culture of patient safety among health care providers; it offers a mechanism for creating an environment in which the causes of risks and hazards to patient safety can be thoroughly and honestly examined and discussed without fear of penalties and liabilities. It provides for the voluntary formation of Patient Safety Organizations (PSOs) that can collect, aggregate, and analyze confidential information reported voluntarily by health care providers. By analyzing substantial amounts of patient safety event information across multiple institutions, PSOs are able to identify patterns of failures and propose measures to eliminate or reduce risks and hazards.

In order to implement the Patient Safety Act, the Department of Health and Human Services (HHS) issued the Patient Safety and Quality Improvement Final Rule (Patient Safety Rule) which became effective on January 19, 2009. The Patient Safety Rule outlines the requirements that entities must meet to become and remain listed as PSOs, the

process by which the Secretary of HHS (Secretary) will accept certifications and list PSOs, and provisions pertaining to the confidentiality and privilege protections for patient safety work product (PSWP).

When specific statutory requirements are met, the information collected and the analyses and deliberations regarding the information receive confidentiality and privilege protections under this legislation. The Secretary delegated authority to the Director of the Office for Civil Rights (OCR) to interpret and enforce the confidentiality protections of the Patient Safety Act (**Federal Register**, Vol. 71, No. 95, May 17, 2006, p. 28701–2). Civil money penalties may be imposed for knowing or reckless impermissible disclosures of PSWP. AHRQ implements and administers the rest of the statute's provisions.

Pursuant to the Patient Safety Rule (42 CFR 3.102), an entity that seeks to be listed as a PSO by the Secretary must certify that it meets certain requirements and, upon listing, would meet other criteria. To remain listed for renewable three-year periods, a PSO must re-certify that it meets these obligations and would continue to meet them while listed. The Patient Safety Act and Patient Safety Rule also impose other obligations discussed below that a PSO must meet to remain listed. In accordance with the requirements of the Patient Safety Rule (see, e.g., 42 CFR 3.102(a)(1), 3.102(b)(2)(i)(E), 3.102(d)(1), and 3.112), the entities seeking to be listed and to remain listed must complete the proposed forms, in order to attest to compliance with statutory criteria and the corresponding regulatory requirements.

#### Method of Collection

With this submission, AHRQ is requesting approval of the following proposed administrative forms:

1. **PSO Certification for Initial Listing Form.** This form, containing certifications of eligibility and a capacity and intention to comply with statutory criteria and regulatory requirements, is to be completed, in accordance with 42 U.S.C. 299b–24(a)(1), and the above-cited regulatory certification provisions, by an entity seeking to be listed by the Secretary as a PSO for an initial three-year period.

2. **PSO Certification for Continued Listing Form.** In accordance with 42 U.S.C. 299b–24(a)(2) and the above-cited regulatory certification provisions, this form is to be completed by a listed PSO seeking continued listing by the Secretary as a PSO for each successive three-year period.

3. **PSO Two Bona Fide Contracts Requirement Certification Form.** To remain listed, a PSO must meet a statutory requirement in 42 U.S.C. 299b–24(b)(1)(C) that it has contracts with more than one provider, within successive 24-month periods, beginning with the date of the PSO's initial listing. This form is to be used by a PSO to certify whether it has met this statutory requirement and the corresponding regulatory provision.

4. **PSO Disclosure Statement Form.** This form provides detailed instructions to a PSO regarding the disclosure statement it must submit and provides for the required certification by the PSO of the statement's accuracy in accordance with the 42 U.S.C. 299b–24(b)(1)(E), when it (i) has a contract with a provider to carry out patient safety activities and (ii) it has financial, reporting, or contractual relationship(s) with that contracting provider or is not managed, controlled, and operated independently from that contracting provider. In accordance with the Patient Safety Act and the Patient Safety Rule, the Secretary is required to review each such report and make public findings as to whether a PSO can fairly and accurately carry out its responsibilities.

5. **PSO Profile Form.** This form is designed to collect a minimum level of voluntary data necessary to develop aggregate statistics relating to PSOs, the types of providers they work with, and their general location in the US. The PSO Profile is intended to be completed annually by all PSOs that are "AHRQ-listed" during any part of the previous calendar year. This information is collected by AHRQ's PSO Privacy Protection Center (PSOPPC) and is used to populate the AHRQ PSO selection tool on the AHRQ PSO website, to generate slides presented at the PSO Annual Meeting, and to develop content for the annual report required by 42 U.S.C. 299b–2(b)(2), the AHRQ National Healthcare Quality and Disparities Report.

6. **PSO Change of Listing Information Form.** The Secretary is required under 42 U.S.C. 299b–24(d) to maintain a publicly available list of PSOs. Under the Patient Safety Rule, that list includes, among other information, each PSO's current contact information. The Patient Safety Rule, at 42 CFR 3.102(a)(1)(vi), also requires that, during its period of listing, a PSO must promptly notify the Secretary of any changes in the accuracy of the information submitted for listing.

7. **PSO Voluntary Relinquishment Form.** A PSO may voluntarily relinquish its status as a PSO for any reason. Pursuant to 42 CFR 3.108(c)(2), in order

for the Secretary to accept a PSO's notification of voluntary relinquishment, the notice must contain certain attestations and future contact information. This form provides an efficient manner for a PSO seeking voluntary relinquishment to provide all of the required information.

OCR is requesting approval of the following administrative form:

**Patient Safety Confidentiality Complaint Form.** The purpose of this collection is to allow OCR to collect the minimum information needed from individuals filing patient safety confidentiality complaints with OCR so that there is a basis for initial processing of those complaints.

In addition, AHRQ is requesting approval for a set of common definitions and reporting formats (Common Formats). As authorized by 42 U.S.C. 299b–23(b), AHRQ coordinates the development of the Common Formats that facilitate aggregation of comparable data at local, PSO, regional and national levels. The Common Formats allow PSOs and health care providers to voluntarily collect and submit standardized information regarding patient safety events to fulfill the national learning system envisioned by the Patient Safety Act.

OMB previously approved the Common Formats and forms described above in 2008, 2011, 2014, and 2018. AHRQ will use these forms, other than the Patient Safety Confidentiality Complaint Form, to obtain information necessary to carry out its authority to implement the Patient Safety Act and Patient Safety Rule. This includes obtaining initial and subsequent certifications from entities seeking to be or remain listed as PSOs and for making the statutorily required determinations prior to and during an entity's period of listing as a PSO. The PSO Division, housed in AHRQ's Center for Quality Improvement and Patient Safety, uses this information.

OCR will use the Patient Safety Confidentiality Complaint Form to collect information for the initial assessment of an incoming complaint. The form is modeled on OCR's form for complaints alleging violations of the privacy of protected health information. Use of the form is voluntary. It may help a complainant provide the essential information. Alternatively, a complainant may choose to submit a complaint in the form of a letter or electronically. An individual who needs help to submit a complaint in writing may call OCR for assistance.

**Estimated Annual Respondent Burden**

The PSO information collection forms described below will be implemented at different times and frequencies due to the voluntary nature of seeking listing and remaining listed as a PSO, filing an OCR Patient Safety Confidentiality Complaint Form, and using the Common Formats. For the PSO forms, the burden estimates are based on the average of submissions received over the past three years. For the Common Formats, this estimate is based on the feedback that AHRQ has received during meetings and technical assistance calls from PSOs and other entities that have been utilizing the formats.

Exhibit 1 shows the estimated annualized burden hours for the respondent to provide the requested information, and Exhibit 2 shows the estimated annualized cost burden associated with the respondents' time to provide the requested information. The total burden hours are estimated to be 100,795.83 hours annually and the total cost burden is estimated to be \$4,053,000.33 annually.

**PSO Certification for Initial Listing Form:** The average annual burden for the collection of information requested by the certification forms for initial listing is based upon a total average estimate of 10 respondents per year and an estimated time of 18 hours per response. The estimated response number includes submissions by not only entities listed as PSOs, but also entities that submit initial listing forms that do not become PSOs. After submitting a PSO Certification for Initial Listing Form, an entity may withdraw its form or submit a revised form,

particularly after receiving technical assistance from AHRQ. In addition, AHRQ, on behalf of the Secretary, may deny listing if an entity does not meet the requirements of the Patient Safety Act and Patient Safety Rule.

**PSO Certification for Continued Listing Form:** The average annual burden for the collection of information requested by the certification form for continued listing has an estimated time of eight hours per response and 42 responses annually. The PSO Certification for Continued Listing Form must be submitted by any interested PSO at least 75 days before the end of its current three-year listing period.

**PSO Two Bona Fide Contracts Requirement Certification Form:** The average annual burden for the collection of information requested by the PSO Two Bona Fide Contract Certification Form is based upon an estimate of 51 respondents per year and an estimated one hour per response. This collection of information takes place when the PSO notifies the Secretary that it has entered into two contracts with providers, which is required once every 24 months.

**PSO Disclosure Statement Form:** The overall annual burden for the collection of information requested by the PSO Disclosure Statement Form is based upon an estimate of two respondents per year and estimated three hours per response. This information collection takes place when a PSO first reports having any of the specified types of additional relationships with a provider with which it has a contract to carry out patient safety activities.

**PSO Profile Form:** The overall annual burden for the collection of information

requested by the PSO Profile Form is based upon an estimate of 72 respondents per year and an estimated three hours per response. The collection of information takes place annually with newly listed PSOs first eligible to submit the form in the calendar year after their initial listing by the Secretary.

**PSO Change of Listing Information Form:** The average annual burden for the collection of information requested by the PSO Change of Listing Information Form is based upon an estimate of 54 respondents per year and an estimated time of five minutes per response. This collection of information takes place on an ongoing basis as needed when there are changes to the PSO's listing information.

**OCR Patient Safety Confidentiality Complaint Form:** The overall annual burden estimate of one hour for the collection of information requested by the form is based on an estimate of one respondent per year and an estimated twenty minutes per response.

**PSO Voluntary Relinquishment Form:** The average annual burden for the collection of information requested by the PSO Voluntary Relinquishment Form is based upon a total average estimate of four respondents per year and an estimated time of thirty minutes per response.

**Common Formats:** AHRQ estimates that 5% FTE of a patient safety manager at a facility will be spent to administer the Common Formats, which is approximately 100 hours a year. The use of the formats by PSOs and other entities is voluntary and is on an ongoing basis.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
PSO Certification for Initial Listing Form .....	10	1	18	180
PSO Certification for Continued Listing Form .....	42	1	8	336
PSO Two Bona Fide Contracts Requirement Form .....	51	1	1	51
PSO Disclosure Statement Form .....	2	1	3	6
PSO Profile Form .....	72	1	3	216
PSO Change of Listing Information .....	54	1	05/60	4.50
PSO Voluntary Relinquishment Form .....	4	1	30/60	2
OCR Patient Safety Confidentiality Complaint Form .....	1	1	20/60	.33
Common Formats .....	1,000	1	100	100,000
Total .....	.....	NA	NA	100,795.83

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost
PSO Certification for Initial Listing Form .....	10	180	\$40.21	\$7,237.80

## EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN—Continued

Form	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost
PSO Certification for Continued Listing Form .....	42	336	40.21	13,510.56
PSO Two Bona Fide Contracts Requirement Form .....	451	451	40.21	2,050.71
PSO Disclosure Statement Form .....	2	6	40.21	241.26
PSO Profile Form .....	72	216	40.21	8,685.36
PSO Change of Listing Form .....	54	4.50	40.21	180.95
PSO Voluntary Relinquishment Form .....	4	2	40.21	80.42
OCR Patient Safety Confidentiality Complaint Form .....	1	.33	40.21	13.27
Common Formats .....	1,000	100,000	40.21	4,021,000.00
Total .....				4,053,000.33

\* Based upon the mean of the hourly average wages for healthcare practitioner and technical occupations, 29-0000, National Compensation Survey, May 2019, "U.S. Department of Labor, Bureau of Labor Statistics." <https://www.bls.gov/oes/current/oes290000.htm>.

### Request for Comments

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3520, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ's health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Dated: July 27, 2021.

**Marquita Cullom,**  
Associate Director.

[FR Doc. 2021–16326 Filed 7–29–21; 8:45 am]

**BILLING CODE 4160–90–P**

### DEPARTMENT OF HEALTH AND HUMAN SERVICES

#### Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10398 #72]

#### Medicaid and Children's Health Insurance Program (CHIP) Generic Information Collection Activities: Proposed Collection; Comment Request

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

**ACTION:** Notice.

**SUMMARY:** On May 28, 2010, the Office of Management and Budget (OMB) issued Paperwork Reduction Act (PRA) guidance<sup>1</sup> related to the "generic" clearance process. Generally, this is an expedited process by which agencies may obtain OMB's approval of collection of information requests that are "usually voluntary, low-burden, and uncontroversial collections," do not raise any substantive or policy issues, and do not require policy or methodological review. The process requires the submission of an overarching plan that defines the scope of the individual collections that would fall under its umbrella. On October 23, 2011, OMB approved our initial request to use the generic clearance process under control number 0938–1148 (CMS–10398). It was last approved on April 26, 2021, via the standard PRA process which included the publication of 60- and 30-day **Federal Register** notices. The scope of the April 2021 umbrella accounts for Medicaid and CHIP State plan amendments, waivers, demonstrations, and reporting. This **Federal Register** notice seeks public

comment on one or more of our collection of information requests that we believe are generic and fall within the scope of the umbrella. Interested persons are invited to submit 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 August 13, 2021.

**ADDRESSES:** When commenting, please reference the applicable form number (see below) and the OMB control number (0938–1148). 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.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may access CMS' website 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:** Following is a summary of the use and burden associated with the subject information collection(s). More detailed information

<sup>1</sup> [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/PRA\\_Gen\\_ICRs\\_5-28-2010.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/assets/inforeg/PRA_Gen_ICRs_5-28-2010.pdf).

can be found in the collection's supporting statement and associated materials (see **ADDRESSES**).

### Generic Information Collection

1. *Type of Information Collection Request:* New collection; *Title of Information Collection:* Expressions of Interest in the Infant Well-Child Visit Affinity Group; *Use:* To improve the use and quality of well-child visits for Medicaid and CHIP beneficiaries ages 0 to 12 months, CMS has launched the Infant Well-Child Visit Learning Collaborative Affinity Group. The affinity group will provide technical assistance to state Medicaid and CHIP agencies and their partners through group workshops and one-on-one meetings. Quality improvement (QI) advisors and subject matter experts will provide state teams with individualized guidance, including QI tools, to identify, implement, and test change ideas to improve infant well-child visits and then scale those changes that prove successful.

Many infants do not receive the recommended number of infant well-child visits. Reasons for missing visits include lack of transportation, work responsibilities, lack of childcare, and other social stressors. The COVID-19 pandemic has exacerbated the number of missed well-child visits, with 21 percent fewer (4.6 million) child screening services provided between March through October 2020, compared to the same period in 2019. Because Medicaid and CHIP cover nearly 40 percent of all children, focusing on well-child visits is an opportunity for state Medicaid and CHIP programs to improve overall attendance and quality of infant well-child visits and to reduce disparities in well-infant care. When children receive the recommended number of high-quality visits, they are more likely to be up-to-date on immunizations, have developmental concerns recognized early, and are less likely to visit the emergency department. *Form Number:* CMS-10398 (#72) (OMB control number: 0938-1148); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 20; *Total Annual Hours:* 140. (For policy questions regarding this collection contact Kristen Zycherman at 410-786-6974.)

Dated: July 26, 2021.

**William N. Parham, III**

*Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2021-16208 Filed 7-29-21; 8:45 am]

**BILLING CODE 4120-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

[CMS-3410-N]

#### Medicare Program; Virtual Meeting of the Medicare Evidence Development and Coverage Advisory Committee—September 22, 2021

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

**ACTION:** Notice.

**SUMMARY:** This notice announces a virtual public meeting of the Medicare Evidence Development & Coverage Advisory Committee (MEDCAC) ("Committee") will be held on Wednesday, September 22, 2021. The MEDCAC panel will examine relevant health outcomes in studies for cerebrovascular disease treatment with a particular focus on new technologies of interest to CMS. Given the increased emphasis on new and innovative medical products for treating diseases that have few proven therapies, studies on certain medical technologies have focused on intermediate and surrogate outcomes rather than longer-term data. As a result, there are more frequent evidence gaps with respect to the clinically meaningful health outcomes for CMS beneficiaries, and these gaps impact our assessments of medical technologies. The MEDCAC panel will examine the growing challenges associated with the decreased level of evidence of certain new and innovative technologies. By voting on specific questions, and by their discussions, MEDCAC panel members will advise CMS about the ideal health outcomes in research studies of cerebrovascular disease treatment technologies, appropriate measurement instruments and follow-up durations to help to provide clarity and transparency of National Coverage Analyses (NCAs). This meeting is open to the public in accordance with the Federal Advisory Committee Act.

**DATES:**

*Meeting Date:* The virtual meeting will be held on Wednesday, September

22, 2021 from 8:00 a.m. until 4:30 p.m., Eastern Daylight Time (EDT).

*Deadline for Submission of Written Comments:* Written comments must be received at the email address specified in the **ADDRESSES** section of this notice by 5:00 p.m., Eastern Daylight Time (EDT), on Monday, August 23, 2021. Once submitted, all comments are final.

*Deadlines for Speaker Registration and Presentation Materials:* The deadline to register to be a speaker and to submit PowerPoint presentation materials and writings that will be used in support of an oral presentation is 5:00 p.m., EDT, on Monday, August 23, 2021. Speakers may register by phone or via email by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Presentation materials must be received at the email address specified in the **ADDRESSES** section of this notice.

*Submission of Presentations and Comments:* Presentation materials and written comments that will be presented at the meeting must be submitted via email to [MedCACpresentations@cms.hhs.gov](mailto:MedCACpresentations@cms.hhs.gov) section of this notice by Monday, August 23, 2021.

*Deadline for All Other Attendees Registration:* Individuals who want to join the meeting may register online at [https://cms.zoomgov.com/webinar/register/WN\\_ejmvuvv1UTImALOSXqhKmpQ](https://cms.zoomgov.com/webinar/register/WN_ejmvuvv1UTImALOSXqhKmpQ) 4:30 p.m. EDT, on Wednesday, September 22, 2021.

*Webinar and Teleconference Meeting Information:* Teleconference dial-in instructions, and related webinar details will be posted on the meeting agenda, which will be available on the CMS website <http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAA&>. Participants in the MEDCAC meeting will require the following: A computer, laptop or smartphone where the Zoom application needs to be downloaded; a strong Wi-Fi or an internet connection and access to use Chrome or Firefox web browser and a webcam if the meeting participant is scheduled to speak or make a presentation during the meeting.

*Deadline for Submitting a Request for Special Accommodations:* Individuals viewing or listening to the meeting who are hearing or visually impaired and have special requirements, or a condition that requires special assistance, should send an email to the MEDCAC Coordinator as specified in the **FOR FURTHER INFORMATION CONTACT** section of this notice no later than 5:00 p.m., EDT on Friday, August 27, 2021.

**ADDRESSES:** Due to the current COVID-19 public health emergency, the Panel meeting will be held virtually.

**FOR FURTHER INFORMATION CONTACT:** Tara Hall, MEDCAC Coordinator, via email at [Tara.Hall@cms.hhs.gov](mailto:Tara.Hall@cms.hhs.gov) or by phone 410-786-4347.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

MEDCAC, formerly known as the Medicare Coverage Advisory Committee (MCAC), is advisory in nature, with all final coverage decisions resting with CMS. MEDCAC is used to supplement CMS' internal expertise. Accordingly, the advice rendered by the MEDCAC is most useful when it results from a process of full scientific inquiry and thoughtful discussion, in an open forum, with careful framing of recommendations and clear identification of the basis of those recommendations. MEDCAC members are valued for their background, education, and expertise in a wide variety of scientific, clinical, and other related fields. (For more information on MEDCAC, see the MEDCAC Charter (<http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/Downloads/medcaccharter.pdf>) and the CMS Guidance Document, *Factors CMS Considers in Referring Topics to the MEDCAC* (<http://www.cms.gov/medicare-coverage-database/details/medicare-coverage-document-details.aspx?MCDId=10>).

**II. Meeting Topic and Format**

This notice announces the Wednesday, September 22, 2021, virtual public meeting of the Committee. The MEDCAC panel will examine relevant health outcomes in studies for cerebrovascular disease treatment with a particular focus on new technologies of interest to CMS. Given the increased emphasis on new and innovative medical products for treating diseases that have few proven therapies, studies on certain medical technologies have focused on intermediate and surrogate outcomes rather than longer-term data. As a result, there are more frequent evidence gaps with respect to the clinically meaningful health outcomes for CMS beneficiaries, and these gaps impact our assessments of medical technologies. The MEDCAC panel will examine the growing challenges associated with the decreased level of evidence of certain new and innovative technologies. By voting on specific questions, and by their discussions, MEDCAC panel members will advise CMS about the ideal health outcomes in research studies of cerebrovascular

disease treatment technologies, appropriate measurement instruments and follow-up durations to help to provide clarity and transparency of National Coverage Analyses (NCAs).

Background information about this topic, including panel materials, is available at <http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAAA&>. Electronic copies of all the meeting materials will be on the CMS website no later than 2 business days before the meeting. We encourage the participation of organizations with expertise in the appraisal of the state of evidence for the use of services and technologies to diagnose and treat patients with cerebrovascular disease. This meeting is open to the public. The Committee will hear oral presentations from the public for approximately 45 minutes. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than what can be reasonably accommodated during the scheduled open public hearing session, we may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by August 30, 2021. Your comments must focus on issues specific to the list of topics that we have proposed to the Committee. The list of research topics to be discussed at the meeting will be available on the following website prior to the meeting: <http://www.cms.gov/medicare-coverage-database/indexes/medcac-meetings-index.aspx?bc=BAAAAAAAAAAAA&>. We require that you declare at the meeting whether you have any financial involvement with manufacturers (or their competitors) of any items or services being discussed. Speakers presenting at the MEDCAC meeting must include a full disclosure slide as their second slide in their presentation for financial interests (for example, type of financial association—consultant, research support, advisory board, and an indication of level, such as minor association <\$10,000 or major association >\$10,000) as well as intellectual conflicts of interest (for example, involvement in a federal or nonfederal advisory committee that has discussed the issue) that may pertain in any way to the subject of this meeting. If you are representing an organization, we require that you also disclose conflict of interest information for that organization. If you do not have a PowerPoint presentation, you will need to present the full disclosure

information requested previously at the beginning of your statement to the Committee.

The Committee will deliberate openly on the topics under consideration. Interested persons may observe the deliberations, but the Committee will not hear further comments during this time except at the request of the chairperson. The Committee will also allow a 15-minute unscheduled open public session for any attendee to address issues specific to the topics under consideration. At the conclusion of the day, the members will vote and the Committee will make its recommendation(s) to CMS.

**III. Registration Instructions**

CMS' Coverage and Analysis Group is coordinating meeting registration. While there is no registration fee, individuals must register to attend. You may register online at <http://www.cms.gov/apps/events/upcomingevents.aspx?strOrderBy=1&type=3> or by phone by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice by the deadline listed in the **DATES** section of this notice. Please provide your full name (as it appears on your state-issued driver's license), address, organization, telephone number(s), and email address. You will receive a registration confirmation with instructions for your participation at the virtual public meeting.

**IV. Collection of Information**

This document does not impose information collection requirements, that is, reporting, recordkeeping or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

The Chief Medical Officer and Director of the Center for Clinical Standards and Quality for the Centers for Medicare & Medicaid Services (CMS), Lee A. Fleisher, having reviewed and approved this document, authorizes Lynette Wilson, who is the Federal Register Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Dated: July 27, 2021.

**Lynette Wilson,**

*Federal Register Liaison, Centers for Medicare & Medicaid Services.*

[FR Doc. 2021-16314 Filed 7-29-21; 8:45 am]

**BILLING CODE 4120-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Administration for Children and Families**

**Proposed Information Collection Activity; Intergovernmental Reference Guide (IRG) (OMB No.: 0970-0209)**

**AGENCY:** Office of Child Support Enforcement, Administration for Children and Families, HHS.

**ACTION:** Request for public comment.

**SUMMARY:** The Administration for Children and Families (ACF), Office of Child Support Enforcement (OCSE), is requesting the Office of Management and Budget (OMB) to approve the Intergovernmental Reference Guide (IRG), with content revisions, for an additional three years. The IRG contains

state and tribal child support information that assists child support enforcement (CSE) agencies in the administration of their respective programs. The current OMB approval expires on January 31, 2022.

**DATES:** *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, the ACF is soliciting public comment on the specific aspects of the information collection described above.

**ADDRESSES:** Copies of the proposed collection of information can be obtained and comments may be forwarded by emailing [infocollection@acf.hhs.gov](mailto:infocollection@acf.hhs.gov). Alternatively, copies can also be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 330 C Street SW,

Washington, DC 20201, Attn: ACF Reports Clearance Officer. All requests, emailed or written, should be identified by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The IRG is a centralized and automated repository of state and tribal profiles that contains high-level descriptions of each CSE program. These profiles provide state, tribal, and foreign country CSE agencies with an effective and efficient method for updating and accessing information needed to process intergovernmental child support cases. Proposed revisions to the state profile include content changes and organizational updates. Proposed revisions to the tribal profile are only organizational, no content changes are proposed.

*Respondents:* State and Tribal Child Support Enforcement Agencies.

**ANNUAL BURDEN ESTIMATES**

Information collection instrument	Total number of annual respondents	Number of annual responses per respondent	Average annual burden hour per response	Annual burden hours
IRG: State Profile Guide (states and territories) .....	54	18	0.3	292
IRG: Tribal Profile Guide .....	62	18	0.3	335

*Estimated Total Annual Burden Hours:* 627.

*Comments:* The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted within 60 days of this publication.

*Authority:* 42 U.S.C. 652(a)(7); 42 U.S.C. 666(f); 45 CFR 301.1; 45 CFR 303.7; and 45 CFR 309.120.

**Mary B. Jones,**  
*ACF/OPRE Certifying Officer.*

[FR Doc. 2021-16244 Filed 7-29-21; 8:45 am]

**BILLING CODE 4184-41-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Food and Drug Administration**

[Docket No. FDA-2020-N-2340]

**Matthew Hebert: Final Debarment Order**

**AGENCY:** Food and Drug Administration, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (FD&C Act) debarment Matthew Hebert for a period of 5 years from importing articles of food or offering such articles for importation into the United States. FDA bases this order on a finding that Mr. Hebert was convicted of a felony count under Federal law for conduct relating to the importation into the United States of an article of food. Mr. Hebert was given notice of the proposed debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. As of May 5, 2021 (30 days after receipt of the notice), Mr. Hebert has not responded. Mr. Hebert's failure to respond and request a hearing constitutes a waiver of his right to a hearing concerning this matter.

**DATES:** This order is applicable July 30, 2021.

**ADDRESSES:** Submit applications for termination of debarment to the Dockets Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500, or at <https://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Jaime Espinosa (ELEM-4029), Division of Enforcement, Office of Strategic Planning and Operational Policy, Office of Regulatory Affairs, Food and Drug Administration, 12420 Parklawn Dr., Rockville, MD 20857, 240-402-8743, or at [debarments@fda.hhs.gov](mailto:debarments@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Section 306(b)(1)(C) of the FD&C Act (21 U.S.C. 335a(b)(1)(C)) permits debarment of an individual from importing an article of food or offering such an article for import into the United States if FDA finds, as required by section 306(b)(3)(A) of the FD&C Act, that the individual has been convicted of a felony for conduct relating to the importation into the United States of any food. On December 11, 2020, Mr. Hebert was convicted, as defined in section 306(l)(1)(A) of the FD&C Act, in the U.S. District Court for the Northern



District of Texas-Dallas Division, when the court accepted Mr. Hebert's plea of guilty and entered judgment against him for the offense of introduction of misbranded food into interstate commerce with intent to defraud and mislead, in violation of sections 301(a) and 303(a)(2) of the FD&C Act (21 U.S.C. 331(a) and 333(a)(2)).

FDA's finding that the debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: As contained in the superseding indictment, filed on January 5, 2016, Mr. Hebert was a co-owner of USP Labs with primarily responsibilities over product packaging design. As contained in the factual résumé submitted as part of Mr. Hebert's plea agreement on March 11, 2019, and the factual resumes submitted as part of plea agreements with his codefendants, one of Mr. Hebert's codefendants instructed a Chinese company to have 2 metric tons of ground *cynanchum auriculatum* root powder shipped internationally to S.K. Laboratories in California for inclusion in USP Labs' dietary supplement products, using the false name "*cynanchum auriculatum* root extract." USP Labs sent false labels to retailers and wholesalers listing "*cynanchum auriculatum* (root) extract" as an ingredient in OxyElite Pro "Advanced Formula" (which went on sale in or around August 2013), even though that ingredient was not present in the product. Beginning in or around August 2013, Mr. Hebert, USP Labs, and others working at USP Labs and S.K. Laboratories, did knowingly, and with the intent to defraud and mislead, cause the shipment of a misbranded food, namely the OxyElite Pro "Advanced Formula" dietary supplement, in interstate commerce. Specifically, on or about October 4, 2013, with intent to defraud and mislead, Mr. Hebert caused the shipment of misbranded OxyElite Pro "Advanced Formula" in interstate commerce. The labeling for OxyElite Pro "Advanced Formula" falsely declared *cynanchum auriculatum* (root) extract as an ingredient, when in fact OxyElite Pro "Advanced Formula" contained imported *cynanchum auriculatum* powder but no *cynanchum auriculatum* (root) extract.

As a result of this conviction, FDA sent Mr. Hebert, by certified mail on March 29, 2021, a notice proposing to debar him for a period of 5 years from importing articles of food or offering such articles for import into the United States. The proposal was based on a finding under section 306(b)(1)(C) of the FD&C Act that Mr. Hebert's felony conviction of "introduction of

misbranded food into interstate commerce with intent to defraud and mislead" in violation of sections 301(a) and 303(a)(2) of the FD&C Act constitutes conduct relating to the importation into the United States of an article of food because Mr. Hebert caused the shipment of a misbranded food in interstate commerce, and the food was misbranded because its labeling falsely declared *cynanchum auriculatum* (root) extract as an ingredient, when in fact the imported ingredient was *cynanchum auriculatum* powder, not *cynanchum auriculatum* root extract.

The proposal was also based on a determination, after consideration of the relevant factors set forth in section 306(c)(3) of the FD&C Act, that Mr. Hebert should be subject to a 5-year period of debarment. The proposal also offered Mr. Hebert an opportunity to request a hearing, providing Mr. Hebert 30 days from the date of receipt of the letter in which to file the request, and advised Mr. Hebert that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. Mr. Hebert failed to respond within the timeframe prescribed by regulation and has, therefore, waived his opportunity for a hearing and waived any contentions concerning his debarment (21 CFR part 12).

## II. Findings and Order

Therefore, the Assistant Commissioner, Office of Human and Animal Food Operations, under section 306(b)(1)(C) of the FD&C Act, under authority delegated to the Assistant Commissioner, finds that Mr. Matthew Hebert has been convicted of a felony count under Federal law for conduct relating to the importation into the United States of an article of food and that he is subject to a 5 year period of debarment.

As a result of the foregoing finding, Mr. Hebert is debarred for a period of 5 years from importing articles of food or offering such articles for import into the United States, effective (see **DATES**). Pursuant to section 301(cc) of the FD&C Act, the importing or offering for import into the United States of an article of food by, with the assistance of, or at the direction of Matthew Hebert is a prohibited act.

Any application by Mr. Hebert for termination of debarment under section 306(d)(1) of the FD&C Act should be identified with Docket No. FDA-2020-N-2340 and sent to the Dockets Management Staff (see **ADDRESSES**). The public availability of information in

these submissions is governed by 21 CFR 10.20(j).

Publicly available submissions will be placed in the docket and will be viewable at <https://www.regulations.gov> or at the Dockets Management Staff (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

Dated: July 23, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021-16211 Filed 7-29-21; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

#### Notice of a Supplemental Award to the University of Arkansas System Telehealth Focused Rural Health Research Center

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** HRSA announces a supplemental award in the amount of \$100,000 annually through fiscal year 2024. This funding will support the University of Arkansas Telehealth Focused Rural Health Research Center (TF RHRC), a current HRSA-funded cooperative agreement. The supplemental request is for the remaining period of performance of the current cooperative agreement, subject to the availability of funds and successful performance of the activities in a given budget year.

**FOR FURTHER INFORMATION CONTACT:** For further information regarding this request, please contact Nicole Hewitt, ([nhewitt@hrsa.gov](mailto:nhewitt@hrsa.gov)), (301) 443-3893.

#### **SUPPLEMENTARY INFORMATION:**

*Intended Recipient of Award:* University of Arkansas System.

*Amount of Award Increase Non-Competitive Award:* \$100,000 annually.  
*Period of Supplemental Funding:* 9/1/2021-08/31/2024.

*CFDA Number:* 93.155.

*Authority:* Section 711(b)(5) of the Social Security Act (42 U.S.C. 912(b)(5)).

*Justification:* The TF RHRC program is authorized by Section 711(b)(5) of the Social Security Act (42 U.S.C. 912(b)(5)), as amended. This program is within HRSA's Federal Office of Rural Health Policy's (FORHP) Office for the Advancement of Telehealth (OAT), which administers grants, cooperative

agreements, and contracts to provide technical assistance and other activities as necessary to support activities related to improving health care in rural areas. Such activities include the evaluation of telehealth programs in rural and underserved areas.

Under the TF RHRC Program, one of the two research centers was selected to receive supplemental funding to evaluate all of OAT's programs. The University of Arkansas was awarded a cooperative agreement on September 1, 2020, to conduct evaluation-focused research and maintain a thorough and comprehensive evaluation of nationwide telehealth investments in rural areas and populations.

The University of Arkansas is presently in the first year of evaluating OAT's programs, and the current research is evaluating the impact of investments in telehealth services funded by the FORHP. In Year 1 of the grant, they have been working on evaluating OAT's Licensure and Portability Program and the Telehealth

Resource Centers. All program evaluation research falls under the jurisdiction of the University of Arkansas.

Consistent with fiscal year 2021 Departmental appropriations language, HRSA's FORHP has funded telehealth research that impacts rural areas and underserved rural populations. In addition, per the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), the HHS Secretary is required to develop a strategic plan to research and evaluate the evidence for such technology-enabled collaborative learning and capacity building models.<sup>1</sup>

As part of that directive, FORHP intends to work in consultation with the University of Arkansas who can evaluate the Telehealth Technology Enabled Learning Program (TTELP). TTELP connects specialists at academic medical centers with primary care providers in rural, frontier, and underserved populations providing evidence-based training and support to help them treat patients with complex

conditions in their communities. TTELP is also tasked with developing appropriate methodologies to evaluate and identify outcomes associated with learning community model initiatives.

The proposed activities for the supplemental funding are within the scope of the University of Arkansas' current TF RHRC cooperative agreement. This funding will allow HRSA to demonstrate whether or not this congressionally mandated program was effective. The University of Arkansas will be asked to submit a Request for Information and include a work plan, budget and budget narrative for the funding increase that incorporates this new TTELP evaluation project.

The supplemental funds are being requested for the remaining years of the cooperative agreement, subject to the availability of funds. The supplemental funds will be awarded prior to the end of the current fiscal year. The cooperative agreement ends on August 31, 2024.

Grantee/organization name	Grant number	State	FY 2021 authorized funding level	FY 2021 estimated supplemental funding
University of Arkansas for Medical Sciences .....	U3GRH40001	AR	\$950,000	\$100,000

Grantee/organization name	Grant number	State	FY 2022 authorized funding level	FY 2022 estimated supplemental funding
University of Arkansas for Medical Sciences .....	U3GRH40001	AR	\$950,000	\$100,000

Grantee/organization name	Grant number	State	FY 2023 authorized funding level	FY 2023 estimated supplemental funding
University of Arkansas for Medical Sciences .....	U3GRH40001	AR	\$950,000	\$100,000

**Diana Espinosa,**  
Acting Administrator.  
[FR Doc. 2021-16255 Filed 7-29-21; 8:45 am]  
BILLING CODE 4165-15-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Indian Health Service**

**Community Health Aide Program: Tribal Planning & Implementation**

Announcement Type: New.  
Funding Announcement Number: HHS-2021-IHS-TPI-0001.

Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number: 93.382.

**Key Dates**

Application Deadline Date: September 1, 2021.

Earliest Anticipated Start Date: September 30, 2021.

**I. Funding Opportunity Description**

*Statutory Authority*

The Indian Health Service (IHS) is accepting applications for grants for the Community Health Aide Program (CHAP) Tribal Planning and

Implementation (TPI) program. The CHAP is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Health Care Improvement Act, 25 U.S.C. 16161. This grant program is described in the Assistance Listings located at <https://beta.sam.gov> (formerly known as Catalog of Federal Domestic Assistance) under 93.382.

*Background*

The national CHAP will provide a network of health aides trained to support licensed health professionals while providing direct health care,

<sup>1</sup> Consolidated Appropriations Act, 2021. <https://docs.house.gov/billsthisweek/20201221/BILLS-116HR133SA-RCP-116-68.pdf> (pages 2102-2106).

health promotion, and disease prevention services. These providers will work within a referral relationship under the supervision of licensed clinical providers that includes clinics, service units, and hospitals. The program will increase access to direct health services, including inpatient and outpatient visits.

The Alaska CHAP has become a model for efficient and high quality health care delivery in rural Alaska, providing approximately 300,000 patient encounters per year and responding to emergencies 24 hours a day, seven days a week. Specialized providers in dental and behavioral health were later introduced to respond to the needs of patients and address the health disparities in oral health and mental health among American Indians and Alaska Natives.

The national CHAP is a workforce model that includes three different provider types that act as extenders of their licensed clinical supervisor. The national CHAP currently includes a behavioral health aide, community health aide, and dental health aide. Each of the health aide categories operate in a tiered level practice system. The national CHAP model provides an opportunity for increased access to care through the extension of primary care, dental, and behavioral health clinicians.

In 2010, under the permanent reauthorization of the Indian Health Care Improvement Act (IHCIA), Congress provided the Secretary of the U.S. Department of Health and Human Services, acting through the IHS, the authority to expand the Alaska CHAP program. In 2016, the IHS initiated Tribal Consultation on expanding the CHAP to the contiguous 48 states. In 2018, the IHS formed the CHAP Tribal Advisory Group (TAG) and began developing the program. In 2020, the IHS announced the national CHAP policy, which formally created the national CHAP.

#### *Purpose*

The purpose of the TPI program is to support the planning and implementation for Tribes and Tribal Organizations (T/TO) positioned to begin operating a CHAP or support a growing CHAP in the contiguous 48 states. The grant program is designed to support the regional flexibility required for T/TO to implement a CHAP unique to the needs of their individual communities across the country through the identification of feasibility factors. The focus of the program is to:

1. Develop clinical supervisor support for primary care, behavioral health, and dental health clinicians providing both

direct and indirect supervision of prospective health aides;

2. Identify area and community-specific health care needs of patients that can be addressed by the health aides;

3. Identify and develop a technology infrastructure plan for the mobility and success of health aides in anticipation of providing services;

4. Develop a training plan to include partners across the T/TO's geographic region to enhance the training opportunities available to prospective health aides to include continuing education and clinical practice;

5. Identify best practices for integrating a CHAP workforce into an existing Tribal health system;

6. Address social determinants of health that impact the recruitment and retention of prospective health aides; and

7. Identify the total cost of full implementation of a CHAP within an existing Tribal health system.

## **II. Award Information**

### *Funding Instrument—Grant*

#### *Estimated Funds Available*

The total funding identified for fiscal year (FY) 2021 is approximately \$1,500,000. Individual award amounts are anticipated to be between \$450,000 and \$500,000. The funding available for competing awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

#### *Anticipated Number of Awards*

Approximately three awards will be issued under this program announcement. The IHS intends to award no more than one grant per IHS area.

#### *Period of Performance*

The period of performance is two years.

## **III. Eligibility Information**

### *1. Eligibility*

To be eligible for this new FY 2021 funding opportunity, an applicant must be one of the following, as defined under 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term "Indian Tribe" means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation, as defined in or established pursuant to the

Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

- A Tribal organization as defined by 25 U.S.C. 1603(26). The term "Tribal organization" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304): "Tribal organization" means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.

An applicant may not apply to both this opportunity, TPI, and the CHAP Tribal Assessment and Planning (TAP) opportunity (number HHS-2021-IHS-TAP-0001).

An organization currently carrying out a CHAP in the United States, in accordance with 25 U.S.C. 1616l through an Indian Self-Determination and Education Assistance Act (ISDEAA) agreement, is eligible to apply, but may not utilize the funds to carry out a CHAP.

The Program Office will notify any applicants deemed ineligible.

*Note:* Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

### *2. Cost Sharing or Matching*

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

### *3. Other Requirements*

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the Period of Performance outlined under Section II Award Information, Period of Performance, will

be considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

#### Additional Required Documentation Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any applicant selected for funding. An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official, signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official, signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Tribes organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

#### Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

### IV. Application and Submission Information

#### 1. Obtaining Application Materials

The application package and detailed instructions for this announcement are hosted on <https://www.Grants.gov>.

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443-2114 or (301) 443-5204.

#### 2. Content and Form Application Submission

Mandatory documents for all applicants include:

- Abstract (one page) summarizing the project.
- Application forms:
  1. SF-424, Application for Federal Assistance.
  2. SF-424A, Budget Information—Non-Construction Programs.

#### 3. SF-424B, Assurances—Non-Construction Programs.

- Project Narrative (not to exceed 15 pages). See Section IV.2.A Project Narrative for instructions.

1. Background information on the organization.

2. Proposed scope of work, objectives, and activities that provide a description of what the applicant plans to accomplish.

- Budget Justification and Narrative (not to exceed 5 pages). See Section IV.2.B Budget Narrative for instructions.
- One-page Timeframe Chart.
- Tribal Resolution(s).
- Letters of Support from organization's Board of Directors (if applicable).
- 501(c)(3) Certificate.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF-LLL), if applicant conducts reportable lobbying.
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
- Organizational Chart (optional).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or

2. Face sheets from audit reports.

Applicants can find these on the FAC website at <https://harvester.census.gov/facdissem/Main.aspx>.

#### Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See <https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html>.

#### Requirements for Project and Budget Narratives

##### A. Project Narrative

This narrative should be a separate document that is no more than 15 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger; (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and will not be reviewed. The 15-page limit for the narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget justifications, narratives, and/or other items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Plan; and Part 3—Program Evaluation. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

#### Part 1: Program Information (Limit—4 pages)

##### Section 1: Community Profile

Describe the demographics of the community including, but not limited to, geography, languages, age, and socioeconomic status. The community profile should include data specific to the community that would benefit from the implementation of CHAP.

##### Section 2: Health & Infrastructure Needs

Describe the community's current health disparities related to primary, behavioral, and oral health care. The needs section should provide facts and evidence related to infrastructure barriers (e.g., recruitment, retention, and access to facilities).

##### Section 3: Organizational Capacity

Describe the T/TO's current health program activities, how long it has been operating, and what programs or services are currently being provided. Describe in full the organization's infrastructure and its ability to assess the feasibility of implementing a CHAP and identifying significant barriers that could prohibit the implementation.

#### Part 2: Program Plan (Limit—6 pages)

##### Section 1: Program Plan

Describe in full the direction the T/TO plans to take in the CHAP TPI. The program plan should identify the plan to address Tribal infrastructure needs specific to:

- Clinical supervisor support and clinical operations.
- Enhanced scope of work to address community and region specific needs.
- Training infrastructure (including continuing education).

- Technology infrastructure.
- System integration.
- Support to prospective health aides that address social determinants of health.

#### Section 2: Program Activities

Describe in full how the applicant will develop a robust clinical support system for the clinical supervision of providers. The activities should also include how the applicant will correlate the community health needs to additional requirements to be included into the scope of work of health aides, a detailed plan of how to adjust the clinical operations to incorporate a CHAP, and the training plan to include continuing education for prospective health aides. Describe the resources the applicant will provide for health aides once the CHAP is operating, including technology investments to aide in mobility of providers and auxiliary supports to address critical social determinants of health. The program plan activities should also include how the applicant plans to calculate the full implementation.

#### Section 3: Staffing Plan

Describe key staff tasked with carrying out the program activities in Section 2. Applicants are highly encouraged to partner with other key stakeholders within the T/TO's region for a robust understanding of the needs and implications of implementing a CHAP into their respective communities.

#### Section 4: Timeline

Describe a timeline not to exceed two years for the completion of the program plan, activities, and evaluation plan. Provide a timeline chart depicting a realistic timeline that details all major activities, milestones, and applicable staffing plans. The timeline should include the projected progress report due at the midpoint of the project period. The timeline chart should not exceed one page.

#### Part 3: Program Evaluation (Limit—5 pages)

##### Section 1: Evaluation Plan

Please identify and describe significant program activities and achievements associated with the delivery of quality health services. Provide a plan to provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress. The evaluation plan should address major categories related to (See Sample Logic Model in Related Documents in *Grants.gov*):

- Clinical supervision support.
- Enhanced scope of practice.
- Training infrastructure (including continuing education).
- Technology needs.
- Integration best practices.
- Auxiliary supports for prospective health aides working within the system.
- Calculating total implementation cost.

##### B. Budget Narrative (Limit—5 pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF-424A (Budget Information for Non-Construction Programs). The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the "Other" category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1. Application Review Information, Evaluation Criteria), the narrative should highlight the changes from year 1 or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

##### 3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at <https://www.Grants.gov>). If problems persist, contact Mr. Paul Gettys ([Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov)), Acting Director, DGM, by telephone at (301) 443-2114 or (301) 443-5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

##### 4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

##### 5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the

award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.

- The available funds are inclusive of direct and indirect costs.
- Only one grant may be awarded per applicant.

##### 6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the <https://www.Grants.gov> website to submit an application. Find the application by selecting the "Search Grants" link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Paul Gettys, Acting Director, DGM. A written waiver request must be sent to [GrantsPolicy@ihs.gov](mailto:GrantsPolicy@ihs.gov) with a copy to [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov). The waiver request must be documented in writing (emails are acceptable) before submitting an application by some other method, and include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to the DGM. Applications that are submitted without a copy of the signed waiver from the Acting Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m., Eastern Time, on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in <https://www.Grants.gov> by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.

- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at <https://www.Grants.gov>).

- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.

- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.

- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.

- Applicants must comply with any page limits described in this funding announcement.

- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

#### Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B that uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through <https://fedgov.dnb.com/webform> or call (866) 705-5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (“Transparency Act”), requires all HHS recipients to report information on sub-awards.

Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

#### System for Award Management (SAM)

Organizations that are not registered with SAM must have a DUNS number first, then access the SAM online registration through the SAM home page at <https://sam.gov> (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active).

Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at <https://sam.gov>.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the DGM Grants Management, Policy Topics web page: <https://www.ihs.gov/dgm/policytopics/>.

#### V. Application Review Information

Possible points assigned to each section are noted in parentheses. The 15-page project narrative should include only the first year of activities; information for multi-year projects should be included as a separate document. See “Multi-year Project Requirements” at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

##### 1. Evaluation Criteria

###### A. Introduction and Need for Assistance (10 points)

Identify the proposed project and plans to fully implement a CHAP within their community. The needs should clearly identify the existing health system and how the CHAP will be integrated to meet the health needs of the community in the fields of behavioral, oral, and primary health care.

###### B. Project Objective(s), Work Plan, and Approach (30 points)

The work plan should be comprised of two key parts: Program Information and Program Plan. Provide information related to three key sections: Community profile; health and infrastructure; and organizational capacity. The Program Information part should demonstrate a robust community profile that highlights the existing health system, demographic data of community members and user population, and a detailed description of the T/TO carrying out the proposed activity. An acceptable Program Plan expecting to receive full points should include details of the applicants plan to address the program objective. The Program Plan should address, at a

minimum, key activities related to clinical supervisor support, scope of work, technology infrastructure, training infrastructure, integration best practices, and auxiliary support to health aides that address social determinants.

###### C. Program Evaluation (30 points)

The program evaluation should be comprised of two key sections: Evaluation plan and outcome report. The evaluation plan should address major categories related to:

- Clinical supervisor support;
- enhanced scope of work;
- technology infrastructure;
- training infrastructure;
- integration best practices;
- auxiliary support; and
- full implementation costs (See Sample Logic Model in Related Documents in *Grants.gov*).

The evaluation plan should identify how the T/TO plans to fully integrate CHAP. The evaluation should include total implementation costs based on the implementation plan and program plan identified, including any significant implementation barriers. List measurable and attainable goals with explicit timelines that detail expectation of findings. The Outcome Report should describe, in full, the findings of the program plan, evaluation, and determination on stage of readiness for implementation. The outcome report should organize the findings into at least five of the seven categories:

1. Clinical Supervisor Support.
2. Scope of Work.
3. Technology Infrastructure.
4. Training Infrastructure.
5. Integration Planning.
6. Auxiliary Support.
7. Implementation Cost.

Applicants are encouraged to identify additional categories above the seven aforementioned and may choose to develop subcategories that best fit the program plan.

###### D. Organizational Capabilities, Key Personnel, and Qualifications (10 points)

Provide a detailed biographical sketch of each member of key personnel assigned to carry out the objectives of the program plan. The sketches should detail the qualifications and expertise of identified staff.

###### E. Categorical Budget and Budget Justification (20 points)

Provide a detailed budget of each expenditure directly related to the identified program activities.

###### Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one

additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional documents can be uploaded as Other Attachments in *Grants.gov*

- Work plan, logic model, and/or timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.

- Consultant or contractor proposed scope of work and letter of commitment (if applicable).

- Current Indirect Cost Rate Agreement.

- Organizational chart.
- Map of area identifying project location(s).

- Additional documents to support narrative (*i.e.*, data tables, key news articles, etc.).

## 2. Review and Selection

Each application will be prescreened for eligibility and completeness, as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, project period limit) will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

## 3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Clinical and Preventive Services within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF-424) of the application.

### A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

### B. Approved But Unfunded Applications

Approved applications not funded due to lack of available funds will be held for one year. If funding becomes available during the course of the year, the application may be reconsidered.

*Note:* Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

## VI. Award Administration Information

### 1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

#### A. The Criteria as Outlined in This Program Announcement

#### B. Administrative Regulations for Grants

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at <https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-part75.pdf>.

- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at [https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75\\_1372#se45.1.75\\_1372](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372).

#### C. Grants Policy

- HHS Grants Policy Statement, Revised 01/07, at <http://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>.

#### D. Cost Principles

- Uniform Administrative Requirements for HHS Awards, “Cost Principles,” at 45 CFR part 75, subpart E.

#### E. Audit Requirements

- Uniform Administrative Requirements for HHS Awards, “Audit Requirements,” at 45 CFR part 75, subpart F.

F. As of August 13, 2020, 2 CFR 200 has been updated to include a prohibition on certain telecommunications and video

surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

### 2. Indirect Costs

This section applies to all recipients that request reimbursement of indirect costs (IDC) in their application budget. In accordance with HHS Grants Policy Statement, Part II-27, IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award’s budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, “any non-Federal entity [*i.e.*, applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs (MTDC) which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.”

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) at <https://rates.psc.gov/> or the Department of the Interior (Interior Business Center) at



<https://ibc.doi.gov/IGS/tribal>. For questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443-5204.

### 3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in Section VII for the systems contact information.

The reporting requirements for this program are noted below.

#### A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the budget period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

#### B. Financial Reports

Federal Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services at <https://pms.psc.gov>. Failure to submit timely reports may result in adverse award actions blocking access to funds.

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the Period of Performance. Grantees are responsible and

accountable for accurate information being reported on all required reports: The Progress Reports, the Federal Cash Transaction Report, and the Federal Financial Report.

#### C. Data Collection and Reporting

At the conclusion of the program period, the outcome report should detail how the T/TO plans to completely integrate CHAP into their Tribal health system and list major barriers that could potentially impact full integration. The Outcome Report should describe, in full, the findings of the program plan and evaluation, and plans for implementation. The outcome report should organize the findings of the key categories:

1. Clinical Supervisor Support.
2. Scope of Practice.
3. Technology Infrastructure.
4. Training Plan.
5. System Integration.
6. Auxiliary Support to Address Social Determinants.

Based on the findings and measurable outcomes of the categories, the applicant should explicitly identify the implementation plan and projected cost associated with full implementation.

#### D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards. IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a \$25,000 sub-award obligation threshold met for any specific reporting period. For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at <https://www.ihs.gov/dgm/policytopics/>.

#### E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, and, in some circumstances, religion, conscience, and sex. This includes ensuring programs are accessible to persons with limited English proficiency. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see <https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html> and <http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html>.

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html> and <https://www.lep.gov>. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.

- Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see <http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html>.

- HHS funded health and education programs must be administered in an environment free of sexual harassment. Please see <https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html>; <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>; and <https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>.

- Recipients of FFA must also administer their programs in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws. Collectively, these laws prohibit exclusion, adverse treatment, coercion, or other discrimination against persons or

entities on the basis of their consciences, religious beliefs, or moral convictions. Please see <https://www.hhs.gov/conscience/conscience-protections/index.html> and <https://www.hhs.gov/conscience/religious-freedom/index.html>.

Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at <https://www.hhs.gov/ocr/about-us/contact-us/index.html> or call 1-800-368-1019 or TDD 1-800-537-7697.

#### F. Federal Awardee Performance and Integrity Information System (FAPIIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS) at <https://www.fapiis.gov> before making any award in excess of the simplified acquisition threshold (currently \$250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. The IHS will consider any comments by the applicant, in addition to other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75, appendix XII, of the Uniform Guidance, non-Federal entities (NFEs) are required to disclose in FAPIIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than \$10,000,000 for any period of time during the period of performance of an award/project.

#### Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General, all

information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Paul Gettys, Acting Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include "Mandatory Grant Disclosures" in subject line), Office: (301) 443-5204, Fax: (301) 594-0899, Email: [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov).

And  
U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: <https://oig.hhs.gov/fraud/report-fraud/>, (Include "Mandatory Grant Disclosures" in subject line), Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or, Email: [MandatoryGranteeDisclosures@oig.hhs.gov](mailto:MandatoryGranteeDisclosures@oig.hhs.gov).

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR parts 180 & 376).

#### VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Minette C. Galindo, Public Health Advisor, Indian Health Service, Office of Clinical and Preventive Services, 5600 Fishers Lane, Mail Stop: 08N34A, Rockville, MD 20857, Phone: (301) 443-4644, Fax: (301) 594-6213, Email: [IHSCHAP@ihs.gov](mailto:IHSCHAP@ihs.gov).

2. Questions on grants management and fiscal matters may be directed to: Donald Gooding, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-2298, Email: [Donald.Gooding@ihs.gov](mailto:Donald.Gooding@ihs.gov).

3. Questions on systems matters may be directed to: Paul Gettys, Acting Director, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-2114; or the DGM main line (301) 443-5204, email: [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov).

#### VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement, and contract recipients to provide a smoke-free workplace and

promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

**Elizabeth A. Fowler,**

*Acting Director, Indian Health Service.*

[FR Doc. 2021-16283 Filed 7-29-21; 8:45 am]

**BILLING CODE 4165-16-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

#### Community Health Aide Program: Tribal Assessment & Planning

*Announcement Type:* New.

*Funding Announcement Number:* HHS-2021-IHS-TAP-0001.

*Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number:* 93.382.

#### Key Dates

*Application Deadline Date:*

September 6, 2021.

*Earliest Anticipated Start Date:*

September 30, 2021.

#### I. Funding Opportunity Description

##### *Statutory Authority*

The Indian Health Service (IHS) is accepting applications for grants for the Community Health Aide Program (CHAP) Tribal Assessment and Planning (TAP) program. The CHAP is authorized under the Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Health Care Improvement Act, 25 U.S.C. 1616l. This grant program is described in the Assistance Listings located at <https://sam.gov/content/home> (formerly known as Catalog of Federal Domestic Assistance) under 93.382.

##### *Background*

The national CHAP will provide a network of health aides trained to support licensed health professionals while providing direct health care, health promotion, and disease prevention services. These providers will work within a referral relationship under the supervision of licensed clinical providers that include clinics, service units, and hospitals. The CHAP aides will increase access to direct health services, including inpatient and outpatient visits.

The Alaska CHAP has become a model for efficient and high quality health care delivery in rural Alaska, providing approximately 300,000 patient encounters per year and responding to emergencies 24 hours a day, seven days a week. Specialized providers in dental and behavioral health were later introduced to respond to the needs of patients and address the health disparities in oral health and mental health among American Indian and Alaska Natives.

The national CHAP is a workforce model that includes three different provider types that act as extenders of their licensed clinical supervisor. The national CHAP currently includes a behavioral health aide, community health aide, and dental health aide. Each of the health aide categories operate in a tiered level practice system. The national CHAP model provides an opportunity for increased access to care through the extension of primary care, dental, and behavioral health clinicians.

In 2010, under the permanent reauthorization of the Indian Health Care Improvement Act (IHCIA), Congress provided the Secretary of the U.S. Department of Health and Human Services, acting through the IHS, the authority to expand the CHAP nationally. In 2016, the IHS initiated Tribal Consultation on expanding the CHAP to the contiguous 48 states. In 2018, the IHS formed the CHAP Tribal Advisory Group (TAG) and began developing the program. In 2020, the IHS announced the national CHAP policy, which formally created the national CHAP.

#### *Purpose*

The purpose of the TAP program is to support the assessment and planning of Tribes and Tribal Organizations (T/TO) in determining the feasibility of implementing CHAP in their respective communities. The program is designed to support the regional flexibility required for T/TO to design a program unique to the needs of their individual communities across the country through the identification of feasibility factors. The focus of the program is to:

1. Assess whether the T/TO can integrate CHAP into the Tribal health system, including the health care workforce.
2. Identify systemic barriers that prohibit the complete integration of CHAP into an existing health care system. The barriers should be related to:
  - Clinical infrastructure.
  - Workforce barriers.
  - Certification of providers.
  - Training of providers.

- Inclusion of culture in the services provided by a CHAP provider.

3. Plan partnerships across the T/TO geographic region to address the barriers, including reimbursement, training, education, clinical infrastructure, implementation cost, and determination of system integration.

## **II. Award Information**

### *Funding Instrument—Grant*

#### Estimated Funds Available

The total funding identified for fiscal year (FY) 2021 is approximately \$2,340,000. Individual award amounts for the first budget year are anticipated to be between \$250,000 and \$260,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

#### Anticipated Number of Awards

Approximately nine awards will be issued under this program announcement. The IHS intends to award no more than one grant per IHS area.

#### Period of Performance

The period of performance is two years.

## **III. Eligibility Information**

### *1. Eligibility*

To be eligible for this new FY 2021 funding opportunity, an applicant must be one of the following, as defined under 25 U.S.C. 1603:

- A federally recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term “Indian Tribe” means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group, or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.
- A Tribal organization as defined by 25 U.S.C. 1603(26). The term “Tribal organization” has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304): “Tribal organization” means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned,

or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.

An applicant may not apply to both this opportunity, TAP, and the CHAP Tribal Planning and Implementation (TPI) opportunity (number HHS–2021–IHS–TPI–0001).

An organization currently carrying out a CHAP in the United States, in accordance with 25 U.S.C. 16161 through an Indian Self-Determination and Education Assistance Act (ISDEAA) agreement, is also not eligible to apply.

The Program office will notify any applicants deemed ineligible.

*Note:* Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of nonprofit status, etc.

### *2. Cost Sharing or Matching*

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

### *3. Other Requirements*

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the Period of Performance outlined under Section II Award Information, Period of Performance, will be considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

### Additional Required Documentation Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any applicant selected for funding. An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official, signed Tribal Resolution cannot be submitted with the application prior to the application

deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official, signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Tribes organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

#### Proof of Nonprofit Status

Organizations claiming nonprofit status must submit a current copy of the 501(c)(3) Certificate with the application.

### IV. Application and Submission Information

#### 1. Obtaining Application Materials

The application package and detailed instructions for this announcement are hosted on <https://www.Grants.gov>.

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443-2114 or (301) 443-5204.

#### 2. Content and Form Application Submission

Mandatory documents for all applicants include:

- Abstract (one page) summarizing the project.
- Application forms:
  1. SF-424, Application for Federal Assistance.
  2. SF-424A, Budget Information—Non-Construction Programs.
  3. SF-424B, Assurances—Non-Construction Programs.
    - Project Narrative (not to exceed 15 pages). See Section IV.2.A Project Narrative for instructions.
      1. Background information on the organization.
      2. Proposed scope of work, objectives, and activities that provide a description of what the applicant plans to accomplish.
        - Budget Justification and Narrative (not to exceed 5 pages). See Section IV.2.B Budget Narrative for instructions.
        - One-page Timeframe Chart.
        - Tribal Resolution(s).

- Letters of Support from organization's Board of Directors (if applicable).
- 501(c)(3) Certificate.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF-LLL), if applicant conducts reportable lobbying.
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
- Organizational Chart (optional).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
  2. Face sheets from audit reports.
- Applicants can find these on the FAC website at <https://harvester.census.gov/facdissem/Main.aspx>.

#### Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See <https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html>.

#### Requirements for Project and Budget Narratives

##### A. Project Narrative

This narrative should be a separate document that is no more than 15 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger; (3) be single-spaced; and (4) be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and not be reviewed. The 15-page limit for the narrative does not include the work plan, standard forms, Tribal Resolutions, budget, budget justifications, narratives, and/or other items.

There are three parts to the narrative: Part 1—Program Information; Part 2—

Program Plan; and Part 3—Program Evaluation and Outcome Report. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

#### Part 1: Program Information (Limit—4 Pages)

##### Section 1: Community Profile

Describe the demographics of the community including, but not limited to, geography, languages, age, and socioeconomic status. The community profile should include data specific to the community that would benefit from the implementation of CHAP.

##### Section 2: Health & Infrastructure Needs

Describe the community's current health disparities related to primary, behavioral, and oral health care.

##### Section 3: Organizational Capacity

Describe the T/TO's current health program activities, how long it has been operating, and what programs or services are currently being provided. Describe in full the organization's infrastructure and its ability to assess the barriers that could impact the integration of CHAP and identify significant barriers that could prohibit the implementation.

#### Part 2: Program Plan (Limit—6 Pages)

##### Section 1: Program Plan

Describe in full the direction the T/TO plans to take in the CHAP TAP. The program plan should first clearly identify the problems within the community related to behavioral, primary, and oral health. The program plan should then include the plan to assess the problem(s). This should include a timeline for the assessment. The program plan should identify a timeline to determine whether CHAP can address the barriers identified.

##### Section 2: Program Activities

Describe in full the activities to identify problems creating barriers within the community related to behavioral, primary, and oral health. These activities should be categorized (at a minimum) within key factors related to clinical infrastructure, workforce barriers, training infrastructure, and cultural inclusion. Describe in full how the applicant plans to assess the problems identified. Finally, describe in detail the activities and associated timeline to determine whether CHAP is feasible and activities to quantify the cost associated with CHAP. The program activities should detail which partners will aid in

identifying and assessing barriers related to clinical infrastructure, workforce barriers, training infrastructure, and cultural inclusion.

#### Section 3: Staffing Plan

Describe key staff tasked with carrying out the program activities in Section 2. Applicants should account for potential stakeholder partnerships following the assessment of barriers in the staffing plan.

#### Section 4: Timeline

Describe a timeline not to exceed two years for the completion of the program plan, activities, and evaluation plan. Provide a timeline chart depicting a realistic timeline that details all major activities, milestones, and applicable staffing plans. The timeline should include the projected progress report due at the midpoint of the project period. The timeline chart should not exceed one page.

### Part 3: Program Evaluation & Outcome Report (Limit—5 Pages)

#### Section 1: Evaluation Plan

The evaluation plan should identify and describe significant program activities and achievements associated with the assessment and planning of whether CHAP can address identified barriers within the existing Tribal health system. Provide a comparison of the actual accomplishments to the goals established for the project period, or if applicable, provide justification for the lack of progress. The evaluation plan should organize all identified problems that lead to barriers into major categories related to clinical infrastructure, workforce barriers, training infrastructure, and cultural inclusion specific to the scope of practice of prospective CHAP providers. The evaluation plan should detail how these barriers can be quantified. The evaluation plan should detail how the applicant will measure the assessment of whether CHAP can address the issues identified including number of partnerships for each major category of barriers, other factors that may impact feasibility, and sustainability. Finally, the evaluation plan should detail how the applicant plans to calculate the total cost associated with integrating CHAP as part of the planning process.

#### Section 2: Outcome Report

At the conclusion of the program period, using the findings from the evaluation, the T/TO should determine the feasibility of implementing a CHAP within their own community. The Outcome Report should describe in full the findings of the program plan,

evaluation, and determination on stage of readiness for implementation. The outcome report should organize the findings into at least five categories:

1. Clinical Infrastructure.
2. Workforce Barriers.
3. Training Infrastructure.
4. Cultural Inclusion.
5. Implementation Cost.

Based on the findings and measurable outcomes of the categories, the applicant should explicitly identify whether CHAP is feasible for implementation into their respective community. Applicants should develop an organized report that highlights the categories succinctly and includes data (quantitative or qualitative) from the evaluation plan. The outcome report should explicitly detail the cost associated with integrating CHAP if it is found that CHAP can address the barriers identified in the assessment phase.

#### B. Budget Narrative (Limit—5 Pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF-424A (Budget Information for Non-Construction Programs). The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the “Other” category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1. Application Review Information, Evaluation Criteria), the narrative should highlight the changes from year 1 or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

#### 3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at <https://www.Grants.gov>). If problems persist, contact Mr. Paul Gettys ([Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov)), Acting Director, DGM, by telephone at (301) 443-2114 or (301) 443-5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking

number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

The IHS will not acknowledge receipt of applications.

#### 4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

#### 5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one grant may be awarded per applicant.

#### 6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the <https://www.Grants.gov> website to submit an application. Find the application by selecting the “Search Grants” link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Paul Gettys, Acting Director, DGM. A written waiver request must be sent to [GrantsPolicy@ihs.gov](mailto:GrantsPolicy@ihs.gov) with a copy to [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov). The waiver request must: (1) Be documented in writing (emails are acceptable) before submitting an application by some other method, and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to the DGM. Applications that are submitted without a copy of the signed waiver from the Acting Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m., Eastern Time, on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be

considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in <https://www.Grants.gov> by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at <https://www.Grants.gov>).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

#### Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B that uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through <https://fedgov.dnb.com/webform> or call (866) 705-5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (“Transparency Act”), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier

to enhance the quality of information available to the public pursuant to the Transparency Act.

#### System for Award Management (SAM)

Organizations that are not registered with SAM must have a DUNS number first, then access the SAM online registration through the SAM home page at <https://sam.gov> (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge but can take several weeks to process. Applicants may register online at <https://sam.gov>.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the DGM Grants Management, Policy Topics web page: <https://www.ihs.gov/dgm/policytopics/>.

#### V. Application Review Information

Possible points assigned to each section are noted in parentheses. The 15-page project narrative should include only the first year of activities; information for multi-year projects should be included as a separate document. See “Multi-year Project Requirements” at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to fully understand the project. Attachments requested in the criteria do not count toward the 15-page limit for the project narrative. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

##### 1. Evaluation Criteria

###### A. Introduction and Need for Assistance (10 Points)

Identify the proposed project and plans to identify the feasibility of implementing a CHAP within their community. The needs should clearly identify the existing health system and how the CHAP may be a viable workforce model for the community needs.

###### B. Project Objective(s), Work Plan, and Approach (30 Points)

The work plan should be comprised of two key parts: Program Information and Program Plan. Acceptable Program

Information should provide information related to three (3) key sections: Community profile; health and infrastructure; and organizational capacity. The Program Information part should demonstrate a robust community profile that highlights the existing health system, demographic data of community members and user population, and a detailed description of the T/TO carrying out the proposed activity. An acceptable Program Plan should include details of the applicant’s plan to address the program objective. The Program Plan should address, at a minimum, key activities related to clinical infrastructure, workforce barriers, and training infrastructure.

###### C. Program Evaluation (30 Points)

The program evaluation should address how the applicant intends to measure major categories related to clinical infrastructure:

- Workforce barriers;
- training infrastructure;
- cultural inclusion (See Sample Logic Model in Related Documents in *Grants.gov*) specific to the scope of practice of prospective CHAP providers; and

- implementation costs.

The evaluation plan should identify:

- how the applicant plans to determine the feasibility of CHAP integration into the Tribal system;
- measurement of significant systematic barriers;
- implementation cost associated with CHAP; and
- planning for the scope of work.

The applicant may choose to develop a readiness assessment to measure the feasibility. List measurable and attainable goals with explicit timelines that detail expectation of findings.

###### D. Organizational Capabilities, Key Personnel, and Qualifications (10 Points)

Provide a detailed biographical sketch of each member of key personnel assigned to carry out the objectives of the program plan. The sketches should detail the qualifications and expertise of identified staff.

###### E. Categorical Budget and Budget Justification (20 Points)

Provide a detailed budget of each expenditure directly related to the identified program activities.

###### Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will

not count as part of the project narrative or the budget narrative.

Additional documents can be uploaded as Other Attachments in *Grants.gov*.

- Work plan, logic model, and/or timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Additional documents to support narrative (*i.e.*, data tables, key news articles, etc.).

## 2. Review and Selection

Each application will be prescreened for eligibility and completeness, as outlined in the funding announcement. Applications that meet the eligibility criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, project period limit) will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

## 3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Clinical and Preventive Services within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF-424) of the application.

### A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

### B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for one year. If funding becomes available during the course of the year, the application may be reconsidered.

*Note:* Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

## VI. Award Administration Information

### 1. Administrative Requirements

Awards issued under this announcement are subject to, and are administered in accordance with, the following regulations and policies:

#### A. The Criteria as Outlined in This Program Announcement

#### B. Administrative Regulations for Grants

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at <https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-part75.pdf>.

- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at [https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75\\_1372#se45.1.75\\_1372](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372).

#### C. Grants Policy

- HHS Grants Policy Statement, Revised 01/07, at <http://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>.

#### D. Cost Principles

- Uniform Administrative Requirements for HHS Awards, “Cost Principles,” at 45 CFR part 75, subpart E.

#### E. Audit Requirements

- Uniform Administrative Requirements for HHS Awards, “Audit Requirements,” at 45 CFR part 75, subpart F.

F. As of August 13, 2020, 2 CFR 200 was updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This

prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

## 2. Indirect Costs

This section applies to all recipients that request reimbursement of indirect costs (IDC) in their application budget. In accordance with HHS Grants Policy Statement, Part II-27, IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award’s budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, “any non-Federal entity [*i.e.*, applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs (MTDC) which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.”

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) at <https://rates.psc.gov/> or the Department of the Interior (Interior Business Center) at <https://ibc.doi.gov/ICS/tribal>. For



questions regarding the indirect cost policy, please call the Grants Management Specialist listed under "Agency Contacts" or the main DGM office at (301) 443-5204.

### 3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a "Grant Note" in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in Section VII for the systems contact information.

The reporting requirements for this program are noted below.

#### A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the budget period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

#### B. Financial Reports

Federal Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services at <https://pms.psc.gov>. Failure to submit timely reports may result in adverse award actions blocking access to funds.

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the Period of Performance.

Grantees are responsible and accountable for accurate information

being reported on all required reports: The Progress Reports and Federal Financial Report.

#### C. Data Collection and Reporting

To satisfy the reporting requirements, the applicant is expected to develop an outcome report. The outcome report should explicitly state whether CHAP implementation and integration into the existing health care system is viable or not. The Outcome Report should describe, in full, the findings of the program plan, evaluation, and determination on stage of readiness for implementation. The outcome report should organize the findings into at least five categories:

1. Clinical Infrastructure.
2. Workforce Barriers.
3. Training Infrastructure.
4. Cultural Inclusion.
5. Implementation Cost.

Applicants are encouraged to identify additional categories above the five aforementioned and may choose to develop subcategories that best fit the program plan.

#### D. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards. IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a \$25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at <https://www.ihs.gov/dgm/policytopics/>.

#### E. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of Federal financial assistance (FFA) from HHS must

administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age, and, in some circumstances, religion, conscience, and sex. This includes ensuring programs are accessible to persons with limited English proficiency. The HHS Office for Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see <https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html> and <http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html>.

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html> and <https://www.lep.gov>. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.

- Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see <http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html>.

- HHS funded health and education programs must be administered in an environment free of sexual harassment. Please see <https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html>; <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>; and <https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>.

- Recipients of FFA must also administer their programs in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws. Collectively, these laws prohibit exclusion, adverse treatment, coercion, or other discrimination against persons or entities on the basis of their consciences, religious beliefs, or moral convictions. Please see <https://www.hhs.gov/conscience/conscience-protections/index.html> and <https://www.hhs.gov/conscience/religious-freedom/index.html>.

Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at <https://www.hhs.gov/ocr/about-us/contact-us/index.html> or call 1-800-368-1019 or TDD 1-800-537-7697.

#### F. Federal Awardee Performance and Integrity Information System (FAPIS)

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIS), at <https://www.fapiis.gov>, before making any award in excess of the simplified acquisition threshold (currently \$250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75, appendix XII, of the Uniform Guidance, non-Federal entities (NFEs) are required to disclose in FAPIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than \$10,000,000 for any period of time during the period of performance of an award/project.

#### Mandatory Disclosure Requirements

As required by 2 CFR part 200 of the Uniform Guidance and the HHS implementing regulations at 45 CFR part 75, the IHS must require an NFE or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General of all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service,

Division of Grants Management, ATTN: Paul Gettys, Acting Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857 (Include "Mandatory Grant Disclosures" in subject line), Office: (301) 443-5204, Fax: (301) 594-0899, Email: [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov).

And  
U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: <https://oig.hhs.gov/fraud/report-fraud/> (Include "Mandatory Grant Disclosures" in subject line), Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or Email: [MandatoryGranteeDisclosures@oig.hhs.gov](mailto:MandatoryGranteeDisclosures@oig.hhs.gov).

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (see 2 CFR parts 180 & 376).

#### VII. Agency Contacts

1. Questions on the programmatic issues may be directed to: Minette C. Galindo, Public Health Advisor, Indian Health Service, Office of Clinical and Preventive Services, 5600 Fishers Lane, Mail Stop: 08N34A, Rockville, MD 20857, Phone: (301) 443-4644, Email: [IHSCHAP@ihs.gov](mailto:IHSCHAP@ihs.gov).

2. Questions on grants management and fiscal matters may be directed to: Donald Gooding, Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-2298, Email: [Donald.Gooding@ihs.gov](mailto:Donald.Gooding@ihs.gov).

3. Questions on systems matters may be directed to: Paul Gettys, Acting Director, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-2114; or the DGM main line (301) 443-5204, Email: [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov).

#### VIII. Other Information

The Public Health Service strongly encourages all grant, cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This

is consistent with the HHS mission to protect and advance the physical and mental health of the American people.

**Elizabeth A. Fowler,**

*Acting Director, Indian Health Service.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Indian Health Service

#### Epidemiology Program for American Indian/Alaska Native Tribes and Urban Indian Communities

*Announcement Type:* New and Competing Continuation.

*Funding Announcement Number:* HHS-2021-IHS-EPI-0001.

*Assistance Listing (Catalog of Federal Domestic Assistance or CFDA) Number:* 93.231.

#### Key Dates

*Application Deadline Date:* September 1, 2021.

*Earliest Anticipated Start Date:* September 30, 2021.

#### I. Funding Opportunity Description

##### *Statutory Authority*

The Indian Health Service (IHS) is accepting applications for a cooperative agreement for Tribal Epidemiology Centers (TECs) serving American Indian/Alaska Native (AI/AN) Tribes and Urban Indian communities. This program is authorized under: The Snyder Act, 25 U.S.C. 13; the Transfer Act, 42 U.S.C. 2001(a); and the Indian Health Care Improvement Act (IHCA), as amended, 25 U.S.C. 1621m. This program is described in the Assistance Listings located at <https://beta.sam.gov> (formerly known as Catalog of Federal Domestic Assistance) under 93.231.

##### *Background*

The TEC program was authorized by Congress in 1996 as a way to provide public health support to multiple Tribes and Urban Indian communities in each of the IHS Administrative Areas. The funding opportunity announcement is open to currently funded TECs.

TECs are uniquely positioned within Tribes, Tribal organizations, and Urban Indian organizations (UIO) to conduct disease surveillance, research, prevention, and control of disease, injury, or disability, and to assess the effectiveness of AI/AN public health programs. Some of the existing TECs have already developed innovative strategies to monitor the health status of Tribes and Urban Indian communities,

including development of Tribal health registries and use of sophisticated record linkage computer software to correct existing state data sets for racial misclassification.

TECs provide critical support for activities that promote Tribal Self-Governance and effective management of Tribal and Urban Indian health programs. Data generated locally and analyzed by TECs enable Tribes and Urban Indian communities to effectively plan and make decisions that best meet the needs of their communities. In addition, TECs can immediately provide feedback to local data systems, which will lead to improvements in Indian health data overall.

As more Tribes choose to operate health programs in their communities, TECs ultimately will provide additional public health services such as disease control and prevention programs. Some existing TECs provide assistance to Tribal and Urban Indian communities in such areas as sexually transmitted disease (STD) control and cancer prevention.

They also assist Tribes and Urban Indian communities to establish baseline data for successfully evaluating intervention and prevention activities.

Sexually transmitted infections (STIs) remain a major public health challenge in the United States (U.S.) with an estimated 20 million new infections occurring each year; half of them occur among adolescents and young adults ages 15–24. Many STIs, like chlamydia and gonorrhea, can be asymptomatic; however, if left untreated, STIs can lead to infertility and increase the risk of acquiring other STIs. For pregnant women, there are additional risks of ectopic pregnancy, miscarriage, stillbirth, and early infant death.

Although widespread across the U.S. among all populations, the STI epidemic disproportionately affects certain racial and ethnic groups, including AI/AN people. Such disparities in STI incidence are complex to understand but may be rooted in a number of social factors such as poverty, inadequate access to health care, lack of education, social inequality, and cultural influences. Recent surveillance data demonstrate that STI rates continue to increase in Indian Country. The latest surveillance report showed that AI/AN people have 3.8 times the incidence rate of chlamydia compared with whites and a 4.4 times higher rate of gonorrhea. For more information, please visit [https://www.ihs.gov/epi/includes/themes/responsive2017/display\\_objects/documents/STI/Indian\\_Health\\_Surveillance\\_Report\\_STI\\_2015.pdf](https://www.ihs.gov/epi/includes/themes/responsive2017/display_objects/documents/STI/Indian_Health_Surveillance_Report_STI_2015.pdf). AI/

AN people have the second highest rates for both chlamydia and gonorrhea compared to other races/ethnicities. Gonorrhea rates have continued to increase since 2011. Regional differences in STIs in Indian Country are observed. Recurrent STIs can increase the likelihood of human immunodeficiency virus (HIV) transmission, and gonorrhea and syphilis often present as co-morbid conditions with HIV diagnosis, particularly among men who have sex with men (MSM).

AI/AN youth and AI/AN women, particularly women of reproductive age, have a disparate and increased STI burden. In addition, recent outbreaks of syphilis have been observed among AI/AN communities, resulting in a dramatic increase in congenital syphilis cases in recent years. Some of these outbreaks are also connected to the use of injection drugs and methamphetamines. Particularly concerning is the dramatic increase in syphilis cases among AI/AN women and the rise in congenital syphilis (CS) cases. The CDC national STI surveillance report demonstrated that from 2014 to 2018 CS cases, among all races, in the U.S. increased from 462 to 1,306 (183 percent). In 2018, AI/AN mothers had the highest rate of reported CS cases nationally. The rate of increase in reported CS cases among AI/AN mothers is higher than for any other race or ethnicity in the U.S. (from 13.2 cases per 100,000 live births in 2014 to 79.2 in 2018).

Untreated CS can cause miscarriage, stillbirth, prematurity, low birth weight, or death shortly after birth. The impact of CS depends on when a pregnant woman contracts syphilis and whether she has access to treatment for the infection. Up to 40 percent of babies born to pregnant women with untreated syphilis may be stillborn or die from the infection as a newborn. According to CDC data, analysis of CS cases born to AI/AN mothers in 2018 identified gaps in prenatal care and access to timely and appropriate treatment.

The STI National Strategic Plan, released on December 17, 2020, aims to reverse the recent dramatic rise in STIs in the U.S. Please visit <https://www.hhs.gov/sites/default/files/STI-National-Strategic-Plan-2021-2025.pdf> for the most recent documents, outlining the following goals and selected objectives:

1. Goal 1: Prevent New STIs
  - a. Objective 1.1—Increase awareness of STIs and sexual health.
  - b. Objective 1.2—Expand implementation of quality,

comprehensive STI primary prevention activities.

c. Objective 1.3—Increase completion rates of routinely recommended human papillomavirus (HPV) vaccination.

d. Objective 1.4—Increase the capacity of public health, health care delivery systems, and the health workforce to prevent STIs.

2. Goal 2: Improve the Health of People by Reducing Adverse Outcomes of STIs

a. Objective 2.1—Expand high-quality affordable STI secondary prevention, including screening, care, and treatment, in communities and populations most impacted by STIs.

b. Objective 2.2—Work to effectively identify, diagnose, and provide holistic care and treatment for people with STIs by increasing the capacity of public health, health care delivery systems, and the health workforce.

3. Goal 3: Accelerate Progress in STI Research, Technology, and Innovation

a. Objective 3.4—Identify, evaluate, and scale up best practices in STI prevention and treatment, including through translational, implementation, and communication science research.

4. Goal 4: Reduce STI-Related Health Disparities and Health Inequities

a. Objective 4.1—Reduce stigma and discrimination associated with STIs.

b. Objective 4.2—Expand culturally competent and linguistically appropriate STI prevention, care, and treatment services in communities disproportionately impacted by STIs.

c. Objective 4.3—Address social determinants of health and co-occurring conditions.

5. Goal 5: Achieve Integrated, Coordinated Efforts that Address the STI Epidemic

a. Objective 5.1—Integrate programs to address the syndemic of STIs, HIV, viral hepatitis, and substance use disorders.

b. Objective 5.2—Improve quality, accessibility, timeliness, and use of data related to STIs and social determinants of health.

c. Objective 5.3—Improve mechanisms to measure, monitor, evaluate, report, and disseminate progress toward achieving national STI goals.

Furthermore, the STI National Strategic Plan identifies the following priority groups: Adolescents and young adults; MSM; and, pregnant women.

The STI National Strategic Plan also puts emphasis on other subgroups including racial and ethnic minorities (including AI/AN people) and geographic focus on regions with high STI burden. This national plan outlines goals, objectives, and indicators that

specifically focus on health disparities and particularly addresses disparities in CS among Tribal communities.

Applicants should create their action plans in the context of these goals, objectives, and indicators.

The TEC program will continue to enhance the ability of the Indian health system to collect and manage data more effectively and to better understand and develop the link between public health problems and behavior, socioeconomic conditions, and geography. The TEC program will also support Tribal and Urban Indian communities by providing technical training in public health practice and prevention-oriented research and by promoting public health career pathways serving AI/AN populations.

#### *Purpose*

The purpose of this IHS cooperative agreement is to strengthen public health capacity and to fund Tribes, Tribal organizations, and UIOs, and inter-Tribal consortia in identifying relevant health status indicators and priorities to support Public Health interventions that reduce morbidity and mortality in the population using sound epidemiologic principles. Work plans submitted in response to this announcement must incorporate the applicant's desired objectives and all of the required activities of the program's four goal sets, which are combined from the seven TEC core functional areas as outlined in the Indian Health Care Improvement Act (IHCIA) at 25 U.S.C. 1621m(b). The seven core functions of the TECs are:

(1) Collect data relating to, and monitor progress made toward meeting, each of the health status objectives of the Service, the Indian Tribes, Tribal organizations, and UIOs in the service area;

(2) Evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health;

(3) Assist Indian Tribes, Tribal organizations, and UIOs in identifying highest-priority health status objectives and the services needed to achieve those objectives, based on epidemiological data;

(4) Make recommendations for the targeting of services needed by the populations served;

(5) Make recommendations to improve health care delivery systems for Indians and Urban Indians;

(6) Provide requested technical assistance to Indian Tribes, Tribal organizations, and UIOs in the development of local health service priorities and incidence and prevalence

rates of disease and other illness in the community; and

(7) Provide disease surveillance and assist Indian Tribes, Tribal organizations, and Urban Indian communities to promote public health.

The seven core functions, included in the four goal sets are:

#### Goal Set 1: Public Health Promotion

Collect health status data, provide disease surveillance and assist Tribes, Tribal organizations, and UIOs to promote public health.

#### Goal Set 2: Evaluation

Evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health.

#### Goal Set 3: Recommendation

Assist Indian Tribes, Tribal organizations, and UIOs in identifying highest-priority health status objectives and the services needed to achieve those objectives, based on epidemiological data. Make recommendations for the targeting of services needed by the populations served. Make recommendations to improve health care delivery systems for Indians and Urban Indians.

#### Goal Set 4: Technical Assistance

Provide technical assistance to Indian Tribes, Tribal organizations, and UIOs in the development of local health service priorities and determine incidence and prevalence rates of disease and other illness in the community.

Applicant objectives may include activities beyond the required activities but must address them. Additional activities must still fall within the seven core functions and the four Goal sets.

Required activities under the core funding are: Community Health Profiles (CHP); Data collection and Disease Surveillance; Public Health Preparedness and Response; STD Activities; technical assistance to Indian Tribes, Tribal organizations, and UIOs; evaluate and support Area-wide interventions that promote severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) vaccine uptake; and, evaluate and support Area-wide interventions that promote SARS-CoV-2 outbreak response and recovery.

See Section I: Required, Optional, and Allowable Activities for full details.

It is the intent of IHS to fund sufficient TECs to serve Tribes and Urban Indian communities in all 12 IHS administrative areas.

Each TEC selected for funding will act under a cooperative agreement with the

IHS. During funded activities, the TECs may receive Protected Health Information (PHI) for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, reporting of disease, injury, vital events, such as birth or death, and the conduct of public health surveillance, public health investigation, and public health interventions for the Tribal and Urban Indian communities that they serve. TECs acting under a cooperative agreement with IHS are public health authorities for which the disclosure of PHI by covered entities is authorized by the Privacy Rule, 45 CFR 164.512(b).

#### Required, Optional, and Allowable Activities

Goal Set 1: Collect health status data, provide disease surveillance, and assist Tribes, Tribal organizations, and UIOs to promote public health (Core Functions 1 and 7).

Required Activities under Goal Set 1:

- (1) CHPs
  - a. Develop culturally appropriate community health assessments encompassing all the Tribal and/or Urban Indian communities served by the TEC.
  - b. CHPs should include information appropriate to allow Tribal and Urban Indian leaders to make informed decisions, prioritize health problems, and develop, implement, and evaluate their community health improvement plans.
  - c. Provide and enact a plan that includes a project overview, specific health indicators, and means of dissemination for both Tribe-specific and regional CHPs.
  - d. Participate in local, regional, and national committees that address public health priorities and, as appropriate, with other Federal agencies.
  - e. Establish and maintain an advisory council that can provide overall program direction and guidance. The advisory council should include some members with technical expertise in epidemiology and public health (e.g., from state health departments or county health departments) and include representation from the Tribal health and Urban Indian health programs within the TECs regional area.
  - f. Translate available data and/or results of analyses on disease incidence/prevalence and determined risk factors into useful products, messaging, and outreach to effectively guide stakeholders' interventions addressing public health priorities.

(2) Data collection and Disease Surveillance

a. Establish and maintain data sharing agreements and Memorandums of Understanding (MOU) to support data collection and analysis. Agreements may be needed with local organizations, Tribal governments, state authorities, and Federal agencies.

b. Provide disease surveillance and assist Indian Tribes, Tribal organizations, and UIOs to promote public health.

Optional Activities with Budget Support under Goal Set 1:

(1) IHS-funded UIOs Technical Assistance

These activities are eligible for a supplemental budget of up to \$100,000 per award.

The grantee will support 41 IHS-funded UIOs located in 22 states through the following activities:

a. Providing training and technical assistance on planning, conducting, and implementing community health needs assessment;

b. developing new and updating existing CHPs; and

c. providing ongoing training and tutorials on how to interpret data, such as the Census and American Community Survey data.

These activities have additional reporting requirements including quarterly progress reports that are due within 30 days after the budget period ends. These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required.

(2) Group A HIV/STI Activities

These activities are eligible for a supplemental budget of up to \$100,000 per awardee.

Activities under this supplement are organized under the operational strategies of the Ending the HIV Epidemic: A Plan for America initiative (EHE).

TEC sites serving areas that do not include the EHE Phase One priority Geographic area(s) and Location(s) are eligible to apply for this supplemental funding. For a list of Phase One priority Geographic Areas and Locations, please visit <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/jurisdictions/phase-one>.

Coordination Operational Strategy

a. Grantees will send at least one representative to the annual HIV Coordination meeting, scheduled in September of each year to coincide with the U.S. Conference on HIV/acquired Immunodeficiency syndrome (AIDS). The budget should include travel and associated costs for participation.

b. Grantees will participate in the IHS National AI/AN STI Prevention workgroup.

Diagnosis Operational Strategy

c. The TECs will provide technical assistance and/or disease surveillance support to Tribal and Urban communities by developing analytical reports to examine the burden of HIV and other relevant comorbidities such as STIs and hepatitis C virus (HCV) in Tribal and Urban communities.

Treatment Operational Strategy

d. The TECs will provide support to Tribal and Urban communities in the development of enhanced activities and expanded capacity to better identify AI/AN people who are not in care, including those who were never linked to care following an HIV, STI, or HCV diagnosis and those who have fallen out of care.

Respond Operational Strategy

e. Respond rapidly to detect and characterize growing HIV, STI, or HCV clusters and prevent new infections. TECs will provide technical assistance and/or direct support to Tribal and Urban communities on the following activities:

i. Develop or accelerate the refinement of HIV, STI, and HCV community plans that are customized for AI/AN communities. Extensive community engagement in this process will help ensure that community-specific social norms and unique epidemic attributes are addressed.

ii. Develop collaborative partnerships among Tribal, state, and local health departments, the clinical community, and community-based organizations to expand and routinize HIV diagnosis, treatment, prevention, and response.

(3) Group B HIV/STI Activities

These activities are eligible for a supplemental budget of up to \$250,000 per awardee.

Applicants may either request Group A or Group B activities based on their geographic service area. Applicants should not apply for both Group A and Group B activities.

Activities under this supplement are organized under the operational strategies of the EHE.

TEC sites serving areas that do include the EHE Phase One priority Geographic area(s) and Location(s) are eligible to apply for this supplemental funding.

For a list of Phase One priority Geographic Areas and Locations, please visit <https://www.hiv.gov/federal-response/ending-the-hiv-epidemic/jurisdictions/phase-one>.

Applications for Group B HIV Activities must include the following activities.

Coordination Operational Strategy

a. Grantees will send at least one representative to the annual HIV Coordination meeting scheduled in September of each year to coincide with the U.S. Conference on AIDS. The budget should include travel and associated costs for participation.

b. Grantees will participate in the IHS National AI/AN STI Prevention workgroup.

Diagnosis Operational Strategy

c. The TECs will provide technical assistance and/or disease surveillance support to communities by developing analytical reports to examine the burden of HIV and other relevant comorbidities such as STIs and HCV in Tribal communities.

Treatment Operational Strategy

d. The TECs will provide support to communities in the development of enhanced activities and expanded capacity to better identify people who are not in care, including those who were never linked to care following an HIV, STI, or HCV diagnosis and those who have fallen out of care.

Respond Operational Strategy

e. Respond rapidly to detect and characterize growing HIV, STI, or HCV clusters and prevent new infections. TECs will provide technical assistance and/or direct support to communities on the following activities:

i. Develop or accelerate the development and/or refinement of community plans that are customized for AI/AN communities. Extensive community engagement in this process will help ensure that community-specific social norms and unique epidemic attributes are addressed.

ii. Develop collaborative partnerships among Tribal, state, and local health departments, the clinical community, and community-based organizations to expand and routinize HIV diagnosis, treatment, prevention, and response.

Further Activities under this Supplement

Applications are required to address the above activities, and must propose activities addressing at least two of the additional operational strategies below.

Diagnosis Operational Strategy

a. Diagnose all people with HIV, STIs, and HCV as early as possible after infection and connect them to immediate treatment. The TECs will provide technical assistance and/or direct support to AI/AN communities on the following activities:

i. Implementing HIV testing recommendations through the rapid replication of proven or innovative HIV screening models;

ii. Developing and implementing innovative testing and health care

engagement strategies focused on meeting the needs of groups at higher risk, including MSM, transgender individuals, high-risk heterosexuals, and persons who inject drugs.

Protection Operational Strategy

b. Protect people at risk for HIV using potent and proven prevention interventions, including Pre-Exposure Prophylaxis (PrEP), a medication that can prevent new HIV infections. The TECs will provide technical assistance and/or direct support to communities on the following activities:

i. Support efforts to increase the awareness of, access to, and utilization of PrEP among identified populations;

ii. Support efforts to incentivize providers and community-based health care organizations to integrate HIV testing, linkage, and referral to care, and linkage or referral to medical prevention (*i.e.*, PrEP) services into primary care services, particularly for their higher-risk patients;

iii. Raise awareness about the prevention benefits of “Treatment as Prevention” (TasP) and “Undetectable = Untransmittable” (U=U) among providers, people living with and at risk for HIV, and the general population;

iv. As an entry point to recovery services and overdose and infection prevention, support the development, expansion, implementation, and evaluation of harm-reduction services for people who inject drugs.

v. Evaluate the local acceptability and opportunities for establishing or increasing syringe services programs (SSPs) including: Linkage to substance use disorder treatment; access to and disposal of sterile syringes and injection equipment; and vaccination, testing, and linkage to care and treatment for infectious diseases.

vi. Promote early identification of individuals with recurrent STI events with focus on chlamydia, gonorrhea, and syphilis through analysis of clinical or other locally available data.

vii. Promote linkage to care including PrEP or other appropriate services to aid the prevention of HIV and other infectious disease transmission, especially for those diagnosed with STIs.

viii. Promote and support Expedited Partner Therapy (EPT) for individuals diagnosed with chlamydia and gonorrhea to control transmission.

ix. Promote enhanced STI screening among youth and MSM and engage providers in adopting best practices, such as obtaining a thorough sexual history and promoting an adolescent-friendly clinic environment.

Respond Operational Strategy

c. Respond rapidly to detect and characterize growing HIV, STI, or Viral hepatitis clusters and prevent new infections. The TECs will provide technical assistance and/or public health surveillance support to communities on the following activities:

i. Establish and support boots-on-the-ground public health workforce capacity that is culturally competent and committed to ensuring implementation of community-based HIV, STI, and/or Viral hepatitis control plans, including facilitating and troubleshooting collaborative community-wide disease control efforts;

ii. Develop or expand the capacity to detect and respond to all established or emerging HIV, STI, and/or Viral hepatitis clusters to reduce disease transmission.

Allowable Activities Under Goal Set 1:

(1) Enhance or develop disease surveillance systems. Surveillance systems can address infectious and chronic diseases, record linkage studies to improve existing surveillance systems, suicide data tracking, regional health registries, influenza surveillance, among others.

(2) Carry out at least one new disease surveillance activity per cycle, complete with evaluation and the use of measurable outcomes.

Goal Set 2: Evaluate existing delivery systems, data systems, and other systems that impact the improvement of Indian health (Core Function 2).

Required Activities under Goal Set 2: None required.

Optional Activities with Budget Support under Goal Set 2:

(1) Annual Cancer Survivorship Leadership Training

This activity is eligible for a supplemental budget of up to \$85,000 per awardee. One award is anticipated.

This activity supports the CDC National Center for Chronic Disease Prevention and Health Promotion activity Annual Cancer Survivorship Leadership Training. Grantee will organize and implement at least two, three-day cancer support leadership trainings for 15–25 AI/AN participants, nationally. The training will be designed to give participants a unique opportunity to work together in a safe, supportive environment to learn and practice skills to help people affected by cancer in their communities. The training will be based on the model, A Gathering of Cancer Support, using the Gathering of Native Americans (GONA) teaching methods.

Outcome:

Participants will show change in knowledge/understanding of the below elements:

Wellness from a Native American Perspective

a. Using a group discussion method such as Rez Café, identify two AI/AN core values that support wellness and healing.

b. Using a group discussion method such as Rez Café, identify two AI/AN core values to draw from to help facilitate a support group.

Cancer 101

c. Describe two ways to take personal action to reduce cancer risk

Exploring Emotional Peer Support Skills and How to Start Up Cancer Support in Your Community.

d. Determine best role for self in setting up cancer support.

e. Identify at least two steps for starting up cancer support in your community.

(2) Tribal Public Health Departments

This activity is eligible for a supplemental budget of up to \$150,000 per awardee. Six awards are anticipated.

a. Conduct Ecological Assessments on Tribal public health programs and services in your Area.

b. Develop plans with specific Tribes on strengthening Tribal public health programs and services.

c. Support the establishment and/or expansion of one or more Tribal public health department(s) in your Area.

Allowable Activities Under Goal Set 2:

(1) Evaluate sufficiency of IHS electronic health record data to determine AI/AN health status, to create seamless data linkages, and to meet the health information needs for Tribes and Tribal programs. This should include an assessment of the ability for the health information systems to meet those needs, create seamless data linkages, and meet data access needs for Tribes and Tribal organizations.

Goal Set 3: Assist Indian Tribes, Tribal organizations, and UIOs in identifying highest-priority health status objectives and the services needed to achieve those objectives, based on epidemiological data.

Make recommendations for the targeting of services needed by the populations served.

Make recommendations to improve health care delivery systems for Indians and Urban Indians (Core Functions 3, 4, and 5).

Required Activities Under Goal Set 3: (1) Public Health Preparedness and Response

a. Strengthen Tribally-focused surveillance systems and data.

b. Conduct outbreak investigations and response.

c. Lead community assessments for disaster preparedness, response, and recovery.

d. Develop response plans for major public health emergencies.

e. Lead, coordinate, or participate in Federal, Tribal, state, or local emergency response exercises and activities.

f. Promote and facilitate planning and response activities among Tribes.

g. Build partnerships among government agencies, Tribes, and other organizations to advance emergency preparedness in Indian country.

#### (2) STD Activities

The grantees will conduct activities in this announcement to support the above STI National Strategic Plan goals and indicators pertaining to chlamydia, gonorrhea, Primary and Secondary Syphilis and congenital syphilis. While the STI National Strategic Plan includes HPV as an additional focus, applicants should not emphasize HPV in their application. However, HPV-related activities can be incorporated into project plans as a secondary focus if desired, as appropriate and if relevant or complementary to primary work.

##### a. Community Profiles

In year 1 of award, the grantees will develop an assessment of the overall burden of the following STIs: Chlamydia, gonorrhea, primary and secondary syphilis, and congenital syphilis within the communities they serve.

To support the profile, the grantees will analyze current, existing data or generate their own data related to STI burden with particular emphasis on priority groups listed above and any other priority groups identified during the assessment phase. When analyzing existing data, grantees will ensure analyses are novel and not duplicative of analytic approaches or products available from other sources. Data may include publically available data, surveillance data, clinical data, qualitative data, or other relevant health data source. Applicants should prioritize data that describe STI burden in Tribal communities within their jurisdiction, such as through partnerships with public health authorities at the Tribal, local or state level. Although historic data may be reviewed, analysis must incorporate data on the burden of STIs generated within the last 5 years. The applicants are encouraged to create assessments that examine STI burden at different Tribal communities and report those results accordingly; regional or IHS Area level results or national level results can be used for comparison purposes.

Special focus should be on indicators and priority areas outlined in the STI National Strategic Plan.

The assessment will serve as a living document and will be updated minimally on year 3 and year 5 of the award.

During years, 2–5 of the award the grantees should: (1) Work to obtain information from community members and Tribal leaders on defining gaps and opportunities to further improve STI prevention and care and (2) conduct relevant interventions to improve STI prevention and care services. The grantees will create a report describing the findings from their community engagement and outlining any relevant feasibility, gaps, and opportunities identified in the interventions conducted. Interventions can be expanded to more communities depending on results, feasibility, and acceptability.

##### b. Communication of findings

At the end of year one grantees will create a report outlining analytic findings of the community profile assessments and also create and include a strategic plan and road map on how to address STI burden within the supported AI/AN communities. Applicants are encouraged to align their strategic approach with the vision and goals of the National STI Strategic Plan and implementing the objectives and strategies most relevant to their role and communities. In addition, applicants should use available data to identify where their resources will have the most impact and to determine indicators and targets best suited to measure their progress towards selected goals. The applicant strategic plan is meant to serve as a living document and be updated based on inputs from supported communities and lessons learned as the work progresses. Please visit <https://www.hhs.gov/sites/default/files/STI-National-Strategic-Plan-2021-2025.pdf> for further background.

The grantees will create or adapt communication materials for appropriate audiences (community members, Tribal leaders, health care providers) and convene meetings to share findings with community members and other stakeholders such as Tribal leadership, medical providers, public health partners, etc.

The grantees will work with selected communities to create detailed strategic plans on how to improve STI prevention with specific focus on aligning to any STI National Strategic plan goals, objectives, and indicators and convene a coalition with diverse partners (community members, public health professionals, trainers, health care

providers and others). Communities can self-identify or be selected in collaboration with the applicant based on available epidemiologic evidence. Each grantee will work with at least two communities.

##### c. Meetings

Grantees will meet with IHS Division of Epidemiology and Disease Prevention (DEDP) staff quarterly to discuss activity progress and garner technical assistance.

Grantees will regularly participate in IHS National STI program workgroup meetings. Each grantee is requested to present once a year on their activities relating to this announcement at these meetings.

Grantees are encouraged to share knowledge gained by presenting findings at Tribal meetings, regional meetings and/or publishing in peer-reviewed journals.

Grantees will attend one national STI-focused meeting such as the National Coalition of STD Directors annual meeting or the National STD conference and are strongly encouraged to submit abstracts for presentations. When such meetings are held in person, applicant's budget should include travel costs for up to three staff to attend.

##### d. Outcomes

The applicant will provide evidence of direct dissemination of assessment results to Tribal communities including Tribal leadership.

Dissemination could include meetings, online reports (and number of views), media releases, and newsletters.

Optional Activities with Budget Support under Goal Set 3:

##### (1) Targeted STD Activities

This activity is eligible for a supplemental budget of up to \$150,000 per awardee. Six awards are anticipated.

To qualify for targeted STD activities, the applicant must demonstrate an increased incidence of congenital syphilis or syphilis among women of reproductive age within their jurisdiction.

The STI National Strategic Plan specifically outlines a focus on congenital syphilis (CS) in Tribal communities and includes a disparity indicator to reduce CS rate among AI/AN people/communities.

In order to achieve a reduction in CS rates among AI/AN people, a comprehensive approach to reduce syphilis rates among women of reproductive age is necessary. Grantees will conduct activities in one or more of the following domains with the goal to address the STI Disparity Indicator focusing on the reduction of CS cases among AI/AN people. Applicants can propose additional relevant work to address CS among their communities.



Activities are intended to complement and expand from required STD activities and develop a logic model specific to this activity apart from the program-wide logic model.

a. Linkage to prenatal care

Applicants will address gaps in prenatal care that contribute to late maternal syphilis screening and treatment. Applicants should prioritize hard to reach populations, including, but not limited to, persons experiencing homelessness and Persons Who Inject Drugs (PWID), and design interventions to link these populations to care.

Applicants will determine whether third trimester screening is occurring within their jurisdictions and evaluate its ability to (a) avert cases before birth; and (b) detect and treat additional CS cases. Applicants may partner with health care providers to test different scalable interventions; for example, the feasibility and impact of Electronic Health Record reminders and/or screening at delivery.

b. Surveillance

Applicants will design activities to address surveillance gaps to capture and accurately report syphilis cases among AI/AN women (particularly women of reproductive age) and understand risk factors associated with transmission.

c. Outbreak response plans and trainings

Applicants will assess gaps in current practices to respond to syphilis outbreaks within their jurisdiction. Applicants will develop comprehensive syphilis outbreak response plans that incorporate and enhance health education and training for providers and disease investigators serving the community. Feasibility of response plans will be assessed with Tribes and Tribal leadership within their jurisdiction. Applicants can include other STIs in outbreak response plans. Applicants will assess training needs and identify providers/Disease Intervention Specialists in need of training and arrange or develop resources. Applicants will connect with existing resources like the STD Prevention Training Centers to create trainings for providers in their community that are tailored to local needs and that are culturally appropriate. Applicants may find more information on the STD Prevention Training Centers at <https://www.nnptc.org/>.

d. Screening in alternative locations

Applicants will create an inventory of any screening currently conducted in alternative locations within their jurisdiction and pilot novel screening programs for syphilis (but also including other STIs) that may reach

heterosexual populations. Applicants will evaluate the effectiveness of such interventions at case-finding and treatment. This could include jails, inpatient or Emergency Department settings, and substance abuse treatment centers.

e. Communication of findings

The grantee will create a report outlining findings and develop a local strategic plan and road map on how to address CS and syphilis burden within the supported AI/AN communities. This plan will differentiate from the work conducted under Part A activities.

The grantees will create or adapt communication materials for appropriate audiences (community members, Tribal leaders, health care providers) and convene meetings to share findings with community members and other stakeholders such as Tribal leadership, medical providers, public health partners, etc.

Grantee will convene a coalition with diverse partners (community members, public health professionals, trainers, health care providers and others) to create concrete action steps to target CS in their jurisdiction and to inform further adaptation of the local strategic plan.

f. Meetings and Reporting

Grantees will meet with IHS DEDP staff quarterly to discuss activity progress and garner technical assistance.

Grantees will provide reports two times a year summarizing progress towards outcomes in Logic Model.

Grantees will participate in any IHS National STI program workgroup meetings focusing on CS and share their activities with other participants.

Grantees will present on their CS activities minimally once per year.

Grantees are encouraged to share knowledge gained by presenting findings at Tribal, regional, or national meetings and/or publishing in peer-reviewed journals.

g. Outcomes

Demonstrated improvement in capturing of syphilis cases among women of reproductive age and ascertainment of CS cases. Demonstrated improvement of linkage to care and screening for syphilis with particular emphasis on hard to reach populations, including, but not limited to, persons experiencing homelessness and PWID.

The grantees will provide evidence of direct dissemination of findings to Tribal communities including Tribal leadership. Dissemination could include meetings, online reports (and number of views), media releases, and newsletters.

Allowable Activities Under Goal Set 3:

(1) Public Health Response  
Grantees may conduct further activities not addressed above including:

a. Infectious Disease control.

b. Outbreak Response.

c. Assess and support Environmental Health emerging needs of local communities.

Goal Set 4: Provide technical assistance to Indian Tribes, Tribal organizations, and UIOs in the development of local health service priorities and to determine incidence and prevalence rates of disease and other illness in the community (Core Function 6).

Required Activities Under Goal Set 4:

(1) Provide culturally appropriate training and technical support based on the needs of Indian Tribes, Tribal organizations, and UIOs served. Topics may include but are not limited to program evaluation, data analysis, data quality, survey design and administration, program planning, community health assessment, and outbreak response.

a. Implement and evaluate at least one public health intervention (conducted by grantee or by supported community) to promote health or address disparities in AI/AN communities.

(2) Evaluate and support Area-wide interventions that promote SARS-CoV-2 vaccine uptake. Assess community attitudes/knowledge/beliefs around vaccine availability, vaccine coverage, and uptake among AI/AN populations and the IHS/Tribal/Urban health care workforce. Address sufficiency and/or gaps regarding vaccine messaging and public communication campaigns and develop implementation strategies to maximize vaccine coverage among AI/AN communities.

This requirement will have a separate budget of \$250,000 per TEC.

a. Explain how the TEC will develop, maintain and strengthen relationships with other public health authorities (e.g., Tribal, county, state) in order to facilitate Public Health assessment, response, communications and dissemination relevant to vaccine implementation to enhance uptake and overall coverage.

b. The TEC will develop a comprehensive needs assessment relevant to the ongoing SARS-CoV-2 vaccine implementation efforts within their relevant IHS Area.

i. Assessment should include implementation gaps and opportunities for improvement in local vaccination activities.

ii. Based on needs assessment findings, develop and implement intervention strategies to address gaps

and enhance opportunities related to improving local vaccine implementation, uptake, and communications.

iii. Perform ongoing evaluation of activities to determine effectiveness and impacts and to inform future efforts.

c. Perform an assessment of existing vaccination capacity, implementation, and uptake for years 1–3 of this funding cycle. Plans for years 4–5 should use this assessment to continue, adapt, and evaluate changes in local conditions and respond to ongoing vaccination needs and goals.

(3) Evaluate and support Area-wide interventions that promote coronavirus disease 2019 (COVID–19) pandemic response, mitigation, and recovery.

This requirement should have a budget of at least \$1,000,000 per site.

(a) Explain how the TEC will develop, maintain, and strengthen relationships with other public health authorities (e.g., Tribal, county, state) in order to facilitate collaborative pandemic outbreak response activities at the local and regional level.

(b) These COVID funds are to meet immediate needs in the response, mitigation, and recovery from the COVID–19 pandemic. Plans for activities should be explicitly tied to measurable pandemic response, mitigation, and recovery outcomes.

Optional Activities with Budget Support under Goal Set 4

(1) SASP/DVP/FHC Technical Assistance

This activity is eligible for a supplemental budget of up to \$265,000 per awardee.

Twelve awards are anticipated.

*Objective:* To provide Technical Assistance (TA) to the Substance Abuse and Suicide Prevention (SASP), Domestic Violence Prevention (DVP), and Forensic Health Care (FHC) projects funded within their regional area. Technical Assistance (TA) should apply to Tribes, Tribal organizations, UIOs, and Federal facilities that receive grants from IHS Behavioral Health. TA should assist projects in meeting required reporting activities.

a. Cross-Site/Group TA

i. Representatives from TECs participate in monthly calls with IHS Division of Behavioral Health (DBH) program staff.

ii. The TECs will facilitate or participate in scheduled Area Project Officer (APO) monthly conference calls/webinars to include all grantees within their respective IHS Area.

iii. Organize and facilitate quarterly webinars related to the expectations and required activities of the SASP, DVP and FHC grant programs.

iv. Provide at least one opportunity per year for individual grantees to meet with local TEC annually at regional or national meeting forum (for example, regional behavioral health conferences).

v. Coordinate in-person, virtual, or teleconference peer-to-peer support opportunities for grantees.

b. Individualized Training and Technical Assistance (TTA)

i. Engage in regular communication with grantee project directors and/or project coordinators, providing individualized TTA to SASP/DVP/FHC grantees based on the needs of individual grant community to meet the expectations and required activities of the grant program.

ii. Provide monthly, individual virtual site visits.

iii. Document individual one-on-one meetings that occurred at regional or national meetings, such as regional behavioral health conferences.

iv. Develop an individualized data collection tracker to assist grantees with local data collection.

v. TECs will work with grantees to establish baseline data related to the SASP/DVP/FHC funded projects, DBH Alcohol and Substance Abuse (ASA) Government Performance and Results Act (GPRA) measures and other IHS Strategic Plan Goals.

vi. Technical assistance provided by TECs in this cooperative agreement are limited to efforts that support grantee submission of the required DBH annual progress report (APR) and grantee-specific interventions outlined in the applicant project narrative.

vii. TECs should outline available resources and technology, including software technology for project data analysis and management. TECs may use resources available to them to enhance TA support including software, maintenance, and storage capabilities. However, it is recommended that these activities include an established agreement between the TEC and the grantee.

c. Development of Resources

i. Support grantee development of publications and/or presentation for use in their program.

ii. Provide subject matter expertise, tools, and resources to enhance grantee development of culturally competent, community-based methods for local evaluation and data collection plans.

iii. Create individualized training plans for use with grantees.

iv. Support development of MOUs related to project needs (e.g., provide templates for establishing data collection plans and data sharing agreements, partnerships, and/or services).

v. Develop TTA material including public health messages, and aid in public health messaging practice guides to assist grantees in developing documents identified as grant required activities.

(2) Zero Alcohol and Substance Abuse (ASA) Suicide Initiative Technical Assistance

This activity is eligible for a supplemental budget of up to \$125,000 per awardee.

One award is anticipated.

*Objective:* To provide technical assistance that supports the data collection and data analysis requirements of local projects funded under the two IHS Alcohol and Substance Abuse Pilot Project Initiatives; the Community Opioid Intervention Pilot Project (COIPP) and the Youth Regional Treatment Center (YRTC) Aftercare Pilot Project. Technical assistance should apply to Tribes, Tribal organizations, UIOs and Federal facilities that receive grants from IHS Behavioral Health.

a. Data Collection, Analysis, and Reporting

i. Support local grantee efforts to develop data plans that will support grant objectives, project activities and evaluation efforts. Each grantee was highly recommended to develop a logic/model or theory of change as part of their project description.

1. Technical assistance provided by TECs in this cooperative agreement shall support data collection, analysis, and reporting. Data shall be coordinated and submitted with local grantee evaluation efforts and required annual progress reports.

2. Work with grantees to establish baseline data related to pilot project.

3. Work with grantees to establish a local data collection plan, including project data collection tracker related to proposed activities and evaluation efforts. Data will include a compilation of quantitative and qualitative data that addresses the project impact including outcomes such as performance measures related to evaluation outcomes and intended results.

4. TECs will assist grantees to include and prioritize the collection and reporting of DBH ASA GPRA measures and other IHS Strategic Plan Goals.

ii. Technical assistance provided by TECs in this cooperative agreement shall support grantee submission of the required DBH APR.

iii. TECs should outline available resources and technology, including software technology for project data analysis and management. TECs may use resources available to them to enhance TA support including software,

maintenance, and storage capabilities. However, it is recommended that these activities include an established agreement between the TEC and the grantee.

b. Individualized TTA

i. Engage in regular communication with grantee project directors and/or project coordinators, providing individualized TTA based on the needs of individual pilot project and Tribal community to meet the expectations and required activities of the grant program.

ii. Provide monthly, individual virtual site visits.

iii. Document individual one-on-one meetings that occurred at regional or national meetings, such as regional behavioral health conferences.

c. Development of Resources

i. Support grantee development of publications and/or presentation for use in their program.

ii. Provide subject matter expertise, tools, and resources to enhance grantee development of culturally competent, community-based methods for local evaluation and data collection plans.

iii. Support development of MOUs related to project needs (e.g., provide templates for establishing data collection plans and data sharing agreements, partnerships, and/or services).

(3) Diabetes Activities

This activity is eligible for a supplemental budget of up to \$100,000 per awardee.

One award is anticipated.

a. Provide data technical assistance to the Urban Indian Health Organization (UIHO) Special Diabetes Program for Indians (SDPI) grantees to support their diabetes prevention and treatment services.

b. Develop the annual Urban Diabetes Care and Outcomes Summary Report, which provides an overview of the UIHO data submitted into the IHS Diabetes Care and Outcomes Audit. These reports provide data on the diabetes care provided as well as the outcomes achieved in the UIHO patient population, including identifying areas for improvement.

Allowable Activities under Goal Set 4: None additional.

Pre-Conference Grant Requirements

The awardee is required to comply with the "HHS Policy on Promoting Efficient Spending: Use of Appropriated Funds for Conferences and Meeting Space, Food, Promotional Items, and Printing and Publications," dated January 23, 2015 (Policy), as applicable to conferences funded by grants and cooperative agreements. The Policy is available at <https://www.hhs.gov/grants/>

[contracts/contract-policies-regulations/efficient-spending/index.html?language=es.](#)

The awardee is required to:

Provide a separate detailed budget justification and narrative for each conference anticipated. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration website, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other (explain in detail and cost breakdown). For additional questions please contact Lisa C. Neel at (301) 443-4305 or email at [lisa.neel@ihs.gov](mailto:lisa.neel@ihs.gov).

## II. Award Information

### Funding Instrument—Cooperative Agreement

#### Estimated Funds Available

The total funding identified for fiscal year (FY) 2021 is approximately \$30,750,000. Individual award amounts for the first budget year are anticipated to be between \$1,070,000 and \$3,000,000. The funding available for competing and subsequent continuation awards issued under this announcement is subject to the availability of appropriations and budgetary priorities of the Agency. The IHS is under no obligation to make awards that are selected for funding under this announcement.

Funding for this award will be provided through: The IHS Office of Public Health Support, the IHS Office of Urban Indian Health Programs, the IHS Office of Clinical and Preventive Services, National Human Immunodeficiency Virus (HIV) & Viral Hepatitis C (HCV) Program in partnership with the U.S. Department of Health and Human Services (HHS) Minority HIV/AIDS Fund (MHAF), the Centers for Disease Control and Prevention's (CDC) National Center for Chronic Disease Prevention and Health Promotion, and the National Institutes of Health's (NIH) National Institute on Minority Health and Health Disparities (NIMHD). The authorities for CDC and NIH funding will be exercised through an Intra-Departmental Delegation of Authority (IDDA) with IHS. The administration will be carried out through an Intra-agency Agreement (IAA) between CDC, NIH, and IHS. Portions of this award will be funded by the Office of the Assistant Secretary for Health, HHS, as authorized under the statutory earmark for minority AIDS prevention and treatment activities, and are to be carried out pursuant to Title III of the Public Service Act. The funding is being made available through

an IDDA to award specific funding for fiscal year (FY) 2021.

#### Anticipated Number of Awards

Approximately 12 awards will be issued under this program announcement.

#### Period of Performance

The period of performance is for five years.

#### Cooperative Agreement

Cooperative agreements awarded by the HHS are administered under the same policies as a grant. However, the funding agency (IHS) is anticipated to have substantial programmatic involvement in the project during the entire award segment. Below is a detailed description of the level of involvement required for the IHS.

#### Substantial Agency Involvement Description for Cooperative Agreement

(1) Provide funded TECs with ongoing consultation and technical assistance to plan, implement, and evaluate each component as described under Recipient Activities. Consultation and technical assistance may include, but not be limited to, the following areas:

(a) Interpretation of current scientific literature related to epidemiology, statistics, surveillance, Healthy People 2030 objectives, and other public health issues;

(b) Design and implementation of each program component such as surveillance, epidemiologic analysis, outbreak investigation, development of epidemiologic studies, development of disease control programs, and coordination of activities; and

(c) Overall operational planning and program management.

(2) Coordinate all IHS epidemiologic activities on a national scope including development and management of disease surveillance systems, generation of related reports, and investigation of disease outbreaks.

(3) Conduct routine site visits to TECs and/or coordinate TEC visits to IHS to assess work plans and ensure data security; confirm compliance with applicable laws and regulations; assess program activities; and to mutually resolve problems, as needed.

(4) Participate in annual TEC meeting for information sharing, problem solving, or training.

(5) Provide training in the use of data from the Epidemiology Data Mart (EDM) and other IHS systems for the purposes of creating reports for disease surveillance, epidemiologic analysis, and epidemiologic studies. Training can be provided online or onsite, depending on staff availability.

(6) Coordinate opportunities for training of TEC staff where applicable. Examples include webinars on the EDM and data use, technical assistance, use of statistical software, and fellowship opportunities.

### III. Eligibility Information

#### 1. Eligibility

To be eligible for this FY 2021 funding opportunity applicants must:

A. Be one of the following as defined by 25 U.S.C. 1603:

1. A Federally-recognized Indian Tribe as defined by 25 U.S.C. 1603(14). The term "Indian Tribe" means any Indian Tribe, band, nation, or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 *et seq.*], which is recognized as eligible for the special programs and services provided by the U.S. to Indians because of their status as Indians.

2. A Tribal organization as defined by 25 U.S.C. 1603(26). The term "Tribal organization" has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5304): "Tribal organization" means the recognized governing body of any Indian Tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: Provided that, in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian Tribe, the approval of each such Indian Tribe shall be a prerequisite to the letting or making of such contract or grant. Applicant shall submit letters of support and/or Tribal Resolutions from the Tribes to be served.

3. An Intertribal Consortium or Indian organization as defined by 25 U.S.C. 1621m(d)(2) as: (A) Incorporated for the primary purpose of improving Indian health; and (B) representative of the Indian Tribes or Urban Indian communities residing in the area in which the Intertribal consortium is located.

B. Demonstrate that they have complied with previous terms and conditions of the Epidemiology Program for AI/AN Tribes and Urban Indian Communities grant in order to receive funding under this announcement; and

C. Represent or serve a population of at least 60,000 AI/AN people or 70 percent of the Tribal governments in the Area to be eligible, as demonstrated by Tribal Resolutions, blanket Tribal Resolutions, Tribal Letters of Support (LoS) or LoS from Urban Indian clinic directors and/or Chief Executive Officers (CEOs). Applicants must describe the population of AI/AN people and Tribes that will be represented. The number of AI/AN people served must be substantiated by documentation describing IHS user populations, U.S. Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid. Resolutions or LoS from each Tribe, AN village and LoS from each Urban Indian community represented must be included in the application package. Resolutions or LoS must be current (*e.g.*, not pre-date inception of the applicant epidemiology center) and express explicit support for the applicant epidemiology center. Collaborations with IHS Areas, Federal agencies such as the CDC, state, academic institutions, or other organizations are encouraged (letters of support and collaboration should be included in the application). If applicants do not have 100 percent Tribal support for their work, applicants must report the proportion and estimated population of the Tribes in their Area that do not support their work explicitly through LoS or resolution.

The DEDP will notify any applicants deemed ineligible.

Note: Please refer to Section IV.2 (Application and Submission Information/Subsection 2, Content and Form of Application Submission) for additional proof of applicant status documents required, such as Tribal Resolutions, proof of non-profit status, etc.

#### 2. Cost Sharing or Matching

The IHS does not require matching funds or cost sharing for grants or cooperative agreements.

#### 3. Other Requirements

Applications with budget requests that exceed the highest dollar amount outlined under Section II Award Information, Estimated Funds Available, or exceed the Period of Performance outlined under Section II Award Information, Period of Performance will be considered not responsive and will not be reviewed. The Division of Grants Management (DGM) will notify the applicant.

#### Tribal Resolution

The DGM must receive an official, signed Tribal Resolution prior to issuing a Notice of Award (NoA) to any applicant selected for funding. An Indian Tribe or Tribal organization that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. However, if an official, signed Tribal Resolution cannot be submitted with the application prior to the application deadline date, a draft Tribal Resolution must be submitted with the application by the deadline date in order for the application to be considered complete and eligible for review. The draft Tribal Resolution is not in lieu of the required signed resolution, but is acceptable until a signed resolution is received. If an application without a signed Tribal Resolution is selected for funding, the applicant will be contacted by the Grants Management Specialist (GMS) listed in this funding announcement and given 90 days to submit an official, signed Tribal Resolution to the GMS. If the signed Tribal Resolution is not received within 90 days, the award will be forfeited.

Tribes organized with a governing structure other than a Tribal council may submit an equivalent document commensurate with their governing organization.

### IV. Application and Submission Information

#### 1. Obtaining Application Materials

The application package and detailed instructions for this announcement are hosted on <https://www.Grants.gov>.

Please direct questions regarding the application process to Mr. Paul Gettys at (301) 443-2114 or (301) 443-5204.

#### 2. Content and Form Application Submission

The applicant must include the project narrative as an attachment to the application package. Mandatory documents for all applicants include:

- Abstract (one page) summarizing the project.

- Application forms:

1. SF-424, Application for Federal Assistance.

2. SF-424A, Budget Information—Non-Construction Programs.

3. SF-424B, Assurances—Non-Construction Programs.

- Project Narrative (not to exceed 12 pages). See Section IV.2.A Project Narrative for instructions.

1. Background information on the organization.

2. Proposed scope of work, objectives, and activities that provide a description

of what the applicant plans to accomplish.

- Proposed logic model.
- Budget Justification and Narrative (not to exceed five pages). See Section IV.2.B Budget Narrative for instructions.
- One-page Timeframe Chart.
- Tribal Resolution(s) or Letters of Support.
- Letters of Support from organization's Board of Directors.
- 501(c)(3) Certificate, if applicable.
- Biographical sketches for all Key Personnel.
- Contractor/Consultant resumes or qualifications and scope of work.
- Disclosure of Lobbying Activities (SF-LLL).
- Certification Regarding Lobbying (GG-Lobbying Form).
- Copy of current Negotiated Indirect Cost rate (IDC) agreement (required in order to receive IDC).
- Organizational Chart (optional).
- Documentation of current Office of Management and Budget (OMB) Financial Audit (if applicable).

Acceptable forms of documentation include:

1. Email confirmation from Federal Audit Clearinghouse (FAC) that audits were submitted; or
2. Face sheets from audit reports.

Applicants can find these on the FAC website at <https://harvester.census.gov/facdissem/Main.aspx>.

#### Public Policy Requirements

All Federal public policies apply to IHS grants and cooperative agreements. Pursuant to 45 CFR 80.3(d), an individual shall not be deemed subjected to discrimination by reason of their exclusion from benefits limited by Federal law to individuals eligible for benefits and services from the IHS. See <https://www.hhs.gov/grants/grants/grants-policies-regulations/index.html>.

#### Requirements for Project and Budget Narratives

##### A. Project Narrative

This narrative should be a separate document that is no more than 12 pages and must: (1) Have consecutively numbered pages; (2) use black font 12 points or larger; (3) be single-spaced; (4) and be formatted to fit standard letter paper (8½ x 11 inches).

Be sure to succinctly answer all questions listed under the evaluation criteria (refer to Section V.1, Evaluation Criteria) and place all responses and required information in the correct section noted below or they will not be considered or scored. If the narrative exceeds the page limit, the application will be considered not responsive and

will not be reviewed. The 12-page limit for the narrative does not include the work plan, standard forms, Tribal Resolutions or LoS, budget, budget justifications, narratives, and/or other items.

There are three parts to the narrative: Part 1—Program Information; Part 2—Program Planning and Evaluation; and Part 3—Program Report. See below for additional details about what must be included in the narrative.

The page limits below are for each narrative and budget submitted.

##### Part 1: Program Information (Limit—3 pages)

###### Section 1: Introduction and Need for Assistance

Must include the applicant's background information, a description of epidemiological service, epidemiologic capacity, and history of support for such activities. Applicants need to include current public health activities, what program services are currently being provided, and interactions with other public health authorities in the region (state, local, or Tribal).

###### Section 2: Organizational Capabilities

The applicant must describe staff capabilities or hiring plans for the key personnel with appropriate expertise in epidemiology, health sciences, and program management. The applicant must also demonstrate access to specialized expertise such as a doctoral level epidemiologist and/or a biostatistician. Applicants must include an organizational chart and provide position descriptions and biographical sketches of key personnel including consultants or contractors. The position description should clearly describe each position and its duties. Resume should indicate that proposed staff is qualified to carry out the project activities.

###### Section 3: User Population

The number of AI/AN people served must be substantiated by documentation describing IHS user populations, U.S. Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid.

##### Part 2: Program Planning and Evaluation (Limit—5 pages)

###### Section 1: Program Plans

Applicant must include a work plan that describes program goals, objectives, activities, timeline, and responsible person for carrying out the objectives/activities. The applicant must include at least a minimum of four of the seven core functions of the IHCLA and other

activities listed under the Required, Optional, and Allowable Activities.

##### Section 2: Program Evaluation

Applicant must define the criteria to be used to evaluate activities listed in the work plan under the Grantee Cooperative Agreement Award Activities. Criteria must include the collection, management, and reporting of established TEC IHS GPRA measures. They must explain the methodology that will be used to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved and describe how evaluation findings will be disseminated to the IHS, co-funders, and the population served. The evaluation plan must include a logic model (not counted in the page limit) with at least one measurable outcome per required activity. Applicants are strongly encouraged to base their logic model on the Draft Logic Model supplied with this notice.

##### Part 3: Program Report (Limit—4 pages)

###### Section 1: Describe Major Accomplishments Over the Last 24 Months

Please identify and describe significant program achievements associated with the delivery of quality health services. Provide a comparison of the actual accomplishments to the goals established for the project period or, if applicable, provide justification for the lack of progress.

###### Section 2: Describe Major Activities Over the Last 24 Months

Please identify and summarize recent, major project activities related to the work proposed in the last 24 months.

###### Section 3: Describe Epidemiology Activities Over the Last 5 Years

Please identify and summarize substantial epidemiology center activities conducted over the last five years, especially those you propose to continue.

##### B. Budget Narrative (Limit—5 pages)

Provide a budget narrative that explains the amounts requested for each line item of the budget from the SF-424A (Budget Information for Non-Construction Programs). The budget narrative should specifically describe how each item will support the achievement of proposed objectives. Be very careful about showing how each item in the "Other" category is justified. For subsequent budget years (see Multi-Year Project Requirements in Section V.1. Application Review Information, Evaluation Criteria), the narrative

should highlight the changes from year 1 or clearly indicate that there are no substantive budget changes during the period of performance. Do NOT use the budget narrative to expand the project narrative.

### 3. Submission Dates and Times

Applications must be submitted through *Grants.gov* by 11:59 p.m. Eastern Time on the Application Deadline Date. Any application received after the application deadline will not be accepted for review. *Grants.gov* will notify the applicant via email if the application is rejected.

If technical challenges arise and assistance is required with the application process, contact *Grants.gov* Customer Support (see contact information at <https://www.grants.gov>). If problems persist, contact Mr. Paul Gettys ([Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov)), Acting Director, DGM, by telephone at (301) 443-2114 or (301) 443-5204. Please be sure to contact Mr. Gettys at least ten days prior to the application deadline. Please do not contact the DGM until you have received a *Grants.gov* tracking number. In the event you are not able to obtain a tracking number, call the DGM as soon as possible.

IHS will not acknowledge receipt of applications.

### 4. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

### 5. Funding Restrictions

- Pre-award costs are allowable up to 90 days before the start date of the award provided the costs are otherwise allowable if awarded. Pre-award costs are incurred at the risk of the applicant.
- The available funds are inclusive of direct and indirect costs.
- Only one cooperative agreement will be awarded per applicant.

### 6. Electronic Submission Requirements

All applications must be submitted via *Grants.gov*. Please use the <https://www.Grants.gov> website to submit an application. Find the application by selecting the “Search Grants” link on the homepage. Follow the instructions for submitting an application under the Package tab. No other method of application submission is acceptable.

If the applicant cannot submit an application through *Grants.gov*, a waiver must be requested. Prior approval must be requested and obtained from Mr. Paul Gettys, Acting Director, DGM. A written waiver request must be sent to [GrantsPolicy@ihs.gov](mailto:GrantsPolicy@ihs.gov) with a copy to [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov). The

waiver request must: (1) Be documented in writing (emails are acceptable) before submitting an application by some other method, and (2) include clear justification for the need to deviate from the required application submission process.

Once the waiver request has been approved, the applicant will receive a confirmation of approval email containing submission instructions. A copy of the written approval must be included with the application that is submitted to the DGM. Applications that are submitted without a copy of the signed waiver from the Acting Director of the DGM will not be reviewed. The Grants Management Officer of the DGM will notify the applicant via email of this decision. Applications submitted under waiver must be received by the DGM no later than 5:00 p.m., Eastern Time, on the Application Deadline Date. Late applications will not be accepted for processing. Applicants that do not register for both the System for Award Management (SAM) and *Grants.gov* and/or fail to request timely assistance with technical issues will not be considered for a waiver to submit an application via alternative method.

Please be aware of the following:

- Please search for the application package in <https://www.Grants.gov> by entering the Assistance Listing (CFDA) number or the Funding Opportunity Number. Both numbers are located in the header of this announcement.
- If you experience technical challenges while submitting your application, please contact *Grants.gov* Customer Support (see contact information at <https://www.grants.gov>).
- Upon contacting *Grants.gov*, obtain a tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver from the agency must be obtained.
- Applicants are strongly encouraged not to wait until the deadline date to begin the application process through *Grants.gov* as the registration process for SAM and *Grants.gov* could take up to 20 working days.
- Please follow the instructions on *Grants.gov* to include additional documentation that may be requested by this funding announcement.
- Applicants must comply with any page limits described in this funding announcement.
- After submitting the application, the applicant will receive an automatic acknowledgment from *Grants.gov* that contains a *Grants.gov* tracking number. The IHS will not notify the applicant that the application has been received.

Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS)

Applicants and grantee organizations are required to obtain a DUNS number and maintain an active registration in the SAM database. The DUNS number is a unique 9-digit identification number provided by D&B that uniquely identifies each entity. The DUNS number is site specific; therefore, each distinct performance site may be assigned a DUNS number. Obtaining a DUNS number is easy, and there is no charge. To obtain a DUNS number, please access the request service through <https://fedgov.dnb.com/webform>, or call (866) 705-5711.

The Federal Funding Accountability and Transparency Act of 2006, as amended (“Transparency Act”), requires all HHS recipients to report information on sub-awards. Accordingly, all IHS grantees must notify potential first-tier sub-recipients that no entity may receive a first-tier sub-award unless the entity has provided its DUNS number to the prime grantee organization. This requirement ensures the use of a universal identifier to enhance the quality of information available to the public pursuant to the Transparency Act.

System for Award Management (SAM)

Organizations that are not registered with SAM must have a DUNS number first, then access the SAM online registration through the SAM home page at <https://www.sam.gov/SAM/> (U.S. organizations will also need to provide an Employer Identification Number from the Internal Revenue Service that may take an additional 2–5 weeks to become active). Please see *SAM.gov* for details on the registration process and timeline. Registration with the SAM is free of charge, but can take several weeks to process. Applicants may register online at <https://www.sam.gov/SAM/>.

Additional information on implementing the Transparency Act, including the specific requirements for DUNS and SAM, are available on the DGM Grants Management, Policy Topics web page: <https://www.ihs.gov/dgm/policytopics/>.

## V. Application Review Information

Possible points assigned to each section are noted in parentheses. The 12-page project narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. See “Multi-year Project Requirements” at the end of this section for more information. The narrative section

should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully. Points will be assigned to each evaluation criteria adding up to a total of 100 possible points. Points are assigned as follows:

### 1. Evaluation Criteria

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Points are assigned as follows:

#### A. Introduction and Need for Assistance (10 points)

a. Describe the applicant's current public health activities including programs or services currently provided, interactions with other public health authorities in the regions (state, local, or Tribal) and how long it has been operating. Specifically describe current epidemiologic capacity and history of support for such activities.

b. Provide a physical location of the TEC and area to be served by the proposed program, including a map (include the map in the attachments) and specifically describe the office space and how it is going to be paid for.

c. Describe the applicant's user population. The applicant must demonstrate AI/AN people will be served and must be substantiated by using documentation describing IHS user populations, U.S. Census Bureau data, clinical catchment data, or any method that is scientifically and epidemiologically valid data.

#### B. Project Objectives, Work Plan, and Approach (35 points)

a. State in measurable and realistic terms the objectives and appropriate activities to achieve each objective for the projects as listed in the Required, Optional, and Allowable Activities. The work plan needs to include the grantees desired objectives and must demonstrate a minimum of four of the seven TEC core functional areas as outlined in the IHCA.

b. Identify the expected results, benefits, and outcomes or products to be derived from each objective of the project.

c. Include a work plan for each objective that indicates when the objectives and major activities will be accomplished and who will conduct the activities.

#### C. Program Evaluation (10 points)

a. Define the criteria to be used to evaluate activities listed in the work plan under the Required, Optional, and Allowable Activities.

b. Explain the methodology that will be used to determine if the needs identified for the objectives are being met and if the outcomes identified are being achieved. Be explicit about how the logic model relates to the objectives and activities. Include the logic model in the appendix.

c. Explain how the organization will participate in cross-organization evaluation activities, as needed.

d. Describe how evaluation findings will be disseminated to stakeholders.

#### D. Organizational Capabilities, Key Personnel, and Qualifications (10 points)

a. Explain both the management and administrative structure of the organization, including documentation of current certified financial management systems from the Bureau of Indian Affairs, IHS, or a Certified Public Accountant and an updated organizational chart (include in appendix).

b. Describe the ability of the organization to manage a program of the proposed scope.

c. Provide position descriptions and biographical sketches of Key Personnel, including those of consultants or contractors in the Other Attachments form in *Grants.gov*. Position descriptions should very clearly describe each position and its duties, indicating desired qualification and experience requirements related to the project. Resumes should indicate that the proposed staff is qualified to carry out the project activities. Applicants with expertise in epidemiology will receive priority.

d. Applicant must at least have two epidemiologists as part of the proposal.

#### E. Epidemiology Center Capacity (30 points)

a. Applicant must demonstrate current capacity and successes over time (five years) in providing epidemiology center services to Tribes and Tribal populations in their area.

#### F. Categorical Budget and Budget Justification (5 points)

a. The five points for Categorical Budget only applies to Year 1. Provide a line item budget and budget narrative for Year 1.

b. Provide a justification by line item in the budget including sufficient cost and other details to facilitate the determination of cost allowance and

relevance of these costs to the proposed project. The funds requested should be appropriate and necessary for the scope of the project. Be aware of and incorporate budget limits and requirements listed in the Required, Optional, and Allowable Activities in Section I.

i. IHS recommends that applicants review <https://www.ihs.gov/dper/evaluation/evaluation-policy/> and plan their budget proposals in compliance with the general Evaluation Policy of IHS.

c. If use of consultants or contractors are proposed or anticipated, provide a detailed budget and scope of work that clearly defines the deliverables or outcomes anticipated.

d. If the applicant will be hosting a conference, the applicant must include a separate detailed budget justification and narrative for the conference. The cost categories to be addressed are as follows: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration website, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other (explain in detail and cost breakdown).

e. Applicant is required to submit a line item budget and budget narrative by category for years 2–5 as an appendix to show the five-year plan of the proposal.

#### Multi-Year Project Requirements

Applications must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project. This attachment will not count as part of the project narrative or the budget narrative.

Additional documents can be uploaded as Appendix Items in *Grants.gov*.

- Work plan, logic model, and/or timeline for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Rate Agreement.
- Organizational chart.
- Map of area identifying project location(s).
- Logic model.
- Additional documents to support narrative (*i.e.*, data tables, key news articles, etc.).

#### 2. Review and Selection

Each application will be prescreened for eligibility and completeness as outlined in the funding announcement. Applications that meet the eligibility



criteria shall be reviewed for merit by the Objective Review Committee (ORC) based on evaluation criteria. Incomplete applications and applications that are not responsive to the administrative thresholds (budget limit, project period limit) will not be referred to the ORC and will not be funded. The applicant will be notified of this determination.

Applicants must address all program requirements and provide all required documentation.

### 3. Notifications of Disposition

All applicants will receive an Executive Summary Statement from the IHS Office of Public Health Support within 30 days of the conclusion of the ORC outlining the strengths and weaknesses of their application. The summary statement will be sent to the Authorizing Official identified on the face page (SF-424) of the application.

#### A. Award Notices for Funded Applications

The NoA is the authorizing document for which funds are dispersed to the approved entities and reflects the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the award, the effective date of the award, and the budget/project period. Each entity approved for funding must have a user account in GrantSolutions in order to retrieve the NoA. Please see the Agency Contacts list in Section VII for the systems contact information.

#### B. Approved but Unfunded Applications

Approved applications not funded due to lack of available funds will be held for one year. If funding becomes available during the course of the year, the application may be reconsidered.

Note: Any correspondence other than the official NoA executed by an IHS grants management official announcing to the project director that an award has been made to their organization is not an authorization to implement their program on behalf of the IHS.

## VI. Award Administration Information

### 1. Administrative Requirements

Cooperative agreements are administered in accordance with the following regulations and policies:

A. The criteria as outlined in this program announcement.

B. Administrative Regulations for Grants:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards currently in effect or implemented during the period of award, other

Department regulations and policies in effect at the time of award, and applicable statutory provisions. At the time of publication, this includes 45 CFR part 75, at <https://www.govinfo.gov/content/pkg/CFR-2020-title45-vol1/pdf/CFR-2020-title45-vol1-part75.pdf>.

- Please review all HHS regulatory provisions for Termination at 45 CFR 75.372, at [https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75\\_1372#se45.1.75\\_1372](https://www.ecfr.gov/cgi-bin/retrieveECFR?gp&SID=2970eec67399fab1413ede53d7895d99&mc=true&n=pt45.1.75&r=PART&ty=HTML&se45.1.75_1372#se45.1.75_1372).

C. Grants Policy:

- HHS Grants Policy Statement, Revised 01/07, at <http://www.hhs.gov/sites/default/files/grants/grants/policies-regulations/hhsgps107.pdf>.

D. Cost Principles:

- Uniform Administrative Requirements for HHS Awards, “Cost Principles,” at 45 CFR part 75, subpart E.

E. Audit Requirements:

- Uniform Administrative Requirements for HHS Awards, “Audit Requirements,” at 45 CFR part 75, subpart F.

F. As of August 13, 2020, 2 CFR 200 has been updated to include a prohibition on certain telecommunications and video surveillance services or equipment. This prohibition is described in 2 CFR 200.216. This will also be described in the terms and conditions of every IHS grant and cooperative agreement awarded on or after August 13, 2020.

### 2. Indirect Costs

This section applies to all recipients that request reimbursement of indirect costs (IDC) in their application budget. In accordance with HHS Grants Policy Statement, Part II-27, IHS requires applicants to obtain a current IDC rate agreement and submit it to the DGM prior to the DGM issuing an award. The rate agreement must be prepared in accordance with the applicable cost principles and guidance as provided by the cognizant agency or office. A current rate covers the applicable grant activities under the current award’s budget period. If the current rate agreement is not on file with the DGM at the time of award, the IDC portion of the budget will be restricted. The restrictions remain in place until the current rate agreement is provided to the DGM.

Per 45 CFR 75.414(f) Indirect (F&A) costs, “any non-Federal entity [*i.e.*, applicant] that has never received a negotiated indirect cost rate, . . . may elect to charge a de minimis rate of 10 percent of modified total direct costs

(MTDC) which may be used indefinitely. As described in Section 75.403, costs must be consistently charged as either indirect or direct costs, but may not be double charged or inconsistently charged as both. If chosen, this methodology once elected must be used consistently for all Federal awards until such time as the non-Federal entity chooses to negotiate for a rate, which the non-Federal entity may apply to do at any time.”

Electing to charge a de minimis rate of 10 percent only applies to applicants that have never received an approved negotiated indirect cost rate from HHS or another cognizant federal agency. Applicants awaiting approval of their indirect cost proposal may request the 10 percent de minimis rate. When the applicant chooses this method, costs included in the indirect cost pool must not be charged as direct costs to the grant.

Available funds are inclusive of direct and appropriate indirect costs. Approved indirect funds are awarded as part of the award amount, and no additional funds will be provided.

Generally, IDC rates for IHS grantees are negotiated with the Division of Cost Allocation (DCA) at <https://rates.psc.gov/> or the Department of the Interior (Interior Business Center) at <https://ibc.doi.gov/ICS/tribal>. For questions regarding the indirect cost policy, please call the GMS listed under “Agency Contacts” or the main DGM office at (301) 443-5204.

### 3. Reporting Requirements

The grantee must submit required reports consistent with the applicable deadlines. Failure to submit required reports within the time allowed may result in suspension or termination of an active grant, withholding of additional awards for the project, or other enforcement actions such as withholding of payments or converting to the reimbursement method of payment. Continued failure to submit required reports may result in the imposition of special award provisions, and/or the non-funding or non-award of other eligible projects or activities. This requirement applies whether the delinquency is attributable to the failure of the awardee organization or the individual responsible for preparation of the reports. Per DGM policy, all reports must be submitted electronically by attaching them as a “Grant Note” in GrantSolutions. Personnel responsible for submitting reports will be required to obtain a login and password for GrantSolutions. Please see the Agency Contacts list in Section VII for the systems contact information.

The reporting requirements for this program are noted below.

#### A. Progress Reports

Program progress reports are required semi-annually. The progress reports are due within 30 days after the reporting period ends (specific dates will be listed in the NoA Terms and Conditions). These reports must include a brief comparison of actual accomplishments to the goals established for the period, a summary of progress to date or, if applicable, provide sound justification for the lack of progress, and other pertinent information as required. A final report must be submitted within 90 days of expiration of the period of performance.

#### B. Financial Reports

Federal Cash Transaction Reports are due 30 days after the close of every calendar quarter to the Payment Management Services at <https://pms.psc.gov>. Failure to submit timely reports may result in adverse award actions blocking access to funds.

Federal Financial Reports are due 30 days after the end of each budget period, and a final report is due 90 days after the end of the Period of Performance.

Grantees are responsible and accountable for reporting accurate information on all required reports: The Progress Reports, the Federal Cash Transaction Report, and the Federal Financial Report.

#### C. Data Collection and Reporting

Based on the required activities in Section II, describe how grantee plans to collect data for the proposed project and activities. Identify any type(s) of evaluation(s) that will be used and how you will collaborate with partners to complete any evaluation efforts or data collection. Progress reports will include compilation of quantitative data (e.g., number served; screenings completed) and qualitative or narrative (text) data. Reporting elements should be specific to activities/programs, processes, and outcomes such as performance measures and other data relevant to evaluation outcomes, including intended results (i.e., impact and outcomes). Grantees will be required to collect and submit responses to specific data calls upon request, as well as semi-annual and annual progress reports.

#### D. Post Conference Grant Reporting

The following requirements were enacted in Section 3003 of the Consolidated Continuing Appropriations Act, 2013, Public Law 113–6, 127 Stat. 198, 435 (2013), and; *Office of Management and Budget*

*Memorandum M–17–08, Amending OMB Memorandum M–12–12: All HHS/IHS awards containing grants funds allocated for conferences will be required to complete a mandatory post award report for all conferences. Specifically: The total amount of funds provided in this award/cooperative agreement that were spent for “Conference X,” must be reported in final detailed actual costs within 15 calendar days of the completion of the conference. Cost categories to address should be: (1) Contract/Planner, (2) Meeting Space/Venue, (3) Registration website, (4) Audio Visual, (5) Speakers Fees, (6) Non-Federal Attendee Travel, (7) Registration Fees, and (8) Other.*

#### E. Federal Sub-Award Reporting System (FSRS)

This award may be subject to the Transparency Act sub-award and executive compensation reporting requirements of 2 CFR part 170.

The Transparency Act requires the OMB to establish a single searchable database, accessible to the public, with information on financial assistance awards made by Federal agencies. The Transparency Act also includes a requirement for recipients of Federal grants to report information about first-tier sub-awards and executive compensation under Federal assistance awards.

IHS has implemented a Term of Award into all IHS Standard Terms and Conditions, NoAs, and funding announcements regarding the FSRS reporting requirement. This IHS Term of Award is applicable to all IHS grant and cooperative agreements issued on or after October 1, 2010, with a \$25,000 sub-award obligation threshold met for any specific reporting period.

For the full IHS award term implementing this requirement and additional award applicability information, visit the DGM Grants Management website at <https://www.ihs.gov/dgm/policytopics/>.

#### F. Compliance With Executive Order 13166 Implementation of Services Accessibility Provisions for All Grant Application Packages and Funding Opportunity Announcements

Recipients of Federal financial assistance (FFA) from HHS must administer their programs in compliance with Federal civil rights laws that prohibit discrimination on the basis of race, color, national origin, disability, age and, in some circumstances, religion, conscience, and sex. This includes ensuring programs are accessible to persons with limited English proficiency. The HHS Office for

Civil Rights provides guidance on complying with civil rights laws enforced by HHS. Please see <https://www.hhs.gov/civil-rights/for-providers/provider-obligations/index.html> and <http://www.hhs.gov/ocr/civilrights/understanding/section1557/index.html>.

- Recipients of FFA must ensure that their programs are accessible to persons with limited English proficiency. HHS provides guidance to recipients of FFA on meeting their legal obligation to take reasonable steps to provide meaningful access to their programs by persons with limited English proficiency. Please see <https://www.hhs.gov/civil-rights/for-individuals/special-topics/limited-english-proficiency/fact-sheet-guidance/index.html> and <https://www.lep.gov>. For further guidance on providing culturally and linguistically appropriate services, recipients should review the National Standards for Culturally and Linguistically Appropriate Services in Health and Health Care at <https://minorityhealth.hhs.gov/omh/browse.aspx?lvl=2&lvlid=53>.

- Recipients of FFA also have specific legal obligations for serving qualified individuals with disabilities. Please see <http://www.hhs.gov/ocr/civilrights/understanding/disability/index.html>.

- HHS funded health and education programs must be administered in an environment free of sexual harassment. Please see <https://www.hhs.gov/civil-rights/for-individuals/sex-discrimination/index.html>; <https://www2.ed.gov/about/offices/list/ocr/docs/shguide.html>; and <https://www.eeoc.gov/eeoc/publications/fs-sex.cfm>.

- Recipients of FFA must also administer their programs in compliance with applicable Federal religious nondiscrimination laws and applicable Federal conscience protection and associated anti-discrimination laws. Collectively, these laws prohibit exclusion, adverse treatment, coercion, or other discrimination against persons or entities on the basis of their consciences, religious beliefs, or moral convictions. Please see <https://www.hhs.gov/conscience/conscience-protections/index.html> and <https://www.hhs.gov/conscience/religious-freedom/index.html>.

Please contact the HHS Office for Civil Rights for more information about obligations and prohibitions under Federal civil rights laws at <https://www.hhs.gov/ocr/about-us/contact-us/index.html> or call 1–800–368–1019 or TDD 1–800–537–7697.

**G. Federal Awardee Performance and Integrity Information System (FAPIS)**

The IHS is required to review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIS) at <https://www.fapiis.gov> before making any award in excess of the simplified acquisition threshold (currently \$250,000) over the period of performance. An applicant may review and comment on any information about itself that a Federal awarding agency previously entered. IHS will consider any comments by the applicant, in addition to other information in FAPIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants as described in 45 CFR 75.205.

As required by 45 CFR part 75 Appendix XII of the Uniform Guidance, non-Federal entities (NFEs) are required to disclose in FAPIS any information about criminal, civil, and administrative proceedings, and/or affirm that there is no new information to provide. This applies to NFEs that receive Federal awards (currently active grants, cooperative agreements, and procurement contracts) greater than \$10,000,000 for any period of time during the period of performance of an award/project.

**Mandatory Disclosure Requirements**

As required by 2 CFR part 200 of the Uniform Guidance, and the HHS implementing regulations at 45 CFR part 75, the IHS must require a non-Federal entity or an applicant for a Federal award to disclose, in a timely manner, in writing to the IHS or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Submission is required for all applicants and recipients, in writing, to the IHS and to the HHS Office of Inspector General all information related to violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. 45 CFR 75.113.

Disclosures must be sent in writing to: U.S. Department of Health and Human Services, Indian Health Service, Division of Grants Management, ATTN: Paul Gettys, Acting Director, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, (Include "Mandatory Grant Disclosures" in subject line), Office: (301) 443-5204,

Fax: (301) 594-0899, Email: [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov).

And

U.S. Department of Health and Human Services, Office of Inspector General, ATTN: Mandatory Grant Disclosures, Intake Coordinator, 330 Independence Avenue SW, Cohen Building, Room 5527, Washington, DC 20201, URL: <https://oig.hhs.gov/fraud/report-fraud/>, (Include "Mandatory Grant Disclosures" in subject line), Fax: (202) 205-0604 (Include "Mandatory Grant Disclosures" in subject line) or, Email: [MandatoryGranteeDisclosures@oig.hhs.gov](mailto:MandatoryGranteeDisclosures@oig.hhs.gov).

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371 Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 & 376).

**VII. Agency Contacts**

1. Questions on the programmatic issues may be directed to: Lisa C. Neel, MPH, Public Health Advisor, Indian Health Service, Office of Public Health Support, Division of Epidemiology & Disease Prevention, Indian Health Service, 5600 Fishers Lane, Mailstop 09E10D, Rockville, MD 20857, Phone: (301) 443-4305, Email: [lisa.neel@ihs.gov](mailto:lisa.neel@ihs.gov).

2. Questions on grants management and fiscal matters may be directed to: John Hoffman, Senior Grants Management Specialist, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mailstop 09E70, Rockville, MD 20857, Phone: (301) 443-2116, Email: [John.Hoffman@ihs.gov](mailto:John.Hoffman@ihs.gov).

3. Questions on systems matters may be directed to: Paul Gettys, Acting Director, Indian Health Service, Division of Grants Management, 5600 Fishers Lane, Mail Stop: 09E70, Rockville, MD 20857, Phone: (301) 443-2114; or the DGM main line (301) 443-5204, E-Mail: [Paul.Gettys@ihs.gov](mailto:Paul.Gettys@ihs.gov).

**VIII. Other Information**

The Public Health Service strongly encourages all grant, cooperative agreement and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103-227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the HHS mission to

protect and advance the physical and mental health of the American people.

**Elizabeth A. Fowler,**

*Acting Director, Indian Health Service.*

[FR Doc. 2021-16281 Filed 7-29-21; 8:45 am]

**BILLING CODE 4165-16-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Center for Complementary & Integrative Health; Notice of Closed Meeting**

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Integrative Health Special Emphasis Panel; Institutional Research Training Grants (IT).

*Date:* August 24, 2021.

*Time:* 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Center for Complementary and Integrative, Democracy II, 6707 Democracy Blvd., Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Shiyong Huang, Ph.D., Scientific Review Officer, Office of Scientific Review, Division of Extramural Activities, NCCIH/NIH, 6707 Democracy Boulevard, Suite 401, Bethesda, MD 20817, [shiyong.huang@nih.gov](mailto:shiyong.huang@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.213, Research and Training in Complementary and Alternative Medicine, National Institutes of Health, HHS)

Dated: July 26, 2021.

**Tyeshia M. Roberson-Curtis,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-16261 Filed 7-29-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

This is a virtual meeting and will be open to the public as indicated below. The url link to this meeting is: <https://www.nidcd.nih.gov/about/advisory-council/upcoming-meetings>. The meeting is partially Closed to the public.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Deafness and Other Communication Disorders Advisory Council.

*Date:* September 9–10, 2021.

*Closed:* September 9, 2021, 10:00 a.m. to 12:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Open:* September 9, 2021, 1:00 p.m. to 3:10 p.m.

*Agenda:* Staff reports on divisional, programmatic, and special activities.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Open:* September 10, 2021, 10:00 a.m. to 12:00 p.m.

*Agenda:* Staff reports on divisional, programmatic, and special activities.

*Place:* National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

*Contact Person:* Rebecca Wagenaar-Miller, Ph.D., Director, Division of Extramural Activities, NIDCD/NIH, 6001 Executive Boulevard, Bethesda, MD 20892, (301) 496–8693, [rebecca.wagenaar-miller@nih.gov](mailto:rebecca.wagenaar-miller@nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when

applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.nidcd.nih.gov/about/advisory-council>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: July 27, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–16305 Filed 7–29–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Center for Scientific Review Special Emphasis Panel; Small Business: SBIR/STTR Commercialization Readiness Pilot Program.

*Date:* August 18, 2021.

*Time:* 10:00 a.m. to 2:00 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:* Allen Richon, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6184, MSC 7892, Bethesda, MD 20892, 301–379–9351, [allen.richon@nih.hhs.gov](mailto:allen.richon@nih.hhs.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: July 27, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021–16307 Filed 7–29–21; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed 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:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; PAR–19–202: High Impact, Interdisciplinary Science in NIDDK Research Areas (RC2)—Diabetes, Endocrinology & Metabolic Diseases.

*Date:* September 20, 2021.

*Time:* 2:00 p.m. to 3:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

*Contact Person:* Lan Tian, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Boulevard, Room 7349, Bethesda, MD 20892–5452, (301) 496–7050, email: [tianl@nih.gov](mailto:tianl@nih.gov).

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Review of Institutional Training Grants in Digestive Diseases and Nutrition.

*Date:* September 24, 2021.

*Time:* 10:00 a.m. to 6:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Video Meeting).

*Contact Person:* Lan Tian, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, 6707 Democracy Boulevard, Room 7349, Bethesda, MD 20892–5452, (301) 496–7050, email: [tianl@nih.gov](mailto:tianl@nih.gov).

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: July 27, 2021.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-16306 Filed 7-29-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

#### National Institute of Biomedical Imaging and Bioengineering; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the National Advisory Council for Biomedical Imaging and Bioengineering.

The meeting will be open to the public by videocast as indicated below.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Advisory Council for Biomedical Imaging and Bioengineering NACBIB, September 2021.

*Date:* September 14, 2021.

*Open:* 12:00 p.m. to 3:15 p.m.

*Agenda:* Report from the Institute Director and other Institute Staff.

*Place:* National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Closed:* 3:30 p.m. to 4:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institutes of Health, Democracy II, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* David T. George, Ph.D., Associate Director, Office of Research Administration, National Institute of Biomedical Imaging and Bioengineering, 6707 Democracy Boulevard, Room 920, Bethesda, MD 20892, [georged@mail.nih.gov](mailto:georged@mail.nih.gov).

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the

name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: <https://www.nibib.nih.gov/about-nibib/advisory-council>, where an agenda and any additional information for the meeting will be posted when available.

Dated: July 26, 2021.

**David W. Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-16262 Filed 7-29-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2021-0242]

#### Great Lakes Pilotage Advisory Committee Meeting

**AGENCY:** U.S. Coast Guard, Department of Homeland Security.

**ACTION:** Notice of Federal Advisory Committee Meeting.

**SUMMARY:** The Great Lakes Pilotage Advisory Committee (Committee) will meet in Cape Vincent, New York, to discuss matters relating to Great Lakes pilotage, including review of proposed Great Lakes pilotage regulations and policies. The meeting will be open to the public.

**DATES:**

*Meeting:* The Committee will meet on Wednesday, September 1, 2021, from 8 a.m. to 5:30 p.m. Eastern Daylight Time. Please note that this meeting may adjourn early if the Committee has completed its business.

*Comments and supporting documentations:* To ensure your comments are received by Committee members before the meeting, submit your written comments no later than August 24, 2021.

**ADDRESSES:** The meeting will be held at the Saint Lawrence Seaway Pilots' Association conference facility, 230 N Point Street, Cape Vincent, NY 13618.

*Pre-registration Information:* Pre-registration is not required for access. Attendees will be required to follow as closely as possible COVID-19 safety guidelines promulgated by the Centers for Disease Control and Prevention (CDC), which includes vaccinated persons do not need to wear masks. Masks will be provided for non-vaccinated attendees. Some CDC guidance is here: <https://www.cdc.gov/coronavirus/2019-ncov/communication/guidance.html>

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Instructions:* You are free to submit comments at any time, including orally at the meeting, but if you want Committee members to review your comment before the meeting, please submit your comments no later than August 24, 2021. We are particularly interested in comments on the issues in the "Agenda" section below. We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the words "Department of Homeland Security" and the docket number USCG-2021-0242. Comments received will be posted without alteration at <https://www.regulations.gov>, including any personal information provided. You may wish to view the Privacy and Security Notice available on the homepage of [www.regulations.gov](https://www.regulations.gov), and DHS's eRulemaking System of Records notice (85FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

*Docket Search:* Documents mentioned in this notice as being available in the docket, and all public comment, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you will be notified when comments are posted.

**FOR FURTHER INFORMATION CONTACT:** Mr. Vincent Berg, Alternate Designated Federal Officer of the Great Lakes Pilotage Advisory Committee, telephone (202) 906-0835, or email [Vincent.F.Berg@uscg.mil](mailto:Vincent.F.Berg@uscg.mil).

**SUPPLEMENTARY INFORMATION:** Notice of this meeting is in compliance with the *Federal Advisory Committee Act* (5 U.S.C. Appendix). The Great Lakes Pilotage Advisory Committee is established under the authority of 46 U.S.C. 9307, and makes recommendations to the Secretary of Homeland Security and the Coast Guard on matters relating to Great Lakes pilotage, including review of proposed

Great Lakes pilotage regulations and policies.

*Agenda:* The Great Lakes Pilotage Advisory Committee will meet on Wednesday, September 1, 2021 to review, discuss, deliberate and formulate recommendations, as appropriate on the following topics:

1. Status of Committee member's terms and appointments.
2. Individual pilot compensation reporting.
3. Port of Toledo.
4. Method of expensing major capital assets.
5. Efficiency—delays and double pilotage.
6. Pilotage fees during winter work.
7. Cruise ships and Canadian tankers.
8. Ojibway anchorage.
9. Pilot Association project and updates.
10. Stakeholder Outreach.
11. Public Comments.

A copy of all meeting documentation will be available at <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Marine-Transportation-Systems-CG-5PW/Office-of-Waterways-and-Ocean-Policy/Great-Lakes-Pilotage-Advisory-Committee/> by August 24, 2021. Alternatively, you may contact Mr. Vincent Berg as noted in the **FOR FURTHER INFORMATION CONTACT** section above.

Public comments or questions will be taken throughout the meeting as the Committee discusses the issues and prior to deliberations and voting. There will also be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 5 minutes. Please note that the public comment period will end following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above, to register as a speaker.

Dated: July 27, 2021.

**Michael D. Emerson,**

*Director, Marine Transportation Systems.*

[FR Doc. 2021-16299 Filed 7-29-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Immigration and Customs Enforcement

[OMB Control Number 1653-0054]

#### Agency Information Collection Activities: Training Plan for Science, Technology, Engineering, and Mathematics (STEM) Optional Practical Training (OPT) Students; Extension, Without Change, of a Currently Approved Collection

**AGENCY:** U.S. Immigration and Customs Enforcement, Department of Homeland Security.

**ACTION:** 30-Day notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act (PRA) of 1995 the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE) will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance. This information collection was previously published in the **Federal Register** on April 5, 2021, allowing for a 60-day comment period. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until August 30, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of the publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** If you have questions related to this collection, call or email Sharon Snyder, Student and Exchange Visitor Program (SEVP), 703-603-3400 or 1-800-892-4829, email: [sevp@ice.dhs.gov](mailto:sevp@ice.dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### Comments

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the

functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Training Plan for STEM OPT Students.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-983; U.S. Immigration and Customs Enforcement.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Primary: Individuals or households. The Form I-983 serves as a planning document for STEM OPT students, the SEVP-certified school officials, and the employers. The Training Plan for STEM OPT Students also serves as an evidentiary document for SEVP, by tracking the STEM OPT student's progress, setting forth the terms and conditions of the practical training, and documenting the obligations of the three parties that are involved—the F student, the SEVP-certified school, and the employer.

The student and the employer must each complete and sign their part of the Form I-983. The SEVP-certified school will incorporate the completed and signed Form I-983 as part of the student's school file. The SEVP-certified school will make the student's Form I-983 available to DHS upon request.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:*

TABLE 1—CALCULATION OF ANNUAL REPORTING BURDEN FOR TRAINING PLAN

Function	Avg. annual responses	Time per response (hours)	Avg. annual hour burden <sup>1</sup>
<b>Student Burden</b>			
Initial Completion of Training Plan .....	66,565	2.17	144,446
12-month Evaluation Requirements .....	66,565	1.50	99,848
Subtotal .....			244,294
<b>DSO Burden</b>			
Initial Review of Training Plan & Recordkeeping .....	66,565	1.33	88,531
Review of Evaluation & Recordkeeping .....	66,565	1.33	88,531
Subtotal .....			177,062
<b>Employer Burden</b>			
Initial Completion of Training Plan .....	66,565	4.00	266,260
Evaluation Requirements .....	66,565	0.75	49,924
Subtotal .....			316,184
Total Burden Hours .....			737,540

<sup>1</sup> Time per response as shown is rounded to the nearest hundredth.

<sup>2</sup> Burden estimates for the DSO and Employer respondents include time for reviewing the responses provided by the student respondents.

(6) *An estimate of the total public burden (in hours) associated with the collection: 737,540 annual burden hours.*

Dated: July 27, 2021.

Scott Elmore,

PRA Clearance Officer.

[FR Doc. 2021-16254 Filed 7-29-21; 8:45 am]

BILLING CODE 9111-28-P

## DEPARTMENT OF HOMELAND SECURITY

### Transportation Security Administration

#### New Agency Information Collection Activity Under OMB Review: Speaker Request Form.

**AGENCY:** Transportation Security Administration, Homeland Security (DHS).

**ACTION:** 30-Day notice.

**SUMMARY:** This notice announces that the Transportation Security Administration (TSA) has forwarded the new Information Collection Request (ICR) abstracted below to the Office of Management and Budget (OMB) for review and approval under the Paperwork Reduction Act (PRA). The ICR describes the nature of the information collection and its expected burden. The collection involves the basic point of contact information on the person/organization requesting a TSA speaker, the logistical information for that speaking engagement, and

context for the request to determine the audience reach, ethical concerns, and possible promotion of the speaking engagement.

**DATES:** Send your comments by August 30, 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](http://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, TSA-11, Transportation Security Administration, 6595 Springfield Center Drive, Springfield, VA 20598-6011; telephone (571) 227-2062; email [TSAPRA@tsa.dhs.gov](mailto: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 April 22, 2021, 86 FR 21339.

#### 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:* Speaker Request Form.

*Type of Request:* New collection.

*OMB Control Number:* 1652-XXXX.

*Form(s):* Speaker Request Form.

*Affected Public:* The general public requesting a TSA speaker.

*Abstract:* To respond to public speaking invitations, TSA has created the Speaker Request Form, which collects information on the requestor and the event a speaker would attend. The form requests the name of the organization and if it is a profit or



nonprofit organization; the point of contact information for the person coordinating the event; the date, time, and location of the event; the type of event (e.g., keynote, dinner, panel, interview, etc.); the purpose of the event; the topics of discussion; the audience makeup; other notable guests; and if media will be attending.

TSA is submitting the form as a Common Form to permit Federal agency users beyond the agency that created the form (e.g., Department of Homeland Security or U.S. Office of Personnel Management) to streamline the information collection process in coordination with OMB.

*Number of Respondents:* 300.

*Estimated Annual Burden Hours:* An estimated 50 hours annually.

Dated: July 26, 2021.

**Christina A. Walsh,**

*TSA Paperwork Reduction Act Officer,  
Information Technology.*

[FR Doc. 2021-16216 Filed 7-29-21; 8:45 am]

**BILLING CODE 9110-05-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0015]

#### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Immigrant Petition for Alien Workers

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (i.e., the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until September 28, 2021.

**ADDRESSES:** All submissions received must include the OMB Control Number

1615-0015 in the body of the letter, the agency name and Docket ID USCIS-2007-0018. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2007-0018.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshombres, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

#### SUPPLEMENTARY INFORMATION:

##### Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS-2007-0018 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS 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>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-140; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit; Not-for-profit institutions. The information collected on this form will be used by USCIS to determine eligibility for the requested immigration benefits under section 203(b)(1), 203(b)(2), or 203(b)(3) of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-140 is 148,000 and the estimated hour burden per response is 1.08 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 159,840 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$20,596,559.

Dated: July 27, 2021.

**Samantha L. Deshombres,**

*Chief, Regulatory Coordination Division,  
Office of Policy and Strategy, U.S. Citizenship  
and Immigration Services, Department of  
Homeland Security.*

[FR Doc. 2021-16286 Filed 7-29-21; 8:45 am]

**BILLING CODE 9111-97-P**

**DEPARTMENT OF HOMELAND SECURITY****U.S. Citizenship and Immigration Services**

[OMB Control Number 1615-0009]

**Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition for a Nonimmigrant Worker****AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.**ACTION:** 30-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting 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. The purpose of this notice is to allow an additional 30 days for public comments.

**DATES:** Comments are encouraged and will be accepted until August 30, 2021.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be submitted via the Federal eRulemaking Portal website at <http://www.regulations.gov> under e-Docket ID number USCIS-2005-0030. All submissions received must include the OMB Control Number 1615-0009 in the body of the letter, the agency name and Docket ID USCIS-2005-0030.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshombres, Chief, Telephone number (240) 721-3000 (This is not a toll-free number; comments are not accepted via telephone message.). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <http://www.uscis.gov>, or call the USCIS Contact Center at (800) 375-5283; TTY (800) 767-1833.

**SUPPLEMENTARY INFORMATION:****Comments**

The information collection notice was previously published in the **Federal Register** on April 1, 2021, at 86 FR 17181, allowing for a 60-day public

comment period. USCIS did receive three comments in connection with the 60-day notice. No changes were made to the information collection as a result of the comments.

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: <http://www.regulations.gov> and enter USCIS-2005-0030 in the search box. The comments submitted to USCIS via this method are visible to the Office of Management and Budget and comply with the requirements of 5 CFR 1320.12(c). All submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS 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 <http://www.regulations.gov>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used

(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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

**Overview of This Information Collection**

(1) *Type of Information Collection Request:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition for a Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-129; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* *Primary:* Business or other for-profit. USCIS uses the data collected on this form to determine eligibility for the requested nonimmigrant petition and/or requests to extend or change nonimmigrant status. An employer (or agent, where applicable) uses this form to petition USCIS for an alien to temporarily enter as a nonimmigrant. An employer (or agent, where applicable) also uses this form to request an extension of stay or change of status on behalf of the alien worker. The form serves the purpose of standardizing requests for nonimmigrant workers and ensuring that basic information required for assessing eligibility is provided by the petitioner while requesting that beneficiaries be classified under certain nonimmigrant employment categories. It also assists USCIS in compiling information required by Congress annually to assess effectiveness and utilization of certain nonimmigrant classifications.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-129 is 294,751 and the estimated hour burden per response is 2.34 hours; the estimated total number of respondents for the information collection E-1/E-2 Classification Supplement to Form I-129 is 4,760 and the estimated hour burden per response is 0.67; the estimated total number of respondents for the information collection Trade Agreement Supplement to Form I-129 is 3,057 and the estimated hour burden per response is 0.67; the estimated total number of respondents for the information collection H Classification Supplement to Form I-129 is 96,291 and the estimated hour burden per response is 2; the estimated total number of respondents for the information collection H-1B and H-1B1 Data Collection and Filing Fee Exemption Supplement is 96,291 and the estimated hour burden per response is 1; the estimated total number of respondents for the information collection L Classification Supplement to Form I-129 is 37,831 and the estimated hour burden per response is 1.34; the estimated total number of respondents for the information collection O and P Classifications Supplement to Form I-129 is 22,710 and the estimated hour burden per response is 1; the estimated

total number of respondents for the information collection Q-1 Classification Supplement to Form I-129 is 155 and the estimated hour burden per response is 0.34; the estimated total number of respondents for the information collection R-1 Classification Supplement to Form I-129 is 6,635 and the estimated hour burden per response is 2.34.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 1,072,810 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is \$70,681,290.

Dated: July 27, 2021.

**Samantha L. Deshommes,**

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021-16289 Filed 7-29-21; 8:45 am]

**BILLING CODE 9111-97-P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Citizenship and Immigration Services

[OMB Control Number 1615-0045]

#### Agency Information Collection Activities; Extension, Without Change, of a Currently Approved Collection: Petition by Entrepreneur to Remove Conditions on Permanent Resident Status

**AGENCY:** U.S. Citizenship and Immigration Services, Department of Homeland Security.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this proposed extension of a currently approved collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.*, the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

**DATES:** Comments are encouraged and will be accepted for 60 days until September 28, 2021.

**ADDRESSES:** All submissions received must include the OMB Control Number 1615-0045 in the body of the letter, the agency name and Docket ID USCIS-2006-0009. Submit comments via the Federal eRulemaking Portal website at <https://www.regulations.gov> under e-Docket ID number USCIS-2006-0009.

**FOR FURTHER INFORMATION CONTACT:** USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721-3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at <https://www.uscis.gov>, or call the USCIS Contact Center at 800-375-5283 (TTY 800-767-1833).

#### SUPPLEMENTARY INFORMATION:

##### Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: <https://www.regulations.gov> and entering USCIS-2006-0009 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at <https://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS 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>.

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

- (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information,

including the validity of the methodology and assumptions used;

(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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension, Without Change, of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Petition by Entrepreneur to Remove Conditions on Permanent Resident Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I-829; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households; Business or other for-profit. This form is used by a conditional resident alien entrepreneur who obtained such status through a qualifying investment, to apply to remove conditions on his or her conditional residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I-829 is 2,780 and the estimated hour burden per response is 4 hours. The estimated total number of respondents for the information collection of Biometrics is 2,780 and the estimated hour burden per response is 1.17 hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 14,373 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is 1,204,368.

Dated: July 27, 2021.

**Samantha L. Deshommes,**

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2021-16290 Filed 7-29-21; 8:45 am]

**BILLING CODE 9111-97-P**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

[Docket No. FR-7034-N-44]

**30-Day Notice of Proposed Information Collection: Rent Reform Demonstration: 6-Year Follow-Up; OMB Control No.: 2528-0306**

**AGENCY:** Office of the Chief Information Officer, Housing and Urban Development (HUD).

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 30 days of public comment.

**DATES:** *Comments Due Date:* August 30, 2021.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [OIRA\\_submission@omb.eop.gov](mailto:OIRA_submission@omb.eop.gov) or [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**FOR FURTHER INFORMATION CONTACT:** Anna P. Guido, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email her at [Anna.P.Guido@hud.gov](mailto:Anna.P.Guido@hud.gov) or telephone 202-402-5535. This is not a toll-free number. Person with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. Copies of available documents submitted to OMB may be obtained from Ms. Guido.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on December 18, 2020 at 85 FR 82498.

**A. Overview of Information Collection**

*Title of Information Collection:* Rent Reform Demonstration: 6-Year Follow-Up.

*OMB Approval Number:* 2528-0306.

*Type of Request:* Revision or extension of currently approved collection.

*Form Number:* N/A.

*Description of the need for the information and proposed use:*

The Department is conducting this study under contract with MDRC and its subcontractors (The Bronner Group, Quadel Consulting Corporation, and the Urban Institute). The project is a

random assignment trial of an alternative rent system. Families are randomly assigned to participate either in the new/alternative rent system or to continue in the current system. For voucher holders, outcomes of the alternative system are hypothesized to be increases in earnings, employment and job retention, among others. Random assignment will limit the extent to which selection bias drives observed results. The evaluation will document the progress of a group of housing voucher holders, who will be drawn from current residents, and the impact of the alternative rent system on the families as well as the administrative burden on Public Housing Agencies (PHAs). Three PHAs continue to participate in the long-term evaluation:

(1) Lexington Housing Authority (LHA), Lexington, Kentucky;

(2) Louisville Metro Housing Authority (LMHA), Louisville, Kentucky;

(3) San Antonio Housing Authority (SAHA), San Antonio, Texas; and

Data collection efforts include the families that are part of the treatment and control groups, as well as PHA staff. Data will be gathered through a variety of methods including informational interviews and discussions, direct observation, and analysis of administrative records. The work covered under this information request is for data collection proposed for the 6-year follow-up phase of the Rent Reform Demonstration.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
Study Participant Interviews .....	60	1	60	1.5	90	\$7.25	\$652.50
PHA Supervisor Interviews .....	9	1	9	1.5	13.5	42.17	569.30
PHA Specialist Staff Interviews .....	15	1	15	1.5	22.5	25.64	576.90
Cost Study Data Collection Activities with PHA staff .....	9	1	9	2	18	28.50	513.00
Total .....	93	.....	.....	.....	144	.....	2,311.70

**B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) If the information will be processed and used in a timely manner;

(3) The accuracy of the agency’s estimate of the burden of the proposed collection of information;

(4) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(5) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

*Authority:* Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

**Anna P. Guido,**

*Department Reports Management Officer,  
Office of the Chief Information Officer.*

[FR Doc. 2021-16263 Filed 7-29-21; 8:45 am]

BILLING CODE 4210-67-P

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[DOI-2020-0008; LLOC400000.L18500000.  
YC0000.LIITADC10000.20X]

#### Privacy Act of 1974; System of Records

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Rescinding of system of records notices.

**SUMMARY:** In accordance with the Privacy Act of 1974, as amended, the Department of the Interior (DOI) is rescinding 11 system of records notices from its existing inventory. These systems were managed by the Bureau of Land Management (BLM) and are no longer in use, or have been superseded by Government-wide, Department-wide, or other BLM system of records notices; however, they have not been formally rescinded. This notice formally rescinds the 11 system of records notices identified below.

**DATES:** These changes take effect on July 30, 2021.

**ADDRESSES:** You may submit comments identified by docket number [DOI-2020-0008] by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* [DOI\\_Privacy@ios.doi.gov](mailto:DOI_Privacy@ios.doi.gov). Include docket number [DOI-2020-0008] in the subject line of the message.
- *U.S. Mail or Hand-Delivery:* Teri Barnett, Departmental Privacy Officer, U.S. Department of the Interior, 1849 C Street NW, Room 7112, Washington, DC 20240.

*Instructions:* All submissions received must include the agency name and docket number [DOI-2020-0008]. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>.

You should be aware that your entire comment including your personal identifying information, such as your address, phone number, email address, or any other personal identifying

information in your comment, may be made publicly available at any time. While you may request to withhold your personal identifying information from public review, we cannot guarantee we will be able to do so.

#### FOR FURTHER INFORMATION CONTACT:

Catherine Brean, Associate Privacy Officer, Bureau of Land Management, DOI National Operations Center, Bldg. 50, Denver, Colorado 80224-0047, [blm\\_wo\\_privacy@blm.gov](mailto:blm_wo_privacy@blm.gov) or (830) 225-3459.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Privacy Act of 1974, as amended, the BLM is rescinding the following 11 system of records notices from its system of records inventory. As part of an annual review of system notices, the BLM determined that these system of records notices are obsolete or superseded by a published Government-wide, Department-wide, or BLM system of records notice. The original publication of these system of records notices is covered below in the history section, including a modification published in the **Federal Register** at 73 FR 17376 (April 1, 2008) to add a new routine use for each system of records to authorize disclosure of information to appropriate agencies, entities, and persons in the event of a data breach, in accordance with the Office of Management and Budget Memorandum M-07-16, *Safeguarding Against and Responding to the Breach of Personally Identifiable Information*.

1. INTERIOR/BLM-9, Property and Supplies Accountability. This system of records notice has been superseded by two Department-wide system of records notices. The records contained in the system are covered by and maintained under INTERIOR/DOI-87, Acquisition of Goods and Services: FBMS, 73 FR 43766 (July 28, 2008); and INTERIOR/DOI-86, Accounts Receivable: FBMS, 73 FR 43772 (July 28, 2008).

2. INTERIOR/BLM-12, Manpower Management. This system of records notice has been superseded by a Government-wide system of records notice. The records contained in the system of records are covered by and maintained under OPM/GOVT-1, General Personnel Records, 77 FR 73694 (December 11, 2012); modification published at 80 FR 74815 (November 30, 2015).

3. INTERIOR/BLM-14, Security Clearance Files. This system of records notice has been superseded by a Department-wide system of records notice. The records contained in the system of records are covered by and maintained under INTERIOR/DOI-45, HSPD-12: Identity Management System

and Personnel Security Files, 72 FR 11036 (March 12, 2007).

4. INTERIOR/BLM-21, Travel. This system of records notice has been superseded by two Government-wide system of records notices. The records contained in the system of records are covered by and maintained under GSA/GOVT-3, Travel Charge Card Program, 78 FR 20108 (April 3, 2013); and GSA/GOVT-4, Contracted Travel Services Program, 74 FR 26700 (June 3, 2009).

5. INTERIOR/BLM-22, Financial Management. This system of records notice has been superseded by two Department-wide system of records notices. The records contained in the system of records are covered by and maintained under INTERIOR/DOI-86, Accounts Receivable: FBMS, 73 FR 43772 (July 28, 2008); and INTERIOR/DOI-87, Acquisition of Goods and Services: FBMS, 73 FR 43766 (July 28, 2008).

6. INTERIOR/BLM-23, Contract Files. This system of records notice has been superseded by a Department-wide system of records notice. The records contained in the system of records are covered by and maintained under INTERIOR/DOI-87, Acquisition of Goods and Services: FBMS, 73 FR 43766 (July 28, 2008).

7. INTERIOR/BLM-24, Copy Fee Deposit. This system of records notice is outdated and is no longer in use. Any records of purchases of items from the BLM would be covered by and maintained under INTERIOR/DOI-86, Accounts Receivable: FBMS, 73 FR 43772 (July 28, 2008).

8. INTERIOR/BLM-26, Incentive and Honor Awards. This system of records notice has been superseded by a Government-wide system of records notice. The records contained in the system of records are covered by and maintained under OPM/GOVT-1, General Personnel Records, 77 FR 73694 (December 11, 2012); modification published at 80 FR 74815 (November 30, 2015).

9. INTERIOR/BLM-27, Real Estate Appraiser Roster. This system is obsolete and the records are no longer maintained. DOI Secretarial Order No. 3251 signed on November 12, 2003 discontinued this program. All records have been disposed of in accordance with an approved records retention schedule.

10. INTERIOR/BLM-31, Name File System. This system of records is obsolete. Any records of the type identified in this system of records notice are covered by and maintained under one BLM system of records notice and two Department-wide system of records notices: INTERIOR/BLM-32,

Land & Minerals Authorization Tracking System, 56 FR 5014 (February 7, 1991); modification published at 73 FR 17376 (April 1, 2008); INTERIOR/DOI-87, Acquisition of Goods and Services: FBMS, 73 FR 43766 (July 28, 2008); and INTERIOR/DOI-86, Accounts Receivable: FBMS, 73 FR 43772 (July 28, 2008).

11. INTERIOR/BLM-35, Collections and Billings System (CBS). This system of records notice has been superseded by a Department-wide system of records notice. The records contained in the system of records are covered by and maintained under INTERIOR/DOI-86, Accounts Receivable: FBMS, 73 FR 43772 (July 28, 2008).

These 11 system of records notices were identified as no longer needed due to being superseded by other published system of records notices or are no longer in use. Rescinding these system of records notices will have no adverse impacts on individuals. This rescindment will also promote the overall streamlining and management of DOI Privacy Act systems of records. This notice hereby rescinds the BLM system of records notices identified below.

#### SYSTEM NAME AND NUMBER:

1. INTERIOR/BLM-9, Property and Supplies Accountability
2. INTERIOR/BLM-12, Manpower Management
3. INTERIOR/BLM-14, Security Clearance Files
4. INTERIOR/BLM-21, Travel
5. INTERIOR/BLM-22, Financial Management
6. INTERIOR/BLM-23, Contract Files
7. INTERIOR/BLM-24, Copy Fee Deposit
8. INTERIOR/BLM-26, Incentive and Honor Awards
9. INTERIOR/BLM-27, Real Estate Appraiser Roster
10. INTERIOR/BLM-31, Name File System
11. INTERIOR/BLM-35, Collections and Billings System (CBS)

#### HISTORY:

1. INTERIOR/BLM-9, Property and Supplies Accountability, 47 FR 55317 (December 8, 1982); modification published at 73 FR 17376 (April 1, 2008).
2. INTERIOR/BLM-12, Manpower Management, 47 FR 55317 (December 8, 1982); modification published at 73 FR 17376 (April 1, 2008).
3. INTERIOR/BLM-14, Security Clearance Files, 42 FR 19114 (April 11, 1977); modification published at 73 FR 17376 (April 1, 2008).
4. INTERIOR/BLM-21, Travel, 51 FR 25109 (July 10, 1986); modification

published at 73 FR 17376 (April 1, 2008).

5. INTERIOR/BLM-22, Financial Management, 51 FR 25110 (July 10, 1986); modification published at 73 FR 17376 (April 1, 2008).

6. INTERIOR/BLM-23, Contract Files, 47 FR 55317 (December 8, 1982); modification published at 73 FR 17376 (April 1, 2008).

7. INTERIOR/BLM-24, Copy Fee Deposit, 51 FR 25110 (July 10, 1986); modification published at 73 FR 17376 (April 1, 2008).

8. INTERIOR/BLM-26, Incentive and Honor Awards, 42 FR 19118 (April 11, 1977); modification published at 73 FR 17376 (April 1, 2008).

9. INTERIOR/BLM-27, Real Estate Appraiser Roster, 42 FR 19118 (April 11, 1977); modification published at 73 FR 17376 (April 1, 2008).

10. INTERIOR/BLM-31, Name File System, 56 FR 5014 (February 7, 1991); modification published at 73 FR 17376 (April 1, 2008).

11. INTERIOR/BLM-35, Collections and Billings System (CBS), 65 FR 502 (January 5, 2000); modification published at 73 FR 17376 (April 1, 2008).

#### Teri Barnett,

*Departmental Privacy Officer, Department of the Interior.*

[FR Doc. 2021-16223 Filed 7-29-21; 8:45 am]

**BILLING CODE 4310-84-P**

## DEPARTMENT OF THE INTERIOR

### Bureau of Ocean Energy Management

[Docket No. BOEM-2021-0050]

#### Notice of Intent To Prepare an Environmental Impact Statement for the Proposed Kitty Hawk Offshore Wind Project Offshore North Carolina

**AGENCY:** Bureau of Ocean Energy Management (BOEM), Interior.

**ACTION:** Notice of intent (NOI) to prepare an environmental impact statement (EIS); request for comments.

**SUMMARY:** Consistent with the regulations implementing the National Environmental Policy Act (NEPA), BOEM announces its intent to prepare an EIS for the review of a construction and operations plan (COP) submitted by Kitty Hawk, LLC (Kitty Hawk) for its Kitty Hawk Offshore Wind Project. The COP proposes the development, construction, and operation of a wind energy facility offshore North Carolina with export cables connecting to the onshore electric grid in Virginia Beach, Virginia. This NOI announces the EIS

scoping process for the Kitty Hawk COP. Additionally, this NOI seeks public comment and input under section 106 of the National Historic Preservation Act (NHPA) and its implementing regulations. Detailed information about the proposed wind energy facility, including the COP, can be found on BOEM's website at: <https://www.boem.gov/Kitty-Hawk>.

**DATES:** Comments are due to BOEM no later than August 30, 2021.

BOEM will hold virtual public scoping meetings for the Kitty Hawk EIS at the following dates and times (eastern daylight time):

- Tuesday, August 10, 2021, 5:30 p.m.;
- Thursday, August 12, 2021, 1:00 p.m.; and
- Tuesday August 17, 2021, 5:30 p.m.

**ADDRESSES:** Comments can be submitted in any of the following ways:

- Delivered by mail or delivery service, enclosed in an envelope labeled "KITTY HAWK COP EIS," and addressed to Program Manager, Office of Renewable Energy, Bureau of Ocean Energy Management, 45600 Woodland Road, Sterling, Virginia 20166; or
- Through the *regulations.gov* web portal: Navigate to <https://www.regulations.gov> and search for Docket No. BOEM-2021-0050. Click on the "Comment" button. Enter your information and comment, then click "Submit Comment."

#### FOR FURTHER INFORMATION CONTACT:

Michelle Morin, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (703) 787-1722 or [michelle.morin@boem.gov](mailto:michelle.morin@boem.gov).

#### SUPPLEMENTARY INFORMATION:

##### Purpose of and Need for the Proposed Action

In Executive Order 14008, President Biden stated that it is the policy of the United States:

To organize and deploy the full capacity of its agencies to combat the climate crisis to implement a Government-wide approach that reduces climate pollution in every sector of the economy; increases resilience to the impacts of climate change; protects public health; conserves our lands, waters, and biodiversity; delivers environmental justice; and spurs well-paying union jobs and economic growth, especially through innovation, commercialization, and deployment of clean energy technologies and infrastructure.

Through a competitive leasing process under 30 CFR 585.211, BOEM awarded Avangrid Renewables, LLC Commercial Lease OCS-A 0508 covering an area offshore North Carolina (the Lease Area) which was subsequently assigned to

Kitty Hawk in 2021. Kitty Hawk has the exclusive right to submit a COP for activities within the Lease Area, and it has submitted a COP to BOEM proposing the construction and installation, operations and maintenance, and conceptual decommissioning of an offshore wind energy facility in the western portion of the Lease Area (the Project).

The goal of Kitty Hawk is to develop a commercial-scale, offshore wind energy facility in the Lease Area, with up to 69 total wind turbine generators, 1 offshore substation (also called “electrical service platform”), inter-array cables, 1 onshore substation, and up to 2 transmission cables making landfall in Virginia Beach, Virginia, and connecting to the Pennsylvania-New Jersey-Maryland (PJM) Interconnection energy grid. Kitty Hawk is actively seeking one or more power purchase agreement awards for this project. The project is intended to substantially contribute to the region’s electrical reliability and help Virginia achieve its renewable energy goals as stated in the Virginia Clean Economy Act.

Based on the goals of the applicant and BOEM’s authority, the purpose of BOEM’s action is to respond to Kitty Hawk’s COP proposal and determine whether to approve, approve with modifications, or disapprove Kitty Hawk’s COP to construct and install, operate and maintain, and decommission a commercial-scale, offshore wind energy facility within the Lease Area (the Proposed Action). BOEM’s action is needed to further the United States policy to make Outer Continental Shelf energy resources available for expeditious and orderly development, subject to environmental safeguards (43 U.S.C. 1332(3)), including consideration of natural resources, safety of navigation, and other ocean uses.

In addition, the National Oceanic and Atmospheric Administration’s (NOAA) National Marine Fisheries Service (NMFS) anticipates receipt of one or more requests for authorization to take marine mammals incidental to activities related to the Project under the Marine Mammal Protection Act (MMPA). NMFS’s issuance of an MMPA incidental take authorization is a major Federal action, and, in relation to BOEM’s action, is considered a connected action (40 CFR 1501.9(e)(1)). The purpose of the NMFS action—which is a direct outcome of Kitty Hawk’s request for authorization to take marine mammals incidental to specified activities associated with the Project (e.g., pile driving)—is to evaluate the applicant’s request pursuant to specific

requirements of the MMPA and its implementing regulations administered by NMFS, considering impacts of the applicant’s activities on relevant resources, and if appropriate, issue the permit or authorization. NMFS needs to render a decision regarding the request for authorization due to NMFS’s responsibilities under the MMPA (16 U.S.C. 1371(a)(5)(D)) and its implementing regulations. If NMFS makes the findings necessary to issue the requested authorization, NMFS intends to adopt BOEM’s EIS to support that decision and fulfill its NEPA requirements.

The U.S. Army Corps of Engineers Wilmington and Norfolk Districts (USACE) anticipate a permit action to be undertaken through authority delegated to the District Engineer by 33 CFR 325.8, under section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 U.S.C. 403) and section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). The USACE considers issuance of a permit under these two delegated authorities a major Federal action connected to BOEM’s Proposed Action (40 CFR 1501.9(e)(1)). The applicant’s stated purpose and need for the project, as indicated above, is to provide a commercially viable, offshore wind energy project within the Lease Area to help States achieve their renewable energy goals.

The basic project purpose, as determined by USACE for section 404(b)(1) guidelines evaluation, is offshore wind energy generation. The overall project purpose for section 404(b)(1) guidelines evaluation, as determined by USACE, is the construction and operation of a commercial-scale, offshore wind energy project for renewable energy generation and distribution to the PJM Interconnection energy grid. USACE intends to adopt BOEM’s EIS to support its decision on any permits requested under section 10 of the RHA or section 404 of the CWA.

#### **Preliminary Proposed Action and Alternatives**

The Proposed Action is the construction and operation of a wind energy facility on the Lease Area as described in the COP submitted by Kitty Hawk. In its COP, Kitty Hawk is proposing the construction and operation of up to 69 wind turbine generators, 1 offshore substation, inter-array cables, 1 onshore substation, and up to 2 export cables making landfall on Sandbridge Beach in the City of Virginia Beach, Virginia, and connecting to the onshore electric grid. Kitty Hawk has proposed using foundations that are a

combination of monopiles, piled jackets, and up to three suction caisson jackets. The wind turbine generators, offshore substations, array cables, and substation interconnector cables would be located on the OCS approximately 23.75 nautical miles (27 statute miles) (44 kilometers) east of Corolla, North Carolina. The offshore export cables would be buried below the seabed of both the OCS and Virginia state waters.

If any reasonable alternatives are identified during the scoping period, BOEM will evaluate those alternatives in the draft EIS, which will also include a no action alternative. Under the no action alternative, BOEM would disapprove the COP, and Kitty Hawk’s wind energy facility described in the COP would not be built.

Once BOEM completes the EIS and associated consultations, BOEM will decide whether to approve, approve with modification, or disapprove the Kitty Hawk COP. If BOEM approves the COP and the Project is constructed, the lessee must submit a plan to decommission the facilities before the end of the lease term.

#### **Summary of Potential Impacts**

The draft EIS will identify and describe the potential effects of the Proposed Action on the human environment that are reasonably foreseeable and have a reasonably close causal relationship to the Proposed Action. This includes effects that occur at the same time and place as the Proposed Action or alternatives and effects that are later in time or occur in a different place. Potential impacts include, but are not limited to, impacts (whether beneficial or adverse) on air quality, water quality, bats, benthic habitat, essential fish habitat, invertebrates, finfish, birds, marine mammals, terrestrial and coastal habitats and fauna, sea turtles, wetlands and other waters of the United States, commercial fisheries and for-hire recreational fishing, cultural resources, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other marine uses, recreation and tourism, and visual resources. These potential impacts will be analyzed in the draft EIS and final EIS.

Based on a preliminary evaluation of these resources, BOEM expects potential impacts on sea turtles and marine mammals from underwater noise caused by construction and from collision risks with Project-related vessel traffic. Structures installed by the Project could permanently change benthic habitat and other fish habitat. Commercial fisheries



and for-hire recreational fishing could be impacted. Project structures above the water could affect the visual character defining historic properties and recreational and tourism areas. Project structures also could pose an allision and height hazard to vessels passing close by, and vessels could in turn pose a hazard to the structures. Additionally, the Project could cause use conflicts with mineral extraction, military activities, air traffic, land-based radar services, cables and pipelines, and scientific surveys. Beneficial impacts are also expected by facilitating achievement of State renewable energy goals (e.g., Virginia's goal of developing 5.2 gigawatts of offshore wind energy by 2034; North Carolina's goal of developing 2.8 gigawatts of offshore wind energy off its coast by 2030), increasing job opportunities, improving air quality, and reducing carbon emissions. The EIS will analyze measures that would avoid, minimize, or mitigate adverse environmental effects.

#### Anticipated Permits and Authorizations

In addition to the requested COP approval, various other Federal, State, and local authorizations will be required for the Kitty Hawk Project. Applicable Federal laws include, but are not limited to, the Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, NEPA, MMPA, RHA, CWA, and the Coastal Zone Management Act. BOEM will also conduct government-to-government consultations with federally recognized tribes (Tribes). For a full listing of regulatory requirements applicable to the Kitty Hawk Project, please see the COP, volume I available at <https://www.boem.gov/Kitty-Hawk>.

BOEM has chosen to use the NEPA substitution process to fulfill its obligations under NHPA. While BOEM's obligations under NHPA and NEPA are independent, regulations implementing section 106 of NHPA, at 36 CFR 800.8(c), allow the NEPA process and documentation to substitute for various aspects of review otherwise required under NHPA. This substitution is intended to improve efficiency, promote transparency and accountability, and support a broadened discussion of potential effects that a project could have on the human environment. During preparation of the EIS, BOEM will ensure that the NEPA substitution process will fully meet all NHPA obligations.

#### Schedule for the Decision-Making Process

After the draft EIS is completed, BOEM will publish a notice of availability (NOA) and request public comments on the draft EIS. BOEM expects to issue the NOA in September 2022. After the public comment period ends, BOEM will review and respond to comments received and will develop the final EIS. BOEM expects to make the final EIS available to the public in June 2023. In accordance with 40 CFR 1506.11, BOEM will not make a decision or issue a record of decision (ROD) sooner than 30 days after the final EIS is released.

This project is a "covered project" under section 41 of the Fixing America's Surface Transportation Act (FAST-41). FAST-41 provides increased transparency and predictability by requiring Federal agencies to publish comprehensive permitting timetables for all covered projects. FAST-41 also provides procedures for modifying permitting timetables to address the unpredictability inherent in the environmental review and permitting process for significant infrastructure projects. To view the FAST-41 Permitting Dashboard for Kitty Hawk, visit: <https://www.permits.performance.gov/permitting-project/kitty-hawk-offshore-wind-project>.

**Scoping Process:** This NOI commences the public scoping process to identify issues and potential alternatives for consideration in the Kitty Hawk EIS. Throughout the scoping process, Federal agencies, Tribes, State and local governments, and the general public have the opportunity to help BOEM determine significant resources and issues, impact-producing factors, reasonable alternatives (e.g., size, geographic, seasonal, or other restrictions on construction and siting of facilities and activities), and potential mitigation measures to be analyzed in the EIS, as well as to provide additional information.

In the interests of efficiency, completeness, and facilitating public involvement, BOEM will use the NEPA process to fulfill NHPA's public involvement requirements under 36 CFR 800.2(d). BOEM will involve the public, State and local governments, Tribes, and Kitty Hawk as consulting parties under NHPA. Also, BOEM may identify additional consulting parties, by considering written requests from individuals and organizations who would like to participate as consulting parties.

BOEM will hold virtual public scoping meetings for the Kitty Hawk EIS at the following dates and times (eastern daylight time):

- Tuesday, August 10, 2021, 5:30 p.m.;
- Thursday, August 12, 2021, 1:00 p.m.; and
- Tuesday August 17, 2021, 5:30 p.m.

Registration for the virtual public meetings may be completed here: <https://www.boem.gov/Kitty-Hawk-Scoping-Virtual-Meetings>.

**NEPA Cooperating Agencies:** BOEM invites other Federal agencies, Tribes, and State and local governments to consider becoming cooperating agencies in the preparation of this EIS. The NEPA regulations specify that qualified agencies and governments are those with "jurisdiction by law or special expertise." Potential cooperating agencies should consider their authority and capacity to assume the responsibilities of a cooperating agency and should be aware that an agency's role in the environmental analysis neither enlarges nor diminishes the final decision-making authority of any other agency involved in the NEPA process.

Upon request, BOEM will provide potential cooperating agencies with a written summary of expectations for cooperating agencies, including schedules, milestones, responsibilities, scope and detail of cooperating agencies' expected contributions, and availability of pre-decisional information. BOEM anticipates this summary will form the basis for a memorandum of agreement between BOEM and any non-Department of the Interior cooperating agency. Agencies also should consider the factors for determining cooperating agency status in the Council on Environmental Quality memorandum entitled "Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act," dated January 30, 2002. This document is available on the internet at: [http://energy.gov/sites/prod/files/nepapub/nepa\\_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf](http://energy.gov/sites/prod/files/nepapub/nepa_documents/RedDont/G-CEQ-CoopAgenciesImplem.pdf).

BOEM, as the lead agency, will not provide financial assistance to cooperating agencies. Even if a governmental entity is not a cooperating agency, it will have opportunities to provide information and comments to BOEM during the public input stages of the NEPA process.

**NHPA Consulting Parties:** Certain individuals and organizations with a demonstrated interest in the Project can request to participate as NHPA consulting parties under 36 CFR 800.2(c)(5) based on their legal or

economic stake in historic properties affected by the Project.

Before issuing this NOI, BOEM compiled a list of potential consulting parties and invited them in writing to become consulting parties. To become a consulting party, those invited must respond in writing, preferably by the requested response date.

Interested individuals or organizations that did not receive an invitation can request to be consulting parties by writing to the appropriate staff at ICF, which is the third party EIS contractor supporting BOEM in its administration of this review. ICF's contact for this review is Christine Cruiss (800-203-2807, [kittyhawksection106@icf.com](mailto:kittyhawksection106@icf.com)). BOEM will determine which interested parties should be consulting parties.

**Comments:** Federal agencies, Tribes, State and local governments, and other interested parties are requested to comment on the scope of this EIS, significant issues that should be addressed, and alternatives that should be considered. For information on how to submit comments, see the **ADDRESSES** section above.

BOEM does not consider anonymous comments. Please include your name and address as part of your comment. BOEM makes all comments, including the names, addresses, and other personally identifiable information included in the comment, available for public review online. Individuals can request that BOEM withhold their names, addresses, or other personally identifiable information included in their comment from the public record; however, BOEM cannot guarantee that it will be able to do so. In order for BOEM to withhold from disclosure your personally identifiable information, you must identify any information contained in your comment that, if released, would constitute a clearly unwarranted invasion of your privacy. You also must briefly describe any possible harmful consequences of the disclosure of that information, such as embarrassment, injury, or other harm.

Additionally, under section 304 of NHPA, BOEM is required, after consultation with the Secretary of the Interior, to withhold the location, character, or ownership of historic resources if it determines that disclosure may, among other things, cause a significant invasion of privacy, risk harm to the historic resources, or impede the use of a traditional religious site by practitioners. Tribal entities and other parties providing information on historic resources should designate information that they wish to be held as

confidential and provide the reasons why BOEM should do so.

All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

#### **Request for Identification of Potential Alternatives, Information, and Analyses Relevant to the Proposed Action**

BOEM requests information, data, analyses, alternatives, comments, views, or any suggestions concerning the Proposed Action from Federal agencies, Tribes, State and local governments, academic institutions, industry, non-profit organizations, and any other individuals or organizations. Specifically, BOEM requests information on the following topics:

1. Potential effects that the Proposed Action could have on biological resources, including bats, birds, coastal fauna, finfish, invertebrates, essential fish habitat, marine mammals, and sea turtles.
2. Potential effects that the Proposed Action could have on physical resources and conditions including air quality, water quality, and wetlands and other waters of the United States.
3. Potential effects that the Proposed Action could have on socioeconomic and cultural resources, including commercial fisheries and for-hire recreational fishing, demographics, employment, economics, environmental justice, land use and coastal infrastructure, navigation and vessel traffic, other uses (marine minerals, military use, aviation), recreation and tourism, and scenic and visual resources.

4. Other possible reasonable alternatives to the Proposed Action that BOEM should consider, including additional or alternative avoidance, minimization, and mitigation measures.

5. As part of its compliance with NHPA section 106 and its implementing regulations (36 CFR part 800), BOEM seeks comment and input from the public and consulting parties regarding the identification of historic properties within the Proposed Action's area of potential effects, the potential effects on those historic properties from the activities proposed in the COP, and any information that supports identification of historic properties under NHPA. BOEM also solicits proposed measures to avoid, minimize, or mitigate any adverse effects on historic properties. BOEM will present available information regarding known historic

properties during the public scoping period at <https://www.boem.gov/Kitty-Hawk>. BOEM's effects analysis for historic properties will be available for public and consulting party comment in the draft EIS.

6. Information on other current or planned activities within the Lease Area or in the vicinity of the Proposed Action and their possible impacts on the Project or the Project's impacts on those activities.

7. Other information relevant to the Proposed Action and its impacts on the human environment.

To promote informed decision making, comments should be as specific as possible and should provide as much detail as necessary to meaningfully and fully inform BOEM of the commenter's position. Comments should explain why the issues raised are important to the consideration of potential environmental impacts and alternatives to the Proposed Action as well as economic, employment, and other impacts affecting the quality of the human environment.

The draft EIS will include a summary of all alternatives, information, and analyses submitted during the scoping process for consideration by BOEM and the cooperating agencies.

**Authority:** This NOI is published in accordance with NEPA, 42 U.S.C. 4321 *et seq.*, and 40 CFR 1501.9.

**William Yancey Brown,**  
*Chief Environmental Officer, Bureau of Ocean Energy Management.*

[FR Doc. 2021-16282 Filed 7-29-21; 8:45 am]

**BILLING CODE 4310-MR-P**

## **DEPARTMENT OF THE INTERIOR**

### **Bureau of Reclamation**

**[RR04093000, XXXR4081X3, RX.05940913.FY19400]**

#### **Public Meeting of the Glen Canyon Dam Adaptive Management Work Group**

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act of 1972, the Bureau of Reclamation (Reclamation) is publishing this notice to announce that a Federal Advisory Committee meeting of the Glen Canyon Dam Adaptive Management Work Group (AMWG) will take place.

**DATES:** The meeting will be held virtually on Wednesday, August 18, 2021, from 9:30 a.m. to approximately

5:00 p.m. (MDT); and Thursday, August 19, 2021, from 9:30 a.m. to approximately 4:00 p.m. (MDT).

**ADDRESSES:** The meeting will be held virtually for Wednesday, August 18 at <https://rec.webex.com/rec/j.php?MTID=m13bea902af78b719731c73238388a7e0>, Meeting Number: 199 214 8505, Password: Aug18.

The meeting will be held virtually for Thursday, August 19 at <https://rec.webex.com/rec/j.php?MTID=mc3f8e361d6f59654a643773b1680dfec>, Meeting Number: 199 081 2526, Password: Aug19.

**FOR FURTHER INFORMATION CONTACT:** Ms. Lee Traynham, Bureau of Reclamation, telephone (801) 524-3752, email at [ltraynham@usbr.gov](mailto:ltraynham@usbr.gov).

**SUPPLEMENTARY INFORMATION:** The Glen Canyon Dam Adaptive Management Program (GCDAMP) was implemented as a result of the Record of Decision on the Operation of Glen Canyon Dam Final Environmental Impact Statement to comply with consultation requirements of the Grand Canyon Protection Act (Pub. L. 102-575) of 1992. The AMWG makes recommendations to the Secretary of the Interior concerning Glen Canyon Dam operations and other management actions to protect resources downstream of Glen Canyon Dam, consistent with the Grand Canyon Protection Act. The AMWG meets two to three times a year.

**Agenda:** The AMWG will meet to receive updates on: (1) Current basin hydrology and operations; (2) proposed revisions to the GCDAMP budget and workplan for fiscal year 2022; (3) experiments implemented in 2021 and those considered for implementation in 2022; (4) the status of threatened and endangered species; (5) long-term funding considerations; and (6) project work and other activities completed by GCDAMP Tribal partners. The AMWG will also discuss other administrative and resource issues pertaining to the GCDAMP. To view a copy of the agenda and documents related to the above meeting, please visit Reclamation's website at <https://www.usbr.gov/uc/progact/amp/amwg.html>.

**Meeting Accessibility/Special Accommodations:** The meeting is open to the public. Individuals requiring special accommodations to access the public meeting should contact Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) at least (5) business days prior to the meeting so appropriate arrangements can be made.

**Public Disclosure of Comments:** Time will be allowed on both days for any individual or organization wishing to make extemporaneous and/or formal

oral comments. To allow for full consideration of information by the AMWG members, written notice must be provided to Ms. Lee Traynham (see **FOR FURTHER INFORMATION CONTACT**) prior to the meeting. Any written comments received will be provided to the AMWG members.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

**Lee Traynham,**

*Chief, Adaptive Management Group,  
Resources Management Division, Upper  
Colorado Basin—Interior Region 7.*

[FR Doc. 2021-16209 Filed 7-29-21; 8:45 am]

**BILLING CODE 4332-90-P**

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## INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-661 (Final)]

### Utility Scale Wind Towers From Malaysia

#### Determination

On the basis of the record<sup>1</sup> developed in the subject investigation, the United States International Trade Commission (“Commission”) determines, pursuant to the Tariff Act of 1930 (“the Act”), that an industry in the United States is materially injured by reason of imports of utility scale wind towers from Malaysia, provided for in subheadings 7308.20.00 and 8502.31.00 of the Harmonized Tariff Schedule of the United States, that have been found by the U.S. Department of Commerce (“Commerce”) to be subsidized by the government of Malaysia.<sup>2</sup>

#### Background

The Commission instituted this investigation effective September 30, 2020, following receipt of petitions filed with the Commission and Commerce by the Wind Tower Trade Coalition (Arcosa Wind Towers Inc., Dallas, Texas; and Broadwind Towers, Inc., Manitowoc, Wisconsin). The Commission scheduled the final phase of the investigation following

notification of a preliminary determination by Commerce that imports of utility scale wind towers from Malaysia were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)). Notice of the scheduling of the final phase of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 16, 2021 (86 FR 20197). Counsel for the Wind Tower Trade Coalition withdrew its previously filed request to appear at the hearing, after no other parties submitted a request to appear, and indicated a willingness to submit written responses to any Commission questions in lieu of a hearing. Consequently, since no party to the investigation requested a hearing, the Commission canceled its hearing in connection with this investigation (86 FR 31730). Parties to this investigation responded to written questions posed by the Commission in their posthearing briefs.

The Commission made this determination pursuant to § 705(b) of the Act (19 U.S.C. 1671d(b)). It completed and filed its determination in this investigation on July 26, 2021. The views of the Commission are contained in USITC Publication 5215, July 2021, entitled *Utility Scale Wind Towers from Malaysia: Investigation No. 701-TA-661 (Final)*.

By order of the Commission.

Issued: July 26, 2021.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2021-16242 Filed 7-29-21; 8:45 am]

**BILLING CODE 7020-02-P**

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## JUDICIAL CONFERENCE OF THE UNITED STATES

### Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules; Hearings of the Judicial Conference

**AGENCY:** Judicial Conference of the United States.

**ACTION:** Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules; notice of proposed amendments and open hearings.

**DATES:** All written comments and suggestions with respect to the proposed amendments may be submitted on or after the opening of the period for

<sup>1</sup> The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

<sup>2</sup> 86 FR 30593 (June 9, 2021).

public comment on August 6, 2021, but no later than February 16, 2022.

**ADDRESSES:** Written comments must be submitted electronically, following the instructions provided on the website. All comments submitted will be posted on the website and available to the public.

Remote public hearings via video or telephone conference are scheduled on the proposed amendments as follows:

- Appellate Rules on January 14, 2022 and January 28, 2022;
- Bankruptcy Rules on January 7, 2022 and January 28, 2022;
- Civil Rules on January 6, 2022 and February 4, 2022;
- Criminal Rules on November 8, 2021 and January 11, 2022; and
- Evidence Rules on January 21, 2022.

Those wishing to testify must contact the Secretary of the Committee on Rules of Practice and Procedure by email at: [RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov), at least 30 days before the hearing.

**FOR FURTHER INFORMATION CONTACT:** Scott Myers, Esq., Acting Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7-300, Washington, DC 20544, Phone (202) 502-1820, [RulesCommittee\\_Secretary@ao.uscourts.gov](mailto:RulesCommittee_Secretary@ao.uscourts.gov).

**SUPPLEMENTARY INFORMATION:** The Advisory Committees on Appellate, Bankruptcy, Civil, Criminal, and Evidence Rules have proposed amendments to the following rules:

*Appellate Rules:* 2 and 4.

*Bankruptcy Rules:* Restyled Rules Parts III-VI; Rules 3002.1, 3011, and 8003; new Rule 9038; Official Forms 101, 309E1, 309E2, and 417A; and new Official Forms 410C13-1N, 410C13-1R, 410C13-10C, 410C13-10NC, and 410C13-10R.

*Civil Rules:* 15, 72, and new Rule 87.

*Criminal Rules:* New Rule 62.

*Evidence Rules:* 106, 615, and 702.

The text of the proposed rules and the accompanying committee notes, along with the related forms, will be posted by August 6, 2021, on the Judiciary's website at: <http://www.uscourts.gov/rules-policies/proposed-amendments-published-public-comment>.

(Authority: 28 U.S.C. 2073.)

Dated: July 27, 2021.

**Shelly L. Cox,**

*Management Analyst, Rules Committee Staff.*

[FR Doc. 2021-16319 Filed 7-29-21; 8:45 am]

**BILLING CODE 2210-55-P**

## DEPARTMENT OF JUSTICE

### Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0024]

#### Agency Information Collection Activities; Proposed eCollection of eComments Requested; Revision of a Currently Approved Collection; Report of Firearms Transactions—Demand 2—ATF Form 5300.5

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Department of Justice (DOJ), will submit the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection OMB 1140-0024 (Report of Firearms Transactions—Demand 2—ATF Form 5300.5) is being renamed (Demand 2 Program: Report of Firearms Transactions—ATF Form 5300.5), to clearly identify the firearms transactions affected by this collection. There is also an increase in the total annual respondents, responses, and burden hours. The proposed (IC) is also being published to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and will be accepted for 60 days until September 28, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, regarding the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact: Neil Troppman, Law Enforcement Support Branch, National Tracing Center Division either by mail at 244 Needy Road, Martinsburg, WV 25405, by email at [neil.troppman@atf.gov](mailto:neil.troppman@atf.gov), or by telephone at 304-260-3643.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

- whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

1. *Type of Information Collection (check justification or form 83):*

Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Report of Firearms Transactions—Demand 2.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number (if applicable): ATF Form 5300.5.

*Component:* Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Business or other for profit.

*Other (if applicable):* None.

*Abstract:* The Demand 2 Program requires Federal Firearm Licensees (FFLs) with 25 or more traces with a time to crime of three years or less in a calendar year, to submit an annual Report of Firearms Transactions—Demand 2—ATF Form 5300.5, followed by quarterly reports of used firearms acquired by the FFL.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 628 respondents will use the form approximately four times annually, and it will take each respondent approximately 30 minutes to complete their responses.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 1,256 hours, which is equal to 628 (# of respondents) \* 4 (# of responses per respondent) \* .5 (30 minutes).

7. *An Explanation of the Change in Estimates:* Due to an increase in the

number of FFLs subject to the reporting requirements of the Demand 2 program, the total respondents, responses, and burden hours for this collection have increased by 233, 932, and 466 respectively, since the last renewal in 2018.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 27, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021-16317 Filed 7-29-21; 8:45 am]

**BILLING CODE 4410-FY-P**

## DEPARTMENT OF JUSTICE

[CPCLO Order No. 007-2021]

### Privacy Act of 1974; Systems of Records

**AGENCY:** Justice Management Division, United States Department of Justice.

**ACTION:** Notice of a new system of records.

**SUMMARY:** Pursuant to the Privacy Act of 1974 and Office of Management and Budget (OMB) Circular No. A-108, notice is hereby given that the Justice Management Division (JMD), a component within the United States Department of Justice (DOJ or Department), proposes to develop a new system of records titled Security Monitoring and Analytics Service Records, JUSTICE/JMD-026. JMD proposes to establish this system of records to provide external federal agency subscribers with the technical capability to protect their data from malicious or accidental threats using DOJ-managed systems.

**DATES:** In accordance with 5 U.S.C. 552a(e)(4) and (11), this notice is effective upon publication, subject to a 30-day period in which to comment on the routine uses, described below. Please submit any comments by August 30, 2021.

**ADDRESSES:** The public, OMB, and Congress are invited to submit any comments: By mail to the United States Department of Justice, Office of Privacy and Civil Liberties, ATTN: Privacy Analyst, 145 N St. NE, Suite 8W.300, Washington, DC 20530; by facsimile at 202-307-0693; or by email at [privacy.compliance@usdoj.gov](mailto:privacy.compliance@usdoj.gov). To ensure proper handling, please

reference the above CPCLO Order No. on your correspondence.

**FOR FURTHER INFORMATION CONTACT:** Nickolous Ward, DOJ Chief Information Security Officer, (202) 514-3101, 145 N Street NE, Washington, DC 20530.

**SUPPLEMENTARY INFORMATION:** In accordance with the Federal Information Security Modernization Act of 2014, among other authorities, agencies are responsible for complying with information security policies and procedures requiring information security protections commensurate with the risk and magnitude of harm resulting from the unauthorized access, use, disclosure, disruption, modification, or destruction of agency information and information systems. *See, e.g.,* 44 U.S.C. 3554 (2018). Executive Order No. 13800, Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure (May 2017), directs agency heads to show preference in their procurement for shared information technology (IT) services, to the extent permitted by law, including email, cloud, and cybersecurity services. Office of Management and Budget (OMB) Memorandum M-19-16, Centralized Mission Support Capabilities for the Federal Government (April 26, 2019), establishes the framework for implementing “Sharing Quality Services” across agencies. The Economy Act of 1932; 31 U.S.C. 1535, authorizes agencies to enter into agreements to obtain supplies or services from another agency.

Consistent with these authorities, the JMD, Office of the Chief Information Officer (OCIO), Cybersecurity Services Staff (CSS), developed the Security Monitoring and Analytics Service (SMAS) system to provide DOJ-managed IT service offerings to other federal agencies wishing to leverage DOJ’s cybersecurity services, referred to as “external federal agency subscribers.” SMAS has a suite of technology products, which consists of a range of commercial off-the-shelf (COTS) software that provide insight into the subscribers’ operating environment. SMAS capabilities include, but are not limited to, asset discovery, vulnerability assessment, Network Intrusion Detection System (NIDS), Endpoint Detection and Response (EDR), and Security Information and Event Management (SIEM) event correlation and log management. SMAS also offers User Behavior Analytics (UBA) and User Activity Monitoring (UAM) tools to correlate security events, as part of the service offering. SMAS enables the identification and evaluation of

suspicious, unauthorized, or anomalous activity that may indicate malicious behavior and activity. DOJ provides this information directly to external federal agency subscribers for review and further evaluation. JMD monitors user activities and captures and stores files that might be related to suspicious, unauthorized, or anomalous activities. JMD ensures that possible security events or incidents are accurately identified, analyzed, guarded against, investigated, and shared with the external federal agency subscriber via secure means of communication (e.g., encrypted email).

JMD established the system of records, Security Monitoring and Analytics Service Records, JUSTICE/JMD-026, to cover records maintained by JMD while utilizing SMAS for its external federal agency subscribers. Specifically, JMD tracks external federal agency subscriber’s IT, information system, and/or network activity, including any access by users to any IT, information systems, and/or networks, whether authorized or unauthorized. Consistent with these requirements, JMD must ensure that it maintains accurate audit and activity records of the observable occurrences on external federal agency subscriber information systems and networks (also referred to as “events”) that are significant and relevant to the security of the external federal agency subscriber’s information and information systems. These audit and activity records may include, but are not limited to, information that establishes what type of event occurred, when the event occurred, where the event occurred, the source of the event, the outcome of the event, and the identity of any individuals or subjects associated with the event. These records assist DOJ and external federal agency subscribers with protecting subscribers’ data and ensuring the secure operation of IT, information systems, and networks.

Additionally, monitored events—whether detected utilizing information systems maintaining audit and activity records, reported to the Department or external federal agency subscriber by information system users, or reported to the Department or the external federal agency subscriber by the cybersecurity research community or members of the general public conducting good faith vulnerability discovery activities—may constitute occurrences that (1) actually or imminently jeopardize, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitute a violation or imminent threat of violation of law, security

policies, security procedures, or acceptable use policies. These records assist DOJ and external federal agency subscribers with tracking and documenting actual or suspected incidents, which may, in limited circumstances, include records of individuals reporting, or otherwise associated with, an actual or suspected incident.

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and Congress on this new system of records.

Dated: July 20, 2021.

**Peter A. Winn,**

*Acting Chief Privacy and Civil Liberties Officer, United States Department of Justice.*

**Justice/JMD-026**

**SYSTEM NAME AND NUMBER:**

Security Monitoring and Analytics Service Records, JUSTICE/JMD-026.

**SECURITY CLASSIFICATION:**

Controlled Unclassified Information.

**SYSTEM LOCATION:**

Records will be maintained electronically at Department of Justice offices, other sites utilized by the Department of Justice, and in information technology, information systems, or networks owned, operated by, or operated on behalf of the Department of Justice. Most records will be maintained electronically at one or more of the Department's Core Enterprise Facilities (CEF), including, but not limited to: CEF East, Clarksburg, WV 26306; CEF West, Pocatello, ID 83201; or CEF-DC, Sterling, VA 20164. In the future, records may also be maintained by a Department-authorized cloud service provider if the Department decides that so doing will provide increased security and accessibility. In that event, any servers would be maintained within the Continental United States and the name and address of the Department-authorized cloud service provider will be made public, and for purposes of individual access and amendment, the location of the records will continue to be at the address listed above.

Some or all system information may also be duplicated at other locations where the Department has granted direct access to support DOJ System Manager operations, system backup, emergency preparedness, and/or continuity of operations. For more specific information about the location of records maintained in this system of records, contact the system manager using the contact information listed in the "SYSTEM MANAGER(S)" paragraph, below.

**SYSTEM MANAGER(S):**

DOJ Chief Information Security Officer, (202) 514-3101, 145 N Street NE, Washington, DC 20530.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

The Federal Information Security Modernization Act of 2014, 44 U.S.C. 3551 *et seq.*; The Economy Act of 1932, as amended, 31 U.S.C.1535; Executive Order No. 13800, Strengthening the Cybersecurity of Federal Networks and Critical Infrastructure (2017).

**PURPOSE(S) OF THE SYSTEM:**

The Department of Justice (DOJ) Security Monitoring and Analytics Service (SMAS) provides DOJ-managed cybersecurity services to external federal agency subscribers, giving subscribers the technical capability to protect their information, information technologies, information systems, and networks from malicious or accidental threats. SMAS enables the identification and evaluation of suspicious, unauthorized, or anomalous activity and/or vulnerabilities. Records in this system of records are used by system administrators and security personnel, or persons authorized to assist these personnel, for the purpose of: Reviewing and analyzing subscriber information and subscriber information system activity and access events for indications of inappropriate, unusual, or abnormal activity; tracking, documenting, and handling actual or suspected cybersecurity events and incidents; identifying and managing vulnerabilities; supporting audit reviews, analyses, reporting requirements, and after-the-fact investigations of cybersecurity events and incidents; planning and managing system services; and otherwise performing their official duties. Authorized personnel may use the records in this system for the purpose of investigating improper access or other improper activity related to information system access; and referring such record(s) to external federal agency subscribers.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

A. SMAS authorized users, including DOJ employees, DOJ contractors, and employees and contractors of external federal agency subscribers with authorized access to SMAS to perform analysis on collected information; and

B. The categories of individuals covered by this system encompass all individuals who are provided external federal agency subscriber information technology monitored by SMAS, who access external federal agency

subscriber information systems monitored by SMAS, or who transmit information across external federal agency subscriber networks monitored by SMAS. Such individuals may include: (1) Individuals who use external federal agency subscriber information technology, information systems, and/or networks to send or receive information or related communications, access internet sites, or access any external federal agency subscriber information technologies, information systems, or information; (2) individuals from outside the external federal agency subscriber who communicate electronically with subscriber users, information technologies, information systems, and/or networks; (3) individuals reporting, tracking, documenting and/or otherwise associated with actual or suspected cybersecurity incident and/or event activities; and (4) any individuals who attempt to access external federal agency subscriber information technologies, information systems, and/or networks, with or without authorization.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Records in this system of records may include:

A. Access and activity logs that establish what type of event occurred, when an event occurred, where an event occurred, the source of an event, the outcome of an event, and the identity of any individuals or subjects associated with an event. Such information includes, but is not limited to: Time stamps recording the data and time of access or activity; source and destination addresses; user, device, and process identifiers, including internet Protocol (IP) address, Media Access Control (MAC) address, and event descriptions; success/fail indications; filenames involved; full text recording of privileged commands; and/or access control or flow control rules invoked. Such information may be collected and aggregated by the operating system or application software locally within an information technology, information system, or network.

B. Information relating to any individuals accessing an external federal agency subscriber's information, information technologies, information systems, or networks monitored by SMAS. This includes: User names; persistent identifiers (such as a User ID); contact information, such as title, office, component, and agency; and the authorization of an individual's access to systems, files, or applications, such as signed consent forms or Rules of Behavior forms, or access authentication

information (including but not limited to passwords, challenge questions/answers used to confirm/validate a user's identity, and other authentication factors).

C. Records on the use of electronic mail, instant messaging, other chat services, electronic call detail information (including name, originating/receiving numbers, duration, and date/time of call), and electronic voicemail on an external federal agency subscriber's information technologies, information systems, or networks monitored by SMAS.

D. Records of internet access from any information technology connected to an external federal agency subscriber's information system or network monitored by SMAS, or through authorized connections to external federal agency subscriber's networks and information systems monitored by SMAS, including the IP address of the information technology being used to initiate the internet connection and the information accessed.

E. Audit reviews, analyses, and reporting, including but not limited to, audits that result from monitoring of account usage, remote access, wireless connectivity, mobile device connection, configuration settings, system component inventory, physical access, and communications at the boundaries of information systems monitored by SMAS.

F. Actual or suspected incident or event report information, including but not limited to: Information related to individuals reporting, tracking, documenting, and/or otherwise associated with a cybersecurity incident and/or event; information related to reporting, tracking, investigating, and/or addressing an incident or event (*e.g.*, data/time of the incident or event; location of incident or event; type of incident or event; storage medium information; safeguard information; external/internal entity report tracking; data elements associated with the incident or event; information on individuals impacted; information on information system(s) impacted; remediation, response, or notification actions; lessons learned; risk of harm and compliance assessments); and information related to discovering, testing, reporting, tracking, investigating, and/or addressing a security vulnerability or indicator of a security vulnerability.

**RECORD SOURCE CATEGORIES:**

Records covered by this system of records are generated internally (*i.e.*, information technology, information system, and/or network activity logs),

manually sourced from agency personnel, or sourced directly from the individual to whom the record pertains.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside the Department as a routine use pursuant to 5 U.S.C. 552a(b)(3) under the circumstances or for the purposes described below, to the extent such disclosures are compatible with the purposes for which the information was collected:

A. To an organization or individual in both the public or private sector where there is reason to believe the recipient is or could become the target of a particular criminal activity or conspiracy or other threat, to the extent the information is relevant to the protection of life, health, or property. Information may be similarly disclosed to other recipients who share the same interests as the target or who may be able to assist in protecting against or responding to the activity or conspiracy.

B. To appropriate officials and employees of a federal agency for which the Department is authorized to provide a service, when disclosed in accordance with an interagency agreement and when necessary to accomplish an agency function articulated in the interagency agreement.

C. To any person(s) or appropriate Federal, state, local, territorial, tribal, or foreign law enforcement authority authorized to assist in an approved investigation of or relating to the improper usage of DOJ information technologies, information systems, and/or networks.

D. To any person, organization, or governmental entity in order to notify them of a serious terrorist threat for the purpose of guarding against or responding to such a threat.

E. To Federal, state, local, territorial, tribal, foreign, or international licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit.

F. Where a record, either alone or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the relevant records may be referred to the appropriate Federal, state, local, territorial, tribal, or foreign law enforcement authority or other appropriate entity charged with the

responsibility for investigating or prosecuting such violation or charged with enforcing or implementing such law.

G. To complainants and/or victims to the extent necessary to provide such persons with information and explanations concerning the progress and/or results of the investigation or case arising from the matters of which they complained and/or of which they were a victim.

H. To any person or entity that the Department has reason to believe possesses information regarding a matter within the jurisdiction of the Department, to the extent deemed to be necessary by the Department in order to elicit such information or cooperation from the recipient for use in the performance of an authorized activity.

I. In an appropriate proceeding before a court, grand jury, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator determines the records to be relevant to the proceeding.

J. To an actual or potential party to litigation or the party's authorized representative for the purpose of negotiation or discussion of such matters as settlement, plea bargaining, or in informal discovery proceedings.

K. To the news media and the public, including disclosures pursuant to 28 CFR 50.2, unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

L. To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, interagency agreement, or other assignment for the Federal government, when necessary to accomplish an agency function related to this system of records.

M. To designated officers and employees of state, local, territorial, or tribal law enforcement or detention agencies in connection with the hiring or continued employment of an employee or contractor, where the employee or contractor would occupy or occupies a position of public trust as a law enforcement officer or detention officer having direct contact with the public or with prisoners or detainees, to the extent that the information is relevant and necessary to the recipient agency's decision.

N. To appropriate officials and employees of a federal agency or entity



that requires information relevant to a decision concerning the hiring, appointment, or retention of an employee; the issuance, renewal, suspension, or revocation of a security clearance; the execution of a security or suitability investigation; the letting of a contract; or the issuance of a grant or benefit.

O. To a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

P. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of, and at the request of, the individual who is the subject of the record.

Q. To the National Archives and Records Administration for purposes of records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

R. To appropriate agencies, entities, and persons when (1) the Department suspects or has confirmed that there has been a breach of the system of records; (2) the Department has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Department (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

S. To another federal agency or entity, when the Department determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

T. To any agency, organization, or individual for the purpose of performing authorized audit or oversight operations

of DOJ, and meeting related reporting requirements.

U. To such recipients and under such circumstances and procedures as are mandated by federal statute or treaty.

**POLICIES AND PRACTICES FOR STORAGE OF RECORDS:**

Records are maintained in electronic storage media, in accordance with the safeguards mentioned below.

**POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:**

Data shared with the external agency subscriber consists of report(s) on the automated alerts generated by the tools or manually collected through the hotline. At the request of the external agency subscriber, DOJ can provide custom reports, which may be grouped by username, host name, IP address or another key indicator. Records may be retrieved by identifying characteristics as part of information system security monitoring, cybersecurity incident response, user activity monitoring, or in support of other security activity.

**POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:**

Records in this system are retained and disposed of in accordance with the schedule approved by the Archivist of the United States, General Records Schedule 3.2: Information Systems Security Records, Transmittal No. 26 September 2016, item 010-062 and General Records Schedule 5.6: Security Records, Transmittal No. 31 April 2020, item 210-240, for records created and maintained by federal agencies related to protecting the security of information technology systems and data, and responding to computer security incidents. Log data is maintained in Logging as a Service as the DOJ's repository for 365 days.

**ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:**

Information in this system is safeguarded in accordance with appropriate laws, rules, and policies, including the Department's automated systems security and access policies and Interconnection Security Agreements (ISAs) with the federal agency subscribers. Access to such information is limited to Department personnel, contractors, and other personnel who have an official need for access in order to perform their duties. Records are maintained in an access-controlled area, with direct access permitted to only authorized personnel. Electronic records are accessed only by authorized personnel with accounts on the Department's network. Additionally, direct access to certain information may

be restricted depending on a user's role and responsibility within the organization and system. Any electronic data that contains personally identifiable information will be encrypted in accordance with applicable National Institute of Standards and Technology standards when transferred between DOJ and the subscriber agency.

**RECORD ACCESS PROCEDURES:**

A request for access to a record from this system of records must be submitted in writing and comply with 28 CFR part 16, and should be sent by mail to the Justice Management Division, ATTN: FOIA Contact, Room 1111, Robert F. Kennedy Department of Justice Building, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001, or by email at [JMDFOIA@usdoj.gov](mailto:JMDFOIA@usdoj.gov). The envelope and letter should be clearly marked "Privacy Act Access Request." The request should include a general description of the records sought, and must include the requester's full name, current address, and date and place of birth. The request must be signed and dated and either notarized or submitted under penalty of perjury. While no specific form is required, requesters may obtain a form (Form DOJ-361) for use in certification of identity from the FOIA/Privacy Act Mail Referral Unit, Justice Management Division, United States Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001, or from the Department's website at [http://www.justice.gov/oip/forms/cert\\_ind.pdf](http://www.justice.gov/oip/forms/cert_ind.pdf). Some information may be exempt from the access provisions as described in the "EXEMPTIONS PROMULGATED FOR THE SYSTEM" paragraph, below. An individual who is the subject of a record in this system may access any stored records that are not exempt from the access provisions. A determination whether a record may be accessed will be made at the time a request is received.

**CONTESTING RECORD PROCEDURES:**

Individuals seeking to contest or amend information maintained in the system should direct their requests to the address indicated in the "RECORD ACCESS PROCEDURES" section, above. The envelope and letter should be clearly marked "Privacy Act Amendment Request." The request must comply with 28 CFR 16.46, and state clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Some information may be exempt from the amendment provisions as described

in the “EXEMPTIONS PROMULGATED FOR THE SYSTEM” paragraph, below. An individual who is the subject of a record in this system may seek amendment of those records that are not exempt. A determination whether a record may be amended will be made at the time a request is received.

#### NOTIFICATION PROCEDURES:

Individuals may be notified if a record in this system of records pertains to them when the individuals request information utilizing the same procedures as those identified in the “RECORD ACCESS PROCEDURES” paragraph, above.

#### EXEMPTIONS PROMULGATED FOR THE SYSTEM:

The Attorney General will promulgate regulations exempting this system of records from subsections (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f) of the Privacy Act of 1974, as amended, pursuant to 5 U.S.C. 552a(k)(2). These exemptions apply only to the extent that information in the system of records is subject to exemption, pursuant to 5 U.S.C. 552a(k)(2). The Department is in the process of promulgating regulations in accordance with the requirements of 5 U.S.C. 553(b), (c), and (e), that will be published in the **Federal Register**.

#### HISTORY:

None.

[FR Doc. 2021–15883 Filed 7–29–21; 8:45 am]

BILLING CODE 4410–NW–P

## DEPARTMENT OF JUSTICE

### 2021 Survey of Campus Law Enforcement Agencies (SCLEA); Correction

**AGENCY:** Office of Justice Programs, Department of Justice.

**ACTION:** Notice; correction.

**SUMMARY:** The Bureau of Justice Statistics, Office of Justice Programs, Department of Justice, submitted a 30-day notice for publication in the **Federal Register** of July 23, 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. The document contained incorrect information.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Davis, Statistician, Bureau of Justice Statistics, 810 Seventh Street NW, Washington, DC 20531 (email: [Elizabeth.davis@usdoj.gov](mailto:Elizabeth.davis@usdoj.gov); telephone: 202–305–2667).

#### SUPPLEMENTARY INFORMATION:

#### Correction

In the **Federal Register** of July 23, 2021, in FR Doc 2021–15716, on page 39078, in the second column, correct the estimated number of respondents to read 2,067 and the total estimated burden for the collection to 2,067 hours.

Dated: July 23, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021–16077 Filed 7–29–21; 8:45 am]

BILLING CODE 4410–18–P

## DEPARTMENT OF JUSTICE

[OMB Number 1122–0016]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

**AGENCY:** Office on Violence Against Women, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Office on Violence Against Women (OVW), Department of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until September 28, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Revision to Currently Approved Collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees of the Transitional Housing Assistance Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0016. U.S. Department of Justice, Office on Violence Against Women

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 120 grantees of the Transitional Housing Assistance Grant Program (Transitional Housing Program) whose eligibility is determined by statute. This discretionary grant program provides transitional housing, short-term housing assistance, and related support services for individuals who are homeless, or in need of transitional housing or other housing assistance, as a result of fleeing a situation of domestic violence, dating violence, sexual assault, or stalking, and for whom emergency shelter services or other crisis intervention services are unavailable or insufficient. Eligible applicants are States, units of local government, Indian tribal governments, and other organizations, including domestic violence and sexual assault victim services providers, domestic violence or sexual assault coalitions, other nonprofit, nongovernmental organizations, or community-based and culturally specific organizations, that have a documented history of effective work concerning domestic violence, dating violence, sexual assault, or stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the 120 respondents (grantees) approximately one hour to complete the Semi-Annual Progress Report. The semi-annual progress report is divided into sections that pertain to the different

types of activities that grantees may engage in and the different types of grantees that receive funds. A Transitional Housing Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 240 hours, that is 120 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: July 27, 2021.

**Melody Braswell,**

*Department Clearance Officer, PRA, U.S. Department of Justice.*

[FR Doc. 2021-16313 Filed 7-29-21; 8:45 am]

**BILLING CODE 4410-FX-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1105-0091]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection; Assumption of Concurrent Federal Criminal Jurisdiction in Certain Areas of Indian Country

**AGENCY:** Office of Tribal Justice, Department of Justice.

**ACTION:** 60-day Notice.

**SUMMARY:** The Office of Tribal Justice, Department of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until September 28, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mr. Tracy Toulou, Director, Office of Tribal Justice, Department of Justice, 950 Pennsylvania Avenue NW, Room

2310, Washington, DC 20530 (phone: 202-514-8812).

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Office of Tribal Justice, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

### Overview of This Information Collection

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *The Title of the Form/Collection:* Request to the Attorney General for Assumption of Concurrent Federal Criminal Jurisdiction.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form. The applicable component within the Department of Justice is the Office of Tribal Justice.

4. *Affected public who will be asked or required to respond, as well as a brief abstract:* The Department of Justice published a rule to establish the procedures for an Indian tribe whose Indian country is subject to State criminal jurisdiction under Public Law 280 (18 U.S.C. 1162(a)) to request that the United States accept concurrent criminal jurisdiction within the tribe's Indian country, and for the Attorney General to decide whether to consent to such a request. The purpose of the collection is to provide information from the requesting tribe sufficient for the Attorney General to make a decision whether to consent to the request.

5. *An estimate of the total number of respondents and the amount of time*

*estimated for an average respondent to respond:* Fewer than 350 respondents; 80 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated maximum 28,000 annual total burden hours associated with this collection (up to 350 respondents × 80 hours = 28,000 hours). Fewer than 350 Indian tribes are eligible for the assumption of concurrent criminal jurisdiction by the United States. The Department of Justice does not know how many eligible tribes will, in fact, make such a request. The information collection will require Indian tribes seeking assumption of concurrent criminal jurisdiction by the United States to provide certain information relating to public safety within the Indian country of the tribe.

If additional information is required please contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, Suite 3E.405B, Washington, DC 20530.

Dated: July 27, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021-16316 Filed 7-29-21; 8:45 am]

**BILLING CODE 4410-A5-P**

## DEPARTMENT OF JUSTICE

[OMB Number 1122-0007]

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension of a Currently Approved Collection

**AGENCY:** Office on Violence Against Women, Department of Justice

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until September 28, 2021.

**FOR FURTHER INFORMATION CONTACT:** Written comments and/or suggestion regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Cathy Poston, Office on Violence Against Women, at

202–514–5430 or *Catherine.poston@usdoj.gov*.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

#### Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees of the Legal Assistance for Victims Grant Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0007. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 200 grantees of the Legal Assistance for Victims Grant Program (LAV Program) whose eligibility is determined by statute. In 1998, Congress appropriated funding to provide civil legal assistance to domestic violence victims through a set-aside under the Grants to Combat Violence Against Women, Public Law 105–277. In the Violence Against Women Act of 2000 and again in 2005, Congress statutorily authorized the LAV Program. 34 U.S.C. 20121. The LAV Program is intended to increase the availability of legal assistance necessary to provide effective aid to victims of domestic violence, stalking, or sexual

assault who are seeking relief in legal matters arising as a consequence of that abuse or violence. The LAV Program awards grants to law school legal clinics, legal aid or legal services programs, domestic violence victims' shelters, bar associations, sexual assault programs, private nonprofit entities, and Indian tribal governments. These grants are for providing direct legal services to victims of domestic violence, sexual assault, and stalking in matters arising from the abuse or violence and for providing enhanced training for lawyers representing these victims. The goal of the Program is to develop innovative, collaborative projects that provide quality representation to victims of domestic violence, sexual assault, and stalking.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 200 respondents (LAV Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities that grantees may engage in and the different types of grantees that receive funds. An LAV Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 400 hours, that is 200 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: July 27, 2021.

#### Melody Braswell,

Department Clearance Officer, U.S. Department of Justice.

[FR Doc. 2021–16312 Filed 7–29–21; 8:45 am]

**BILLING CODE 4410–FX–P**

## DEPARTMENT OF JUSTICE

### Office of Justice Programs

[OMB Number 1121–0197]

#### Agency Information Collection Activities; Proposed eCollection eComments Requested; Extension Without Change, of a Previously Approved Collection

**AGENCY:** Office of Justice Programs, Department of Justice.

**ACTION:** 30-Day notice.

**SUMMARY:** The Bureau of Justice Assistance, Office of Justice Programs, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted input day until August 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments on the estimated burden to facilities covered by the standards to comply with the regulation's reporting requirements, suggestions, or need additional information, please contact, Joseph Husted, Policy Advisor, Bureau of Justice Assistance, 810 Seventh Street NW, Washington, DC., 20531 or by email at *Joseph.Husted@ojp.usdoj.gov* or *SCAAP@usdoj.gov* or call 202–616–6500/202–353–4411.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, Bureau of Justice Assistance, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of

information technology, e.g., permitting electronic submission of responses.

**Overview of This information Collection**

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Agency Form Number:* State Criminal Alien Assistance Program (SCAAP) Authorizing Legislation: Section 241(i) of the Immigration and Nationality Act (8 U.S.C. 1231(i)).

3. *The Agency Form Number:* There is not form number associated with this information collection. The applicable component within the Department of Justice is the Bureau of Justice Assistance, in the Office of Justice Programs. The application process is managed through the internet, using the Office of Justice Programs' (OJP) SCAAP online application system at: [https://bja.ojp.gov/program/state-criminal-alien-assistance-program-scaap/overview?Program\\_ID=86](https://bja.ojp.gov/program/state-criminal-alien-assistance-program-scaap/overview?Program_ID=86).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Federal, State, and local public safety agencies. States and local units of general government including the 50 state governments, the District of Columbia, Guam, Puerto Rico, the U.S. Virgin Islands, and the more than 3,000 counties and cities with correctional facilities.

*Abstract:* In response to the Violent Crime Control and Law Enforcement Act of 1994 Section 130002(b) as amended in 1996, BJA administers the State Criminal Alien Assistance Program (SCAAP) with the Bureau of Immigration and Customs Enforcement (ICE), and the Department of Homeland Security (DHS). SCAAP provides federal payments to States and localities that incurred correctional officer salary costs for incarcerating undocumented criminal aliens with at least one felony or two misdemeanor convictions for violations of state or local law, and who are incarcerated for at least 4 consecutive days during the designated reporting period and for the following correctional purposes;

- Salaries for corrections officers
- Overtime costs
- Performance based bonuses
- Corrections work force recruitment and retention
- Construction of corrections facilities
- Training/education for offenders
- Training for corrections officers related to offender population management
- Consultants involved with offender population
- Medical and mental health services
- Vehicle rental/purchase for transport of offenders
- Prison Industries
- Pre-release/reentry programs
- Technology involving offender management/inter agency information sharing
- Disaster preparedness continuity of operations for corrections facilities
- Other:* None.

*An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that no more than 700 respondents will apply. Each application takes approximately 90 minutes to complete and is submitted once per year.

5. *An estimate of the total public burden (in hours) associated with the collection:* An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply. It is estimated that no more than 700 respondents will apply. Each application takes approximately 90 minutes to complete and is submitted once per year (annually).

- 700 × 90 minutes = 63,000 minutes/ 60 = 1,050 hours.

6. *An estimate of the total public burden (in hours) associated with the collection:* The estimated annual public burden is 1,050 hours.

If additional information is required, contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405A, Washington, DC 20530.

Dated: July 27, 2021.

**Melody Braswell,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2021-16308 Filed 7-29-21; 8:45 am]

**BILLING CODE 4410-18-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Determinations Regarding Eligibility To Apply for Trade Adjustment Assistance**

In accordance with Sections 223 and 284 (19 U.S.C. 2273 and 2395) of the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) (“Act”), as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act (“TAA”) for workers by (TA-W) issued during the period of June 1 2021 through June 30 2021.

This notice includes summaries of initial determinations such as Affirmative Determinations of Eligibility, Negative Determinations of Eligibility, and Determinations Terminating Investigations of Eligibility within the period. If issued in the period, this notice also includes summaries of post-initial determinations that modify or amend initial determinations such as Affirmative Determinations Regarding Applications for Reconsideration, Negative Determinations Regarding Applications for Reconsideration, Revised Certifications of Eligibility, Revised Determinations on Reconsideration, Negative Determinations on Reconsideration, Revised Determinations on remand from the Court of International Trade, and Negative Determinations on remand from the Court of International Trade.

**Affirmative Determinations for Trade Adjustment Assistance**

The following certifications have been issued.

TA-W No.	Workers' firm	Location	Reason(s)
94694	Faneuil, Inc	Martinsville, VA	Customer Imports of Services.
96692	Pereles Brothers, Inc	Milwaukee, WI	Customer Imports of Articles.
96694	Liberty Iron & Metal, Inc	Erie, PA	Secondary Component Supplier.
96707	Parker Hannifin	Kalamazoo, MI	Secondary Component Supplier.
96738	Elementis Specialties	South Charleston, WV	Imports of Finished Articles Containing Foreign Components.
96788	ConnectiCare Capital, LLC	Farmington, CT	Acquisition of Services from a Foreign Country.
96798	Avtech Tyee Inc	Everett, WA	Secondary Component Supplier.
96799	XPO Logistics Supply Chain, Inc	Everett, WA	Secondary Service Supplier.

TA-W No.	Workers' firm	Location	Reason(s)
96812	PlusOne Communications, LLC	Akron, OH	Customer Imports of Services.
96817	Gilster-Mary Lee Corporation	Wilson, AR	Customer Imports of Articles.
96820	Clarios, LLC	Canby, OR	Company Imports of Articles.
96824	Aetna Resources, LLC	Middletown, CT	Acquisition of Services from a Foreign Country.
96829	A Finkl and Sons	Chicago, IL	ITC Determination.
96834	H. W. Metal Products, Inc	Tualatin, OR	Secondary Component Supplier.
96838	Cleveland Cliffs Steel Corporation	Dearborn, MI	Customer Imports of Articles.
96838A	Cleveland-Cliffs Steel Corporation	Middletown, OH	Customer Imports of Articles.
96841	Earle M. Jorgensen Company	Bedford Heights, OH	Customer Imports of Articles.
96842	TTEC Healthcare Solutions, LLC	Weber City, VA	Customer Imports of Services.
96861	Woodgrain	Pilot Rock, OR	Secondary Component Supplier.
96864	Par Pharmaceutical, Inc	Chestnut Ridge, NY	Shift in Production to a Foreign Country.
96865	Par Pharmaceutical, Inc	Spring Valley, NY	Shift in Production to a Foreign Country.
96865A	Par Pharmaceutical, Inc	Spring Valley, NY	Shift in Services to a Foreign Country.
96867	Voestalpine Rotec LLC	Lafayette, IN	Shift in Production to a Foreign Country.
96877	Frontier Communications	Allen, TX	Acquisition of Services from a Foreign Country.
96885	Jama Software, Inc	Portland, OR	Acquisition of Articles from a Foreign Country.
96886	Digimarc Corporation	Beaverton, OR	Acquisition of Services from a Foreign Country.
96889	Global Safety Textiles LLC	South Hill, VA	Shift in Production to a Foreign Country.
96890	Teleflex	Maple Grove, MN	Shift in Production to a Foreign Country.
96891	The Travelers Indemnity Company	Hartford, CT	Acquisition of Services from a Foreign Country.
96893	ABB, Inc	Kings Mountain, NC	Shift in Production to a Foreign Country.
96896	TDK Ferrites Corporation	Shawnee, OK	Shift in Production to a Foreign Country.
96897	Liberty Mutual Group Inc	Columbia, MD	Acquisition of Services from a Foreign Country.
96898	Emerson Process Management Regulator Technologies Inc.	Walden, NY	Shift in Production to a Foreign Country.
96899	Masonite	Springfield, MO	Shift in Production to a Foreign Country.
96902	Terex USA, LLC	Oklahoma City, OK	Shift in Production to a Foreign Country.
96903	Hanesbrands, Inc	Clarksville, AR	Shift in Production to a Foreign Country.
96904	Smart Energy, Elster Water Co	Ocala, FL	Shift in Production to a Foreign Country.
96906	The Mosaic Company	Plymouth, MN	ITC Determination.
96907	Glimmer Technology, Inc	Eugene, OR	Acquisition of Services from a Foreign Country.
96909	CommScope	Greensboro, NC	Shift in Production to a Foreign Country.
96911	Sanofi US Services, Inc. and Genzyme Corporation.	Malvern, PA	Shift in Services to a Foreign Country.
96913	PPG Industries, Inc	Pittsburgh, PA	Shift in Services to a Foreign Country.
96919	Wells Fargo Bank N.A	Glen Allen, VA	Shift in Services to a Foreign Country.
96938	ST Genetics	Ithaca, NY	Secondary Service Supplier.
96944	Hufcor, Inc	Janesville, WI	Shift in Production to a Foreign Country.
96954	Heritage Sleep Products LLC	Orwell, OH	ITC Determination.
96958	Cooper Lighting LLC	Vicksburg, MS	Shift in Production to a Foreign Country.

### Negative Determinations for Trade Adjustment Assistance

The following investigations revealed that the eligibility criteria for TAA have not been met for the reason(s) specified.

TA-W No.	Workers' firm	Location	Reason(s)
94694A	Faneuil, Inc	Vienna, VA	No Shift in Services or Other Basis.
96585	Lear Corporation	Rochester Hills, MI	No Shift in Production or Other Basis.
96771	Albany Democrat Herald	Albany, OR	No Shift in Services or Other Basis.
96781	Ellwood Texas Forge, LP	Houston, TX	No Shift in Production or Other Basis.
96796	Orchid Orthopedic Solutions	Oregon City, OR	No Shift in Production or Other Basis.
96805	Tory Burch LLC	New York, NY	No Shift in Production or Other Basis.
96818	Waddell & Reed, Inc	Mission, KS	No Shift in Services or Other Basis.
96843	Sykes Enterprises, Incorporated	Boise, ID	No Shift in Services or Other Basis.
96873	TTEC Services Corp	Englewood, CO	No Shift in Services or Other Basis.
96905	Vervent Inc	Luverne, MN	No Shift in Services or Other Basis.
96908	Embraer Executive Jets Services, LLC, a subsidiary of Embraer Aircraft Holding, Inc.	Windsor Locks, CT	No Shift in Services or Other Basis.

**Determinations Terminating Investigations for Trade Adjustment Assistance**

The following investigations were terminated for the reason(s) specified.

TA-W No.	Workers' firm	Location	Reason(s)
96790 .....	Industrial Preventive Maintenance .....	Usk, WA .....	Existing Certification in Effect.
96874 .....	Daktronics Inc .....	Brookings, SD .....	Petitioner Requests Withdrawal.
96882 .....	Mosey Manufacturing Co. Inc .....	Richmond, IN .....	Existing Certification in Effect.
96963 .....	Liberty Mutual Group Inc .....	Dover, NH .....	Petitioner Requests Withdrawal.
96976 .....	Vector USA, Inc .....	Kentland, IN .....	Ongoing Investigation in Process.

**Affirmative Determinations Regarding Applications for Reconsideration**

The following Applications for Reconsideration have been received and granted. The group of workers or other persons showing an interest in the

proceedings may provide written submissions to show why the determination under reconsideration should or should not be modified. The submissions must be sent no later than ten days after publication in **Federal**

**Register** to the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N-5428, 200 Constitution Avenue NW, Washington, DC 20210.

TA-W No.	Workers' firm	Location	Reason(s)
96116 .....	Motorola Mobility LLC .....	Chicago, IL .....	Reconsideration Warranted.

**Revised Certifications of Eligibility**

The following revised certifications of eligibility to apply for TAA have been issued.

TA-W No.	Workers' firm	Location	Reason(s)
96026 .....	Ponderay Newsprint Company .....	Usk, WA .....	Worker Group Clarification.
96138 .....	Mosey Manufacturing Co. Inc .....	Richmond, IN .....	Worker Group Clarification.
96138A .....	Mosey Manufacturing Co. Inc .....	Richmond, IN .....	Worker Group Clarification.

I hereby certify that the aforementioned determinations were issued during the period of *June 1 2021 through June 30 2021*. These determinations are available on the Department's website <https://www.dol.gov/agencies/eta/tradeact> under the searchable listing determinations or by calling the Office of Trade Adjustment Assistance toll free at 888-365-6822.

Signed at Washington, DC, this 7th day of 2021.

**Hope D. Kinglock,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2021-16296 Filed 7-29-21; 8:45 am]

**BILLING CODE 4510-FN-P**

**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Investigations Regarding Eligibility To Apply for Trade Adjustment Assistance**

In accordance with the Trade Act of 1974 (19 U.S.C. 2271, *et seq.*) ("Act"), as amended, the Department of Labor herein presents notice of investigations regarding eligibility to apply for trade adjustment assistance under Chapter 2 of the Act ("TAA") for workers by (TA-W) started during the period of June 1 2021 through June 30 2021.

This notice includes instituted initial investigations following the receipt of validly filed petitions. Furthermore, if applicable, this notice includes investigations to reconsider negative

initial determinations or terminated initial investigations following the receipt of a valid application for reconsideration.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. Any persons showing a substantial interest in the subject matter of the investigations may request a public hearing provided such request is filed in writing with the Administrator, Office of Trade Adjustment Assistance, at the address shown below, no later than ten days after publication in the **Federal Register**.

**Initial Investigations**

The following are initial investigations commenced following the receipt of a properly filed petition.

TA-W No.	Workers' firm	Location	Investigation start date
96917 .....	Hanesbrands, Inc .....	Stuart, VA .....	6/1/2021
96918 .....	T.D.R.N. Inc .....	Spalding, MI .....	6/1/2021



TA-W No.	Workers' firm	Location	Investigation start date
96919	Wells Fargo Bank N.A	Glen Allen, VA	6/1/2021
96920	Stanley Furniture LLC	Martinsville, VA	6/1/2021
96921	Siemens Gamesa Renewable Energy	Hutchinson, KS	6/2/2021
96922	CSG Systems, Inc	Elkhorn, NE	6/2/2021
96923	OECO, LLC/Meggitt	Milwaukie, OR	6/2/2021
96924	Mondelez International Inc. Atlanta Bakery	Atlanta, GA	6/3/2021
96925	Albea Cosmetics America	Morristown, TN	6/3/2021
96926	Steel Parts Manufacturing Inc	Tipton, IN	6/3/2021
96927	Mitsubishi Aircraft Corporation America Inc	Renton, WA	6/3/2021
96928	Granges Americas, Inc	Newport, AR	6/4/2021
96929	Aventics Corporation	Lexington, KY	6/4/2021
96930	Aleris Rolled Products, Inc	Uhrichsville, OH	6/4/2021
96931	Worthington Industries	Worthington, OH	6/4/2021
96932	Dun and Bradstreet	Center Valley, PA	6/4/2021
96933	Eaton Corporation	Hastings, NE	6/7/2021
96934	Perform Group LLC	York, PA	6/7/2021
96935	Prudential	Dubuque, IA	6/7/2021
96936	North Texas PPE	Lewisville, TX	6/8/2021
96937	Prudential Financial	Hartford, CT	6/9/2021
96938	ST Genetics	Ithaca, NY	6/10/2021
96939	Ethan Allen Global, Inc	Danbury, CT	6/10/2021
96940	HCL America	Houston, TX	6/10/2021
96941	Aleris Rolled Products, Inc	Lincolnshire, IL	6/10/2021
96942	HERE Technologies	Chicago, IL	6/11/2021
96943	Molded Fiber Glass	Aberdeen, SD	6/11/2021
96944	Hufcor, Inc	Janesville, WI	6/11/2021
96945	Unum	Portland, ME	6/11/2021
96946	Clarios	Middletown, DE	6/11/2021
96947	Collins Aerospace	Jamestown, ND	6/14/2021
96948	Nabors Drilling USA LP	Williston, ND	6/14/2021
96949	Tecumseh Products Company LLC	Paris, TN	6/15/2021
96950	Dometic Corporation	Elkhart, IN	6/15/2021
96951	Premium PPE	Virginia Beach, VA	6/15/2021
96952	Solstice Sleep Products Inc	Columbus, OH	6/16/2021
96953	Serta Simmons Bedding	Monroe, OH	6/16/2021
96954	Heritage Sleep Products LLC	Orwell, OH	6/16/2021
96955	Genesis Alkali	Green River, WY	6/16/2021
96956	U.S. Bank National Association	Oshkosh, WI	6/16/2021
96957	Protective Health Gear	Paterson, NJ	6/16/2021
96958	Cooper Lighting LLC	Vicksburg, MS	6/17/2021
96959	Highly Marelli USA, Inc	Madison, MS	6/17/2021
96960	Genlyte Thomas Group LLC/Day—Brite/Signify	Tupelo, MS	6/17/2021
96961	Mississippi Silicon LLC	Burnsville, MS	6/17/2021
96962	NHI (New Hampshire Industries)	Claremont, NH	6/17/2021
96963	Liberty Mutual Group Inc	Dover, NH	6/17/2021
96964	GE Aviation	Hooksett, NH	6/17/2021
96965	ON Semiconductor	Gresham, OR	6/21/2021
96966	D6 Inc	Portland, OR	6/21/2021
96967	Data Axle (formerly Infogroup)	Papillion, NE	6/21/2021
96968	Jacobs Engineering Group, Inc	Englewood, CO	6/21/2021
96969	Anthem, Inc	Columbus, OH	6/21/2021
96970	Texarkana Aluminum/TCI	Texarkana, TX	6/21/2021
96971	Vector USA, Inc	Kentland, IN	6/21/2021
96972	Golden Aluminum, Inc	Fort Lupton, CO	6/21/2021
96973	Ashley Furniture Industries, Inc	Saltville, MS	6/21/2021
96974	Ashley Furniture Industries, Inc	Verona, MS	6/21/2021
96975	Capital Bedding Inc	Verona, MS	6/21/2021
96976	Vector USA, Inc	Kentland, IN	6/21/2021
96977	Rest Assured Mattress Co. Inc	Rochester, MN	6/21/2021
96978	Technicolor USA Inc. (formerly Thomson Multimedia)	Culver City, CA	6/21/2021
96979	HP Inc. Puerto Rico	Aguadilla Pueblo, PR	6/22/2021
96980	Mars	Hackettstown, NJ	6/22/2021
96981	Leadec Corporation	Wentzville, MO	6/23/2021
96982	Pendleton Woolen Mills, Inc	Pendleton, OR	6/23/2021
96983	HP Inc. Puerto Rico	Aguadilla, PR	6/23/2021
96984	The Mosaic Company	Lithia, FL	6/23/2021
96985	Leggett & Platt, Inc	Tupelo, MS	6/23/2021
96986	Serta Simmons Bedding LLC	Kapolei, HI	6/23/2021
96987	Champion Technologies, Inc	Eugene, OR	6/23/2021
96988	FXI, Inc	Portland, OR	6/23/2021
96989	GE Aviation	Newark, DE	6/24/2021
96990	HollyFrontier Cheyenne Refining LLC	Cheyenne, WY	6/24/2021
96991	Mattress Mill	Bozeman, MT	6/24/2021

TA-W No.	Workers' firm	Location	Investigation start date
96992	Elite Comfort Solutions, LLC	Verona, MS	6/24/2021
96993	Innocor Inc	Baldwyn, MS	6/24/2021
96994	AT&T Services, Inc	Oakton, VA	6/24/2021
96995	Baker Hughes, Inc	Prudhoe Bay, AK	6/24/2021
96996	Lear Corporation	Morristown, TN	6/24/2021
96997	Arconic Corporation	Riverdale, IA	6/24/2021
96998	Clearwater Paper Company	Neenah, WI	6/24/2021
96999	Old West Mattress Company LLC	Aurora, CO	6/24/2021
97001	Mylan Technologies, Inc	Swanton, VT	6/24/2021
97002	Arconic Mill Products	Elmendorf, TX	6/25/2021
97003	Microsoft Corporation	Fargo, ND	6/25/2021
97004	Doyon Drilling, Inc	Anchorage, AK	6/25/2021
97005	ExxonMobil Alaska	Anchorage, AK	6/25/2021
97006	Halliburton Energy Services HESI	Prudhoe Bay, AK	6/25/2021
97007	T-Mobile	Honolulu, HI	6/25/2021
97008	Salt Lake Mattress and Manufacturing Company DBA Serta Restonic, Sunset Apparel, Sunset Manuf- -cture.	Salt Lake City, UT	6/25/2021
97009	Purple Innovations, Inc	Lehi, UT	6/25/2021
97010	Comfort Revolution, LLC	Belmont, MS	6/25/2021
97011	Biodex Medical Systems	Shirley, NY	6/25/2021
97012	Symbol Mattress	Olive Branch, MS	6/25/2021
97013	Hilcorp Alaska LLC	Prudhoe Bay, AK	6/25/2021
97014	Serta Simmons Bedding LLC	Aurora, CO	6/25/2021
97015	Marathon Petroleum Corporation	Kenai, AK	6/25/2021
97016	National Life Insurance Company	Montpelier, VT	6/25/2021
97017	Peak Oilfield Services Company	Prudhoe Bay, AK	6/25/2021
97018	Schlumberger Technology Corporation	Prudhoe Bay, AK	6/28/2021
97019	Tenneco Inc	Jeffersonville, IN	6/28/2021
97020	DemeTech Corporation	Miami Lakes, FL	6/28/2021
97021	Microchip Technology, Inc	Gresham, OR	6/28/2021
97022	ConocoPhillips Alaska	Anchorage, AK	6/28/2021
97023	Berg Pipe	Panama City, FL	6/28/2021
97024	Corsicana Bedding, LLC	Aurora, IL	6/28/2021
97025	Petro Star, Inc	North Pole, AK	6/29/2021
97026	Keurig Green Mountain, Inc	Essex Junction, VT	6/29/2021
97027	McCall Pattern Company	Manhattan, KS	6/29/2021
97028	A-dec, Inc	Newberg, OR	6/29/2021
97029	Eastern Sleep Products Company (Symbol Mattress)	North Chesterfield, VA	6/29/2021
97030	Liberty Mutual Group, Inc	Dover, NH	6/29/2021
97031	McKesson Corporation	Minneapolis, MN	6/29/2021
97032	ON Semiconductor	South Portland, ME	6/29/2021
97033	IKO Wilmington	Wilmington, DE	6/29/2021
97034	Serta Simmons Bedding, LLC	Riviera Beach, FL	6/29/2021
97035	Solenis LLC	Wilmington, DE	6/29/2021
97036	Anthem Companies Inc	Richmond, VA	6/29/2021
97037	Anthem Companies Inc	Norfolk, VA	6/29/2021
97038	Estee Bedding Company	Chicago, IL	6/29/2021
97039	Tempur Sealy International, Inc. (Mattress Firm)	Plainfield, IL	6/29/2021
97040	Cummins Inc	Memphis, TN	6/29/2021
97041	Innocor, Inc	West Chicago, IL	6/29/2021
97042	Anthem Companies Inc	Denver, CO	6/29/2021
97043	Love's Bakery, Inc	Honolulu, HI	6/29/2021
97044	Sonwil Distribution Center, Inc	Orchard Park, NY	6/30/2021
97045	Durr Universal, Inc	Muscoda, WI	6/30/2021
97046	QVC, Inc	West Chester, PA	6/30/2021
97047	Bombardier Mass Transit Corporation	Plattsburgh, NY	6/30/2021
97048	3P Processing	Wichita, KS	6/30/2021
97049	GE Aviation	Rutland, VT	6/30/2021
97050	Honeywell International	Smithfield, RI	6/30/2021
97051	Hess Corporation, Bakken Operations	Minot, ND	6/30/2021
97052	Briggs & Stratton Corporation	Wauwatosa, WI	6/30/2021
97053	Palisades Nuclear Power Plant	Covert, MI	6/30/2021
97054	The Bellingham Herald Publishing LLC	Bellingham, WA	6/30/2021
97055	Collins Aerospace	Everett, WA	6/30/2021
97056	Cognizant Technology Solutions Corporation	Earth City, MO	6/30/2021
97057	WindKits LLC	Allentown, PA	6/30/2021
97058	Harley Davidson Assembly Plant	Kansas City, MO	6/30/2021
97059	Top Master dba Premier Surfaces	Riverside, MO	6/30/2021
97060	Enervest Ltd	Houston, TX	6/30/2021
97061	Katerra, Inc	Centennial, CO	6/30/2021

**Reconsideration Investigations**

The following are reconsideration investigations following the receipt of a

properly filed application for reconsideration.

TA-W No.	Workers' firm	Location	Investigation start date
96803 .....	Wabtec Corporation .....	Wilmerding, PA .....	6/10/2021

A record of these investigations and petitions filed are available, subject to redaction, on the Department's website <https://www.dol.gov/agencies/eta/tradeact> under the searchable listing or by calling the Office of Trade Adjustment Assistance toll free at 888-365-6822.

Signed at Washington, DC, this 7th day of 2021.

**Hope D. Kinglock,**

*Certifying Officer, Office of Trade Adjustment Assistance.*

[FR Doc. 2021-16297 Filed 7-29-21; 8:45 am]

**BILLING CODE 4510-FN-P**

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## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (21-047)]

### Notice of Intent To Grant a Partially Exclusive License

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of intent to grant a partially exclusive patent license.

**SUMMARY:** NASA hereby gives notice of its intent to grant a partially exclusive patent license in the United States to practice the invention described and claimed in U.S. Patent Application Number 16/503,663 titled "Bistable Collapsible Tubular Mast Boom" to MMA Design, LLC, having its principal place of business in Louisville, CO. The fields of use shall mean the production and supply of deployable space structures or structural components for deployable space structures. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

**DATES:** The prospective partially exclusive license may be granted unless NASA receives written objections including evidence and argument, no later than August 16, 2021 that establish that the grant of the license would not be consistent with the requirements regarding the licensing of federally owned inventions as set forth in the Bayh-Dole Act and implementing

regulations. Competing applications completed and received by NASA no later than August 16, 2021 will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act.

**ADDRESSES:** Objections relating to the prospective license may be submitted to Patent Counsel, Office of the General Counsel, NASA Langley Research Center, Phone (757) 864-3221. Email: [robin.w.edwards@nasa.gov](mailto:robin.w.edwards@nasa.gov).

**SUPPLEMENTARY INFORMATION:** This notice of intent to grant a partially exclusive patent license is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective partially exclusive license will comply with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Information about other NASA inventions available for licensing can be found online at <http://technology.nasa.gov>.

**Helen M. Galus,**

*Agency Counsel for Intellectual Property.*

[FR Doc. 2021-16335 Filed 7-29-21; 8:45 am]

**BILLING CODE 7510-13-P**

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-21-0009; NARA-2021-036]

### Records Schedules; Availability and Request for Comments

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice of availability of proposed records schedules; request for comments.

**SUMMARY:** The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition

authority (records schedules). We publish notice in the **Federal Register** and on [regulations.gov](https://www.regulations.gov) for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

**DATES:** NARA must receive comments by September 13, 2021.

**ADDRESSES:** You may submit comments by the following method. You must cite the control number, which appears on the records schedule in parentheses after the name of the agency that submitted the schedule.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Due to COVID-19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via [regulations.gov](https://www.regulations.gov), you may contact [request.schedule@nara.gov](mailto:request.schedule@nara.gov) for instructions on submitting your comment.

**FOR FURTHER INFORMATION CONTACT:** Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at [regulation\\_comments@nara.gov](mailto:regulation_comments@nara.gov). For information about records schedules, contact Records Management Operations by email at [request.schedule@nara.gov](mailto:request.schedule@nara.gov), by mail at the address above, or by phone at 301-837-1799.

### SUPPLEMENTARY INFORMATION:

#### Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal

memoranda to the *regulations.gov* docket for this notice as “other” documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact [request.schedule@nara.gov](mailto:request.schedule@nara.gov) for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on *regulations.gov* a “Consolidated Reply” summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at <https://www.archives.gov/records-mgmt/rcs>, after the Archivist approves them. The RCS contains all schedules approved since 1973.

### Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA’s approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of

continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records’ administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government’s activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist’s consideration process.

### Schedules Pending

1. Department of Health and Human Services, Administration for Children and Families, Records of the National Responsible Fatherhood Clearinghouse website (DAA–0292–2019–0006).

2. Department of Health and Human Services, Administration for Children and Families, Records of the NRFC Virtual Collaborative Community website (DAA–0292–2019–0010).

3. Department of Health and Human Services, Agency for Healthcare Research and Quality, CAHPS and SOPs Surveys (DAA–0510–2019–0002).

4. Department of Transportation, Federal Aviation Administration, Flight Operation Management System-Flight Inspection Airborne Processor Application (DAA–0237–2020–0008).

5. Department of Transportation, Federal Aviation Administration, Aviation Environmental Design Tool (DAA–0237–2020–0023).

6. Department of Transportation, Federal Aviation Administration, Flight Service for the 21st Century (DAA–0237–2020–0027).

7. Department of Transportation, Federal Aviation Administration, Flight Activity and Crew Tracking System (DAA–0237–2020–0029).

8. Department of Transportation, Federal Aviation Administration, Flight Program Aircraft Management System (DAA–0237–2021–0005).

9. Department of Transportation, Federal Aviation Administration, Compliance Actions (DAA–0237–2021–0010).

10. Department of Transportation, Federal Aviation Administration, Air

Traffic Organization Voluntary Safety Reporting Programs (DAA–0237–2021–0019).

11. Consumer Financial Protection Bureau, Office of Consumer Response, Consumer Response System 2.0 Records (DAA–0587–2021–0002).

12. Court Services and Offender Supervision Agency, Pretrial Service Agency, Pretrial Automated Records and Information System (DAA–0562–2021–0001).

13. Federal Communications Commission, Media Bureau, Transaction Documents (DAA–0173–2020–0005).

14. National Security Commission on Artificial Intelligence, Agency-wide, Commission Records (DAA–0220–2021–0003).

15. Peace Corps, Agency-wide, Fingerprint Cards (DAA–0490–2021–0001).

**Laurence Brewer,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2021–16210 Filed 7–29–21; 8:45 am]

BILLING CODE 7515–01–P

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts

#### Subject 60-Day Notice for the “Participant Outcomes Survey for the Creative Forces®: NEA Military Healing Arts Network Community Arts Engagement Subgranting Program;” Proposed Collection; Comment Request

**AGENCY:** National Endowment for the Arts, National Foundation on the Arts and the Humanities.

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995. This program helps to ensure that requested data is provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents is properly assessed. Currently, the National Endowment for the Arts is soliciting comments concerning the proposed information

collection through a Participant Outcomes Survey for individuals who participate in community arts programs funded by the Creative Forces®: NEA Military Healing Arts Network Community Arts Engagement Subgranting Program. A copy of the information collection request can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the address section below within 60 days from the date of this publication in the **Federal Register**.

**ADDRESSES:** Send comments to Sunil Iyengar, National Endowment for the Arts, via email to [research@arts.gov](mailto:research@arts.gov).

**SUPPLEMENTARY INFORMATION:** The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: July 27, 2021.

**Meghan Jugder,**

*Support Services Specialist, Office of Administrative Services & Contracts, National Endowment for the Arts.*

[FR Doc. 2021-16275 Filed 7-29-21; 8:45 am]

**BILLING CODE 7537-01-P**

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## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings

The National Science Board's Committee on Oversight hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business as follows:

**TIME AND DATE:** Tuesday, July 27, 2021, from 2:00–3:00 p.m. EDT.

**PLACE:** This meeting will be held by teleconference through the National Science Foundation.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** The agenda of the teleconference is: Chair's opening remarks; Committee review and discussion of draft Merit Review Digest, Committee of Visitors (COV) summaries, and potential topics for NSB's Overview; discussion of goals and metrics that could help NSF and NSB assess progress in Broader Impact areas; and prepare for presentation by Dr. Shirley Malcom, Director of AAAS's SEA Change program, and former NSB member.

**CONTACT PERSON FOR MORE INFORMATION:** Point of contact for this meeting is: Ann Bushmiller, [abushmil@nsf.gov](mailto:abushmil@nsf.gov), 703/292-7000. To listen to this teleconference, members of the public must send an email to [nationalsciencebrd@nsf.gov](mailto:nationalsciencebrd@nsf.gov) at least 24 hours prior to the teleconference. The National Science Board Office will send requesters a toll-free dial-in number. Meeting information and updates may be found at the National Science Board website at [www.nsf.gov/nsb](http://www.nsf.gov/nsb).

*Authority:* National Science Foundation Act, as amended (42 U.S.C. 1862n-5), and the Government in the Sunshine Act (5 U.S.C. 552b).

**Chris Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2021-15804 Filed 7-28-21; 4:15 pm]

**BILLING CODE 7555-01-P**

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## NUCLEAR REGULATORY COMMISSION

[NRC-2021-0001]

### Sunshine Act Meetings

**TIME AND DATE:** Weeks of August 2, 9, 16, 23, 30, September 6, 2021.

**PLACE:** Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

**STATUS:** Public.

**MATTERS TO BE CONSIDERED:**

#### Week of August 2, 2021

There are no meetings scheduled for the week of August 2, 2021.

#### Week of August 9, 2021—Tentative

There are no meetings scheduled for the week of August 9, 2021.

#### Week of August 16, 2021—Tentative

There are no meetings scheduled for the week of August 16, 2021.

#### Week of August 23, 2021—Tentative

There are no meetings scheduled for the week of August 23, 2021.

#### Week of August 30, 2021—Tentative

There are no meetings scheduled for the week of August 30, 2021.

#### Week of September 6, 2021—Tentative

There are no meetings scheduled for the week of September 6, 2021.

**CONTACT PERSON FOR MORE INFORMATION:** For more information or to verify the status of meetings, contact Wesley Held at 301-287-3591 or via email at [Wesley.Held@nrc.gov](mailto:Wesley.Held@nrc.gov). The schedule for Commission meetings is subject to change on short notice.

The NRC Commission Meeting Schedule can be found on the internet at: <https://www.nrc.gov/public-involve/public-meetings/schedule.html>.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (e.g., braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301-287-0745, by videophone at 240-428-3217, or by email at [Anne.Silk@nrc.gov](mailto:Anne.Silk@nrc.gov). Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301-415-1969, or by email at [Wendy.Moore@nrc.gov](mailto:Wendy.Moore@nrc.gov).

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: July 28, 2021.

For the Nuclear Regulatory Commission.

**Wesley W. Held,**

*Policy Coordinator, Office of the Secretary.*

[FR Doc. 2021-16426 Filed 7-28-21; 4:15 pm]

**BILLING CODE 7590-01-P**

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## POSTAL REGULATORY COMMISSION

[Docket No. N2021-2; Presiding Officer's Ruling No. 3]

### Service Standard Changes

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Notice.

**SUMMARY:** The Commission is providing notice of a hearing on the Postal

Service’s direct case in this proceeding. This notice informs the public of the hearing dates.

**DATES:** *Hearing dates:* August 11–13, 2021, Virtual Online.

**ADDRESSES:** For additional information, Presiding Officer’s Ruling No. 3 can be accessed electronically through the Commission’s website at <https://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202–789–6820.

**SUPPLEMENTARY INFORMATION:** On June 17, 2021, the Postal Service filed a request for an advisory opinion regarding planned changes to the service standards for First-Class Package Service.<sup>1</sup> The Commission’s procedural schedule reserved August 4–6, 2021 as hearing dates, assuming no rebuttal case would be filed.<sup>2</sup> The Commission further provided that if any party filed a notice of intent to file a rebuttal case, then the new reserved hearing dates would be August 11–13, 2021. Order No. 5933 at 3.

On July 23, 2021, the American Postal Workers Union filed a notice of its intent to file rebuttal testimony.<sup>3</sup> Due to the filing of rebuttal testimony, the hearings on the Postal Service’s direct case will be a week later than originally scheduled, and will begin August 11, 2021.<sup>4</sup> The prehearing dates set in Order No. 5933 are now vacated due to the new hearing schedule.

Parties must now file any notices of intent to conduct oral cross-examination by August 4, 2021. The notice must include an estimate of the amount of time requested for each witness.

In addition, parties may request to present oral argument at the hearing. Accordingly, any request to present oral argument at the hearing must be filed by August 4, 2021.

In lieu of submitting hard copy documents to the Commission as contemplated by 39 CFR 3020.122(e)(2), each party shall file a single document titled “Notice of Designations” containing a list for each witness that identifies the materials to be designated (without the responses). The filing party shall arrange its list for each witness in alphabetical order by the name of the party propounding the interrogatory followed by numerical order of the interrogatory. For example:

**Designations for Witness One**

- ABC/USPS–T1–1
- ABC/USPS–T1–3
- DEF/USPS–T1–1
- GHI/USPS–T1–3
- JKL/USPS–T1–2

**Designations for Witness Two**

- DEF/USPS–T2–4
- GHI/USPS–T2–2

Each party shall file its Notice of Designations no later than August 5, 2021.

The Postal Service shall, on August 6, 2021, file a “Notice of Designated Materials” for each witness it has sponsored, which identifies any corrections to the testimony or designated materials. Attached to that notice shall be a single Adobe PDF file that contains, in order: The witness’s testimony (with any corrections highlighted); identification of any library references sponsored by the witness; and all the witness’s designated written responses (with any corrections highlighted) in alphabetical order by party name and then numerical order of the request.

Rebuttal testimony must be filed by August 4, 2021. Parties who intend to conduct oral cross-examination of rebuttal witnesses shall file a Notice of Intent to Conduct Oral Rebuttal Cross-

Examination not later than August 5, 2021, which shall include an estimate of the time required for each witness.<sup>5</sup> Rebuttal witnesses, if called for oral cross-examination, shall appear immediately following the oral cross-examination of the Postal Service’s direct case. Written discovery (cross-examination) may be served on the parties offering rebuttal testimony immediately after filing of rebuttal testimony, and must be filed no later than August 9, 2021. Responses to those discovery requests are due no later than August 16, 2021. Parties must file a Notice of Designations, consistent with the procedure described above, should they wish to designate rebuttal case discovery responses for the record, no later than August 17, 2021. The Presiding Officer intends to issue a further ruling admitting designated materials into evidence on August 18, 2021.

Initial Briefs or Statements of Position are now due no later than August 20, 2021. Reply Briefs may be filed no later than August 27, 2021.

To facilitate the orderly proceeding of the hearing, the Presiding Officer intends to update the schedule for the hearing dates, including the order and timing of the witnesses’ appearances, on August 9, 2021.

**Ruling**

*It is ordered:*

1. The modified procedural schedule for this proceeding is set forth below the signature of this Ruling.
2. The Secretary shall arrange for publication of this Ruling in the **Federal Register**.

**Erica A. Barker,**  
*Secretary.*

**PROCEDURAL SCHEDULE FOR DOCKET NO. N2021–2**

[Modified by the Presiding Officer, July 26, 2021]

**Deadlines in Preparation for Hearing:**

Filing of Notice Confirming Intent to Conduct Oral Cross-Examination .....	August 4, 2021.
Filing of Request to Present Oral Argument .....	August 4, 2021.
Filing of Notice of Designations .....	August 5, 2021.
Filing of Notices of Designated Materials .....	August 6, 2021.

**Rebuttal Case Deadlines:**

Filing of Rebuttal Cases .....	August 4, 2021.
Filing of Notice Confirming Intent to Conduct Oral Rebuttal Cross-Examination .....	August 5, 2021.
Close of Discovery on Rebuttal Cases .....	August 9, 2021.

<sup>1</sup> United States Postal Service Request for an Advisory Opinion on Changes in the Nature of Postal Services, June 17, 2021 (Request).

<sup>2</sup> Order Modifying Procedural Schedule, July 8, 2021, at 3 (Order No. 5933) (modifying Notice and Order on the Postal Service’s Request for an Advisory Opinion on Changes in the Nature of Postal Services, June 21, 2021 (Order No. 5920)).

<sup>3</sup> American Postal Workers Union, AFL–CIO Notice of Intent to File Rebuttal Testimony, July 23, 2021.

<sup>4</sup> These dates assume that there is no surrebuttal testimony, which the Postal Service would have to request via motion and bear the burden of demonstrating exceptional circumstances that would warrant granting the motion. See 39 CFR 3020.121(b).

<sup>5</sup> Consistent with 39 CFR 3020.122(e)(2), written cross-examination will be utilized as a substitute for oral cross-examination whenever possible. Given the extremely tight procedural schedule required in this case to meet the issuance target for the Commission’s Advisory Opinion, parties are strongly encouraged to limit the use of oral cross-examination unless designated written discovery responses are likely to be inadequate.

## PROCEDURAL SCHEDULE FOR DOCKET NO. N2021-2—Continued

[Modified by the Presiding Officer, July 26, 2021]

Rebuttal Cases Discovery Responses Due .....	August 16, 2021.
Filing of Notice of Designations on Rebuttal Discovery Responses .....	August 17, 2021.
Surrebuttal Case Deadlines (if applicable):	
Filing of Motion for Leave to File Surrebuttal Case .....	August 6, 2021.
Filing of Response to Motion for Leave to File Surrebuttal Case .....	August 10, 2021.
Filing of Surrebuttal Case (if authorized) .....	August 11, 2021.
Hearing Dates:	
Hearings (with Rebuttal Case, but no authorized Surrebuttal Case) .....	August 11–13, 2021.
Hearings (with Rebuttal Case and authorized Surrebuttal Case) .....	August 18–20, 2021.
Briefing Deadlines:	
Filing of Initial Briefs .....	August 20, 2021.
Filing of Reply Briefs .....	August 27, 2021.
Advisory Opinion Deadline:	
Filing of Advisory Opinion (absent determination of good cause for extension) .....	September 29, 2021.

[FR Doc. 2021-16212 Filed 7-29-21; 8:45 am]

BILLING CODE 7710-FW-P

**POSTAL REGULATORY COMMISSION**

[Docket Nos. MC2021-116 and CP2021-118]

**New Postal Products****AGENCY:** Postal Regulatory Commission.**ACTION:** Notice.

**SUMMARY:** The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

**DATES:** *Comments are due:* August 2, 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:****Table of Contents**

- I. Introduction
- II. Docketed Proceeding(s)

**I. Introduction**

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market

dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<sup>1</sup>

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):* MC2021-116 and CP2021-118; *Filing Title:* USPS Request to Add Priority Mail Contract 714 to

<sup>1</sup> 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).

Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* July 23, 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:* August 2, 2021.

This Notice will be published in the **Federal Register**.

**Erica A. Barker,**  
*Secretary.*

[FR Doc. 2021-16213 Filed 7-29-21; 8:45 am]

BILLING CODE 7710-FW-P

**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-92494; File No. SR-ISE-2021-17]

**Self-Regulatory Organizations; Nasdaq ISE, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Opening Process**

July 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 19, 2021 Nasdaq ISE, LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.



## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend ISE Options 3, Section 8, "Options Opening Process."

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/ise/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

ISE proposes to amend Options 3, Section 8, "Options Opening Process." Specifically, the Exchange proposes to amend the definition of Valid Width Quote at Options 3, Section 8(a)(8).

ISE's Opening Process for an option series is conducted pursuant to Options 3, Section 8 paragraphs (f)–(j), on or after 9:30 a.m. Eastern Time if the ABBO, if any, is not crossed and the System has received, within two minutes<sup>3</sup> of the opening trade or quote on the market for the underlying security,<sup>4</sup> a Valid Width Quote. The System will accept a Primary Market Maker's Valid Width Quote or the Valid Width Quote of at least one Competitive Market Maker.<sup>5</sup> Today, ISE requires a Primary Market Maker to enter a Valid Width Quote in 90% of their assigned series, not later than one minute

<sup>3</sup> The Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website.

<sup>4</sup> In the case of index options, the timing is within two minutes of the receipt of the opening price in the underlying index or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options. In both cases the Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website.

<sup>5</sup> The Exchange proposes an amendment within Options 3, Section 8(c)(1)(B) as described below.

following the dissemination of a quote or trade by the market for the underlying security.<sup>6</sup> PMMs must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security.<sup>7</sup> In either case, the Primary Market Maker or Competitive Market Maker must enter a Valid Width Quote to open an options series. ISE Options 3, Section 8(a)(8) defines a Valid Width Quote as follows:

A "Valid Width Quote" is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: Differentials shall be no more than \$.25 between the bid and offer for each options contract for which the bid is less than \$2, no more than \$.40 where the bid is at least \$2 but does not exceed \$5, no more than \$.50 where the bid is more than \$5 but does not exceed \$10, no more than \$.80 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is \$20 or greater, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

The Exchange proposes to amend a Valid Width Quote to instead provide:

A "Valid Width Quote" is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: Differentials shall be no more than \$5, provided that, in the case of equity options, the bid/ask differential stated above shall not apply

<sup>6</sup> In the case of index options, a Primary Market Maker must enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the receipt of the opening price in the underlying index. The PMM assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. See Options 3, Section 8(c)(3). The Exchange proposes to make a technical amendment to Options 3, Section 8(c)(3) which is described below.

<sup>7</sup> In the case of index options, Primary Market Makers must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening. See Options 3, Section 8(c)(3).

to in-the-money series where the market for the underlying security is wider than the differential set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options. Such differences will be posted by the Exchange on its website.

This proposed language is similar to Nasdaq BX, Inc. ("BX").<sup>8</sup> The Exchange proposes to widen the current bid/ask differentials for several reasons.

First, the proposal would conform the Valid Width Quote definition of ISE to that of BX. BX refers to a difference not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending ISE's Valid Width Quote, the Exchange notes that the \$5 difference is akin to ISE's intra-day requirement within ISE Options 2, Section 4(b)(4).<sup>9</sup>

Second, the proposed differential would simplify the differential for Primary Market Makers, who would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series. Widening the differentials would allow Primary Market Makers, and Competitive Market Makers that elect to quote during the Opening Process, an ability to quote wider during the Opening Process when an underlying is

<sup>8</sup> BX Options 3, Section 8(a)(9) provides, "A 'Valid Width Quote' is a two-sided electronic quotation, submitted by a Market Maker, quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options." See also Securities Exchange Act Release No. 89731 (September 1, 2020), 85 FR 55524 (September 8, 2020) (SR-BX-2020-016) (Order Approving Proposed Rule Change To Amend BX's Opening Process in Connection With a Technology Migration).

<sup>9</sup> ISE Options 2, Section 4(b)(4) provides, ". . . To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. The Exchange may establish differences other than the above for one or more series or classes of options." Intra-day, ISE also distinguishes in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security.

volatile. Today, pursuant to Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options. With this proposal, the Exchange is not amending its ability to continue to establish differences for one or more series or classes of options, rather the Exchange may continue to set other requirements pursuant to current ISE Options 3, Section 8(a)(8). Today, the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8),<sup>10</sup> they are:

Bid price low end of	Bid price high end of	Maximum bid/ask differential
\$0.00	\$1.99	\$0.75
2.00	4.99	1.20
5.00	9.99	1.50
10.00	19.99	2.40
20.00	20.00+	3.00

Also, options with an expiration more than nine months away continue to be permitted a Valid Width Quote bid/ask differential of \$5.00. The Exchange will continue to utilize the differentials currently posted on its website until such time as it provides notice to Members of a change.

Third, the Exchange proposes to add rule text to state that such differences will be posted by the Exchange on its website.<sup>11</sup> Posting the current differentials on its website would allow Members to easily refer to the quoting obligations for the Opening Process.

#### Technical Amendment

The Exchange proposes to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B). The Exchange also proposes to remove two incorrect citations to Options 3, Section 8(c)(1)(C). The "C" was removed in a prior rule change.<sup>12</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal to establish a \$5 difference is consistent with Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirements that the rules of an

exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed \$5 difference for the Valid Width Quote is more appropriate because it reflects the Exchange's experience in administering the rule and would continue to give Market Makers flexibility including during the Opening Process. The Exchange notes that the current standard is not being applied as the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8).<sup>16</sup> Widening the Valid Width Quote requirement would provide Primary Market Makers, and Competitive Market Makers that elect to quote during the Opening Process, additional flexibility when submitting Valid Width Quotes during the Opening Process thereby allowing these Market Makers the ability to quote wider in instances where the Exchange has not established Valid Width Quote differentials which differ from those in the rule because volatile market conditions exist or there is news regarding an underlying security which may impact pricing. Primary Market Makers are integral to the Exchange's Opening Process as ISE is dependent on receiving a Valid Width Quote to open an options series. With this proposal, Primary Market Makers would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series.<sup>17</sup>

The proposal would conform the Valid Width Quote definition of ISE to that of BX.<sup>18</sup> BX refers to a difference

not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending ISE's Valid Width Quote, the Exchange notes that the \$5 difference is akin to ISE's intra-day requirement within ISE Options 2, Section 4(b)(4).<sup>19</sup> Also, today, MIAX and Emerald require market makers to enter a valid width NBBO with a difference of no more than \$5 between the bid and offer.<sup>20</sup>

Not all options markets have bid/ask differentials. In 2019, Cboe removed its quote width requirements while citing corresponding rules of its affiliated exchanges.<sup>21</sup> Cboe noted in the 2019 Rule Change that the current quote width requirement at the time for generally all classes was \$10, however, its Market-Makers consistently maintained two-sided quotes that were much tighter than the required width. Cboe opined that, even if markets experienced periods of stress or volatility, they remained obligated to maintain two sided markets and engage in a course of dealings that must be reasonably calculated to contribute to the maintenance of a fair and orderly market, which includes refraining from making bids or offers that are inconsistent with such course of dealings and updating quotations in response to changed market conditions.<sup>22</sup> Cboe noted that it did not believe that continuing to provide for a quote width requirement was necessary nor would it impact the maintenance of fair and orderly markets because Market-Makers already quoted at a bid/ask spread much narrower than the requirements and were required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.<sup>23</sup>

Unlike Cboe, ISE does require its Market Makers to quote both during the Opening Process and intra-day within certain established bid/ask differentials.

<sup>19</sup> See *supra* note 9.

<sup>20</sup> MIAX and Emerald require Market Makers to submit a valid width NBBO in the opening where the bid and offer of the NBBO differ no more than differences outlined in MIAX and Emerald Rule 603(b)(4)(i). MIAX and Emerald Rule 603(b)(4)(i) provides that bidding and offering so as to create differences of no more than \$5 between the bid and offer. Rule 603(b)(4)(ii) provides MIAX and Emerald may establish differences other than the bid/ask differentials described in (i) above for one or more option series or classes, respectively. See MIAX and Emerald Rules 503.

<sup>21</sup> See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-Cboe-2019-059) ("2019 Rule Change").

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>10</sup> See <https://www.nasdaq.com/docs/2021/03/22/ISESystemSettings.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> See Securities Exchange Act Release No. 88729 (April 22, 2020), 85 FR 23573 (April 28, 2020) (SR-ISE-2020-15) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend ISE Rules at Options 3, Section 8, Titled Options Opening Process).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *Id.*

<sup>16</sup> See *supra* note 10.

<sup>17</sup> Today, ISE, Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX"), Nasdaq Phlx LLC ("Phlx"), Miami International Securities Exchange, LLC ("MIAX") and MIAX Emerald, LLC ("Emerald") and are the only options markets that require a Primary Market Maker, or Lead Market Maker in the case of Phlx, to submit a quote to open an options series.

<sup>18</sup> See *supra* note 8.

The Exchange notes that widening its Valid Width Quote differential during the Opening Process will not impact the maintenance of fair and orderly markets because Market Makers on ISE, unlike other markets that do not require quoting during the Opening Process, will continue to require that its Market Makers provide Valid Width Quotes during the Opening Process, thereby ensuring liquidity. Also, Market Makers may quote tighter than the defined Valid Width Quote differential. Finally, similar to Cboe's argument in the 2019 Rule Change, Market Makers are required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.

Today, the Exchange has discretion to set other differentials,<sup>24</sup> similar to MIAX and Emerald.<sup>25</sup> The Exchange currently is utilizing that discretion to set different bid/ask differentials based on its observation of market openings. Currently, the Exchange requires Market Makers to submit Valid Width Quotes which are tighter than the proposed \$5 difference.

The Exchange's robust Opening Process seeks to encourage quality markets. As noted herein, unlike a majority of options markets,<sup>26</sup> it requires Primary Market Makers to quote during the Opening Process to ensure liquidity as well as efficient Opening Process where options series are opened quickly and at fair prices.

The proposal to add rule text to state that such differences will be posted by the Exchange on its website<sup>27</sup> would allow Members to easily refer to the quoting obligations for the Opening Process.

#### Technical Amendment

The Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to require Primary

Market Makers and Competitive Market Makers to bid and/or offer an option series with differences of no more than \$5 for options on equities and index options does not impose an undue burden on competition. All Primary Market Makers, and Competitive Market Makers who elect to quote during the Opening Process, would be subject to the same requirement to submit a Valid Width Quote when submitting quotes during the Opening Process. Differentials would be available on the Exchange's website and therefore transparent, allowing Members to easily refer to the quoting obligations for the Opening Process. Finally, the proposal would also align quoting requirements more closely to intra-day requirements within ISE Options 2, Section 4(b)(4).

With respect to inter-market competition, the Exchange notes that most options markets do not require market makers to quote during the opening.<sup>28</sup> The Exchange notes that MIAX and Emerald have quoting requirements in the opening similar to the differential proposed herein. Also, GEMX, MRX and Phlx are filing similar rule changes to this proposal.<sup>29</sup>

#### Technical Amendment

The Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

#### III. 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<sup>30</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>31</sup>

<sup>28</sup> See *supra* note 17 citing the options markets that require bid/ask differentials.

<sup>29</sup> See SR-GEMX-2021-07, SR-MRX-2021-09 and SR-Phlx-2021-42. These rule changes are not yet noticed.

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>31</sup> 17 CFR 240.19b-4(f)(6). In addition, Rule 19b-4(f)(6) requires a self-regulatory organization to give

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](mailto:rule-comments@sec.gov). Please include File Number SR-ISE-2021-17 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-ISE-2021-17. 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

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 Exchange has satisfied this requirement.

<sup>24</sup> See Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options.

<sup>25</sup> See MIAX and Emerald Rules 503.

<sup>26</sup> See *supra* note 17.

<sup>27</sup> *Id.*

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-ISE-2021-17 and should be submitted on or before August 20, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-16229 Filed 7-29-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92506; File No. SR-NYSEArca-2021-65]

### Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Sprott ESG Gold ETF Under NYSE Arca Rule 8.201-E

July 26, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (“Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 19, 2021, NYSE Arca, Inc. (“NYSE Arca” or the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the 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 list and trade shares of the Sprott ESG Gold ETF under NYSE Arca Rule 8.201-E. The proposed change is available on the Exchange’s website at [www.nyse.com](http://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to list and trade shares (“Shares”) of the Sprott ESG Gold ETF (the “Trust”), under NYSE Arca Rule 8.201-E.<sup>4</sup> Under NYSE Arca Rule 8.201-E, the Exchange may propose to list and/or trade Commodity-Based Trust Shares pursuant to unlisted trading privileges (“UTP”).<sup>5</sup>

The Trust will not be registered as an investment company under the Investment Company Act of 1940, as amended,<sup>6</sup> and is not required to register under such act. The Trust is not a commodity pool for purposes of the Commodity Exchange Act, as amended.<sup>7</sup>

<sup>4</sup> On February 11, 2021, the Trust submitted to the Commission its draft registration statement on Form S-1 under the Securities Act of 1933 (15 U.S.C. 77a) (“Securities Act”) and on July 1, 2021, the Trust submitted to the Commission the most recent amendment to its draft registration statement (collectively, the “Registration Statement”). The Jumpstart Our Business Startups Act, enacted on April 5, 2012, added Section 6(e) to the Securities Act. Section 6(e) of the Securities Act provides that an “emerging growth company” may confidentially submit to the Commission a draft registration statement for confidential, non-public review by the Commission staff prior to public filing, provided that the initial confidential submission and all amendments thereto shall be publicly filed not later than 21 days before the date on which the issuer conducts a road show, as such term is defined in Securities Act Rule 433(h)(4). An emerging growth company is defined in Section 2(a)(19) of the Securities Act as an issuer with less than \$1,070,000,000 total annual gross revenues during its most recently completed fiscal year. The Trust meets the definition of an emerging growth company and consequently has submitted its Form S-1 Registration Statement on a confidential basis with the Commission. The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

<sup>5</sup> Commodity-Based Trust Shares are securities issued by a trust that represent investors’ discrete identifiable and undivided beneficial ownership interest in the commodities deposited into the Trust.

<sup>6</sup> 15 U.S.C. 80a-1.

<sup>7</sup> 17 U.S.C. 1.

The Sponsor of the Trust is Sprott Asset Management LP, a Canadian limited partnership. The Bank of New York Mellon serves as the Trust’s administrator (the “Administrator”) and transfer agent (the “Transfer Agent”). The Delaware Trust Company is the trustee of the Trust (the “Trustee”).<sup>8</sup> The Royal Canadian Mint is the custodian of the Trust’s gold (the “Gold Custodian” or “Mint”).<sup>9</sup> The Bank of New York Mellon will also serve as the Trust’s cash custodian (the “Cash Custodian”) pursuant to the terms of the agreement between the Trust and the Cash Custodian (the “Cash Custody Agreement”). In its capacity as cash custodian, the Cash Custodian will maintain a custodial account that holds cash for the benefit of the Trust for the purpose of payment of the Sponsor’s fee in cash or the other expenses of the Trust.

The Commission has previously approved listing on the Exchange under NYSE Arca Rules 5.2-E(j)(5) and 8.201-E of other precious metals and gold-based commodity trusts, including the GraniteShares Gold MiniBAR Trust;<sup>10</sup> the GraniteShares Gold Trust;<sup>11</sup> the

<sup>8</sup> The Trustee is a fiduciary under the Trust Agreement and must satisfy the requirements of Section 3807 of the Delaware Statutory Trust Act. However, the fiduciary duties, responsibilities and liabilities of the Trustee are limited by, and are only those specifically set forth in, the Trust Agreement. The Trust does not have a Board of Directors or persons acting in a similar capacity.

<sup>9</sup> The Mint operates pursuant to the Royal Canadian Mint Act (Canada) and is a Canadian Crown corporation. Crown corporations are corporations wholly-owned by the Government of Canada. The Mint is, for all its purposes, an agent of Her Majesty in right of Canada and, as such, its obligations generally constitute unconditional obligations of the Government of Canada. The Gold Custodian is responsible for safekeeping the gold owned by the Trust pursuant to gold storage and custody agreements. The Gold Custodian will hold gold for the account of the Trust on an allocated basis (the “Trust Allocated Account”), except where gold is temporarily held in an unallocated account (the “Trust Unallocated Account”). The Sponsor may cause the Trust to engage unaffiliated gold brokers to transfer unallocated gold between the Trust’s custody accounts maintained for the benefit of the Trust by the Gold Custodian in Ottawa, Canada and London, United Kingdom where it can be delivered to a redeeming Authorized Participant (as defined below) if additional unallocated gold is needed by the Trust to satisfy the redeeming Authorized Participant’s redemption request. The Gold Custodian is responsible for allocating specific bars of gold to the Trust Allocated Account. The Gold Custodian will provide the Trust with regular reports detailing the gold transfers in and out of the Trust Unallocated Account with the Gold Custodian and identifying the gold bars held in the Trust Allocated Account.

<sup>10</sup> Securities Exchange Act Release No. 84257 (September 21, 2018), 83 FR 48877 (September 27, 2018) (SR-NYSEArca-2018-55).

<sup>11</sup> Securities Exchange Act Release No. 81077 (July 5, 2017), 82 FR 32024 (July 11, 2017) (SR-NYSEArca-2017-55).

<sup>32</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

Merk Gold Trust;<sup>12</sup> the APMEX Physical-1 oz. Gold Redeemable Trust;<sup>13</sup> and the Long Dollar Gold Trust.<sup>14</sup>

The Exchange represents that the Shares will satisfy the requirements of NYSE Arca Rule 8.201-E and thereby qualify for listing on the Exchange.<sup>15</sup>

#### Operation of the Trust<sup>16</sup>

The investment objective of the Trust will be for the Shares to reflect the performance of the price of gold, less the Trust's expenses and liabilities. The Trust will issue Shares which represent units of fractional undivided beneficial interest in and ownership of the Trust.

The Trust's assets are expected to consist primarily of fully allocated unencumbered physical gold bullion held by the Mint on behalf of the Trust that meets certain environmental, social and governance ("ESG") standards and criteria established by the Sponsor ("ESG Approved Gold"), and will also include unallocated unencumbered physical gold bullion held by the Mint on behalf of the Trust and cash.

The Trust does not intend to hold a certain amount of gold in unallocated form to satisfy redemption requests or to pay expenses, but the Trust expects to hold some amount of unallocated gold at any given point in time. The Trust's holdings of unallocated gold may be a significant percentage of the Trust's assets if, for example, the Trust has received more requests for creations than redemptions or the Trust's unallocated gold holdings are not sufficient to meet certain minimum size requirements to convert unallocated gold to ESG Approved Gold at the Mint. The Trust may need to instruct the Mint to convert ESG Approved Gold into unallocated gold if insufficient unallocated gold is available to be sold to pay expenses or to meet redemption requests. The Mint will exchange ESG Approved Gold for an equal amount of unallocated gold upon the receipt of proper instructions from the Sponsor.

<sup>12</sup> Securities Exchange Act Release No. 71378 (January 23, 2014), 79 FR 4786 (January 29, 2014) (SR-NYSEArca-2013-137).

<sup>13</sup> Securities Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR-NYSEArca-2012-18).

<sup>14</sup> See Securities Exchange Act Release No. 79518 (December 9, 2016), 81 FR 90876 (December 15, 2016) (SR-NYSEArca-2016-84) (order approving listing and trading of shares of the Long Dollar Gold Trust).

<sup>15</sup> With respect to the application of Rule 10A-3 (17 CFR 240.10A-3) under the Act, the Trust relies on the exemption contained in Rule 10A-3(c)(7).

<sup>16</sup> The description of the operation of the Trust, the Shares and the gold market contained herein are based, in part, on the Registration Statement. See note 4, *supra*.

The ESG standards and criteria used by the Sponsor (the "ESG Criteria") are designed to provide investors with an enhanced level of ESG scrutiny along with disclosure of the provenance of the metal sourced, and include an evaluation of mining companies and mines.<sup>17</sup> Mining companies and mines that meet the ESG Criteria ("ESG Approved Mining Companies" and "ESG Approved Mines", respectively) must also comply with the Mint Responsible Sourcing Requirements. An overview of the Sponsor's application of the ESG Criteria to mining companies and mines that can provide the material for ESG Approved Gold is provided below.<sup>18</sup>

The application of the ESG Criteria involves multiple levels of analysis. While the Sponsor's evaluation of mines and mining companies will include the objective factors discussed below, the Sponsor will also evaluate company reports and, where possible, interview key personnel to assess whether such a mining company or mine meets the ESG Criteria, which will require the subjective judgment of the Sponsor. The selection of these factors and how they are applied will be based, at least to some degree, on the judgment of the Sponsor and may or may not be consistent with current or future standards used by others in the industry. The ESG Criteria is subject to change by the Sponsor in its sole discretion.

The ESG Criteria are in addition to those used in the London Bullion Market Association's ("LBMA") Responsible Sourcing Program, as detailed in the LBMA's Responsible Gold Guidance, and are designed to provide investors with an enhanced level of ESG scrutiny along with disclosure of the provenance of the metal sourced. The Mint currently requires that its refining customers, including mines, meet the requirements outlined in the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas, the LBMA Responsible Gold Guidance, the

<sup>17</sup> The ESG Criteria are anticipated to evolve over time at the discretion of the Sponsor. Also, one or more criterion may not be relevant with respect to all sources of gold that are eligible for investment. Factors that could be considered by the Sponsor in modifying the ESG Criteria include changes to current gold mining techniques or standards, evolving legal standards, the introduction of new standards or evaluation frameworks within the mining industry or the elimination of existing standards or frameworks that in the view of the Sponsor are relevant to the ESG assessment of a mining company or mine site.

<sup>18</sup> The ESG Criteria and the Sponsor's application of the ESG Criteria are disclosed in the Registration Statement.

Mint's Responsible Metals Program and the Mint's Anti-Money Laundering and Anti-Terrorist Financing Program in compliance with the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada) (collectively, the "Mint Responsible Sourcing Requirements"). Only mines which the Mint determines meet and maintain the Mint Responsible Sourcing Requirements and with whom the Mint has a contractual refining relationship (each a "Mint Approved Mine", collectively the "Mint Approved Mines") will be eligible for consideration by the Sponsor as a provider of ESG Approved Gold. The Mint will cease refining gold from any Mint Approved Mine that no longer meets the Mint Responsible Sourcing Requirements, as determined by the Mint from time to time.

The ESG factors used for the ESG assessment of mines and miners generally will encompass the following factors:

- Environmental Factors
  - Energy use and greenhouse gas emissions
  - Tailings and waste management
  - Conservation and water management
  - Mine site remediation
- Social Factors
  - Worker safety and health
  - Community relations
  - Natural resource benefit to local communities
  - Child and forced labor
- Governance Factors
  - Corporate governance
  - Workplace and gender diversity
  - Fair executive compensation
  - Corporate transparency and disclosures

Mining companies that qualify for the LBMA's Responsible Sourcing Program and are Mint Approved Mines will then be subject to two levels of ESG screening by the Sponsor: At the overall company level and at the individual mine site level.

First, the Sponsor will evaluate a mining company using ESG factors determined by the Sponsor (described above). This evaluation will use a number of tools, which include ratings from third-party research providers, such as Sustainalytics ESG Risk Ratings, along with sell-side equity research reports. With respect to corporate governance, the Sponsor will evaluate recommendations from proxy voting research providers, such as the Glass Lewis Proxy Review. The Sponsor will also use compliance with precious metals industry standards as an objective factor in its evaluation of

mining companies. Each mining company with high ESG ratings and favorable recommendations from proxy voting research providers that complies with precious metals industry standards will be designated as an ESG Approved Mining Company.

Second, the Sponsor will evaluate individual mine site locations of each ESG Approved Mining Company. Each mine location of an ESG Approved Mining Company will then be evaluated by the Sponsor as follows: (1) The performance of each mine against various indicators in the Mining Association of Canada's Towards Sustainable Mining standards; (2) using the ESG factors described above; and (3) whether such mine is in a heightened risk or conflict area. Each mining location of that ESG Approved Mining Company that (a) the Sponsor determines to meet the Mining Association of Canada's Towards Sustainable Mining standards and the ESG factors, and (b) is not in a heightened risk or conflict area will be designated as an ESG Approved Mine. Only ESG Approved Mines will be permitted to supply the raw material for ESG Approved Gold to the Mint, which will then refine the raw material to create ESG Approved Gold for the Trust. This means that the provenance of ESG Approved Gold will be known to the Trust.

Heightened risk or conflict areas include areas where:

- Human rights abuses, forced or child labor, war crimes or genocide are prevalent;
- mines are involved in direct or indirect support to non-state actors that use arms without legal authority;
- mines transport gold or supplies along routes that involve payment of illegal taxes or extortions; and
- mines are involved in money laundering or terrorism financing.

The Sponsor will be responsible for any costs associated with researching, establishing and maintaining the ESG Criteria, assessing mining companies and mines against certain of the ESG Criteria and the diligence of the Trust's ESG Approved Gold Holdings. The Sponsor will conduct research on each mining company using its in-house investment professionals, and may use the services of outside consultants.

The Trust will not trade in gold futures, options or swap contracts on any futures exchange or over the counter ("OTC"). The Trust will not hold or trade in commodity futures contracts, "commodity interests", or any other instruments regulated by the Commodity Exchange Act. The Trust's Cash Custodian may hold cash

temporarily received from the sale of gold. The Trust's assets will only consist of ESG Approved Gold, unallocated gold and cash.

The Shares are intended to constitute a simple and cost-effective means of making an investment similar to an investment in gold bullion that meets the ESG Criteria. Although the Shares are not the exact equivalent of an investment in gold, they provide investors with an alternative that allows a level of participation in the gold market through the securities market. The Shares are not a proxy for investing in gold.

#### Operation of the Gold Market

The global trade in gold consists of OTC transactions in spot, forwards, and options and other derivatives, together with exchange-traded futures and options. The ESG Criteria and the processes and methods for refining and using ESG Approved Gold for the Trust's operations have been developed by the Sponsor specifically for the Trust, and thus no ESG Approved Gold that meets the ESG Criteria has been produced. Therefore, there have been no market transactions in ESG Approved Gold. The Trust is not aware of a separate market for ESG Approved Gold and does not believe that one will develop. ESG Approved Gold will be a subset of allocated gold bullion that is already currently refined by the Mint for its customers.

The OTC gold market includes spot, forward, and option and other derivative transactions conducted on a principal-to-principal basis. While this is a global, nearly 24-hour per day market, its main centers are London, New York, and Zurich.

According to the Registration Statement, most OTC market trades are cleared through London. The LBMA plays an important role in setting OTC gold trading industry standards. A London Good Delivery Bar (as described below), which is acceptable for settlement of any OTC transaction, will be acceptable for delivery to the Trust in connection with the issuance of Creation Units (defined below).

The most significant gold futures exchange in the U.S. is COMEX, operated by Commodities Exchange, Inc., a subsidiary of New York Mercantile Exchange, Inc., and a subsidiary of the Chicago Mercantile Exchange Group (the "CME Group"). Other commodity exchanges include the Tokyo Commodity Exchange ("TOCOM"), the Multi Commodity Exchange Of India ("MCX"), the Shanghai Futures Exchange, ICE Futures US (the "ICE"), and the Dubai Gold &

Commodities Exchange. The CME Group and ICE are members of the Intermarket Surveillance Group ("ISG").

#### The London Gold Bullion Market

According to the Registration Statement, most trading in physical gold is conducted on the OTC market, predominantly in London. LBMA coordinates various OTC-market activities, including clearing and vaulting, acts as the principal intermediary between physical gold market participants and the relevant regulators, promotes good trading practices and develops standard market documentation. In addition, the LBMA promotes refining standards for the gold market by maintaining the "London Good Delivery List," which identifies refiners of gold that have been approved by the LBMA. In the OTC market, gold bars that meet the specifications for weight, dimensions, fineness (or purity), identifying marks (including the assay stamp of an LBMA-acceptable refiner) and appearance described in "The Good Delivery Rules for Gold and Silver Bars" published by the LBMA are referred to as "London Good Delivery Bars." A London Good Delivery Bar (typically called a "400 ounce bar") must contain between 350 and 430 fine troy ounces of gold (1 troy ounce = 31.1034768 grams), with a minimum fineness (or purity) of 995 parts per 1000 (99.5%), be of good appearance and be easy to handle and stack. The fine gold content of a gold bar is calculated by multiplying the gross weight of the bar (expressed in units of 0.025 troy ounces) by the fineness of the bar. A London Good Delivery Bar must also bear the stamp of one of the refiners identified on the London Good Delivery List.

Following the enactment of the Financial Markets Act 2012, the Prudential Regulation Authority of the Bank of England is responsible for regulating most of the financial firms that are active in the bullion market, and the Financial Conduct Authority is responsible for consumer and competition issues. Trading in spot, forwards and wholesale deposits in the bullion market is subject to the Non-Investment Products ("NIPS") Code adopted by market participants.

#### Creation and Redemption of Shares

The Trust will create and redeem Shares on a continuous basis in one or more blocks of 25,000 Shares (a block of 25,000 Shares is called a "Creation Unit"). As described below, the Trust will issue Shares in Creation Units to certain authorized participants ("Authorized Participants") on an ongoing basis.

Creation Units may be created or redeemed only by Authorized Participants. Orders must be placed by 3:59 p.m. Eastern Time ("E.T."). The day on which a Trust receives a valid purchase or redemption order is the order date. In connection with creations and redemptions of Creation Units, Authorized Participants will be required to deliver or receive unallocated gold to or from the Trust, as applicable. An Authorized Participant will be required to enter into a trading agreement with the Mint for purposes of facilitating transfers of unallocated gold between the Trust and the Authorized Participant.

Unallocated gold received from Authorized Participants will be converted into ESG Approved Gold by the Mint. The Mint will convert unallocated gold into ESG Approved Gold after receipt of a completed withdrawal request form from the Sponsor to withdraw an amount of unallocated gold from the Trust Unallocated Account and deposit ESG Approved Gold into the Trust Allocated Account.

The Trust will redeem Shares using unallocated gold. To the extent that the Trust's existing holdings of unallocated gold are insufficient to meet a redemption request, the Trust will be required to request that the Mint convert ESG Approved Gold to unallocated gold, which may result in delays in the Trust's ability to meet redemption requests from Authorized Participants. The Mint will exchange ESG Approved Gold for an equal amount of unallocated gold upon the receipt of proper instructions from the Sponsor. The Mint will issue a confirmation of a completed exchange to the Sponsor by facsimile or by email on the business day that the exchange is completed.

The Mint expects that it will be able to refine and produce ESG Approved Gold within approximately five business days following the receipt of completed withdrawal request, subject to production capacity, availability and minimum size requirements. The business day on which the physical withdrawal is to occur will be confirmed to the Sponsor in writing by the Mint. A receipt of deposit will be issued to the Sponsor by facsimile or by email on the business day the production of all ESG Approved Gold underlying a withdrawal request form is completed.

Creation Units are only issued or redeemed on a day that the Exchange is open for regular trading in an amount of gold determined by the Administrator. Because ESG Approved Gold can be sourced by the Mint only from a limited

number of suppliers, from time-to-time, on a temporary basis until additional ESG Approved Gold can be refined by the Mint, the Trust will hold gold in unallocated form. No Shares will be issued unless the Mint has allocated to the Trust Unallocated Account the corresponding amount of unallocated gold from the Authorized Participant's account.

Each Authorized Participant must be a registered broker-dealer, a participant in Depository Trust Corporation ("DTC"), have entered into an agreement with the Trustee (the "Authorized Participant Agreement") and be in a position to deliver or receive to or from the Trust, as applicable, an amount of gold that is at least equal to the aggregate NAV of the number of Creation Units that are part of a purchase order or redemption order, as the case may be.

According to the Registration Statement, Authorized Participants may surrender Creation Units in exchange for the corresponding amount of unallocated gold announced by the Transfer Agent. Upon the surrender of such Shares and the payment of the Transfer Agent's applicable fee and of any expenses, taxes or charges, the Transfer Agent will deliver to the order of the redeeming Authorized Participant the amount of unallocated gold corresponding to the redeemed Creation Units. Shares can only be surrendered for redemption in Creation Units of 25,000 Shares each.

Before surrendering Creation Units for redemption, an Authorized Participant must deliver to the Trustee a written request indicating the number of Creation Units it intends to redeem. The date the Trustee receives that order determines the amount of unallocated gold to be received in exchange. However, orders received by the Trustee after 3:59 p.m. Eastern Time ("E.T.") will be rejected.

The redemption distribution from the Trust will consist of a credit to the redeeming Authorized Participant's unallocated account representing the amount of the gold held by the Trust evidenced by the Shares being redeemed as of the date of the redemption order.

#### Net Asset Value

The NAV of the Trust will be calculated by subtracting the Trust's expenses and liabilities on any day from the value of the gold and other assets owned by the Trust on that day; the NAV per Share will be obtained by dividing the NAV of the Trust on a given day by the number of Shares outstanding on that day. On each day on

which the Exchange is open for regular trading, the Administrator will determine the NAV as promptly as practicable after 4:00 p.m. E.T. The Administrator will value the Trust's gold on the basis of LBMA Gold Price PM or LBMA Gold Price AM. If the Sponsor deems it necessary, the Sponsor and the Administrator may agree to use a widely recognized pricing service for purposes of ascertaining the price of gold to use when calculating the NAV. The NAV per Share will be calculated by taking the current price of the Trust's total assets, subtracting any liabilities, and dividing by the total number of Shares outstanding.

Authorized Participants will not receive from the Sponsor, the Trust or any affiliates any fee or other compensation in connection with the offering of the Shares.

#### Availability of Information Regarding Gold

Currently, the Consolidated Tape Plan does not provide for dissemination of the spot price of a commodity such as gold over the Consolidated Tape. However, there will be disseminated over the Consolidated Tape the last sale price for the Shares, as is the case for all equity securities traded on the Exchange (including exchange-traded funds). In addition, there is a considerable amount of information about gold and gold markets available on public websites and through professional and subscription services.

Investors may obtain gold pricing information on a 24-hour basis based on the spot price for an ounce of Gold from various financial information service providers, such as Reuters and Bloomberg.

Reuters and Bloomberg, for example, provide at no charge on their websites delayed information regarding the spot price of Gold and last sale prices of Gold futures, as well as information about news and developments in the gold market. Reuters and Bloomberg also offer a professional service to subscribers for a fee that provides information on Gold prices directly from market participants. Complete real-time data for Gold futures and options prices traded on the COMEX are available by subscription from Reuters and Bloomberg. There are a variety of other public websites providing information on gold, ranging from those specializing in precious metals to sites maintained by major newspapers. In addition, the LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk).



### Availability of Information

The intraday indicative value (“IIV”) per Share for the Shares will be disseminated by one or more major market data vendors. The IIV will be calculated based on the amount of gold held by the Trust and a price of gold derived from updated bids and offers indicative of the spot price of gold.<sup>19</sup>

The website for the Trust (<https://sprott.com/investment-strategies/physical-bullion-trusts>) will contain the following information, on a per Share basis, for the Trust: (a) The mid-point of the bid-ask price<sup>20</sup> at the close of trading (“Bid/Ask Price”), and a calculation of the premium or discount of such price against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. The website for the Trust will also provide the Trust’s prospectus. Finally, the Trust’s website will be updated once daily to provide the last sale price of the Shares as traded in the U.S. market at the end of regular trading. In addition, 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.

The Trust will maintain, on its website, current lists of the ESG Criteria, and ESG Approved Mines and ESG Approved Mining Companies from which the Trust sources its ESG Approved Gold. The Trust anticipates that ESG Approved Mines and ESG Approved Mining Companies may be added or removed from such lists over time based on, among other things, whether such ESG Approved Mines and ESG Approved Mining Companies meet the evolving ESG Criteria and whether they are Mint Approved Mines. The Trust will update the information on its website promptly after any change to the ESG Criteria, ESG Approved Mines or ESG Approved Mining Companies.

<sup>19</sup> The IIV on a per Share basis disseminated during the Core Trading Session should not be viewed as a real-time update of the NAV, which is calculated once a day.

<sup>20</sup> The bid-ask price of the Shares will be determined using the highest bid and lowest offer on the Consolidated Tape as of the time of calculation of the closing day NAV.

### Criteria for Initial and Continued Listing

The Trust will be subject to the criteria in NYSE Arca Rule 8.201–E(e) for initial and continued listing of the Shares.

A minimum of two Creation Units or 50,000 Shares will be required to be outstanding at the start of trading, which is equivalent to 10,000 fine ounces of gold or about \$18,550,000 as of June 14, 2021. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity.

### Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Trust subject to the Exchange’s existing rules governing the trading of equity securities. Trading in the Shares on the Exchange will occur in accordance with NYSE Arca Rule 7.34–E(a). The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. As provided in NYSE Arca Rule 7.6–E, Commentary .03, the minimum price variation (“MPV”) for quoting and entry of orders in equity securities traded on the NYSE Arca Marketplace is \$0.01, with the exception of securities that are priced less than \$1.00 for which the MPV for order entry is \$0.0001.

Further, NYSE Arca Rule 8.201–E sets forth certain restrictions on ETP Holders acting as registered Market Makers in the Shares to facilitate surveillance. Under NYSE Arca Rule 8.201–E(g), an ETP Holder acting as a registered Market Maker in the Shares is required to provide the Exchange with information relating to its trading in the underlying gold, any related futures or options on futures, or any other related derivatives. Commentary .04 of NYSE Arca Rule 6.3–E requires an ETP Holder acting as a registered Market Maker, and its affiliates, in the Shares to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of any material nonpublic information with respect to such products, any components of the related products, any physical asset or commodity underlying the product, applicable currencies, underlying indexes, related futures or options on futures, and any related derivative instruments (including the Shares).

As a general matter, the Exchange has regulatory jurisdiction over its ETP Holders and their associated persons, which include any person or entity controlling an ETP Holder. To the extent the Exchange may be found to lack jurisdiction over a subsidiary or affiliate

of an ETP Holder that does business only in commodities or futures contracts, the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. Trading on the Exchange in the Shares 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: (1) The extent to which conditions in the underlying gold market have caused disruptions and/or lack of trading, or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. In addition, trading in Shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange’s “circuit breaker” rule.<sup>21</sup> The Exchange will halt trading in the Shares if the NAV of the Trust is not calculated or disseminated daily. The Exchange may halt trading during the day in which an interruption occurs to the dissemination of the IIV, as described above. If the interruption to the dissemination of the IIV persists past the trading day in which it occurs, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

### Surveillance

The Exchange represents that trading in the Shares will be subject to the existing trading surveillances administered by the Exchange, as well as cross-market surveillances administered by the Financial Industry Regulatory Authority (“FINRA”) on behalf of the Exchange, which are designed to detect violations of Exchange rules and applicable federal securities laws.<sup>22</sup> The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and federal securities laws applicable to trading on the Exchange.

The surveillances referred to above generally focus on detecting securities trading outside their normal patterns,

<sup>21</sup> See NYSE Arca Rule 7.12–E.

<sup>22</sup> FINRA conducts 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.

which could be indicative of manipulative or other violative activity. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares from markets and other entities that are members of ISG or with which the Exchange has in place a comprehensive surveillance sharing agreement.<sup>23</sup>

Also, pursuant to NYSE Arca Rule 8.201–E(g), the Exchange is able to obtain information regarding trading in the Shares and the underlying gold through ETP Holders acting as registered Market Makers, in connection with such ETP Holders' proprietary or customer trades through ETP Holders which they effect on any relevant market.

In addition, the Exchange also has a general policy prohibiting the improper distribution of material, non-public information by its employees.

All statements and representations made in this filing regarding (a) the description of the portfolio, (b) limitations on portfolio holdings or reference assets, or (c) the applicability of Exchange listing rules specified in this rule filing shall constitute continued listing requirements for listing the Shares of the Trust on the Exchange.

The issuer has represented to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under Section 19(g)(1) of the Act, the Exchange will monitor for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under NYSE Arca Rule 5.5–E(m).

## 2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement

under Section 6(b)(5)<sup>24</sup> that an exchange have rules that are 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, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria in NYSE Arca Rule 8.201–E. The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The proposed rule change is designed to promote just and equitable principles of trade and to protect investors and the public interest in that there is a considerable amount of gold price and gold market information available on public websites and through professional and subscription services. Investors may obtain on a 24-hour basis gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Investors may obtain gold pricing information based on the spot price for an ounce of gold from various financial information service providers. Current spot prices also are generally available with bid/ask spreads from gold bullion dealers. In addition, the Trust's website will provide pricing information for gold spot prices and the Shares. Market prices for the Shares will be available from a variety of sources including brokerage firms, information websites and other information service providers. The NAV of the Trust will be published by the Sponsor on each day that the NYSE Arca is open for regular trading and will be posted on the Trust's website. The IIV relating to the Shares will be widely disseminated by one or more major market data vendors at least every 15 seconds during the Core Trading Session. In addition, the LBMA Gold Price is publicly available at no charge at [www.lbma.org.uk](http://www.lbma.org.uk). The Trust's website will also provide the Trust's prospectus, as well as the two most recent reports to stockholders, and lists

of the Trust's ESG Criteria, ESG Approved Mines and ESG Approved Mining Companies from which the Trust will source its ESG Approved Gold. In addition, 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.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of an additional type of exchange-traded product that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures relating to trading in the Shares and may obtain information via ISG from other exchanges that are members of ISG or with which the Exchange has entered into a comprehensive surveillance sharing agreement. In addition, as noted above, investors will have ready access to information regarding gold pricing.

### *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 believes the proposed rule change will enhance competition by accommodating Exchange trading of an additional exchange-traded product relating to physical gold.

### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were solicited or received with respect to the proposed rule change.

## **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

<sup>23</sup> For a list of the current members of ISG, see [www.isgportal.org](http://www.isgportal.org).

<sup>24</sup> 15 U.S.C. 78f(b)(5).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2021-65 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-NYSEArca-2021-65. 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-NYSEArca-2021-65 and should be submitted on or before August 20, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>25</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-16234 Filed 7-29-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92501; File No. SR-LCH SA-2021-001]

### Self-Regulatory Organizations; LCH SA; Order Approving Proposed Rule Change Relating to the Clearing of Single-Name Credit Default Swaps by U.S. Customers

July 26, 2021.

#### I. Introduction

On April 13, 2021, Banque Centrale de Compensation, which conducts business under the name LCH SA ("LCH SA"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4,<sup>2</sup> a proposed rule change to amend LCH SA's (i) CDS Clearing Rule Book (the "Rule Book"); (ii) CDS Clearing Supplement (the "Clearing Supplement"); (iii) CDS Clearing Procedures (the "Procedures"); and (iv) FCM Clearing Regulations ("Clearing Regulations") to allow LCH SA to offer clearing services in respect of single-name CDS that are security-based swaps ("SBS") submitted by Clearing Members on behalf of their U.S. clients.<sup>3</sup> The proposed rule change was published for comment in the **Federal Register** on May 3, 2021.<sup>4</sup> On June 10, 2021, the Commission designated a longer period within which to take action on the proposed rule change, until August 1, 2021.<sup>5</sup> The Commission did not receive comments regarding the proposed rule

<sup>25</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Capitalized terms used but not defined herein have the meanings specified in the Rule Book, the Clearing Supplement, the Procedures, and the Clearing Regulations, as applicable.

<sup>4</sup> Self-Regulatory Organizations; LCH SA; Notice of Filing of Proposed Rule Change Relating to the Clearing of Single-Name Credit Default Swaps by U.S. Customers, Exchange Act Release No. 34-91676 (April 26, 2021); 86 FR 23445 (May 3, 2021) (SR-LCH SA-2021-001) ("Notice").

<sup>5</sup> Self-Regulatory Organizations; LCH SA; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change Relating to the Clearing of Single-Name Credit Default Swaps by U.S. Customers, Exchange Act Release No. 34-92142 (June 10, 2021); 86 FR 32079 (June 16, 2021) (SR-LCH SA-2021-001).

change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description of the Proposed Rule Change

Currently, LCH SA's Clearing Members are permitted to submit for clearing swaps on behalf of their U.S. clients. The proposed rule change would amend the LCH SA documents mentioned above to permit LCH SA's Clearing Members also to submit for clearing SBS on behalf of their U.S. clients. Thus, after the proposed rule change becomes effective, LCH SA would permit its Clearing Members to submit for clearing both swaps and SBS on behalf of their U.S. clients.

In addition to this initiative, the proposed rule change would also make certain other confirming and clarifying changes, as discussed further below in Part II.E.

##### A. Rule Book

To facilitate this initiative, the proposed rule change would amend the Rule Book to, among other things, (i) modify existing and adopt new defined terms; (ii) modify the membership requirements applicable to Clearing Members; (iii) remove provisions that prohibit Clearing Members from offering clearing services to U.S. clients with respect to SBS; (iv) establish the account structure for Clearing Members clearing SBS on behalf of U.S. clients; (v) update provisions to apply them to Clearing Members that are broker-dealers; and (vi) amend the Appendix to apply relevant provisions of the CDS Default Management Process to SBS. These amendments are discussed below according to the different titles of the Rule Book.

##### i. Title I

The proposed rule change would add new, and modify existing, defined terms related to Clearing Members and Clients found in Title I of the Rule Book. These changes would facilitate registered broker-dealers becoming Clearing Members for the purpose of clearing SBS on behalf of U.S. clients. For example, the proposed rule change would add a definition for "BD," to mean a legal entity that is a "broker" or "dealer" as defined in Section 3(a)(4) or 3(a)(5) of the Act, respectively, and is registered in such capacity with the Commission and a member in good standing of FINRA. Similarly, the proposed rule change would amend the defined term "FCM Clearing Member" to be "FCM/BD Clearing Member." As amended, the term "FCM/BD Clearing Member" would mean any FCM, BD, or

legal entity that is both an FCM and BD that has been admitted to LCH SA as a clearing member. The proposed rule change would make a similar modification to the defined term “FCM Client,” which would become “FCM/BD Client.”

Similarly, the proposed rule change would modify a number of defined terms and add new defined terms that relate to the account structure in which transactions would be recorded and collateral for Cleared Swaps and SBS would be held. Among other changes, the proposed rule change would add a new defined term for “Cleared Swap,” which would be used to differentiate between “swaps” and “SBS” and their different account structures and add new defined terms for “Cleared Swaps Customer” and “Cleared Swaps Customer Collateral.” Overall, these changes would establish three account structures: (i) A separate account structure for Cleared Swaps; (ii) a separate account structure for SBS; and (iii) an account structure in which an FCM/BD Clearing Member that is both an FCM and a BD may elect to clear and hold margin for FCM/BD Cleared Transactions that are SBS for FCM/BD Clients on a commingled basis with Cleared Swaps.<sup>6</sup>

Moreover, the proposed rule change would amend certain terms with respect to legal jurisdictions to reflect the availability of clearing SBS for U.S. clients. Specifically, the proposed rule change would modify the term “Non-U.S. CCM” to mean, when used in the context of an Original Transaction, a CCM that has its residence in, is organized under the laws of, or has its principal place of business located in, a jurisdiction other than the United States, its territories or possessions and is not a registered BD or FCM. Similarly, the proposed rule change would modify the term “U.S. CCM Client” to mean a Client of an FCM or a BD or any Client that has its residence in, is organized under the laws of, or has its principal place of business located in the United States, its territories or possessions.

Finally, the proposed rule change would make clarifying and conforming changes to other defined terms, and other Articles of Title I of the Rule Book, to reflect these changes. These changes

would update references to Clearing Members to apply them to FCM/BD Clearing Members instead of just FCM Clearing Members.

#### ii. Title II and Title III

The proposed rule change would next amend Title II and Title III of the Rule Book, which relate to the requirements applicable to LCH SA’s Clearing Members and LCH SA’s clearing operations. First, the proposed rule change would amend Article 2.1.1.2 of the Rule Book to provide that, without prejudice to the membership requirements set out in the CDS Clearing Rules and applicable law, both FCMs and BDs are eligible to become FCM/BD Clearing Members. Second, the proposed rule change would amend Article 2.2.3.1 to define a BD’s “net capital” as its net capital as provided in SEC Rule 15c3–1.

The proposed rule change would also make conforming changes throughout Title II and in Article 3.1.10.9 of Title III to apply them to an FCM/BD Clearing Member instead of just an FCM Clearing Member. These changes would update references to Clearing Members to apply them to FCM/BD Clearing Members instead of just FCM Clearing Members.

#### iii. Title IV

The proposed rule change would also amend Title IV regarding risk management, specifically, Article 4.2.2.5, which relates to the return of excess collateral. Under Article 4.2.2.5 as revised, if (i) the FCM/BD Margin Balance of an FCM/BD Client Financial Account exceeds the relevant FCM/BD Client Margin Requirement prior to the Morning Call or (ii) the value of the Collateral attributed to the FCM/BD Buffer Financial Account exceeds the FCM/BD Client Collateral Buffer Threshold, then LCH SA would treat the excess as follows. If the excess is related to Cleared Swaps, it would be reclassified as FCM/BD Swaps Unallocated Client Excess Collateral, and thereafter may be returned to the FCM/BD Clearing Member upon request in the conditions set out in Section 3 of the Procedures, subject to Article 6.2.5 of the Rule Book. If the excess is related to SBS (excluding SBS that are held in the FCM/BD Swaps Client Account Structure as Cleared Swaps, as described below), it would be reclassified as FCM/BD SBS Client Excess Collateral, and thereafter may be returned to the FCM/BD Clearing Member upon request in the conditions set out in Section 3 of the Procedures, subject to Article 6.2.5 of the Rule Book.

The proposed rule change would also make conforming changes throughout

Title IV to apply the articles to an FCM/BD Clearing Member instead of just an FCM Clearing Member. These changes would update references to Clearing Members to apply them to FCM/BD Clearing Members instead of just FCM Clearing Members.

#### iv. Title V

The proposed rule change next would amend Title V, regarding CDS Client Clearing Services provided by a CCM. Here the proposed rule change would amend Article 5.1.1.2 to permit LCH SA’s Clearing Members to submit for clearing SBS on behalf of their U.S. clients. Currently, Article 5.1.1.2 prohibits a Non-U.S. Clearing Member from offering client clearing services to any U.S. client with respect to SBS and any U.S. Clearing Member from offering client clearing services to any client with respect to SBS. The proposed rule change would delete this provision.

The proposed rule change also would amend another provision of Article 5.1.1.2 that currently prohibits a Clearing Member from offering clearing services to any U.S. client (other than an affiliate of the Clearing Member) with respect to an Original Transaction that is not SBS, unless the Clearing Member meets the specified conditions. As amended, this provision would prohibit a Clearing Member from offering clearing services to any U.S. client, other than an affiliate of the Clearing Member, with respect to swaps and SBS, unless the Clearing Member (i) is an FCM/BD and (ii) has provided LCH SA with an opinion of counsel confirming that the provision of clearing services would not be contrary to applicable law.

#### v. Title VI

The proposed rule change would amend Title VI, regarding FCM/BD client clearing. First, Article 6.1.1.2(vi) currently prohibits an FCM Clearing Member from providing CDS Client Clearing Services (defined as clearing services in respect of CDS and/or Index Swaptions provided by a Clearing Member to its Clients) to any client. The proposed rule change would delete this prohibition.

The proposed rule change next would amend Article 6.2.1.1, which currently specifies the account structure that LCH SA must open and maintain for each FCM Clearing Member that provides client clearing services for swaps. The proposed rule change would amend this article so that it specifies the client account structure for an FCM/BD Clearing Member providing client clearing services for swaps and SBS. Thus, the proposed rule change would

<sup>6</sup> See Order Granting Conditional Exemptions Under the Securities Exchange Act of 1934 in Connection With Portfolio Margining of Swaps and Security-Based Swaps, Exchange Act Release No. 68433 (Dec. 14, 2012); 77 FR 75211 (Dec. 19, 2012) (“Portfolio Margining Order”) (setting out certain conditions that dually registered clearing agencies/derivatives clearing organizations and participating BD/FCMs must satisfy when offering a program to commingle and portfolio margin cleared CDS for customer positions).

add a new subsection (ii) that specifies the accounts that would make up the FCM/BD SBS Client Account Structure. This structure would mirror the structure applicable to swaps.

Thus, under the proposed rule change, Article 6.2.1.1(i) would set forth the required account structure for an FCM (which may also be a BD) with respect to any Cleared Swaps, which would include:

- An FCM/BD Swaps Client Trade Account for each Cleared Swaps Customer;
- An FCM/BD Swaps Client Margin Account for each Cleared Swaps Customer;
- An FCM/BD Swaps Client Financial Account for each Cleared Swaps Customer;
- An FCM/BD Swaps Unallocated Client Collateral Financial Account;
- An FCM/BD Swaps Buffer Financial Account; and
- An FCM/BD Swaps Client Collateral Account.

Likewise, Article 6.2.1.1(ii) would set forth the required account structure for a BD (which may also be an FCM) with respect to any SBS (excluding SBS that are permitted to be held in an account with Cleared Swaps), which would include:

- An FCM/BD SBS Client Trade Account for each SBS Customer;<sup>7</sup>
- An FCM/BD SBS Client Margin Account for each SBS Customer;<sup>8</sup>
- An FCM/BD SBS Client Financial Account for each SBS Customer;<sup>9</sup>
- An FCM/BD SBS Client Excess Collateral Financial Account;<sup>10</sup>

<sup>7</sup> In furtherance of this change, the proposed rule change also would amend Article 6.2.2.1, which relates to the establishment of trade accounts, to require LCH SA to open FCM/BD SBS Client Trade Accounts for SBS Customers.

<sup>8</sup> In furtherance of this change, the proposed rule change also would amend Article 6.2.3.1, which relates to the establishment of client margin accounts, to require LCH SA to open FCM/BD SBS Client Margin Accounts for SBS Customers. Similarly, the proposed rule change would amend Article 6.2.3.2 to provide that FCM/BD Cleared Transactions (i) registered in an FCM/BD Swaps Client Trade Account for a Cleared Swaps Customer will be allocated to the corresponding FCM/BD Cleared Swaps Client Margin Account and (ii) registered in an FCM/BD SBS Client Trade Account for an SBS Customer will be allocated to the corresponding FCM/BD SBS Client Margin Account, for the purpose of the determination of the Open Positions and NPV Payment Requirements attributable to such FCM/BD Client.

<sup>9</sup> In furtherance of this change, the proposed rule change also would amend Article 6.2.4.1, which relates to the establishment of Client Financial Accounts and related accounts, to require LCH SA to open FCM/BD SBS Client Financial Accounts for SBS Customers, in which LCH SA will record the value of Collateral provided by the FCM/BD Clearing Member in respect of each such SBS Customer's Open Positions in SBS.

<sup>10</sup> In furtherance of this change, the proposed rule change also would amend Article 6.2.4.1, which

- An FCM/BD SBS Buffer Financial Account;<sup>11</sup> and
- An FCM/BD SBS Client Collateral Account.<sup>12</sup>

Moreover, the proposed rule change would add a new Article 6.2.1.1(iii) to provide that an FCM/BD Clearing Member that is both an FCM and a BD may elect to clear and hold margin for FCM/BD Cleared Transactions that are SBS for FCM/BD Clients in the FCM/BD Swaps Client Account Structure on a commingled basis with Cleared Swaps, and margin such combined positions on a portfolio basis in compliance with Applicable Laws.<sup>13</sup> This provision would be subject to the condition that each FCM/BD Client participating in the portfolio margining must be an eligible contract participant as defined in Section 1a(18) of the Commodity Exchange Act.<sup>14</sup> Upon such election, FCM/BD Cleared Transactions that are SBS would be included as Cleared Swaps and maintained in the FCM/BD Swaps Client Account Structure.

The proposed rule change also would add a new article regarding the return of excess collateral. Under new Article 6.2.5.2, an FCM/BD Clearing Member is not permitted to maintain any FCM/BD Client Excess Collateral on a day-to-day basis with respect to SBS, but may hold FCM/BD Client Excess Collateral on an intraday basis. LCH SA would be required to transfer the value of any FCM/BD Client Excess Collateral that is reflected in any FCM/BD SBS Client Financial Account of the FCM/BD Clearing Member prior to the Morning Call to the FCM/BD Clearing Member's FCM/BD SBS Client Excess Collateral Financial Account. In addition, new Article 6.2.5.2(iv) would require, among other things, that LCH SA hold FCM/BD

relates to the establishment of Client Financial Accounts and related accounts, to require LCH SA to open an FCM/BD SBS Client Excess Collateral Financial Account for SBS Customers, in which LCH SA will record the value of FCM/BD SBS Client Excess Collateral.

<sup>11</sup> In furtherance of this change, the proposed rule change also would amend Article 6.2.4.1, which relates to the establishment of Client Financial Accounts and related accounts, to require LCH SA to open an FCM/BD SBS Buffer Financial Account for SBS Customers, in which LCH SA will record the value of Collateral provided by the FCM/BD Clearing Member as FCM/BD SBS Client Collateral Buffer.

<sup>12</sup> In furtherance of this change, the proposed rule change also would amend Article 6.2.4.1, which relates to the establishment of Client Financial Accounts and related accounts, to require LCH SA to open FCM/BD SBS Client Collateral Accounts for SBS Customers, in which LCH SA will record the value of Collateral held by LCH SA in the other accounts listed in Article 6.2.1.1(ii) (such as the FCM/BD SBS Client Financial Account and FCM/BD SBS Client Excess Collateral Financial Account).

<sup>13</sup> See Portfolio Margin Order, 77 FR 75211.

<sup>14</sup> 7 U.S.C. 1a(18).

SBS Client Excess Collateral in the FCM/BD SBS Client Excess Collateral Financial Account for the benefit of FCM/BD Clearing Member's FCM/BD Clients that are SBS customers as a class in accordance with SEC regulations and Applicable Law and that upon the request of an FCM/BD Clearing Member, LCH SA would return FCM/BD SBS Client Excess Collateral to such FCM/BD Clearing Member.

The proposed rule change also would amend Article 6.2.6.1, which currently requires an FCM Clearing Member to collect collateral from each client in respect of such client's open positions in an amount at least equal to the greater of (i) the amount required by LCH SA for the FCM Client Margin Account for such client or (ii) such higher amount as required in Section 2 of the Procedures. The proposed rule change would amend this Article to apply it to FCM/BD Clearing Members and to add a corresponding provision for client open positions in SBS in an amount at least equal to the amount required by LCH SA for the FCM/BD SBS Client Margin Accounts.

Finally, the proposed rule change would make conforming changes throughout Title VI by updating references to Clearing Members to ensure that the articles apply to an FCM/BD Clearing Member instead of just an FCM Clearing Member.

#### vi. Appendix

Appendix 1 of the Rule Book describes LCH SA's CDS Default Management Process. The proposed rule change would amend the defined term "Transaction Categories," which currently sets out the different categories of transactions that LCH SA clears. The proposed rule change would amend the definition of "Transaction Categories" to include "Single Name Cleared Transactions." This change would help ensure that LCH SA's default management process applies to SBS.

The proposed rule change also would amend Clause 3.3 of Appendix 1, which sets out the applicable U.S. law and regulation that LCH SA would act in accordance with in carrying out the CDS Default Management Process, such as the Exchange Act and SEC regulations. The proposed rule change would add to Clause 3.3 a reference to the new defined term "SIPC" in Section 1.1.1 of the Rule Book, such that LCH SA would act in accordance with SIPC in carrying out the CDS Default Management Process, in addition to the other U.S. laws and regulations currently listed in Clause 3.3. Under the proposed rule change, "SIPC" would be defined as the

Securities Investor Protection Corporation or any successor thereto.

The proposed rule change would revise Clause 5.4, which relates to competitive bidding in a default auction. Currently under Clause 5.4, all Non-Defaulting Clearing Members are required to participate in Competitive Bidding for each Auction Package notwithstanding that any Non-Defaulting Clearing Member may not have registered within its Account Structure a Cleared Transaction of the type included in the relevant Transaction Category for an Auction Package, subject to certain exceptions. As proposed to be revised, under Clause 5.4 a Non-Defaulting Clearing Member that is a BD but not an FCM would not be required to participate in Competitive Bidding for an Auction Package containing any Cleared Swaps and a Non-Defaulting Clearing Member that is an FCM but not a BD would not be required to participate in Competitive Bidding for an Auction Package containing any SBS.

The proposed rule change also would make conforming changes throughout Appendix 1 to apply Appendix 1 to an FCM/BD Clearing Member instead of just an FCM Clearing Member. Specifically, references to Clearing Members would be updated to apply them to FCM/BD Clearing Members instead of just FCM Clearing Members.

#### *B. Clearing Supplement*

Similar to some of the changes to the Rule Book discussed above, the proposed rule change would make conforming changes to apply the Clearing Supplement to an FCM/BD Clearing Member instead of just an FCM Clearing Member. These changes would update references to Clearing Members to apply them to FCM/BD Clearing Members instead of just FCM Clearing Members.

#### *C. Procedures*

The proposed rule change would amend Sections 2, 3, 4, and 5 of the Procedures.

##### *i. Section 2*

Similar to the changes to the Rule Book and Clearing Supplement discussed above, in Section 2 of the Procedures, the proposed rule change would make conforming changes to apply Section 2 to an FCM/BD Clearing Member instead of just an FCM Clearing Member. These changes would update references to Clearing Members to apply them to FCM/BD Clearing Members instead of just FCM Clearing Members.

##### *ii. Section 3*

Similar to the changes to the Rule Book and Clearing Supplement discussed above, in Section 3 of the Procedures, the proposed rule change would make conforming changes to apply Section 3 to an FCM/BD Clearing Member instead of just an FCM Clearing Member. These changes would update references to Clearing Members to apply them to FCM/BD Clearing Members instead of just FCM Clearing Members.

In addition, the proposed rule change would amend Section 3.3(b), which relates to the Collateral Account structure, to add a reference to the FCM/BD SBS Client Collateral Account. In this account LCH SA would record the Collateral held by LCH SA for the benefit of an FCM/BD Clearing Member's SBS Customers with respect to SBS. The value in this account would be further divided among and recorded in three separate accounts: (i) The FCM/BD SBS Client Financial Account; (ii) the FCM/BD SBS Buffer Financial Account; and (iii) the FCM/BD SBS Client Excess Collateral Financial Account.

The proposed rule change would amend Section 3.7, which relates to collection of Euro denominated cash collateral. As described in Section 3.7(a), LCH SA performs Collateral Calls using TARGET2 Accounts opened in its name. The proposed rule change would amend Section 3.7(a) to provide that LCH SA will perform Collateral Calls with respect to the Clients of a Clearing Member using a TARGET2 Account. As described in the proposed amendment, LCH SA would use this TARGET2 Account to make Collateral Calls in relation to the Client Margin Requirements with respect to SBS (excluding SBS held in the FCM/BD Swaps Client Account Structure) and FCM/BD Client Collateral Buffer Threshold of each FCM/BD Clearing Member.

Similarly, the proposed rule change would amend Section 3.7(b), which relates to the TARGET2 Accounts that a Clearing Member must hold. Section 3.7(b) currently requires that a Clearing Member hold two TARGET2 Accounts, one related to house margin and the other related to client margin. The proposed rule change would add to these two accounts a third account, relating to client margin with respect to SBS. Thus, as revised, Section 3.7(b) would require that an FCM/BD Clearing Member hold three TARGET2 Accounts for purposes of Collateral Calls in respect of (i) its FCM/BD House Margin Requirement and FCM/BD House Excess Collateral Threshold, (ii) its Client

Margin Requirements with respect to Cleared Swaps and FCM/BD Client Collateral Buffer Threshold, and (iii) its Client Margin Requirements with respect to SBS (excluding SBS that are held in the FCM/BD Swaps Client Account Structure) and FCM/BD Client Collateral Buffer Threshold.

The proposed rule change next would amend Section 3.7(g), which relates to the return of Euro denominated cash collateral. Currently, Section 3.7(g)(iv) allows a Clearing Member to request LCH SA to return some or all FCM Unallocated Client Excess Collateral in the form of Euro denominated Cash Collateral provided that the requested amount does not exceed the FCM Unallocated Client Excess Collateral recorded in its Client Collateral Account. The proposed rule change would amend Section 3.7(g)(iv) to clarify that it applies to FCM/BD Clearing Members, not just FCM Clearing Members. The proposed rule change also would add to Section 3.7(g) a new paragraph (v), which would mirror paragraph (iv) of Section 3.7(g) described above, but it would apply to excess collateral related to SBS. Thus, under new Section 3.7(g)(v), a Clearing Member may also request LCH SA to return some or all FCM/BD SBS Client Excess Collateral in the form of Euro denominated Cash Collateral provided that the requested amount does not exceed the FCM/BD SBS Client Excess Collateral recorded in its FCM/BD SBS Client Collateral Account.

The proposed rule change also would amend Section 3.8, which sets out the multi-currency accounts in which LCH SA holds non-Euro Collateral provided by Clearing Members to meet house and client margin requirements. Currently, Section 3.8(a) requires that LCH SA have two multi-currency accounts for holding non-Euro Cash Collateral provided by Clearing Members in respect of their clients. The proposed rule change would add a third account, requiring that LCH SA have, with respect to Clients of a Clearing Member, a multi-currency account used to credit non-Euro, non-USD Cash Collateral which is transferred by an FCM/BD Clearing Member to be recorded in its FCM/BD SBS Client Collateral Account. This account would form part of the LCH SBS Client Segregated Depository Account for purposes of the FCM/BD CDS Clearing Regulations.

Similarly, Section 3.8(b) currently requires that LCH SA have two USD cash accounts for holding USD Cash Collateral provided by Clearing Members in respect of their clients. The proposed rule change would add a third account, requiring that LCH SA have,

with respect to Clients of a Clearing Member, an account used to credit USD Cash Collateral which is transferred by FCM/BD Clearing Members to be recorded in their FCM/BD SBS Client Collateral Account. This account would form part of the LCH SBS Client Segregated Depository Account for purposes of the FCM/BD CDS Clearing Regulations.

With respect to the return of excess collateral, the proposed rule change would amend Section 3.8(h) and (i), to provide for the return of excess collateral in respect of SBS. These amendments would mirror the provisions currently applicable to swaps.

Finally, the proposed rule change would amend Section 3.18, relating to cash payments and variation margin transfers. Currently, Section 3.18(c) lists the accounts that LCH SA uses when making or receiving Cash Payments and/or Variation Margin Collateral Transfer obligations in USD. The proposed rule change would add to this list a cash account used to debit or credit USD to satisfy Cash Payments and/or Variation Margin Collateral Transfer obligations in USD with respect to all relevant Client Cleared Transactions of each FCM/BD Clearing Member that are SBS (excluding SBS that are held in the FCM/BD Swaps Client Account Structure).

#### iii. Section 4

Section 4 sets out certain requirements that a transaction must satisfy to be eligible for clearing at LCH SA. Currently, Section 4.1 provides that (i) in respect of an FCM Client, a U.S. CCM Client of a Non-U.S. CCM or a CCM Client of a U.S. CCM, the Original Transaction may not be a Single Name CDS or any other SBS identified as such in a Clearing Notice; and (ii) in respect of a Non-U.S. CCM Client, the Original Transaction may not be a Single Name CDS or any other SBS identified as such in a Clearing Notice unless such transaction is cleared through a Non-U.S. CCM. The proposed rule change would delete Section 4.1, thus permitting Clearing Members to submit SBS to LCH SA for clearing on behalf of U.S. Clients.

#### iv. Section 5

Section 5 of the Procedures specifies LCH SA's CDS Clearing Operations Procedures and includes numerous references to "FCM Clearing Members." Similar to the changes to the Rule Book and Clearing Supplement discussed above, the proposed rule change would change these references from "FCM Clearing Members" to "FCM/BD

Clearing Members." This would help ensure that the Clearing Operations Procedures in Section 5 apply to FCM/BD Clearing Members instead of just FCM Clearing Members.

#### D. Clearing Regulations

The proposed rule change also would amend LCH SA's CDS Clearing Regulations, which impose certain obligations on LCH SA's Clearing Members and is divided into Regulations 1 through 6, as well as a Definitions section appearing before Regulation 1. The proposed rule change would first update certain of the defined terms found in the Definitions section to reflect some of the changes discussed above. For example, the proposed rule change would amend a number of defined terms to use the term "Cleared Swaps Customer," which, as discussed above, the proposed rule change would add to the Rule Book. The proposed rule change would also add the defined term "LCH SBS Client Segregated Depository Account," which, as discussed above, the proposed rule change would reference in Section 3 of the Procedures.

In Regulation 2 (Depository Accounts), the proposed rule change would set out the relevant account structure for SBS. Under Regulation 2 as revised, each FCM/BD Clearing Member would be required to establish and maintain an FCM/BD SBS Client Segregated Depository Account on behalf of its SBS Customers in accordance with applicable provisions of the Exchange Act and SEC regulations. An FCM/BD Clearing Member would be required to maintain the FCM/BD SBS Client Segregated Depository Account with a Bank in accordance with the Exchange Act and SEC Regulations and the FCM/BD Clearing Member would be allowed to commingle assets of all of its SBS Customers held in that account in a single omnibus account established and maintained in accordance with SEC regulations. LCH SA would designate the FCM/BD SBS Client Segregated Depository Account maintained by each FCM/BD Clearing Member as a "Special Reserve Bank Account for the Exclusive Benefit of the Cleared Security-Based Swap Customers" of the FCM/BD Clearing Member as provided in Exchange Act Rule 15c3-3(p).<sup>15</sup>

Similarly, under Regulation 2 as revised, LCH SA would be required to establish and maintain a LCH SBS Client Segregated Depository Account on behalf of the SBS Customers of FCM/BD Clearing Members, in accordance with applicable provisions of the

Exchange Act and SEC regulations. LCH SA would be required to maintain the LCH SBS Client Segregated Depository Account with a Bank in accordance with the Exchange Act and SEC regulations and LCH SA would be allowed to commingle assets of all of the SBS Customers in that account in a single omnibus account established and maintained in accordance with SEC regulations. Regulation 2 would further require that LCH SA hold in the LCH SBS Client Segregated Depository Account all Collateral that is deposited by FCM/BD Clearing Members in connection with SBS cleared on behalf of SBS Customers (other than Collateral provided to satisfy the Contribution Requirement of such FCM/BD Clearing Members). Moreover, Regulation 2 would require that LCH SA maintain the LCH SBS Client Segregated Depository Account separately from any and all assets of the FCM/BD Clearing Members, or any other assets that LCH SA is holding for clients (other than SBS Customers) and that the account contain no assets other than Collateral deposited by FCM/BD Clearing Members in connection with the clearing of SBS on behalf of their SBS Customers. Finally, LCH SA would designate the LCH SBS Client Segregated Depository Account as a "Special Clearing Account for the Exclusive Benefit of the Cleared Security-Based Swaps Customers" of the FCM/BD Clearing Member for purposes of the Exchange Act and SEC Regulations.

The proposed rule change also would update Regulation 3 of the CDS Clearing Regulations (Collateral), to apply to the LCH SBS Client Segregated Depository Account. Under Regulation 3 as revised, securities or cash held in the LCH SBS Client Segregated Depository Account would be subject to a security interest in accordance with Regulation 5 and no collateral deposited in the LCH SBS Client Segregated Depository Account may be applied on or in respect of payment or satisfaction of the FCM/BD Clearing Member's liabilities to LCH SA.

Similarly, the proposed rule change would update Regulation 4 (Transfer) to apply to BDs, SBS, and SBS Customers. Currently, Regulation 4 requires that, if an FCM Clearing Member is a Defaulting Clearing Member, any action by LCH SA pursuant to the Rule Book (including the CDS Default Management Process) must be taken in compliance with the Commodity Exchange Act and CFTC regulations and applicable bankruptcy laws regarding the liquidation or transfer of FCM Cleared Transactions carried by an FCM on behalf of its clients. Under Regulation 4 as revised, if an FCM/BD Clearing Member is a

<sup>15</sup> 17 CFR 240.15c3-3(p).



Defaulting Clearing Member, any action taken by LCH SA pursuant to the Rule Book (including the CDS Default Management Process) must be taken in compliance with the Commodity Exchange Act and CFTC regulations or the Exchange Act and SEC regulations, as applicable, and applicable bankruptcy laws regarding the liquidation or transfer of Cleared Swaps carried by an FCM on behalf of its clients or SBS carried by a BD on behalf of its SBS Customers. Moreover, under Regulation 4 as revised, to the extent any transfer by an FCM/BD Clearing Member of open contracts between its Proprietary Account and accounts of its FCM/BD Clients, upon an FCM/BD Client default, is permitted pursuant to the Rule Book (including the CDS Default Management Process) and the Procedures, such transfer must be made subject to applicable provisions of the Commodity Exchange Act and CFTC regulations or the Exchange Act and SEC regulations, as applicable, regarding segregation of assets. Currently, this provision only applies to the Commodity Exchange Act and CFTC regulations.

The proposed rule change also would update Regulation 5 of the CDS Clearing Regulations (Security Interest) to apply to BDs, SBS, and SBS Customers. Currently, Regulation 5 provides that each FCM Clearing Member grants LCH SA a first security interest in and a first priority and unencumbered first lien upon any and all cash, securities, receivables, rights and intangibles and any other Collateral or assets deposited with or transferred to LCH SA, or otherwise held by LCH SA, including all property deposited in an LCH Proprietary Depository Account and in an LCH Cleared Swaps Client Segregated Depository Account, as security for unconditional payment and satisfaction of the obligations and liabilities of the FCM Clearing Member to LCH SA. The proposed rule change would amend this provision so that it applies to FCM/BD Clearing Members and the LCH SBS Client Segregated Depository Account. The proposed rule change also would clarify that in no event shall LCH SA's security interest in the Collateral in an LCH Cleared Swaps Client Segregated Depository Account or an LCH SBS Client Segregated Depository Account held on behalf of the FCM/BD Clearing Member's Clients be exercised to satisfy any obligations or liabilities of such FCM/BD Clearing Member other than in connection with obligations or liabilities relating to Cleared Swaps cleared by such FCM/BD Clearing Member on behalf of its

Cleared Swaps Customers or relating to SBS cleared by such FCM/BD Clearing Member on behalf of its SBS Customers. Currently, this provision only applies to LCH Cleared Swaps Client Segregated Depository Account and swaps clients.

Finally, similar to the changes to the Rule Book, Clearing Supplement, and Procedures discussed above, throughout the Clearing Regulations the proposed rule change would make conforming changes to apply the Clearing Regulations to an FCM/BD Clearing Member instead of just an FCM Clearing Member. These changes would update references to Clearing Members to apply them to FCM/BD Clearing Members instead of just FCM Clearing Members, including changing the title of the document to the "FCM/BD CDS Clearing Regulations." The proposed rule change would similarly add references to the Exchange Act when discussing applicable law.

#### *E. Additional Changes Unrelated to U.S. Client Clearing*

In addition to the changes discussed above related to U.S. client clearing, the proposed rule change would make certain other changes not directly related to that initiative. First, the proposed rule change would amend Appendix 1 of the Rule Book (CDS Default Management Process). As discussed above, Appendix 1 of the Rule Book describes LCH SA's CDS Default Management Process. In Clause 5.4.4 (Minimum Bid Size), the amendment would revise the current formula for LCH SA's calculation of the Minimum Bid Size for each Non-Defaulting Clearing Member by incorporating a 100% maximum cap, thus clarifying that a Non-Defaulting Clearing Member would never be required to bid for more than 100% of the relevant Auction Package in a default auction. This proposed change would also be consistent with existing Clause 5.4.6 (Bids in excess of the Minimum Bid Size), which prohibits a Non-Defaulting Clearing Member from submitting Bid(s) whose Bid Size(s), alone or in aggregate, exceed 100% of the relevant Auction Package. The proposed rule change also would revise Clause 5.9.1 for LCH SA's recalculation of Minimum Bid Sizes for Residual Auction Packages in a potential second round of Competitive Bidding. Under existing Clause 5.9.1(i), LCH SA will reduce a Non-Defaulting Clearing Member's original Minimum Bid Size as calculated in Clause 5.4.4 by an amount equal to the Bid Credit, which is the percentage difference between the Minimum Bid Size and the percentage of the aggregate of the Bid Sizes of the

Non-Defaulting Member's Initial Winning Bids. The proposed rule change would provide that such recalculation is "subject to the maximum value for the Bid Credit of the Minimum Bid Size."

In Clause 8.1.1 of Appendix 1 of the Rule Book, the proposed rule change would remove a reference to the Early Termination Trigger Date at the end of the paragraph. Currently, that paragraph provides that upon an Early Termination Trigger Date, other payment and delivery obligations in relation to any Cleared Transactions and any other obligations pursuant to the CDS Clearing Documentation (including Collateral registered in any Collateral Accounts and other Collateral representing a Clearing Member's Contribution Requirement) shall be payable or deliverable on the Early Termination Trigger Date and in accordance with the provisions of Clause 8.1.1. The proposed rule change would retain this language but delete the reference to the Early Termination Trigger Date at the end of the paragraph such that the obligations shall be payable or deliverable in accordance with the provisions of Clause 8.1.1, rather than on the Early Termination Trigger Date and in accordance with the provisions of Clause 8.1.1. This change would help to ensure consistency in the operation of the Early Termination process since all payment and delivery obligations in the context of the Early Termination process would be made at the date and times as set out in the provisions of Clause 8.1.1. Thus, this change would remove a potential inconsistency between the Early Termination Trigger Date and the provisions of Clause 8.1.1.

Finally, the proposed rule change would amend Regulation 6 of the Clearing Regulations to implement CFTC Letter No. 19-17.<sup>16</sup> Under CFTC Letter No. 19-17, a Derivatives Clearing Organization may permit a Futures Commission Merchant to treat the separate accounts of a customer as accounts of separate entities subject to a number of conditions provided for in that letter. Therefore, the proposed rule change would amend Regulation 6(e) to allow Clearing Members to benefit from this no-action relief regarding the withdrawal of the Cleared Swaps Customer funds by providing that references to "Cleared Swaps Customer" shall include all Cleared Swaps Customers for the same beneficial

<sup>16</sup> CFTC Letter No 19-17 of July 10, 2019 ("Advisory and Time-Limited No-Action Relief with Respect to the Treatment of Separate Accounts by Futures Commission Merchants").

owner, unless the Clearing Member complies with the relevant conditions set out in CFTC Letter No. 19–17.

### III. Discussion and Commission Findings

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>17</sup> For the reasons given below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act<sup>18</sup> and Rules 17Ad–22(e)(1) and (e)(18).<sup>19</sup>

#### A. Consistency With Section 17A(b)(3)(F) of the Act

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of LCH SA be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of LCH SA or for which it is responsible.<sup>20</sup> As discussed in more detail below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>21</sup>

As described above, the proposed rule change would make a number of changes to the Rule Book, Clearing Supplement, Procedures, and Clearing Regulations to permit LCH SA's Clearing Members to offer client clearing services in respect of SBS to U.S. clients. Specifically, as discussed in Part II.A, the proposed rule change would amend the Rule Book to (i) add and update defined terms; (ii) modify the membership requirements applicable to Clearing Members; (iii) remove provisions that prohibit Clearing Members from offering clearing services to U.S. clients with respect to SBS; (iv) permit broker-dealers to become Clearing Members and update provisions to apply them to Clearing Members that are broker-dealers; (v) establish the account structure for Clearing Members clearing SBS on behalf of U.S. clients, including the treatment of collateral posted by Clearing Members in respect of client positions in SBS; and (vi) amend the

Appendix to apply relevant provisions of the CDS Default Management Process to SBS. The Commission believes these changes would facilitate clearing of SBS for U.S. clients by establishing the legal and operational framework for Clearing Members to clear SBS on behalf of U.S. clients, thereby promoting the prompt and accurate clearance and settlement of securities transactions by such clients at LCH SA. Similarly, the changes with respect to collateral posted by Clearing Members in respect of client positions in SBS would help to ensure that such collateral is subject to the provisions of LCH SA's Rule Book regarding the protection of collateral, including the return of excess collateral, thereby helping to assure the safeguarding of securities and funds in LCH SA's custody and control. Because the changes to the Clearing Supplement discussed in Part II.B above would further these changes to the Rule Book by making conforming changes to apply the Clearing Supplement to an FCM/BD Clearing Member instead of just an FCM Clearing Member, the Commission believes the changes to the Clearing Supplement also would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in LCH SA's custody and control.

As discussed in Part II.C, the proposed changes to the Procedures would (i) make conforming changes to apply them to an FCM/BD Clearing Member instead of just an FCM Clearing Member; (ii) require that LCH SA and Clearing Members establish and use certain accounts to hold and transfer cash and other collateral for satisfying margin requirements in connection with client positions in SBS; (iii) establish procedures for the return of excess collateral related to client positions in SBS; and (iv) remove provisions that currently prohibit LCH SA from accepting SBS transactions in respect of U.S. clients. Like the changes to the Rule Book and Clearing Supplement, the Commission believes these changes would facilitate clearing of SBS for U.S. clients by establishing the financial accounts and operational framework needed for clearing client positions in SBS and removing provisions that currently prohibit LCH SA from accepting SBS transactions in respect of U.S. clients, thereby promoting the prompt and accurate clearance and settlement of those securities transactions at LCH SA. Moreover, in requiring the establishment and use of certain accounts to hold and transfer cash and other collateral for satisfying margin requirements, and in

establishing procedures for the return of excess collateral related to client positions in SBS, these proposed changes would help to assure the safeguarding of securities and funds in LCH SA's custody and control.

For similar reasons, the Commission finds the proposed changes to the Clearing Regulations also are consistent with Section 17A(b)(3)(F) of the Act.<sup>22</sup> Requiring that Clearing Members and LCH SA establish accounts with a Bank for holding collateral on behalf of SBS Customers and requiring that the accounts be maintained separately from any and all assets of the FCM/BD Clearing Members, or any other assets that LCH SA is holding for clients (other than SBS Customers), should promote the safekeeping of SBS Customers' collateral, thereby assuring safeguarding of securities and funds in LCH SA's custody and control. Similarly, in amending Regulation 3 and Regulation 5 to clarify that the security interest granted to LCH SA applies to FCM/BD Clearing Members and the LCH SBS Client Segregated Depository Account and that no collateral deposited in the LCH SBS Client Segregated Depository Account may be applied on or in respect of payment or satisfaction of any of the FCM/BD Clearing Member's liabilities to LCH SA, the Commission believes the proposed rule change should help to assure that SBS Customers' collateral is not misapplied to satisfy a Clearing Member's liabilities, again assuring the safeguarding of securities and funds in LCH SA's custody and control. Moreover, amending Regulation 4 to require that any action by LCH SA pursuant to the Rule Book (including the CDS Default Management Process) be taken in compliance with the Exchange Act and SEC regulations as well as applicable bankruptcy laws regarding the liquidation or transfer of SBS carried by a BD on behalf of its clients, should help to assure the safekeeping of SBS Customers' collateral after the default of a Clearing Member. Finally, making conforming changes to apply the Clearing Regulations to an FCM/BD Clearing Member instead of just an FCM Clearing Member should help to assure the applicability of these provisions to SBS.

Finally, the Commission finds the other changes unrelated to U.S. client clearing, discussed in Part II.E above, are also consistent with Section 17A(b)(3)(F) of the Act.<sup>23</sup> Amending Appendix 1 of the Rule Book to provide that each Non-Defaulting Clearing Member would never be required to bid

<sup>17</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>18</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>19</sup> 17 CFR 240.17Ad–22(e)(1), (e)(18).

<sup>20</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>21</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>22</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>23</sup> 15 U.S.C. 78q–1(b)(3)(F).

for more than 100% of the relevant Auction Package and to remove a reference to the Early Termination Trigger Date at the end of the paragraph would correct existing drafting errors in clauses pertaining to the CDS Default Management Process. Correcting these errors should help to ensure that the CDS Default Management Process is applied consistently and correctly, thereby helping to ensure a smooth resolution of Clearing Member defaults. This in turn should help to ensure that LCH SA continues to operate as normal after a Clearing Member default, and thus should promote the prompt and accurate clearance and settlement of transactions. Moreover, in amending Regulation 6 of the Clearing Regulations to implement CFTC Letter No. 19–17, the proposed rule change should allow LCH SA's Clearing Members that are FCMs to take advantage of that relief, thereby promoting the use of LCH SA's clearing services among such members and the prompt and accurate clearance and settlement of derivative transactions.

Therefore, for the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Section 17A(b)(3)(F) of the Act.<sup>24</sup>

#### *B. Consistency With Rule 17Ad–22(e)(1)*

Rule 17Ad–22(e)(1) requires that LCH SA 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.<sup>25</sup> The Commission believes the changes discussed above permitting LCH SA's Clearing Members to submit for clearing SBS on behalf of their U.S. clients would establish a well-founded, clear, transparent, and enforceable legal basis for such client clearing services. In particular, removing current provisions from the Rule Book that prohibit Clearing Members from offering clearing services to U.S. clients with respect to SBS and removing provisions from the Procedures that prohibit LCH SA from accepting SBS transactions in respect of U.S. clients, would help ensure that the legal basis for providing clearing to U.S. clients with respect to SBS is well-founded. Establishing the account structure to be used by Clearing Members clearing SBS on behalf of U.S. clients and requiring that Clearing Members and LCH SA establish accounts for holding and transferring cash and other collateral on behalf of

SBS Customers likewise would help ensure that the methods for holding and transferring such collateral are clear and transparent. Amending Appendix 1 of the Rule Book to apply the CDS Default Management Process to SBS would help to ensure the enforceability of the CDS Default Management Process with respect to SBS, while amending Regulation 3 and Regulation 5 of the Clearing Regulations to clarify that the security interest granted to LCH SA applies to FCM/BD Clearing Members and the LCH SBS Client Segregated Depository Account, and that no collateral deposited in the LCH SBS Client Segregated Depository Account may be applied on or in respect of payment or satisfaction of any of the FCM/BD Clearing Member's liabilities to LCH SA, would help to ensure the enforceability of LCH SA's security interest while protecting SBS customer collateral. Finally, amending defined terms and provisions throughout the Rule Book, Clearing Supplement, Procedures, and Clearing Regulations to clarify that they apply to BDs and SBS would help to ensure that the legal bases for applying these provisions to BDs and SBS are similarly well-founded and clear.

The Commission believes that the other changes unrelated to U.S. client clearing, as discussed in Part II.E above, would similarly help to ensure that the legal basis for LCH SA's activities is well-founded and clear. Amending Appendix 1 of the Rule Book to provide that each Non-Defaulting Clearing Member would never be required to bid for more than 100% of the relevant Auction Package and to remove a reference to the Early Termination Trigger Date at the end of the paragraph would correct drafting errors in clauses pertaining to the CDS Default Management Process, thereby helping to ensure the clarity of the CDS Default Management Process. Amending Regulation 6 of the Clearing Regulations to implement CFTC Letter No. 19–17 should help clarify the ability of Clearing Members that are FCMs to rely on the provisions of such letter.

Thus, the Commission finds that these aspects of the proposed rule change are consistent with Rule 17Ad–22(e)(1).<sup>26</sup>

#### *C. Consistency With Rule 17Ad–22(e)(18)*

Rule 17Ad–22(e)(18) requires that LCH SA establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for

participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.<sup>27</sup> As discussed above, as part of the proposed changes permitting LCH SA's Clearing Members to submit for clearing SBS on behalf of their U.S. clients, the proposed rule change would impose certain requirements on Clearing Members who wish to offer clearing to U.S. clients. Among other things, Clearing Members would be required to establish accounts for holding and transferring cash and other collateral on behalf of SBS Customers and would be prohibited from offering clearing services to any U.S. Client, other than an affiliate of the clearing member, with respect to swaps and SBS, unless the Clearing Member (i) is an FCM or BD and (ii) has provided LCH SA with an opinion of counsel confirming that the provision of clearing services would not be contrary to applicable law. The Commission believes these changes would establish objective, risk-based, and publicly disclosed criteria for participation by LCH SA's Clearing Members in client clearing for U.S. clients, which should permit fair and open access by Clearing Members directly and U.S. clients indirectly.

Thus, the Commission finds that these aspects of the proposed rule change are consistent with Rule 17Ad–22(e)(18).<sup>28</sup>

#### **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(b)(3)(F) of the Act<sup>29</sup> and Rules 17Ad–22(e)(1) and (e)(18).<sup>30</sup>

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>31</sup> that the proposed rule change (SR–LCH SA–2021–001), be, and hereby is, approved.<sup>32</sup>

<sup>27</sup> 17 CFR 240.17Ad–22(e)(18).

<sup>28</sup> 17 CFR 240.17Ad–22(e)(18).

<sup>29</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>30</sup> 17 CFR 240.17Ad–22(e)(1), (e)(18).

<sup>31</sup> 15 U.S.C. 78s(b)(2).

<sup>32</sup> In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>24</sup> 15 U.S.C. 78q–1(b)(3)(F).

<sup>25</sup> 17 CFR 240.17Ad–22(e)(1).

<sup>26</sup> 17 CFR 240.17Ad–22(e)(1).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>33</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-16232 Filed 7-29-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92504; File No. SR-ICC-2021-017]

### Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Credit Operating Agreement and Governance Playbook

July 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934<sup>1</sup> and Rule 19b-4,<sup>2</sup> notice is hereby given that on July 20, 2021, ICE Clear Credit LLC (“ICE Clear Credit” or the “Clearing House”) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Credit. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

#### I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

The principal purpose of the proposed rule change is to amend and restate ICE Clear Credit’s Fifth Amended and Restated Operating Agreement (such amended and restated document, the Sixth Amended and Restated Operating Agreement or “Sixth A&R Operating Agreement”) to (i) reduce the number of managers on its Board of Managers (the “Board”) designated by its Parent, ICE US Holding Company L.P., (“ICE-designated managers”), and (ii) remove outdated provisions and make certain other non-substantive amendments.<sup>3</sup> ICE Clear Credit proposes corresponding changes to the Governance Playbook to update the composition of the Board and to make other non-substantive amendments. These revisions do not require any changes to the ICE Clear Credit Clearing Rules (the “Rules”).

#### II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Credit included statements concerning the purpose of and basis for the proposed rule change, security-based swap submission, or advance notice and discussed any comments it received on the proposed rule change, security-based swap submission, or advance notice. The text of these statements may be examined at the places specified in Item IV below. ICE Clear Credit has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

##### (A) Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### (a) Purpose

ICE Clear Credit proposes to adopt the Sixth A&R Operating Agreement, which would amend and restate its Fifth Amended and Restated Operating Agreement, and to make corresponding changes to the Governance Playbook. The proposed revisions are described in detail as follows.

###### I. Sixth A&R Operating Agreement

ICE Clear Credit is proposing to adopt the Sixth A&R Operating Agreement to reduce the number of ICE-designated managers on the Board and to remove outdated provisions and make other non-substantive amendments.

###### Board of Managers

Proposed amendments to Section 3.02(a)(i) would reduce the number of Parent Independent Managers (those independent managers designated by the Parent with no material relationships with ICE Clear Credit or its affiliates) from four to three managers. It would also remove all references to names of such Parent Independent Managers, as such persons have been appointed and need not be named in the operating agreement. Section 3.02(a)(ii) would reduce the number of Parent Non-Independent Managers (those non-independent managers designated by the Parent) from three to two managers. It would also similarly remove all references to names of such Parent Non-Independent Managers. The amendments would not change the numbers of Risk Committee Independent Managers or Risk Committee Non-Independent Managers (those independent and non-independent managers designated by the Risk Committee under the Rules, rather than by the Parent).

The amendments also update Section 3.03 to reflect prior amendments to the operating agreement that the Board will meet no less frequently than quarterly at such time and place as may be determined by the chair and may meet more frequently (either in person or telephonically) as circumstances dictate, and to remove a requirement that the Board meet telephonically no less than twice per calendar year.

###### Removal of Outdated Information Related to Conversion

Sections 2.01 and 2.02 would be revised to remove outdated provisions of the Fifth Amended and Restated Operating Agreement relating to the operation of the Clearing House prior to its conversion in 2011 to a Delaware limited liability company and to reflect the occurrence of that conversion. Related defined terms would be removed and/or updated as necessary to reflect these changes.

###### General Drafting Clarifications and Improvements

ICE Clear Credit additionally proposes other general drafting clarifications and improvements. The proposed changes revise outdated references to the name, jurisdiction of organization, and/or governing document of certain Intercontinental Exchange, Inc. entities and replace references to the Chief Executive Officer with references to the President (which is the correct title of the relevant officer) to reflect prior amendments to the operating agreement. The other changes that would be made throughout the Sixth A&R Operating Agreement include updating the Clearing House’s and the Parent’s notice information as presented in Section 7.01(a) and (b), updating the Clearing House’s registered office and agent in Delaware, referencing the Fifth Amended and Restated Operating Agreement where necessary, updating the definition of ICE’s Board of Director Governance Principles to refer to the current Independence Policy of the Board of Directors of ICE as well as other typographical and grammatical updates.

###### II. Governance Playbook

ICE Clear Credit proposes conforming changes to update the composition of the Board and to make other non-substantive amendments to the Governance Playbook, which consolidates governance arrangements set forth in ICE Clear Credit’s Rules, operating agreement, and other ICE Clear Credit policies and procedures. The changes to Section III.A would similarly reduce the number of Parent

<sup>33</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Capitalized terms used but not defined herein have the meanings specified in the Sixth A&R Operating Agreement.

Independent Managers from four to three managers and the number of Parent Non-Independent Managers from three to two managers. Footnote 1 would reference an amended version of the limited partnership agreement of the Parent and update the jurisdiction of organization of the Parent.<sup>4</sup> In Section III.C, ICE Clear Credit proposes a minor clarification with respect to the receipt and review of resignation letters from managers. Additionally, the proposed changes to Section III.F update the number of independent managers on the Board as well as a link to ICE's Board of Director Governance Principles.

#### (b) Statutory Basis

ICE Clear Credit believes that the proposed rule change is consistent with the requirements of Section 17A of the Act<sup>5</sup> and the regulations thereunder applicable to it. In particular, Section 17A(b)(3)(F) of the Act<sup>6</sup> requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible, and the protection of investors and the public interest. The proposed amendments to the number of ICE-designated managers are intended to promote efficient operation of the Board while maintaining appropriate diversity of viewpoints, representation of the interests of Participants and independence standards for managers. Specifically, as noted above, the amendments will not affect the number of managers designated by the Risk Committee under the Rules. ICE Clear Credit believes a board of 9 managers (rather than 11) remains an appropriate size for oversight of its ongoing operations. The other proposed clarifications and changes enhance readability and ensure that the Sixth A&R Operating Agreement and the Governance Playbook are clear and up to date, including by removing outdated provisions, incorporating prior amendments, or making other general clarifications and improvements, which would further ensure that relevant individuals carry out their responsibilities under the documents. In ICE Clear Credit's view, the amendments will thus enhance the

overall governance of the Clearing House and are consistent with the prompt and accurate clearance and settlement of cleared contracts, the safeguarding of securities and funds in the custody or control of ICE Clear Credit or for which it is responsible, and the protection of investors and the public interest. Accordingly, the amendments satisfy the requirements of Section 17A(b)(3)(F).<sup>7</sup>

Further, Section 17A(b)(3)(C) of the Act<sup>8</sup> requires that the rules of the clearing agency assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. The Sixth A&R Operating Agreement and the Governance Playbook will continue to set out the composition of the Board, with five managers (three independent and two non-independent) designated by the Parent and four managers (two independent and two non-independent) designated by the Risk Committee following the proposed amendments. The amendments will not affect the number of managers designated by the Risk Committee, the majority of whose members (9 of 12) are Participant representatives, and Participants will continue to be represented on the Board. As such, ICE Clear Credit believes that its governance arrangements, as modified by the proposed amendments, will continue to provide a fair representation of its shareholders and participants in the selection of its directors and administration of its affairs and are thus consistent with the requirements of Section 17A(b)(3)(C) of the Act.<sup>9</sup>

Rule 17Ad-22(e)(2)<sup>10</sup> requires clearing agencies to establish reasonably designed policies and procedures to provide for governance arrangements that, among other matters, establish that the board of directors have appropriate experience and skills to discharge their duties and responsibilities and consider the interests of relevant stakeholders of the clearing agency. As noted above, ICE Clear Credit believes the reduction in the number of ICE-designated managers is consistent with the ongoing effective oversight of the Clearing House by the Board. The amendments will not affect the number of managers designated by the Risk Committee, and thus will not adversely affect representation of Participants on the Board. Moreover, a majority of the Board will continue to be independent and have no material

relationships with ICE Clear Credit and its affiliates. As such, ICE Clear Credit believes that the amendments set out in the Sixth A&R Operating Agreement and Governance Playbook are consistent with the requirements of Rule 17Ad-22(e)(2).<sup>11</sup>

#### (B) Clearing Agency's Statement on Burden on Competition

ICE Clear Credit does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or appropriate in furtherance of the purposes of the Act. The amendments are being adopted to update ICE Clear Credit's operating agreement and Governance Playbook, and specifically the number of managers designated by the Parent. As a result, ICE Clear Credit does not expect that the proposed changes will adversely affect access to clearing or the ability of Participants, their customers or other market participants to continue to clear contracts. ICE Clear Credit also does not believe the amendments would materially affect the cost of clearing or otherwise impact competition among market participants or limit market participants' choices for selecting clearing services. Accordingly, ICE Clear Credit does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

#### (C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed amendments have not been solicited or received by ICE Clear Credit. ICE Clear Credit will notify the Commission of any written comments received with respect to the proposed rule change.

### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

<sup>4</sup> See SR-ICC-2021-010 for more information on the change in the jurisdiction of organization of the Parent.

<sup>5</sup> 15 U.S.C. 78q-1.

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>7</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>8</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>9</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>10</sup> 17 CFR 240.17 Ad-22(e)(2).

<sup>11</sup> 17 CFR 240.17 Ad-22(e)(2).

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

#### IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

##### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-ICC-2021-017 on the subject line.

##### *Paper Comments*

Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR-ICC-2021-017. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's website at <https://www.theice.com/clear-credit/regulation>. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICC-2021-017 and should be submitted on or before August 20, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>12</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-16233 Filed 7-29-21; 8:45 am]

**BILLING CODE 8011-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92492; File No. SR-ICEEU-2021-013]

### Self-Regulatory Organizations; ICE Clear Europe Limited; Order Approving Proposed Rule Change Relating to the ICE Clear Europe Articles of Association

July 26, 2021.

#### I. Introduction

On May 25, 2021, ICE Clear Europe Limited ("ICE Clear Europe") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),<sup>1</sup> and Rule 19b-4,<sup>2</sup> a proposed rule change to amend its Articles of Association (the "Articles"). The proposed rule change was published for comment in the **Federal Register** on June 11, 2021.<sup>3</sup> The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

#### II. Description of the Proposed Rule Change

As discussed further below, the proposed rule change would amend the Articles to: (i) Update definitions related to the ICE Clear Europe Board of Directors (the "Board") and references to Board committees; (ii) modify the composition and structure of the Board and Board committees; (iii) revise the provisions regarding Super-Quorum Matters; (iv) add an article regarding presence at a Board meeting and amend an article related to expenses for directors; and (v) adopt gender-neutral language and make non-substantive typographical edits throughout the Articles.<sup>4</sup>

<sup>12</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the ICE Clear Europe Articles of Association, Exchange Act Release No. 92120 (June 7, 2021); 86 FR 31348 (June 11, 2021) (SR-ICEEU-2021-013) ("Notice").

<sup>4</sup> The description that follows is excerpted from the Notice, 86 FR at 31348. Capitalized terms not otherwise defined herein have the meanings

#### *A. Definitions Related to the Board and Board Committees*

Beginning in the defined terms found in Article 3, the proposed rule change would change the name of the Risk Committee to Product Risk Committee and update references to this committee throughout the Articles accordingly. This change would reflect the correct current name and function of this committee (and distinguish the Product Risk Committee from other existing risk committees). Further, the proposed rule change would delete from the definition of Product Risk Committee the statement that it is composed of the directors, to reflect that the committee is comprised of directors as well as representatives of Clearing Members.

The proposed rule change would next delete definitions of, and references to, Board committees other than the Product Risk Committee. The proposed rule change would delete from article 3<sup>5</sup> the definitions of Audit Committee, Board Risk Committee, Compensation Committee, and Nomination Committee. In addition, the proposed rule change would also amend the defined term Committees. Currently that term is defined to mean certain committees of the Board (Audit Committee, Board Risk Committee, etc.). The proposed rule change would revise this definition to mean any committee constituted by the Board under the Articles. Although ICE Clear Europe is not proposing to change its current committee structure at this time, it does not believe the committees need to be defined in the Articles. Given that the Board is authorized to create, modify, or dissolve committees as it determines to be appropriate, the amendments would facilitate future changes to the committee structure by the Board without need to amend the Articles.<sup>6</sup> The proposed rule change would retain the definition of, and references to, the Product Risk Committee, however, because that Committee plays a specific role relating to the CDS Director, as discussed below.<sup>7</sup>

#### *B. Composition and Structure of the Board and Board Committees*

The proposed rule change also would make certain revisions to the composition of the Board and Board committees. Currently, the Articles provide that the number of directors shall be not less than six and not more

assigned to them in the ICE Clear Europe Clearing Rules or the Articles, as applicable.

<sup>5</sup> References herein to the numbering of particular articles will be to the articles as amended.

<sup>6</sup> Notice, 86 FR at 31348.

<sup>7</sup> Notice, 86 FR at 31348.

than twelve, with at least two and not more than four Independent Directors. The proposed rule change would not alter the size of Board; it would retain the not less than six and not more than twelve numerical requirement. The proposed rule change would provide, however, that at least one third of directors should be Independent Directors, replacing the current requirement of at least two and not more than four. Under a minimum Board size of six, this would result in two Independent Directors, and under a maximum Board size of twelve, this would result in four Independent Directors. Thus, this proposed change would in effect keep the number of independent directors the same, while providing flexibility and clarifying the language.

Relatedly, the proposed rule change would update the definition of Independent Director. Independent Director is currently defined as a person who is independent of the Company and of the Clearing House and who is appointed as a non-executive director of the Company. The proposed rule change would modify this definition to mean a person who meets the independence criteria for a director, as defined under relevant applicable legislation and who is appointed as a non-executive director.<sup>8</sup>

Similarly, the proposed rule change would clarify the definition of CDS Director. A CDS Director is defined as a person, reasonably acceptable to the Board and approved by the Bank of England, with appropriate experience of credit derivatives and the credit default swaps marketplace, and further experience including, but not limited to, corporate governance, management oversight, and financial markets, who is appointed by the Board as a non-executive director of the Company and who has been nominated by the Product Risk Committee with responsibility for CDS. The proposed rule change would retain this definition but would add a sentence to clarify that the CDS Director may also meet the criteria required of an Independent Director but, for the avoidance of doubt, would continue to be classified only as a CDS Director. Thus, even if the CDS Director meets the criteria required of an Independent Director, they will be classified only as

a CDS Director and not as an Independent Director.

The proposed rule change would also modify the Board composition requirement with respect to CDS Directors. Currently, the Articles require that two CDS Directors be appointed to serve on the Board. The proposed rule change would modify this provision to require only that one CDS Director serve on the Board. The proposed rule change also would amend the provisions relating to the appointment and retirement of CDS Directors to reflect this change. ICE Clear Europe represented that the proposed reduction to the required number of CDS Directors follows the retirement of one of the previous CDS Directors and that it was unnecessary to have two CDS Directors because Clearing Members would continue to be represented through the remaining CDS Director and the CDS Product Risk Committee.<sup>9</sup>

### C. Super-Quorum Matters

Super-Quorum Matters are certain matters before the Board that are subject to additional requirements regarding the presence of a CDS Director at the meeting where those matters are considered. Article 3 currently defines Super-Quorum Matters as matters regarding those aspects of the Rules that relate to: CDS Clearing Members; CDS contracts; the structure, size, or application of the CDS guaranty fund; the methodology for calculating a CDS Clearing Member's CDS guaranty fund contribution or the components thereof; permitted cover for CDS guaranty fund contributions; powers of assessment in respect of CDS Clearing Members; the time period for, or means by which, CDS margin is returned to a CDS Clearing Member; the methodology for determining the rate of return on the CDS guaranty fund; the use, re-hypothecation or investment of the CDS guaranty fund; the terms of reference for the CDS Risk Committee; and, the subject and content of the Board Resolution relating to those matters. The proposed rule change would retain this definition, with some additional clarifications. Specifically, the proposed rule change would clarify that the definition includes those aspects of the Rules that relate to "criteria for CDS Clearing Membership" instead of just "CDS Clearing Members." Because seemingly any aspect of the Rules could relate to CDS Clearing Members, including those aspects of the rules that are already specifically covered in the definition of Super-Quorum Matters, this specific change would narrow and

clarify this aspect of the definition. Moreover, clarifying that the definition covers those aspects of the Rules that relate to criteria for CDS Clearing Membership would ensure that those provisions of the Rules are also covered by the definition. Finally, the remaining portions of the definition of the Super-Quorum Matters would continue to broadly cover other aspects of the Rule that could relate to CDS Clearing Members, including any aspects of the rules relating to CDS contracts.

In addition, the proposed rule change would update a reference to the terms of reference for the CDS Risk Committee to the terms of reference for the Product Risk Committee, in furtherance of the change discussed above. The proposed rule change would also resolve a drafting ambiguity by removing "the subject and content of the Board Resolution" as a Super-Quorum Matter as, by current practice, not all Board resolutions are Super-Quorum Matters.

The proposed rule change next would amend the Articles to clarify the operation of the super-quorum requirement for Super-Quorum Matters, and to reflect the requirement to have one CDS Director present. The Articles currently require that, in relation to Super-Quorum Matters, a super-quorum is needed for the transaction of business, which means a majority of the directors serving on the Board at that time including at least one CDS Director. The proposed rule change would modify this provision to make the term "Super-Quorum" a defined term, meaning a majority of the directors serving on the Board at that time and, for as long as a CDS Director has been nominated by the Product Risk Committee with responsibility for CDS and appointed by the Board, the Super-Quorum must include a CDS Director who must be present at the meeting. Because under the Articles as revised there will only be one CDS Director, the proposed rule change would add this language to clarify that where a CDS Director has retired or resigned and a new CDS Director has not yet been nominated by the Product Risk Committee and appointed by the Board, the Board could still act on a Super-Quorum Matter. Thus, as in the current Articles, under the proposed rule change a Super-Quorum would include a CDS Director.

The proposed rule change would further clarify that while the CDS Director must be present at a meeting requiring a Super-Quorum, the CDS Director need not vote in favor of the resolution. The Articles do not currently require that the CDS Director vote in favor of the Board resolution relating to

<sup>8</sup> Specifically, ICE Clear Europe represented such legislation would include the definition of "independent member" pursuant to Article 2(28) of the European Market Infrastructure Regulation (EMIR), Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories as incorporated into UK law under the European Union (Withdrawal) Act 2018 (UK EMIR). Notice, 86 FR at 31349, n.4.

<sup>9</sup> Notice, 86 FR at 31349.



the Super-Quorum Matter, so this provision would clarify this point.

Moreover, the Articles currently provide that in relation to Super-Quorum Matters that need to be resolved in an emergency the quorum necessary shall be the number equal to a majority of the directors serving on the Board at that time. Thus, under the current Articles, the Board could resolve a Super-Quorum Matter at an emergency meeting without a CDS Director present. The proposed rule change would retain this provision, but would clarify that the ICE Clear Europe President or their delegate would deem whether there is an emergency. The proposed rule change would also add language to would clarify that, for the avoidance of doubt, the presence of a CDS Director is not necessary at the emergency meeting, as under the current Articles.

Finally, the Articles currently provide that where no CDS Directors are present at a meeting requiring a Super-Quorum, consideration of the business relating to relevant Super-Quorum Matters shall be adjourned to a re-convened meeting to be called subject to a minimum of two Business Days' notice to the Board, at which transaction of business in relation to the relevant Super-Quorum Matters shall not require a Super-Quorum and may be transacted by a quorum equal to a majority of the directors serving on the Board at that time. The proposed rule change would retain this provision but would clarify that at the subsequent meeting, a CDS Director need not be present.

#### *D. Presence and Directors' Expenses*

The proposed rule change, through a new article, would provide that a member shall be deemed present at a general meeting if participating by telephone or other electronic means and all participating members can hear each other. Relatedly, the proposed rule change would amend the Articles to state explicitly that for a quorum to be met for non-Super-Quorum Matters, the required majority of directors must be present at the meeting (under the new definition).

The proposed rule change also would amend the Articles regarding directors' expenses. The Articles provide that directors may, subject to the approval of the Board, be paid all travelling, hotel and other expenses properly incurred by them in connection with their attendance at meetings of directors or committees of directors or general meetings or separate meetings of the Company or otherwise in connection with the discharge of their duties. The proposed rule change would modify this provision by adding the word

“reasonable” immediately before “travelling,” thus in effect requiring the expenses to be reasonable. The proposed rule change also would remove the requirement that the expenses be subject to Board approval. ICE Clear Europe represented that, instead, the ICE Clear Europe President would approve such expenses.<sup>10</sup>

#### *E. Gender Neutral Language and Typographical Errors*

Throughout the Articles, the proposed rule change would amend various provisions to use gender-neutral language. The proposed rule change also would correct certain non-substantive typographical errors and update numbering due to the changes discussed above.

### **III. Discussion and Commission Findings**

Section 19(b)(2)(C) of the Act directs the Commission to approve a proposed rule change of a self-regulatory organization if it finds that such proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to such organization.<sup>11</sup> For the reasons discussed below, the Commission finds that the proposed rule change is consistent with Section 17A(b)(3)(C) of the Act,<sup>12</sup> Section 17A(b)(3)(F) of the Act,<sup>13</sup> and Rule 17Ad-22(e)(2)(i).<sup>14</sup>

#### *A. Consistency With Section 17A(b)(3)(C) of the Act*

Section 17A(b)(3)(C) of the Act requires, among other things, that the rules of ICE Clear Europe assure a fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.<sup>15</sup> The Commission believes that the proposed rule change, in general, would be consistent with assuring a fair representation of ICE Clear Europe's shareholders, members, and participants in the selection of its directors and administration of its affairs. Although, as discussed in Part II.B above, one aspect of the proposed rule change would reduce the minimum representation of CDS Directors on the Board of Directors from two to one, the proposed rule change would not reduce any of the authority or responsibility of the remaining CDS Director. Currently under the Articles the presence of at

least one CDS Director is required at Board meetings relating to Super-Quorum Matters, and no provision explicitly requires that a CDS Director vote in favor of Board resolutions relating to Super-Quorum Matters. Similarly under the proposed rule change, the presence of the CDS Director is required at Board meetings relating to Super-Quorum Matters, but the CDS Director need not vote in favor of a Board resolution relating to a Super-Quorum Matter for the resolution to pass. Moreover, the current provisions relating to the conduct of emergency meetings and re-convened meetings relating to Super-Quorum matters without a CDS Director present are largely the same under the Articles as proposed to be amended, with some additional clarifications. Finally, the Commission notes ICE Clear Europe's representation that Clearing Members would continue to be represented through the CDS Product Risk Committee, which, other than the Chair, is composed entirely of representatives of Clearing Members.<sup>16</sup>

Taking these factors together, the Commission finds that the proposed rule change is consistent with 17A(b)(3)(C) of the Act.<sup>17</sup>

#### *B. Consistency With Section 17A(b)(3)(F) of the Act*

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of ICE Clear Europe be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions, as well as to assure the safeguarding of securities and funds which are in the custody or control of ICE Clear Europe or for which it is responsible.<sup>18</sup> As discussed in more detail below, the Commission generally believes that the changes discussed above should facilitate the efficient operation of the clearing house and a clear and transparent governance structure, which would promote the prompt and accurate clearance and settlement of transactions and assure the safeguarding of securities and funds. Therefore, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.<sup>19</sup>

The Commission believes the changes discussed in Part II.A above would ensure that the Articles are consistent with the current operations of ICE Clear Europe by correcting the name of the

<sup>10</sup> Notice, 86 FR at 31349.

<sup>11</sup> 15 U.S.C. 78s(b)(2)(C).

<sup>12</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>13</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>14</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>15</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>16</sup> Notice, 86 FR at 31349.

<sup>17</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>18</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>19</sup> 15 U.S.C. 78q-1(b)(3)(F).

Risk Committee to the Product Risk Committee and amending the definition of that committee to reflect its current composition. Moreover, revising the defined term “Committees” and removing references to other Board committees would make the Articles more flexible by allowing for the addition, modification, or elimination of Board committees without the need to amend the Articles. The Commission believes that these changes should improve ICE Clear Europe’s ability to adapt its Board to evolving circumstances and unforeseen areas of priority.

Similarly, the Commission believes that the changes discussed in Part II.B above would clarify the Articles with respect to the composition of the Board. Specifically, changing the minimum number of Independent Directors to one third of the Board, from at least two but not more than four, would in effect result in the same number of Independent Directors as currently, given that the size of the Board could still range from six to twelve directors. This change would clarify and simplify the language of this requirement, however. Similarly, the Commission believes that revising the definition of an Independent Director to refer to independence criteria as defined under applicable legislation would allow this definition to change in response to changes to relevant legislation, thus furthering the clarity and flexibility of this definition. The Commission also believes that clarifying the definition of CDS Director, by adding language that a CDS Director can also meet the criteria for an Independent Director, will clarify the Articles by absolving a potential ambiguity of director classification. Finally, the Commission believes that changing the required Board representation of CDS Directors from two to one and revising other provisions to reflect this change would clarify the number of CDS Directors on the Board without substantially reducing the representation of Clearing Members.

The Commission also believes that amending the Articles pertaining to Super-Quorum Matters as discussed in Part II.C above would clarify the requirements applicable to Super-Quorum Matters. Specifically, the Commission believes clarifying the definition of Super-Quorum Matters would make it easier to determine what matters fall within the category of Super-Quorum Matters. Similarly, the Commission believes that by making the term “Super-Quorum” a defined term and including, as in the current Articles, a requirement that a CDS Director be present at a meeting to achieve a Super-

Quorum, the proposed rule change would clarify these provisions. Finally, the Commission believes the other changes discussed in Part II.C above would clarify points currently implied in the Articles: That a CDS Director need not vote in favor of a resolution during a Super-Quorum Matter; that the President or their delegate would determine the existence of an emergency as needed for an emergency meeting; and that a CDS Director need not be present at an emergency or reconvened Board meeting involving a Super-Quorum Matter.

Similarly, the Commission believes that the changes to the Articles concerning the acceptable criteria constituting presence at a Board meeting, as discussed in Part II.D above, would clarify when a director is present at a Board meeting, especially when participating by telephone. Revising the provision regarding directors’ expenses discussed in Part II.D above should clarify this provision given that the ICE Clear Europe President, and not the Board, approves such expenses. Finally, the Commission believes that the changes to the Articles to reflect gender-neutral language, correct typographical errors, and renumber the Articles in accord with the above changes to the Articles would clarify the Articles and eliminate drafting mistakes.

The Commission believes that by clarifying and revising the Articles, the proposed rule change would reduce the possibility for error in interpreting and applying the Articles, thus improving the operation of ICE Clear Europe’s governance in general and the Board in particular. The Commission further believes that improved governance and Board oversight may facilitate the efficient and effective operations of ICE Clear Europe, including its clearance and settlement of transactions and safeguarding of securities and funds. Therefore, the Commission finds that the proposed rule change should promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds in ICE Clear Europe’s custody and control, consistent with the Section 17A(b)(3)(F) of the Act.<sup>20</sup>

#### *C. Consistency With Rule 17Ad-22(e)(2)(i)*

Rule 17Ad-22(e)(2)(i) requires that ICE Clear Europe establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide for governance arrangements

that are clear and transparent.<sup>21</sup> As discussed above, the Commission believes that the proposed rule change would clarify the Articles and the operation of the Board pursuant to the Articles. For example, by establishing when a director is present at a Board meeting, including when participating by telephone, the Commission believes the proposed rule change would clarify when a director is present and counted for purposes of establishing a quorum or Super-Quorum. Moreover, a number of changes discussed in Part II.C above would clarify points currently implied in the Articles: That the CDS Director need not vote in favor of the Board resolution relating to the Super-Quorum Matter; that the President would determine the existence of an emergency as needed for an emergency meeting; and that a CDS Director need not be present at an emergency or reconvened Board meeting. Thus, the Commission finds that the proposed rule change is consistent with Rule 17Ad-22(e)(2)(i).<sup>22</sup>

#### **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(b)(3)(C) of the Act,<sup>23</sup> 17A(b)(3)(F) of the Act,<sup>24</sup> and Rule 17Ad-22(e)(2)(i).<sup>25</sup>

*It is therefore ordered* pursuant to Section 19(b)(2) of the Act<sup>26</sup> that the proposed rule change (SR-ICEEU-2021-013), be, and hereby is, approved.<sup>27</sup>

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>28</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

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<sup>21</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>22</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>23</sup> 15 U.S.C. 78q-1(b)(3)(C).

<sup>24</sup> 15 U.S.C. 78q-1(b)(3)(F).

<sup>25</sup> 17 CFR 240.17Ad-22(e)(2)(i).

<sup>26</sup> 15 U.S.C. 78s(b)(2).

<sup>27</sup> In approving the proposed rule change, the Commission considered the proposal’s impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>28</sup> 17 CFR 200.30-3(a)(12).

<sup>20</sup> 15 U.S.C. 78q-1(b)(3)(F).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92493; File No. SR-CboeEDGX-2021-034]

### Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule

July 26, 2021.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on July 13, 2021, Cboe EDGX Exchange, Inc. (the “Exchange” or “EDGX”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III 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”) is filing with the Securities and Exchange Commission (“Commission”) a proposed rule change to amend the 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/](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 introduce a new Retail Membership Program (the “Program”), which offers discounted membership fees, port fees and market data fees, along with the opportunity to receive enhanced rebates under new retail volume tiers, for up to 18 months for new retail member organizations.<sup>4</sup>

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 registered equities exchanges, as well as a number of alternative trading systems and other off-exchange venues that do not have similar self-regulatory responsibilities under the Exchange Act, to which market participants may direct their order flow. Based on publicly available information,<sup>5</sup> no single registered equities exchange has more than 16% of the market share. Thus, in such a low-concentrated and highly competitive market, no single equities exchange possesses significant pricing power in the execution of order flow. Additionally, the competition for retail order flow is even more intense, particularly as it relates to exchange versus off-exchange venues.

The purpose of this filing is to encourage smaller, retail-oriented market participants that are not currently EDGX Equities members to become members by discounting certain fixed costs associated with EDGX Equities membership and providing an opportunity to receive enhanced rebates for retail transactions. By way of background, the Exchange currently charges member organizations certain fixed costs related to Exchange membership, including the membership fees and port fees, and also assesses fees for market data products, all of which are filed with the Commission and set forth in the Exchange’s Fee Schedule. Also, by way of background, the

Exchange 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. In response to the competitive environment, the Exchange also offers tiered pricing which provides Members opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

As discussed more fully below, the Exchange proposes to introduce the Program, which would offer significant discounts for up to 18 months following approval as a new member on membership fees, port fees and certain market data fees for new member organizations, subject to specific restrictions. These discounts would be available to smaller New Members for the duration of the Program but would be phased out the last six months of the Program as the New Member grows. The Program would also provide an opportunity for new members to receive enhanced rebates on their retail order flow, as described more fully below. The Exchange believes that the proposed Program would make membership easier for a greater number of market participants and provide increased incentives for retail equity trading firms that are not currently Exchange members to apply for Exchange membership. The Exchange believes that having more members trading on the Exchange would benefit investors through the additional display of liquidity and increased execution opportunities on the Exchange. In addition, the Exchange believes that incentivizing specifically smaller, retail broker-dealers to become members could increase the amount of retail order flow sent to a public exchange, thereby encouraging greater participation and liquidity.

The Exchange proposes to codify the Program under Footnote 3 of the Fee Schedule.<sup>6</sup> The Exchange also notes that

<sup>4</sup> The Exchange initially filed the proposed fee changes July 1, 2021 (SR-CboeEDGX-2021-032). On July 13, 2021, the Exchange withdrew that filing and submitted this proposal.

<sup>5</sup> See Cboe Global Markets, U.S. Equities Market Volume Summary, Month-to-Date (June 29, 2021), available at [https://markets.cboe.com/us/equities/market\\_statistics/](https://markets.cboe.com/us/equities/market_statistics/).

<sup>6</sup> The Exchange proposes to relocate the existing Retail Volume Tier program from Footnote 3 to Footnote 2 of the Fee Schedule (which currently is “Reserved”) and codify the new Retail Equities Membership Program under Footnote 3. The Exchange proposes to append a reference to Footnote 2 to fee code ZA in the Fee Codes and Associated Fee Table to reflect this change.

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

the Program is similar to a program adopted by another exchange that similarly provides discounts on membership, connectivity and market data fees for new members for the similar purpose of encouraging smaller, retail-oriented market participants to become members of the exchange.<sup>7</sup>

#### General Eligibility and Restrictions

To be eligible to participate in the Program, a new member organization must be approved as a Retail Member Organization<sup>8</sup> and must not have been approved as an EDGX Equities member organization within the eighteen (18) months prior to approval (“New Member”) as an RMO. Members that were approved as an RMO on or after January 1, 2021 are still eligible for the Program provided they were not approved as an EDGX Equities RMO member within the 18 months prior to their approval as an RMO. Additionally, at least 90% of a New Member’s submitted orders to EDGX Equities each month must be Retail Orders<sup>9</sup> in order to maintain eligibility in the program for that month. Eligibility for discounts begins in the month that a new membership application is approved.<sup>10</sup> A New Member is only eligible to enroll in the Program once. A New Member that is, or becomes, an “affiliate” of an existing member organization, defined as having at least 75% common ownership between the two entities as reflected on each entity’s Form BD, is

<sup>7</sup> See Securities Exchange Act Release No. 91626, (April 21, 2021) 86 FR 22287 (April 27, 2021) (SR–NYSE–2021–22). See also New York Stock Exchange Price List 2021, NYSE Membership On-Range Program.

<sup>8</sup> A “Retail Member Organization” or “RMO” is a Member (or a division thereof) that has been approved by the Exchange under this Rule to submit Retail Orders. See EDGX Rule 11.21(a)(1).

<sup>9</sup> A “Retail Order” is an agency or riskless principal order that meets the criteria of FINRA Rule 5320.03 that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price or side of market and the order does not originate from a trading algorithm or any other computerized methodology. See EDGX Rule 11.21(a)(2). The Exchange will exclude from its calculation the 90% Retail Order threshold shares added, removed or routed on any day the Exchange’s system experiences a disruption that lasts for more than 60 minutes during Regular Trading Hours (“Exchange System Disruption”), on any day with a scheduled early market close, and on the last Friday in June (the “Russell Reconstitution Day”), consistent with the Exchange’s calculation of ADAV and ADV. See Exchange Fee Schedule, Definitions.

<sup>10</sup> An eligible RMO that was approved between January 1, 2021 and June 30, 2021 would be eligible to start receiving discounts and enhanced rebates beginning July 2021 (*i.e.*, would not apply to fees assessed prior to July 1, 2021) and the Program would terminate 18 months after July 2021 (*i.e.*, December 2022 would be the last month the firm is eligible to receive the discounts and enhanced rebates under the Program).

ineligible to participate in the Program. The Program would terminate after the 18th month of membership in the Program and the discounted fees discussed below will be charged to that member at the regular rate set forth in the Exchange’s fee schedule, as applicable, from that point forward.

#### Membership Fee

The Exchange currently assesses a yearly Membership Fee of \$2,500, which is generally assessed at the end of each year for membership in the following calendar year. For any month in which a firm is approved for membership with the Exchange after the renewal period, the Firm Membership Fee is pro-rated beginning on the date on which membership is approved. The pro-rated fee is calculated based on the remaining trading days in that year and assessed in the month following membership approval. The fee is also non-refundable in the event that the firm ceases to be a Member following the date on which fees are assessed.<sup>11</sup> The Exchange proposes to reduce the Membership Fee for a New Member as follows:

- *1–12 Months:* The Exchange proposes to waive the annual Membership Fee in its entirety for any New Member.
- *13–18 months:* For New Members that are still in the program at 13 months, the proposed discount will be based on a New Member’s Retail ADV<sup>12</sup> as a percentage of TCV<sup>13</sup> in December of the year the annual fee is assessed<sup>14</sup> as follows:

- A New Member that has Retail ADV of less than 0.10% of TCV will receive 100% discount on its annual Membership Fee (*i.e.*, the Exchange will waive the annual Membership Fee in its entirety)

- A New Member that has a Retail ADV greater than or equal to 0.10% of

<sup>11</sup> However, if a Member is pending a voluntary termination of rights as a Member pursuant to Exchange Rule 2.8 prior to the date any Membership Fee for a given year will be assessed, and the Member does not utilize the facilities of the Exchange during such time, then the Member is not obligated to pay the annual Membership Fee.

<sup>12</sup> “ADV” means average daily volume calculated as the number of shares added to, removed from, or routed by, the Exchange, or any combination or subset thereof, per day. ADV is calculated on a monthly basis.

<sup>13</sup> “TCV” means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply.

<sup>14</sup> For example, for a New Member that is still in the Program between 13–18 months during 2022, the Exchange would use the New Member’s Retail ADV as a percentage of TCV in the month of December 2022 to determine what discount the New Member is eligible to receive for the annual Membership Fee assessed for 2023.

TCV will receive a 50% of the annual Membership Fee.

- A New Member that has a Retail ADV greater than or equal to 0.20% of TCV will not receive any discount on the annual Membership Fee.

#### Physical Ports

The Program would next provide discounts on physical ports. By way of background, a physical port is utilized by a Member or non-Member to connect to the Exchange at the data centers where the Exchange’s servers are located. The Exchange currently assesses the following non-Disaster Recovery physical connectivity fees for Members and non-Members on a monthly basis: \$2,500 per physical port for a 1 gigabyte (“Gb”) circuit and \$7,500 per physical port for a 10 Gb circuit. The Exchange proposes to provide New Members the following physical port discounts:

- *1–12 Months:* The Exchange proposes to provide a 100% discount for one 1 Gb physical port (*i.e.*, waive the entire fee for one 1 Gb physical port each month). If a New Member purchases a 10 Gb physical port in lieu of a 1 Gb physical port, the Exchange will provide a credit in the amount of the fee for one 1 Gb physical port (currently \$2,500 per month).<sup>15</sup>

- *13–18 months:* For New Members that are still in the program at 13 months, the proposed discount each month will be based on a New Member’s Retail ADV as a percentage of TCV in that month as follows:

- A New Member that has Retail ADV of less than 0.10% of TCV will receive 100% discount on one 1 Gb physical port (if a New Member purchases a 10 Gb physical port in lieu of a 1 Gb physical port, the Exchange will provide a credit in the amount of the fee for one 1 Gb physical port).

- A New Member that has a Retail ADV greater than or equal to 0.10% of TCV will receive a 50% discount on one 1 Gb physical port (if a New Member purchases a 10 Gb physical port in lieu of a 1 Gb physical port, the Exchange will provide a credit in the amount of

<sup>15</sup> The Exchange notes that the credit provided for physical ports shall not be in excess of the cost of one 1 Gb physical port nor in excess of the total amount actually billed to a New Member as and for physical ports each month. For example, if a New Member purchases a 10 Gb physical port mid-month such that the New Member would be assessed a prorated rate of \$2,000 (instead of the full monthly \$7,500 fee), the Exchange will only credit the New Member \$2,000 (the amount the New Member was billed by the Exchange that month) and not \$2,500 (the cost of one 1 Gb physical port).

50% of the fee for one 1 Gb physical port (*i.e.*, \$1,250 per month)).<sup>16</sup>

- A New Member that has a Retail ADV greater than or equal to 0.20% of TCV will not receive any discount on its physical port fees.

**Logical Ports**

The Program would next provide discounts on its logical port fees. Currently, EDGX market participants may utilize a variety of logical connectivity ports. A logical port provides users with the ability within

the Exchange's system to accomplish a specific function through a connection, such as order entry, data receipt, or access to information. Currently, the Exchange assesses the following fees for the following logical ports (collectively referred to as "logical ports"):

Service	Cost per month
Logical Ports (excluding Purge Port, Multicast PITCH Spin Server Port or GRP Port) .....	\$550 per port.
Purge Ports .....	\$650 per port.
Multicast PITCH GRP Ports .....	\$550/primary (A or C Feed).
Multicast PITCH Spin Server Ports .....	\$550/set of primary (A or C feed).

The Exchange proposes to provide New Members the following logical port discounts (for up to 20 logical ports):<sup>17</sup>

- *1–12 Months:* The Exchange proposes to provide a 100% discount for up to 20 logical ports (*i.e.*, waive all fees for up to 20 logical ports).
- *13–18 months:* For New Members that are still in the program at 13 months, the proposed discount each month will be based on a New Member's Retail ADV as a percentage of TCV in that month as follows:
  - A New Member that has Retail ADV of less than 0.10% of TCV will receive 100% discount on up to 20 logical ports.

- A New Member that has a Retail ADV greater than or equal to 0.10% of TCV will receive a 50% discount on up to 20 logical ports.

- A New Member that has a Retail ADV greater than or equal to 0.20% of TCV will not receive any discount on its logical port fees.

**Market Data**

By way of background, the Exchange offers various market data products, including the following, to new member organizations on a voluntary, subscription basis: Cboe One Summary Feed,<sup>18</sup> Cboe One Premium Feed,<sup>19</sup> EDGX Depth Feed<sup>20</sup> and EDGX Top

Feed<sup>21</sup> ("Market Data Product"). Each market data product allows a vendor to redistribute certain data elements included in the data feed on a real-time basis. For each product, the Exchange charges associated fees set forth in the Exchange's Fee Schedule.<sup>22</sup> The market data fees that would be eligible for the Program are External Distribution Fees for Cboe One Summary Feed, Cboe One Premium Feed, EDGX Depth Feed and EDGX Top Feed and the Data Consolidation Fee for the Cboe One Summary Feed ("Eligible Market Data Fees"). The current fees for Eligible Market Data Fees are as follows:

Market data product	External distribution fee	Data consolidation fee
Cboe One Summary .....	\$5,000/mo .....	\$1,000/mo.
Cboe One Premium .....	12,500/mo .....	N/A.
EDGX Depth .....	2,500/mo .....	N/A.
EDGX Top .....	1,500/mo .....	N/A.

The Exchange proposes to provide New Members the following market data discounts:

- *1–12 Months:* The Exchange proposes to provide a 100% discount on Eligible Market Data Fees for Cboe One Summary, EDGX Depth and EDGX Top Data Fees and 44% discount on Eligible Market Data Fees for Cboe One Premium Data Feed.

- *13–18 months:* For New Members that are still in the program at 13 months, the proposed discount each month will be based on a New Member's Retail ADV as a percentage of TCV in that month as follows:
  - A New Member that has Retail ADV of less than 0.10% of TCV will receive 100% discount on Eligible Market Data Fees for Cboe One Summary, EDGX

Depth and EDGX Top Data Fees and 44% discount on Eligible Market Data Fees for Cboe One Premium Data Feed.

- A New Member that has a Retail ADV greater than or equal to 0.10% of TCV will receive a 50% discount on Eligible Market Data Fees for Cboe One Summary, EDGX Depth and EDGX Top Data Fees and 22% discount on Eligible

<sup>16</sup> The 50% discount rate will be based upon the amount of fees billed for up to one 1 Gb Physical Port. For example, if a New Member qualifies only for a 50% discount one month, and that New Member is assessed \$750 for physical port fees that month due to proration, the New Member will be credited \$375.

<sup>17</sup> If a New Member purchases more than 20 logical ports, the Exchange will calculate the average cost per port and provide a credit based on the average cost for 20 ports. For example, if an Exchange member were to purchase 18 order entry Logical Ports and 4 Purge Ports, that member would normally be assessed \$12,500 per month for logical port fees (*i.e.*, \$9,900 for Logical Ports (\$550 × 18) + \$2,600 for Purge Ports (\$650 × 4)). Under the Program, if a New Member purchased 18 order

entry Logical Ports and 4 Purge Ports (and qualified for the 100% discount), that New Member would receive a discount of approximately \$11,363 (*i.e.*, average rate of \$568.18 (\$12,500 divided by 22 ports) × 20 ports) and therefore would only be assessed \$1,137 (*i.e.*, average rate of \$568.18 × 2 remaining ports) as and for logical ports that month.

<sup>18</sup> Cboe One Summary Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for securities traded on EDGX and its affiliated equities exchanges and also contains individual last sale information for the EDGX and its affiliated equities exchanges.

<sup>19</sup> Cboe One Premium Feed is a data feed that disseminates, on a real-time basis, the aggregate best bid and offer ("BBO") of all displayed orders for

securities traded on EDGX and its affiliated exchanges and contains optional functionality which enables recipients to receive aggregated two-sided quotations from EDGX and its affiliated equities exchanges for up to five (5) price levels.

<sup>20</sup> EDGX Depth is a data feed that contains all displayed orders for listed securities trading on the Exchange, order executions, order cancellations, order modifications, order identification numbers, and administrative messages.

<sup>21</sup> EDGX Top Feed is an uncompressed data feed that offers both top-of-book quotations and execution information based on equity orders entered into the System.

<sup>22</sup> See Cboe EDGX Equities Fee Schedule, Market Data Fees.

Market Data Fees for Cboe One Premium Data Feed.

○ A New Member that has a Retail ADV greater than or equal to 0.20% of TCV will not receive any discount on Eligible Market Data Fees.

A New Member that was a subscriber to any of the Eligible Market Data Fees within the prior 18 months before becoming approved as an RMO is ineligible for Program's Market Data fee discounts. Program discounts cannot be combined with any other discounts applicable to Eligible Market Data Fees. For example, the Exchange offers certain discounts under the Small Retail Broker Distribution Program.<sup>23</sup> As proposed, the discounts under the Small Retail Broker Distribution Program could not be used if a new Member is receiving the discounts under the Program for Eligible Market Data Fees.

#### Volume Tier Rebates

The Exchange next proposes to adopt new Retail Membership Program Volume Tiers that would provide an additional opportunity for New Members to receive enhanced rebates from the standard rebate for Retail Orders that add liquidity (*i.e.*, yielding fee code "ZA")<sup>24</sup> if the New Member meets certain volume thresholds. The proposed new tiers would be available to New Members for the duration of the 18-month program and is designed to encourage New Members to increase their order flow in order to receive an enhanced rebate on their liquidity adding retail orders. The Exchange first proposes to adopt Retail Membership Program Volume Tier 1 which would provide an enhanced rebate of \$0.0033 per share where a New Member adds a Retail Order ADV (*i.e.*, yielding fee code ZA) greater than or equal to 0.10% of the TCV. The Exchange also proposes to adopt Retail Membership Program Volume Tier 2 which would provide an enhanced rebate of \$0.0034 per share where a Member adds a Retail Order ADV (*i.e.*, yielding fee code ZA) of greater than or equal to 0.20%.<sup>25</sup> The proposed new tiers are designed to encourage New Members to increase retail order flow on the Exchange which

further contributes to a deeper, more liquid market and provides even more execution opportunities for active market participants at improved prices.

#### 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,<sup>26</sup> in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5),<sup>27</sup> in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members, issuers and other persons using its facilities.

The Exchange operates in a highly competitive market in which market participants can and do move order flow or discontinue or reduce use of certain categories of products, in response to fee changes. Moreover, in the current competitive market environment, market participants also have a choice of where to become members. Accordingly, the Exchange believes that it is reasonable to offer discounted membership fees, physical and logical port fees and certain market data fees for up to 18 months for new RMOs in order to provide an incentive for smaller retail broker-dealers to apply for Exchange membership. The Exchange believes that providing an incentive for retail broker-dealers that are not currently Exchange members to apply for membership would encourage market participants to become members of the Exchange and bring additional liquidity to a public market. In addition, the Exchange believes that the proposal could result in additional retail liquidity to a public exchange, to the benefit of all market participants. The Exchange believes creating incentives and opportunities for new retail members on the Exchange protects investors and the public interest by increasing the competition and liquidity on a transparent public market.

The Exchange also notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and non-discriminatory because they are open on an equal basis to similarly situated members and provide additional benefits or discounts that are reasonably related to (i) the value to an exchange's market quality and (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns. Competing equity exchanges offer similar tiered pricing structures, including schedules of

rebates and fees that apply based upon members achieving certain volume and/or growth thresholds, as well as assess similar fees or rebates for similar types of orders, to that of the Exchange.

Accordingly, the Exchange believes the proposed New Retail Membership Program Volume Tiers are reasonable as they provide New Members an opportunity to receive enhanced rebates for their liquidity adding retail orders. The Exchange believes that the proposed enhanced rebates under the Retail Membership Program Volume Tiers 1 and 2 are reasonable as they are in line with existing rebates under the existing Retail Volume Tiers, which similarly provide enhanced rebates to RMOs on their liquidity adding retail orders if they meet certain thresholds. Additionally, the Exchange believes the proposed rebates are commensurate with the proposed criteria. That is, the rebate reasonably reflects the difficulty in achieving the corresponding criteria as amended. The proposed Retail Membership Program Volume Tiers are designed as an incentive to any and all New Members interested in meeting the proposed tier criteria to submit additional adding retail order flow to the Exchange. The Exchange notes that greater add volume order flow provides for deeper, more liquid markets and execution opportunities, and greater remove volume order flow increases transactions on the Exchange, which incentivizes liquidity providers to submit additional liquidity and execution opportunities, thus, providing an overall increase in price discovery and transparency on the Exchange.

The Exchange believes that the proposal is also equitable and not unfairly discriminatory. In the prevailing competitive environment, members, including retail-focused members, are free to disfavor Exchange membership and the Exchange's pricing if they believe that alternatives offer them better value. The proposed discounted access to Exchange services for up to 18 months and proposed New Retail Membership Program Volume Tiers do not permit unfair discrimination because the proposed changes would apply to all similarly situated members, who would all benefit from the lower and discounted fees, as well as proposed enhanced rebates, on an equal basis. Indeed, the Exchange believes the proposed Program is equitable and not unfairly discriminatory because it's open to all eligible New Members. The Exchange also believes it's equitable and not unfairly discriminatory to apply the Program only to qualifying New

<sup>23</sup> See Cboe EDGX Equities Fee Schedule, Market Data Fees, Small Retail Broker Distribution Program.

<sup>24</sup> Orders yielding fee code "ZA" are Retail Orders that add liquidity and are assessed a standard rebate of \$0.00320 per share.

<sup>25</sup> The Exchange notes that should a New Member qualify for a higher rebate under the existing Retail Volume Tiers, the New Member would receive that higher rebate (*e.g.*, if a New Member adds a Retail Order ADV (*i.e.*, yielding fee code ZA) of greater than or equal to 0.45%, the New Member would receive the enhanced rebate of \$0.0037 per share under Retail Volume Tier 2).

<sup>26</sup> 15 U.S.C. 78f.

<sup>27</sup> 15 U.S.C. 78f(b)(4) and (5).

Members because it is designed to encourage new retail market participants to become RMOs on the Exchange that may not otherwise do so due in part to the costs associated with becoming members of an exchange. Also, the Exchange believes it's equitable and not unfairly discriminatory to apply the proposed Program only to RMOs. As noted above, competition for retail order flow is intense and the Exchange has historically adopted a variety of incentives to encourage retail participation on the Exchange, including offering enhanced rebates for retail order flow.<sup>28</sup> Moreover the proposed Program is designed to incentivize increased Retail Order flow on the Exchange, which orders are generally submitted in smaller sizes and tend to attract Market Makers, as smaller size orders are easier to hedge. Increased Market Maker activity facilitates tighter spreads, signaling an additional corresponding increase in order flow from other market participants, which contributes towards a robust, well-balanced market ecosystem. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange additionally notes that while the Program is applicable only to New Members (that are RMOs), the Exchange does not believe this application is discriminatory as the Exchange offers alternative incentives for non-RMO order flow and also provides existing RMOs opportunities to receive enhanced rebates under existing volume tiers.<sup>29</sup> Similarly, the Exchange believes it's equitable and not unfairly discriminatory to reduce the available discounts for membership, physical and logical ports, and market data fees for New Members that reach a certain

<sup>28</sup> For example, the Exchange offers a higher standard rebate for Retail Orders that add liquidity (*i.e.*, orders yielding fee code "ZA") of \$0.00320 per share in lieu of the standard liquidity adding rebate of \$0.00160 per share. The Exchange also offers further enhanced rebates for qualifying RMOs under the existing Retail Volume Tiers. See EDGX Equities Fees Schedule, Fee Codes and Associated Fees and current Footnote 3, respectively.

<sup>29</sup> For example, the Exchange provides opportunities to all Members to receive an enhanced rebate on their order flow under the existing Add/Remove Volume Tiers. See EDGX Fee Schedule, Footnote 1. Additionally, RMOs may receive enhanced rebates for retail order flow under the existing Retail Volume Tiers. See EDGX Fee Schedule, current Footnote 3.

threshold of Retail ADV as a percentage of TCV during months 13–18 of the Program. As noted above, the proposed Program is designed to encourage new smaller, retail-oriented broker dealers to become members of the Exchange to become RMOs on the Exchange. The Exchange therefore believes it is reasonable and appropriate to reduce available discounts for non-transaction fees once a New Member has become more established and has grown to such degree that they are able to achieve the specified levels of Retail ADV as a percentage of TCV. Moreover, the Exchange notes that such members continue to be eligible to receive the enhanced rebates under the new Retail Membership Program Volume Tiers, as well as the further enhanced rebates under the existing Retail Volume Tiers, which directly corresponds to increased Retail ADV as a percentage of TCV. Accordingly, the Exchange believes that once a New Member is able to meet the specified thresholds, such New Members have less need to avail themselves of non-transaction fee discounts.

Lastly, the Exchange notes another exchange has adopted a similar 18-month program that provides for similar discounts on membership, connectivity and market data fees for the purpose of incentivizing smaller, retail-oriented broker dealers to become members of the Exchange.<sup>30</sup> For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

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. Instead, as discussed above, the Exchange believes that the proposed changes would increase competition by reducing the cost of operating as an Exchange member, which the Exchange believes will enhance market quality through the submission of additional retail liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for members. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of

individual stocks for all types of orders, large and small."<sup>31</sup>

*Intramarket Competition.* The proposed changes are designed to attract additional Members and retail order flow to the Exchange. The Exchange believes that the proposed changes would continue to incentivize market participants to become Exchange members and direct order flow, especially retail order flow, to the Exchange. As discussed above, greater liquidity benefits all market participants on the Exchange by encouraging market participants to become Exchange members and send orders to the Exchange, thereby providing more trading opportunities and contributing to robust levels of liquidity on the Exchange, which benefits all market participants. The proposed lower fees and discounts would be available to all similarly situated market participants, and, as such, the proposed change would not impose a disparate burden on competition among market participants on the Exchange. As noted, the proposal would apply to all similarly situated members on the same and equal terms, who would benefit from the changes on the same basis. Moreover, the Exchange believes that it is appropriate to limit the proposed Program to New Member RMOs as the Exchange is attempting to increase retail participation and as discussed above, the presence of Retail Orders on EDGX has the potential to benefit all market participants. The Exchange notes that competition for retail order flow is particularly fierce and in that context, the Exchange believes that it is appropriate to provide additional incentives for retail-oriented broker dealers to become Members submit retail order flow. Accordingly, the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

*Intermarket Competition.* 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

<sup>30</sup> See note 7, *supra*.

<sup>31</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).



than 16% of the market share.<sup>32</sup> 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 Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>33</sup> The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition v. Securities and Exchange Commission*, the D.C. Circuit stated as follows: “[n]o one disputes that competition for order flow is ‘fierce.’ . . . As the SEC explained, ‘[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution’; [and] ‘no exchange can afford to take its market share percentages for granted’ because ‘no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers’ . . . .”<sup>34</sup> Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

#### C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

#### III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act<sup>35</sup> and paragraph (f) of Rule

19b-4<sup>36</sup> 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](mailto:rule-comments@sec.gov). Please include File Number SR-CboeEDGX-2021-034 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-2021-034. 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-2021-034, and should be submitted on or before August 20, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>37</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-16228 Filed 7-29-21; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92496; File No. SR-Phlx-2021-42]

### Self-Regulatory Organizations; Nasdaq PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Opening Process

July 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 19, 2021, Nasdaq PHLX LLC (“Phlx” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the 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 amend Phlx Options 3, Section 8, “Options Opening Process.”

The text of the proposed rule change is available on the Exchange’s website at <https://listingcenter.nasdaq.com/rulebook/phlx/rules>, at the principal office of the Exchange, and at the Commission’s Public Reference Room.

<sup>37</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

<sup>32</sup> *Supra* note 4. [sic].

<sup>33</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

<sup>34</sup> *NetCoalition v. SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782-83 (December 9, 2008) (SR-NYSEArca-2006-21)).

<sup>35</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>36</sup> 17 CFR 240.19b-4(f).

## 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

Phlx proposes to amend Options 3, Section 8, "Options Opening Process." Specifically, the Exchange proposes to amend the definition of Valid Width Quote at Options 3, Section 8(a)(ix).

Phlx's Opening Process for an option series is conducted pursuant to Options 3, Section 8 paragraphs (f)–(k), on or after 9:30 a.m. Eastern Time the ABBO, if any, is not crossed and the System has received, within two minutes<sup>3</sup> of the opening trade or quote on the market for the underlying security,<sup>4</sup> a Valid Width Quote. The System will accept a Lead Market Maker's Valid Width Quote or the Valid Width Quote of at least one Phlx Electronic Market Maker.<sup>5</sup> Today, Phlx requires a Lead Market Maker to enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security.<sup>6</sup> Lead Market Makers must promptly enter a Valid

Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security.<sup>7</sup> In either case, the Lead Market Maker or Phlx Electronic Market Maker must enter a Valid Width Quote to open an options series. Phlx Options 3, Section 8(a)(ix) defines a Valid Width Quote as follows:

A Valid Width Quote is a two-sided electronic quotation submitted by a Phlx Electronic Market Maker that meets the following requirements: Options on equities and index options bidding and/or offering so as to create differences of no more than \$.25 between the bid and the offer for each option contract for which the prevailing bid is less than \$2; no more than \$.40 where the prevailing bid is \$2 or more but less than \$5; no more than \$.50 where the prevailing bid is \$5 or more but less than \$10; no more than \$.80 where the prevailing bid is \$10 or more but less than \$20; and no more than \$1 where the prevailing bid is \$20 or more, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

The Exchange proposes to amend a Valid Width Quote to instead provide:

A Valid Width Quote is a two-sided electronic quotation submitted by a Phlx Electronic Market Maker that meets the following requirements: Options on equities and index options bidding and/or offering so as to create differences of no more than \$5, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options. Such differences will be posted by the Exchange on its website.

This proposed language is similar to Nasdaq BX, Inc. ("BX").<sup>8</sup> The Exchange

<sup>7</sup> In the case of index options, Lead Market Makers must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening. See Options 3, Section 8(d)(iii).

<sup>8</sup> BX Options 3, Section 8(a)(9) provides, "A 'Valid Width Quote' is a two-sided electronic quotation, submitted by a Market Maker, quoted

proposes to widen the current bid/ask differentials for several reasons.

First, the proposal would conform the Valid Width Quote definition of Phlx to that of BX. BX refers to a difference not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending Phlx's Valid Width Quote, the Exchange notes that the \$5 difference is akin to Phlx's intra-day requirement within Phlx Options 2, Section 4(c)(1).<sup>9</sup>

Second, the proposed differential would simplify the differential for Lead Market Makers, who would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series. Widening the differentials would allow Lead Market Makers, and Electronic Market Makers that elect to quote during the Opening Process, an ability to quote wider during the Opening Process when an underlying is volatile. Today, pursuant to Options 3, Section 8(a)(ix), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options. With this proposal, the Exchange is not amending its ability to continue to establish differences for one or more series or classes of options, rather the Exchange may continue to set other requirements pursuant to current Phlx Options 3, Section 8(a)(ix). Today, the Exchange has established Valid Width Quote differentials which differ

with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options." See also Securities Exchange Act Release No. 89731 (September 1, 2020), 85 FR 55524 (September 8, 2020) (SR-BX-2020-016) (Order Approving Proposed Rule Change To Amend BX's Opening Process in Connection With a Technology Migration).

<sup>9</sup> Phlx Options 2, Section 4(c)(1) provides, "Options on equities (including Exchange-Traded Fund Shares), index options and options on U.S. dollar-settled FCOs may be quoted electronically with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid, provided that the foregoing bid/ask differentials shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. For such series, the bid/ask differentials may be as wide as the spread between the national best bid and offer in the underlying security. The Exchange may establish differences other than the above for one or more series or classes of options."

<sup>3</sup> The Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website.

<sup>4</sup> In the case of index options, the timing is within two minutes of the receipt of the opening price in the underlying index or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options. In both cases the Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website. The Exchange proposes an amendment within Options 3, Section 8(d)(i) as described below.

<sup>5</sup> The Exchange proposes an amendment within Options 3, Section 8(d)(i)(B) as described below.

<sup>6</sup> In the case of index options, a Lead Market Maker must enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the receipt of the opening price in the underlying index. The Lead Market Maker assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. See Options 3, Section 8(d)(iii).

from those described within Options 3, Section 8(a)(ix),<sup>10</sup> they are:

Bid price low end of	Bid price high end of	Maximum bid/ask differential
\$0.00	\$1.99	\$0.75
2.00	4.99	1.20
5.00	9.99	1.50
10.00	19.99	2.40
20.00	20.00+	3.00

Also, options with an expiration more than nine months away continue to be permitted a Valid Width Quote bid/ask differential of \$5.00. The Exchange will continue to utilize the differentials currently posted on its website until such time as it provides notice to members and member organizations of a change.

Third, the Exchange proposes to add rule text to state that such differences will be posted by the Exchange on its website.<sup>11</sup> Posting the current differentials on its website would allow members and member organizations to easily refer to the quoting obligations for the Opening Process.

#### Technical Amendment

The Exchange proposes to add "Eastern Time" after 9:30 a.m. and amend the word "currency" to security." The Exchange proposes to amend "Quotes" to "Quote" within Options 3, Section 8(d)(i)(B).

#### 2. Statutory Basis

The Exchange believes that its proposal to establish a \$5 difference is consistent with Section 6(b) of the Act.<sup>12</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>13</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirement that the rules of an exchange not be designed

to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed \$5 difference for the Valid Width Quote is more appropriate because it reflects the Exchange's experience in administering the rule and would continue to give Market Makers flexibility including during the Opening Process. The Exchange notes that the current standard is not being applied as the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8).<sup>15</sup> Widening the Valid Width Quote requirement would provide Lead Market Makers and Electronic Market Makers that elect to quote during the Opening Process, additional flexibility when submitting Valid Width Quotes during the Opening Process thereby allowing these Market Makers the ability to quote wider in instances where the Exchange has not established Valid Width Quote differentials which differ from those in the rule because volatile market conditions exist or there is news regarding an underlying security which may impact pricing. Lead Market Makers are integral to the Exchange's Opening Process as Phlx is dependent on receiving a Valid Width Quote to open an options series. With this proposal, Lead Market Makers would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series.<sup>16</sup>

The proposal would conform the Valid Width Quote definition of Phlx to that of BX.<sup>17</sup> BX refers to a difference not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending Phlx's Valid Width Quote, the Exchange notes that the \$5 difference is akin to Phlx's intra-day requirement within Phlx Options 2, Section 4(b)(4).<sup>18</sup> Also, today, MIAX and Emerald require market makers to enter a valid width NBBO with a difference of no more than \$5 between the bid and offer.<sup>19</sup>

<sup>15</sup> See *supra* note 10.

<sup>16</sup> Today, Phlx, Nasdaq GEMX, LLC ("GEMX"), Nasdaq MRX, LLC ("MRX"), Nasdaq ISE, LLC ("ISE"), Miami International Securities Exchange, LLC ("MIAX") and MIAX Emerald, LLC ("Emerald") and are the only options markets that require a Primary Market Maker, or Lead Market Maker in the case of Phlx, to submit a quote to open an options series.

<sup>17</sup> See *supra* note 8.

<sup>18</sup> See *supra* note 9.

<sup>19</sup> MIAX and Emerald require Market Makers to submit a valid width NBBO in the opening where the bid and offer of the NBBO differ no more than differences outlined in MIAX and Emerald Rule

Not all options markets have bid/ask differentials. In 2019, Cboe removed its quote width requirements while citing corresponding rules of its affiliated exchanges.<sup>20</sup> Cboe noted in the 2019 Rule Change that the current quote width requirement at the time for generally all classes was \$10, however, its Market-Makers consistently maintained two-sided quotes that were much tighter than the required width. Cboe opined that, even if markets experienced periods of stress or volatility, they remained obligated to maintain two sided markets and engage in a course of dealings that must be reasonably calculated to contribute to the maintenance of a fair and orderly market, which includes refraining from making bids or offers that are inconsistent with such course of dealings and updating quotations in response to changed market conditions.<sup>21</sup> Cboe noted that it did not believe that continuing to provide for a quote width requirement was necessary nor would it impact the maintenance of fair and orderly markets because Market-Makers already quoted at a bid/ask spread much narrower than the requirements and were required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.<sup>22</sup>

603(b)(4)(i). MIAX and Emerald Rule 603(b)(4)(i) provides that bidding and offering so as to create differences of no more than \$5 between the bid and offer. Rule 603(b)(4)(ii) provides MIAX and Emerald may establish differences other than the bid/ask differentials described in (i) above for one or more option series or classes, respectively. See MIAX and Emerald Rules 503.

<sup>20</sup> See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-Cboe-2019-059) ("2019 Rule Change").

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>10</sup> See <https://www.nasdaq.com/docs/2021/03/25/PHLXSystemSettings.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> 15 U.S.C. 78f(b).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> *Id.*

Unlike Cboe, Phlx does require its Market Makers to quote both during the Opening Process and intra-day within certain established bid/ask differentials. The Exchange notes that widening its Valid Width Quote differential during the Opening Process will not impact the maintenance of fair and orderly markets because Market Makers on Phlx, unlike other markets that do not require quoting during the Opening Process, will continue to require that its Market Makers provide Valid Width Quotes during the Opening Process, thereby ensuring liquidity. Also, Market Makers may quote tighter than the defined Valid Width Quote differential. Finally, similar to Cboe's argument in the 2019 Rule Change, Market Makers are required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.

Today, the Exchange has discretion to set other differentials,<sup>23</sup> similar to MIAX and Emerald.<sup>24</sup> The Exchange currently is utilizing that discretion to set different bid/ask differentials based on its observation of market openings. Currently, the Exchange requires Market Makers to submit Valid Width Quotes which are tighter than the proposed \$5 difference.

The Exchange's robust Opening Process seeks to encourage quality markets. As noted herein, unlike a majority of options markets,<sup>25</sup> it requires Lead Market Makers to quote during the Opening Process to ensure liquidity as well as an efficient Opening Process where options series are opened quickly and at fair prices.

The proposal to add rule text to state that such differences will be posted by the Exchange on its website<sup>26</sup> would allow members and member organizations to easily refer to the quoting obligations for the Opening Process.

#### Technical Amendment

The Exchange's proposal to add "Eastern Time" after 9:30 a.m., amend the word "currency" to security," and amend "Quotes" to "Quote" within Options 3, Section 8(d)(i)(B) will bring greater clarity to the Exchange's Rules.

<sup>23</sup> See Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options.

<sup>24</sup> See MIAX and Emerald Rules 503.

<sup>25</sup> See *supra* note 16.

<sup>26</sup> *Id.*

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to require Lead Market Makers and Electronic Market Makers to bid and/or offer an option series with differences of no more than \$5 for options on equities and index options does not impose an undue burden on competition. All Lead Market Makers, and Electronic Market Makers who elect to quote during the Opening Process, would be subject to the same requirement to submit a Valid Width Quote when submitting quotes during the Opening Process. Differentials would be available on the Exchange's website and therefore transparent, allowing members and member organizations to easily refer to the quoting obligations for the Opening Process. Finally, the proposal would also align quoting requirements more closely to intra-day requirements within Phlx Options 2, Section 4(c)(1).

With respect to inter-market competition, the Exchange notes that most options markets do not require market makers to quote during the opening.<sup>27</sup> The Exchange notes that MIAX and Emerald have quoting requirements in the opening similar to the differential proposed herein. Also, ISE, GEMX, and MRX are filing similar rule changes to this proposal.<sup>28</sup>

#### Technical Amendment

The Exchange's proposal to add "Eastern Time" after 9:30 a.m., amend the word "currency" to security," and amend "Quotes" to "Quote" within Options 3, Section 8(d)(i)(B) will bring greater clarity to the Exchange's Rules.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

#### III. 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

<sup>27</sup> See *supra* note 16 citing the options markets that require bid/ask differentials.

<sup>28</sup> See SR-ISE-2021-17, SR-GEMX-2021-07 and SR-MRX-2021-09. These rule changes are not yet noticed.

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<sup>29</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>30</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-Phlx-2021-42 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-2021-42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

<sup>29</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>30</sup> 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 Exchange has satisfied this requirement.

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-Phlx-2021-42 and should be submitted on or before August 20, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>31</sup>

**J. Matthew DeLesDernier,**

*Assistant Secretary.*

[FR Doc. 2021-16231 Filed 7-29-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92491; File No. SR-MRX-2021-09]

### Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Opening Process

July 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 19, 2021, Nasdaq MRX, LLC ("MRX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the 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 amend MRX Options 3, Section 8, "Options Opening Process."

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/mrx/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

MRX proposes to amend Options 3, Section 8, "Options Opening Process." Specifically, the Exchange proposes to amend the definition of Valid Width Quote at Options 3, Section 8(a)(8).

MRX's Opening Process for an option series is conducted pursuant to Options 3, Section 8 paragraphs (f)-(j), on or after 9:30 a.m. Eastern the ABBO, if any, is not crossed and the System has received, within two minutes<sup>3</sup> of the opening trade or quote on the market for the underlying security,<sup>4</sup> a Valid Width Quote. The System will accept a Primary Market Maker's Valid Width Quote or the Valid Width Quote of at least one Competitive Market Maker.<sup>5</sup> Today, MRX requires a Primary Market Maker to enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the

<sup>3</sup> The Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website.

<sup>4</sup> In the case of index options, the timing is within two minutes of the receipt of the opening price in the underlying index or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options. In both cases the Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website.

<sup>5</sup> The Exchange proposes an amendment within Options 3, Section 8(c)(1)(B) as described below.

dissemination of a quote or trade by the market for the underlying security.<sup>6</sup> Primary Market Makers must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security.<sup>7</sup> In either case, the Primary Market Maker or Competitive Market Maker must enter a Valid Width Quote to open an options series. MRX Options 3, Section 8(a)(8) defines a Valid Width Quote as follows:

A "Valid Width Quote" is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: Differentials shall be no more than \$0.25 between the bid and offer for each options contract for which the bid is less than \$2, no more than \$0.40 where the bid is at least \$2 but does not exceed \$5, no more than \$0.50 where the bid is more than \$5 but does not exceed \$10, no more than \$0.80 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is \$20 or greater, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

The Exchange proposes to amend a Valid Width Quote to instead provide:

A "Valid Width Quote" is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: Differentials shall be no more than \$5, provided that, in the case of equity options, the bid/ask differential stated above shall not apply

<sup>6</sup> In the case of index options, a Primary Market Maker must enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the receipt of the opening price in the underlying index. The Primary Market Maker assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one minute after the announced market opening. See Options 3, Section 8(c)(3). The Exchange proposes to make a technical amendment to Options 3, Section 8(c)(3) which is described below.

<sup>7</sup> In the case of index options, Primary Market Makers must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening. See Options 3, Section 8(c)(3).

<sup>31</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

to in-the-money series where the market for the underlying security is wider than the differential set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options. Such differences will be posted by the Exchange on its website.

This proposed language is similar to Nasdaq BX, Inc. ("BX").<sup>8</sup> The Exchange proposes to widen the current bid/ask differentials for several reasons.

First, the proposal would conform the Valid Width Quote definition of MRX to that of BX. BX refers to a difference not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending MRX's Valid Width Quote, the Exchange notes that the \$5 difference is akin to MRX's intra-day requirement within MRX Options 2, Section 4(b)(4).<sup>9</sup>

Second, the proposed differential would simplify the differential for Primary Market Makers, who would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series. Widening the differentials would allow Primary Market Makers and Competitive Market Makers that elect to quote during the Opening Process, an ability to quote wider during the Opening Process when an underlying is volatile. Today,

<sup>8</sup> BX Options 3, Section 8(a)(9) provides, "A 'Valid Width Quote' is a two-sided electronic quotation, submitted by a Market Maker, quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options." See also Securities Exchange Act Release No. 89731 (September 1, 2020), 85 FR 55524 (September 8, 2020) (SR-BX-2020-016) (Order Approving Proposed Rule Change To Amend BX's Opening Process in Connection With a Technology Migration).

<sup>9</sup> MRX Options 2, Section 4(b)(4) provides, ". . . To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. The Exchange may establish differences other than the above for one or more series or classes of options." Intra-day, MRX also distinguishes in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security.

pursuant to Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options. With this proposal, the Exchange is not amending its ability to continue to establish differences for one or more series or classes of options, rather the Exchange may continue to set other requirements pursuant to current MRX Options 3, Section 8(a)(8). Today, the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8),<sup>10</sup> they are:

Bid price low end of	Bid price high end of	Maximum bid/ask differential
\$0.00	\$1.99	\$0.75
2.00	4.99	1.20
5.00	9.99	1.50
10.00	19.99	2.40
20.00	20.00+	3.00

Also, options with an expiration more than nine months away continue to be permitted a Valid Width Quote bid/ask differential of \$5.00. The Exchange will continue to utilize the differentials currently posted on its website until such time as it provides notice to Members of a change.

Third, the Exchange also proposes to add rule text to state that such differences will be posted by the Exchange on its website.<sup>11</sup> Posting the current differentials on its website would allow Members to easily refer to the quoting obligations for the Opening Process.

#### Technical Amendment

The Exchange proposes to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B). The Exchange also proposes to remove two incorrect citations to Options 3, Section 8(c)(1)(iii). The "iii" was removed in a prior rule change.<sup>12</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal to establish a \$5 difference is consistent with Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirements that the rules of an

exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed \$5 difference for the Valid Width Quote is more appropriate because it reflects the Exchange's experience in administering the rule and would continue to give Market Makers flexibility including during the Opening Process. The Exchange notes that the current standard is not being applied as the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8).<sup>16</sup> Widening the Valid Width Quote requirement would provide Primary Market Makers, and Competitive Market Makers that elect to quote during the Opening Process, additional flexibility when submitting Valid Width Quotes during the Opening Process thereby allowing these Market Makers the ability to quote wider in instances where the Exchange has not established Valid Width Quote differentials which differ from those in the rule because volatile market conditions exist or there is news regarding an underlying security which may impact pricing. Primary Market Makers are integral to the Exchange's Opening Process as MRX is dependent on receiving a Valid Width Quote to open an options series. With this proposal, Primary Market Makers would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series.<sup>17</sup>

The proposal would conform the Valid Width Quote definition of MRX to

<sup>10</sup> See <https://www.nasdaq.com/docs/2021/03/22/MRXSystemSetting.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> See Securities Exchange Act Release No. 88660 (April 16, 2020), 85 FR 22482 (April 22, 2020) (SR-MRX-2020-09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 3, Section 8, Relating to the Options Opening Process).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

<sup>15</sup> *Id.*

<sup>16</sup> See *supra* note 10.

<sup>17</sup> Today, MRX, Nasdaq GEMX, LLC ("GEMX"), Nasdaq ISE, LLC ("ISE"), Nasdaq Phlx LLC ("Phlx"), Miami International Securities Exchange, LLC ("MIAX") and MIAX Emerald, LLC ("Emerald") and are the only options markets that require a Primary Market Maker, or Lead Market Maker in the case of Phlx, to submit a quote to open an options series.

that of BX.<sup>18</sup> BX refers to a difference not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending MRX's Valid Width Quote, the Exchange notes that the \$5 difference is akin to MRX's intra-day requirement within MRX Options 2, Section 4(b)(4).<sup>19</sup> Also, today, MIAX and Emerald require market makers to enter a valid width NBBO with a difference of no more than \$5 between the bid and offer.<sup>20</sup>

Not all options markets have bid/ask differentials. In 2019, Cboe removed its quote width requirements while citing corresponding rules of its affiliated exchanges.<sup>21</sup> Cboe noted in the 2019 Rule Change that the current quote width requirement at the time for generally all classes was \$10, however, its Market-Makers consistently maintained two-sided quotes that were much tighter than the required width. Cboe opined that, even if markets experienced periods of stress or volatility, they remained obligated to maintain two sided markets and engage in a course of dealings that must be reasonably calculated to contribute to the maintenance of a fair and orderly market, which includes refraining from making bids or offers that are inconsistent with such course of dealings and updating quotations in response to changed market conditions.<sup>22</sup> Cboe noted that it did not believe that continuing to provide for a quote width requirement was necessary nor would it impact the maintenance of fair and orderly markets because Market-Makers already quoted at a bid/ask spread much narrower than the requirements and were required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.<sup>23</sup>

Unlike Cboe, MRX does require its Market Makers to quote both during the

Opening Process and intra-day within certain established bid/ask differentials. The Exchange notes that widening its Valid Width Quote differential during the Opening Process will not impact the maintenance of fair and orderly markets because Market Makers on MRX, unlike other markets that do not require quoting during the Opening Process, will continue to require that its Market Makers provide Valid Width Quotes during the Opening Process, thereby ensuring liquidity. Also, Market Makers may quote tighter than the defined Valid Width Quote differential. Finally, similar to Cboe's argument in the 2019 Rule Change, Market Makers are required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.

Today, the Exchange has discretion to set other differentials,<sup>24</sup> similar to MIAX and Emerald.<sup>25</sup> The Exchange currently is utilizing that discretion to set different bid/ask differentials based on its observation of market openings. Currently, the Exchange requires Market Makers to submit Valid Width Quotes which are tighter than the proposed \$5 difference.

The Exchange's robust Opening Process seeks to encourage quality markets. As noted herein, unlike a majority of options markets,<sup>26</sup> it requires Primary Market Makers to quote during the Opening Process to ensure liquidity as well as an efficient Opening Process where options series are opened quickly and at fair prices.

The proposal to add rule text to state that such differences will be posted by the Exchange on its website<sup>27</sup> would allow Members to easily refer to the quoting obligations for the Opening Process.

#### Technical Amendment

The Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance

of the purposes of the Act. The Exchange's proposal to require Primary Market Makers and Competitive Market Makers to bid and/or offer an option series with differences of no more than \$5 for options on equities and index options does not impose an undue burden on competition. All Primary Market Makers, and Competitive Market Makers who elect to quote during the Opening Process, would be subject to the same requirement to submit a Valid Width Quote when submitting quotes during the Opening Process. Differentials would be available on the Exchange's website and therefore transparent, allowing Members to easily refer to the quoting obligations for the Opening Process. Finally, the proposal would also align quoting requirements more closely to intra-day requirements within MRX Options 2, Section 4(b)(4).

With respect to inter-market competition, the Exchange notes that most options markets do not require market makers to quote during the opening.<sup>28</sup> The Exchange notes that MIAX and Emerald have quoting requirements in the opening similar to the differential proposed herein. Also, ISE, GEMX and Phlx are filing similar rule changes to this proposal.<sup>29</sup>

#### Technical Amendment

Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

### III. 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<sup>30</sup> and

<sup>28</sup> See *supra* note 17 citing the options markets that require bid/ask differentials.

<sup>29</sup> See SR-ISE-2021-17, SR-GEMX-2021-07 and SR-Phlx-2021-42. These rule changes are not yet noticed.

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>18</sup> See *supra* note 8.

<sup>19</sup> See *supra* note 9.

<sup>20</sup> MIAX and Emerald require Market Makers to submit a valid width NBBO in the opening where the bid and offer of the NBBO differ no more than differences outlined in MIAX and Emerald Rule 603(b)(4)(i). MIAX and Emerald Rule 603(b)(4)(i) provides that bidding and offering so as to create differences of no more than \$5 between the bid and offer. Rule 603(b)(4)(ii) provides MIAX and Emerald may establish differences other than the bid/ask differentials described in (i) above for one or more option series or classes, respectively. See MIAX and Emerald Rules 503.

<sup>21</sup> See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-Cboe-2019-059) ("2019 Rule Change").

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options.

<sup>25</sup> See MIAX and Emerald Rules 503.

<sup>26</sup> See *supra* note 17.

<sup>27</sup> *Id.*



subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>31</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-MRX-2021-09 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-MRX-2021-09. 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

<sup>31</sup> 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 Exchange has satisfied this requirement.

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-MRX-2021-09 and should be submitted on or before August 20, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-16226 Filed 7-29-21; 8:45 am]

BILLING CODE 8011-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92495; File No. SR-GEMX-2021-07]

### Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Opening Process

July 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 19, 2021, Nasdaq GEMX, LLC ("GEMX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the 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 amend GEMX Options 3, Section 8, "Options Opening Process."

The text of the proposed rule change is available on the Exchange's website at <https://listingcenter.nasdaq.com/rulebook/gemx/rules>, at the principal

<sup>32</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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

GEMX proposes to amend Options 3, Section 8, "Options Opening Process." Specifically, the Exchange proposes to amend the definition of Valid Width Quote at Options 3, Section 8(a)(8).

GEMX's Opening Process for an option series is conducted pursuant to Options 3, Section 8 paragraphs (f)-(j), on or after 9:30 a.m. Eastern Time if the ABBO, if any, is not crossed and the System has received, within two minutes<sup>3</sup> of the opening trade or quote on the market for the underlying security,<sup>4</sup> a Valid Width Quote. The System will accept a Primary Market Maker's Valid Width Quote or the Valid Width Quote of at least one Competitive Market Maker.<sup>5</sup> Today, GEMX requires a Primary Market Maker to enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the dissemination of a quote or trade by the market for the underlying security.<sup>6</sup> Primary Market

<sup>3</sup> The Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website.

<sup>4</sup> In the case of index options, the timing is within two minutes of the receipt of the opening price in the underlying index or within two minutes of market opening for the underlying security in the case of U.S. dollar-settled foreign currency options. In both cases the Exchange may designate a shorter time provided it is disseminated to membership on the Exchange's website.

<sup>5</sup> The Exchange proposes an amendment within Options 3, Section 8(c)(1)(B) as described below.

<sup>6</sup> In the case of index options, a Primary Market Maker must enter a Valid Width Quote in 90% of their assigned series, not later than one minute following the receipt of the opening price in the underlying index. The Primary Market Maker assigned in a particular U.S. dollar-settled foreign currency option must enter a Valid Width Quote, in 90% of their assigned series, not later than one

Makers must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open within one minute following the dissemination of a quote or trade by the market for the underlying security.<sup>7</sup> In either case, the Primary Market Maker or Competitive Market Maker must enter a Valid Width Quote to open an options series. GEMX Options 3, Section 8(a)(8) defines a Valid Width Quote as follows:

A “Valid Width Quote” is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: Differentials shall be no more than \$.25 between the bid and offer for each options contract for which the bid is less than \$2, no more than \$.40 where the bid is at least \$2 but does not exceed \$5, no more than \$.50 where the bid is more than \$5 but does not exceed \$10, no more than \$.80 where the bid is more than \$10 but does not exceed \$20, and no more than \$1 where the bid is \$20 or greater, provided that, in the case of equity options, the bid/ask differentials stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differentials set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.

The Exchange proposes to amend a Valid Width Quote to instead provide:

A “Valid Width Quote” is a two-sided electronic quotation submitted by a Market Maker that meets the following requirements: Differentials shall be no more than \$5, provided that, in the case of equity options, the bid/ask differential stated above shall not apply to in-the-money series where the market for the underlying security is wider than the differential set forth above. The bid/ask differentials for in-the-money options series may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the

minute after the announced market opening. See Options 3, Section 8(c)(3). The Exchange proposes to make a technical amendment to Options 3, Section 8(c)(3) which is described below.

<sup>7</sup>In the case of index options, Primary Market Makers must promptly enter a Valid Width Quote in the remainder of their assigned series, which did not open following the receipt of the opening price in the underlying index or, with respect to U.S. dollar-settled foreign currency options, following the announced market opening. See Options 3, Section 8(c)(3).

above for one or more series or classes of options. Such differences will be posted by the Exchange on its website.

This proposed language is similar to Nasdaq BX, Inc. (“BX”).<sup>8</sup> The Exchange proposes to widen the current bid/ask differentials for several reasons.

First, the proposal would conform the Valid Width Quote definition of GEMX to that of BX. BX refers to a difference not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending GEMX’s Valid Width Quote, the Exchange notes that the \$5 difference is akin to GEMX’s intra-day requirement within GEMX Options 2, Section 4(b)(4).<sup>9</sup>

Second, the proposed differential would simplify the differential for Primary Market Makers, who would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series. Widening the differentials would allow Primary Market Makers and Competitive Market Makers that elect to quote during the Opening Process, an ability to quote wider during the Opening Process when an underlying is volatile. Today, pursuant to Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options. With this proposal, the Exchange is not amending its ability to continue to establish differences for one or more series or classes of options, rather the Exchange may continue to set other requirements pursuant to current

<sup>8</sup> BX Options 3, Section 8(a)(9) provides, “A ‘Valid Width Quote’ is a two-sided electronic quotation, submitted by a Market Maker, quoted with a difference not to exceed \$5 between the bid and offer regardless of the price of the bid. However, respecting in-the-money series where the market for the underlying security is wider than \$5, the bid/ask differential may be as wide as the quotation for the underlying security on the primary market, or its decimal equivalent rounded down to the nearest minimum increment. The Exchange may establish differences other than the above for one or more series or classes of options.” See also Securities Exchange Act Release No. 89731 (September 1, 2020), 85 FR 55524 (September 8, 2020) (SR–BX–2020–016) (Order Approving Proposed Rule Change To Amend BX’s Opening Process in Connection With a Technology Migration).

<sup>9</sup> GEMX Options 2, Section 4(b)(4) provides, “. . . To price options contracts fairly by, among other things, bidding and offering so as to create differences of no more than \$5 between the bid and offer following the opening rotation in an equity or index options contract. The Exchange may establish differences other than the above for one or more series or classes of options.” Intra-day, GEMX also distinguishes in-the-money options series where the underlying securities market is wider than the differentials set forth above. For these series, the bid/ask differential may be as wide as the spread between the national best bid and offer in the underlying security.

GEMX Options 3, Section 8(a)(8). Today, the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8),<sup>10</sup> they are:

Bid price low end of	Bid price high end of	Maximum bid/ask differential
\$0.00	\$1.99	\$0.75
2.00	4.99	1.20
5.00	9.99	1.50
10.00	19.99	2.40
20.00	20.00+	3.00

Also, options with an expiration more than nine months away continue to be permitted a Valid Width Quote bid/ask differential of \$5.00. The Exchange will continue to utilize the differentials currently posted on its website until such time as it provides notice to Members of a change.

Third, the Exchange also proposes to add rule text to state that such differences will be posted by the Exchange on its website.<sup>11</sup> Posting the current differentials on its website would allow Members to easily refer to the quoting obligations for the Opening Process.

#### Technical Amendment

The Exchange proposes to amend “Quotes” to “Quote” within Options 3, Section 8(c)(1)(B). The Exchange also proposes to remove two incorrect citations to Options 3, Section 8(c)(1)(iii). The “iii” was removed in a prior rule change.<sup>12</sup>

#### 2. Statutory Basis

The Exchange believes that its proposal to establish a \$5 difference is consistent with Section 6(b) of the Act.<sup>13</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>14</sup> requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and

<sup>10</sup> See <https://www.nasdaq.com/docs/2021/03/22/GEMXSystemSetting.pdf>.

<sup>11</sup> *Id.*

<sup>12</sup> See Securities Exchange Act Release No. 88730 (April 22, 2020), 85 FR 23545 (April 28, 2020) (SR–GEMX–2020–09) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX Rules at Options 3, Section 8, Titled Options Opening Process).

<sup>13</sup> 15 U.S.C. 78f(b).

<sup>14</sup> 15 U.S.C. 78f(b)(5).

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)<sup>15</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed \$5 difference for the Valid Width Quote is more appropriate because it reflects the Exchange's experience in administering the rule and would continue to give Market Makers flexibility including during the Opening Process. The Exchange notes that the current standard is not being applied as the Exchange has established Valid Width Quote differentials which differ from those described within Options 3, Section 8(a)(8).<sup>16</sup> Widening the Valid Width Quote requirement would provide Primary Market Makers, and Competitive Market Makers that elect to quote during the Opening Process, additional flexibility when submitting Valid Width Quotes during the Opening Process thereby allowing these Market Makers the ability to quote wider in instances where the Exchange has not established Valid Width Quote differentials which differ from those in the rule because volatile market conditions exist or there is news regarding an underlying security which may impact pricing. Primary Market Makers are integral to the Exchange's Opening Process as GEMX is dependent on receiving a Valid Width Quote to open an options series. With this proposal, Primary Market Makers would continue to be required to submit a Valid Width Quote during the Opening Process in their assigned options series.<sup>17</sup>

The proposal would conform the Valid Width Quote definition of GEMX to that of BX.<sup>18</sup> BX refers to a difference not to exceed \$5 between the bid and offer within the description of a Valid Width Quote, similar to BX Options 2, Section 4(f) and 5(d)(2) that describes intra-day quotes. By amending GEMX's Valid Width Quote, the Exchange notes that the \$5 difference is akin to GEMX's intra-day requirement within GEMX Options 2, Section 4(b)(4).<sup>19</sup> Also,

today, MIAX and Emerald require market makers to enter a valid width NBBO with a difference of no more than \$5 between the bid and offer.<sup>20</sup>

Not all options markets have bid/ask differentials. In 2019, Cboe removed its quote width requirements while citing corresponding rules of its affiliated exchanges.<sup>21</sup> Cboe noted in the 2019 Rule Change that the current quote width requirement at the time for generally all classes was \$10, however, its Market-Makers consistently maintained two-sided quotes that were much tighter than the required width. Cboe opined that, even if markets experienced periods of stress or volatility, they remained obligated to maintain two sided markets and engage in a course of dealings that must be reasonably calculated to contribute to the maintenance of a fair and orderly market, which includes refraining from making bids or offers that are inconsistent with such course of dealings and updating quotations in response to changed market conditions.<sup>22</sup> Cboe noted that it did not believe that continuing to provide for a quote width requirement was necessary nor would it impact the maintenance of fair and orderly markets because Market-Makers already quoted at a bid/ask spread much narrower than the requirements and were required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.<sup>23</sup>

Unlike Cboe, GEMX does require its Market Makers to quote both during the Opening Process and intra-day within certain established bid/ask differentials. The Exchange notes that widening its Valid Width Quote differential during the Opening Process will not impact the maintenance of fair and orderly markets because Market Makers on GEMX, unlike other markets that do not require quoting during the Opening Process, will continue to require that its Market Makers provide Valid Width Quotes during the Opening Process, thereby

ensuring liquidity. Also, Market Makers may quote tighter than the defined Valid Width Quote differential. Finally, similar to Cboe's argument in the 2019 Rule Change, Market Makers are required to continuously fulfill their obligations to engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market.

Today, the Exchange has discretion to set other differentials,<sup>24</sup> similar to MIAX and Emerald.<sup>25</sup> The Exchange currently is utilizing that discretion to set different bid/ask differentials based on its observation of market openings. Currently, the Exchange requires Market Makers to submit Valid Width Quotes which are tighter than the proposed \$5 difference.

The Exchange's robust Opening Process seeks to encourage quality markets. As noted herein, unlike a majority of options markets,<sup>26</sup> it requires Primary Market Makers to quote during the Opening Process to ensure liquidity as well as an efficient Opening Process where options series are opened quickly and at fair prices.

The proposal to add rule text to state that such differences will be posted by the Exchange on its website<sup>27</sup> would allow Members to easily refer to the quoting obligations for the Opening Process.

#### Technical Amendment

The Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to require Primary Market Makers and Competitive Market Makers to bid and/or offer an option series with differences of no more than \$5 for options on equities and index options does not impose an undue burden on competition. All Primary Market Makers, and Competitive Market Makers who elect to quote during the Opening Process, would be subject to the same requirement to submit a Valid

<sup>15</sup> *Id.*

<sup>16</sup> See *supra* note 10.

<sup>17</sup> Today, GEMX, Nasdaq ISE, LLC ("ISE"), Nasdaq MRX, LLC ("MRX"), Nasdaq Phlx LLC ("Phlx"), Miami International Securities Exchange, LLC ("MIAX") and MIAX Emerald, LLC ("Emerald") and are the only options markets that require a Primary Market Maker, or Lead Market Maker in the case of Phlx, to submit a quote to open an options series.

<sup>18</sup> See *supra* note 8.

<sup>19</sup> See *supra* note 9.

<sup>20</sup> MIAX and Emerald require Market Makers to submit a valid width NBBO in the opening where the bid and offer of the NBBO differ no more than differences outlined in MIAX and Emerald Rule 603(b)(4)(i). MIAX and Emerald Rule 603(b)(4)(i) provides that bidding and offering so as to create differences of no more than \$5 between the bid and offer. Rule 603(b)(4)(ii) provides MIAX and Emerald may establish differences other than the bid/ask differentials described in (i) above for one or more option series or classes, respectively. See MIAX and Emerald Rules 503.

<sup>21</sup> See Securities Exchange Act Release No. 87024 (September 19, 2019), 84 FR 50545 (September 25, 2019) (SR-Cboe-2019-059) ("2019 Rule Change").

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> See Options 3, Section 8(a)(8), the Exchange may establish differences other than the established bid/ask differentials for one or more series or classes of options.

<sup>25</sup> See MIAX and Emerald Rules 503.

<sup>26</sup> See *supra* note 17.

<sup>27</sup> *Id.*

Width Quote when submitting quotes during the Opening Process. Differentials would be available on the Exchange's website and therefore transparent, allowing Members to easily refer to the quoting obligations for the Opening Process. Finally, the proposal would also align quoting requirements more closely to intra-day requirements within GEMX Options 2, Section 4(b)(4).

With respect to inter-market competition, the Exchange notes that most options markets do not require market makers to quote during the opening.<sup>28</sup> The Exchange notes that MIAX and Emerald have quoting requirements in the opening similar to the differential proposed herein. Also, ISE, MRX and Phlx are filing similar rule changes to this proposal.<sup>29</sup>

#### Technical Amendment

The Exchange's proposal to amend "Quotes" to "Quote" within Options 3, Section 8(c)(1)(B) and remove two incorrect citations to Options 3, Section 8(c)(1)(C) will bring greater clarity to the Exchange's Rules.

#### C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

#### III. 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<sup>30</sup> and subparagraph (f)(6) of Rule 19b-4 thereunder.<sup>31</sup>

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](mailto:rule-comments@sec.gov). Please include File Number SR-GEMX-2021-07 on the subject line.

##### Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-GEMX-2021-07. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File

Number SR-GEMX-2021-07 and should be submitted on or before August 20, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>32</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-16230 Filed 7-29-21; 8:45 am]

BILLING CODE 8011-01-P

#### SMALL BUSINESS ADMINISTRATION

[License No. 05/05-0342]

#### Stonehenge Community Impact Fund, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that Stonehenge Community Impact Fund, L.P., 191 W Nationwide Blvd., Suite 600, Columbus, OH 43215, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small concerns, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Stonehenge Community Impact Fund, L.P. is proposing to provide financing to Phonesoap, LLC. to support the Company's growth.

The proposed transaction is brought within the purview of § 107.730 of the Regulations because Stonehenge Community Development 117, LLC, an Associate of Stonehenge Community Impact Fund, L.P., by virtue of Common Control as defined at § 107.50, holds a debt investment in Phonesoap, LLC and the proposed transaction would free other funds to pay such obligation to an Associate.

Therefore, the proposed transaction is considered self-deal pursuant to 13 CFR 107.730 and requires a regulatory exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

**Thomas Morris,**

Acting Associate Administrator, Director,  
Office of SBIC Liquidation, Office of  
Investment and Innovation.

[FR Doc. 2021-16265 Filed 7-29-21; 8:45 am]

BILLING CODE P

<sup>32</sup> 17 CFR 200.30-3(a)(12).

<sup>28</sup> See *supra* note 17 citing the options markets that require bid/ask differentials.

<sup>29</sup> See SR-ISE-2021-17, SR-MRX-2021-09 and SR-Phlx-2021-42. These rule changes are not yet noticed.

<sup>30</sup> 15 U.S.C. 78s(b)(3)(A)(iii).

<sup>31</sup> 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 Exchange has satisfied this requirement.

**SMALL BUSINESS ADMINISTRATION**

[Disaster Declaration #17052 and #17053; Illinois Disaster Number IL-00065]

**Administrative Declaration of a Disaster for the State of Illinois**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Illinois dated 07/26/2021.

*Incident:* Flooding.

*Incident Period:* 06/25/2021 through 06/27/2021.

**DATES:** Issued on 07/26/2021.

*Physical Loan Application Deadline Date:* 09/24/2021.

*Economic Injury (EIDL) Loan Application Deadline Date:* 04/26/2022.

**ADDRESSES:** Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

**FOR FURTHER INFORMATION CONTACT:** A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205-6734.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

*Primary Counties:* McLean.

*Contiguous Counties:*

Illinois: Champaign, De Witt, Ford, Livingston, Logan, Piatt, Tazewell, Woodford.

The Interest Rates are:

	Percent
<i>For Physical Damage:</i>	
Homeowners with Credit Available Elsewhere .....	3.250
Homeowners without Credit Available Elsewhere .....	1.625
Businesses with Credit Available Elsewhere .....	5.760
Businesses without Credit Available Elsewhere .....	2.880
Non-Profit Organizations with Credit Available Elsewhere ...	2.000
Non-Profit Organizations without Credit Available Elsewhere .....	2.000
<i>For Economic Injury:</i>	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere .....	2.880

	Percent
Non-Profit Organizations without Credit Available Elsewhere .....	2.000

The number assigned to this disaster for physical damage is 17052 6 and for economic injury is 17053 0.

The State which received an EIDL Declaration # is Illinois.

(Catalog of Federal Domestic Assistance Number 59008)

**Isabella Guzman,**

*Administrator.*

[FR Doc. 2021-16264 Filed 7-29-21; 8:45 am]

**BILLING CODE 8026-03-P**

**SMALL BUSINESS ADMINISTRATION**

[License No. 05/05-0335]

**Serra Capital (SBIC) III, L.P.; Conflicts of Interest Exemption**

Notice is hereby given that Serra Capital (SBIC) III, L.P., 2021 South First Street, Suite 206, Champaign, IL 61821, a Federal Licensee under the Small Business Investment Act of 1958, as amended ("the Act"), in connection with the financing of a small business concern, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration ("SBA") Rules and Regulations (13 CFR 107.730). Serra Capital (SBIC) III, L.P. is seeking a written exemption from SBA for a proposed financing to ConsortiEX, Inc., 1000 N Water Street, Suite 950, Milwaukee, WI 53202.

The financing is brought within the purview of § 107.730(a) of the Regulations because ConsortiEX, Inc. is an Associate of Serra Capital (SBIC) III, L.P. because Associate Serra Capital III, L.P. owns a greater than ten percent interest in ConsortiEX, Inc., therefore this transaction is considered *Financing which constitute conflicts of interest* requiring SBA's prior written exemption.

Notice is hereby given that any interested person may submit written comments on this transaction within fifteen days of the date of this publication to the Associate Administrator, Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW Washington, DC 20416.

United States Small Business Administration.

**Thomas G. Morris,**

*Acting Associate Administrator, Director, Office of Liquidation, Office of Investment and Innovation.*

[FR Doc. 2021-16266 Filed 7-29-21; 8:45 am]

**BILLING CODE P**

**SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36472]

**CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company**

**AGENCY:** Surface Transportation Board.  
**ACTION:** Decision No. 4 in STB Finance Docket No. 36472; Notice of Acceptance of Application and Related Filings; Issuance of Procedural Schedule.

**SUMMARY:** The Surface Transportation Board (Board) is accepting for consideration the revised application filed on July 1, 2021, by CSX Corporation (CSXC), CSX Transportation Inc. (CSXT), 747 Merger Sub 2, Inc. (747 Merger Sub 2), Pan Am Systems, Inc. (Systems), Pan Am Railways, Inc. (PAR), Boston and Maine Corporation (Boston & Maine), Maine Central Railroad Company (Maine Central), Northern Railroad (Northern), Portland Terminal Company (Portland Terminal), Springfield Terminal Railway Company (Springfield Terminal), Stony Brook Railroad Company (Stony Brook), and Vermont & Massachusetts Railroad Company (V&M) (collectively, Applicants). The application will be referred to as the Revised Application. The Revised Application seeks Board approval under 49 U.S.C. 11321-26 for: CSXC, CSXT, and 747 Merger Sub 2 to control the seven railroads controlled by Systems and PAR, and CSXT to merge six of the seven railroads into CSXT. This proposal is referred to as the Merger Transaction. In addition to the Revised Application, there are several filings for transactions related to the Merger Transaction, including: Four notices of exemption for Norfolk Southern Railway Company (NSR) to acquire trackage rights over existing lines owned by four separate railroads; a petition for exemption to allow Pittsburg & Shawmut Railroad, LLC d/

b/a Berkshire & Eastern Railroad (B&E), to replace Springfield Terminal as the operator of Pan Am Southern LLC (PAS); and a notice of exemption to allow SMS Rail Lines of New York, LLC (SMS) to discontinue service and terminate its lease of a rail line known as the Voorheesville Running Track. These transactions will be referred to as the Related Transactions. This decision embraces the following dockets: *Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc.*, Docket No. FD 36472 (Sub-No. 1); *Norfolk Southern Railway—Trackage Rights Exemption—Providence & Worcester Railroad*, Docket No. FD 36472 (Sub-No. 2); *Norfolk Southern Railway—Trackage Rights Exemption—Boston & Maine Corp.*, Docket No. FD 36472 (Sub-No. 3); *Norfolk Southern Railway—Trackage Rights Exemption—Pan Am Southern LLC*, Docket No. FD 36472 (Sub-No. 4); *Pittsburg & Shawmut Railroad—Operation Exemption—Pan Am Southern LLC*, Docket No. FD 36472 (Sub-No. 5); *SMS Rail Lines of New York, LLC—Discontinuance Exemption—in Albany County, N.Y.*, Docket No. AB 1312X. The Board finds that the Revised Application meets the requirements of 49 CFR 1180.4, 1180.6, and 1180.7 and is therefore complete. 49 CFR 1180.4(c)(7) (“A complete application contains all information for all applicant carriers required by these procedures, except as modified by advance waiver.”) Accordingly, the Revised Application is accepted. The Board adopts a procedural schedule for consideration of the Revised Application and Related Transactions, under which the Board’s final decision would be issued by April 1, 2022, and would become effective by May 1, 2022.

**DATES:** The effective date of this decision is July 30, 2021.

**Transportation Merits.** Any person who wishes to participate in this proceeding as a Party of Record must file, no later than August 20, 2021, a notice of intent to participate if they have not already done so. Descriptions of anticipated responsive applications, including inconsistent applications, are due by August 27, 2021. Petitions for waiver or clarification with respect to such applications are also due by August 27, 2021. Comments, protests, requests for conditions, and any other evidence and argument in opposition to the Revised Application or Related Transactions are also due by August 27, 2021. This includes any comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (USDOT). All responsive applications, including inconsistent applications, are

due by September 28, 2021. Responses to comments, protests, requests for conditions, and other opposition—including responses to DOJ and USDOT filings—are due by October 18, 2021. Responses to responsive applications, including inconsistent applications, are also due by October 18, 2021. Rebuttal in support of the Revised Application and Related Transactions is also due by October 18, 2021. Rebuttals in support of responsive applications, requests for conditions, and other opposition must be filed by November 17, 2021. Final briefs will be due by January 3, 2022. If a public hearing or oral argument is held, it will be held between the filing of rebuttals and final briefs on a date to be determined by the Board. The Board will issue its final decision by April 1, 2022, and the decision will become effective on May 1, 2022.

**Environmental Review.** As discussed below, CSXT is directed to file supplemental environmental information, which must be filed by August 19, 2021 (though CSXT may request an extension). Absent any extensions, environmental comments must be filed by September 17, 2021, addressed to the attention of the Board’s Office of Environmental Analysis (OEA).

**Safety Integration Plan.** Applicants shall file a proposed Safety Integration Plan (SIP) with the OEA and the Federal Railroad Administration (FRA) by August 30, 2021. Comments in response to the proposed SIP will be due on October 4, 2021. Applicants’ response to comments filed regarding the SIP will be due on October 18, 2021.

For further information respecting dates, see the Appendix to this decision.

**ADDRESSES:** Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board’s website. In addition, one copy of each filing must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CSX’s<sup>1</sup> and 747 Merger Sub 2’s representative, Anthony J. LaRocca, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036; (4) Systems’<sup>2</sup> PAR’s, and PAR

<sup>1</sup> CSXT is a wholly owned subsidiary of CSXC. CSXC and CSXT are referred to collectively as CSX.

<sup>2</sup> Systems directly and wholly owns PAR, which in turn directly and wholly owns four rail carriers: Boston & Maine, Maine Central, Portland Terminal,

Railroads’ representative, Robert B. Culliford, Pan Am Systems, Inc., 1700 Iron Horse Park, North Billerica, MA 01862; and (5) any other person designated as a Party of Record on the service list.

**FOR FURTHER INFORMATION CONTACT:**

Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

**SUPPLEMENTARY INFORMATION:** On February 25, 2021, Applicants submitted an application for the proposed Merger Transaction and requested that the Board treat the transaction as a “minor” transaction. In *Decision No. 1*, served and published in the **Federal Register** (86 FR 16,009) on March 25, 2021, the Board found the proposed transaction should be classified as a “significant” transaction under 49 U.S.C. 11325 and 49 CFR 1180.2(b), which must meet different procedural and informational requirements, and that Applicants’ submission therefore could not be treated as an application. However, in that same decision, the Board determined that it would consider the February 25, 2021 submission a prefiling notification (referred to herein as the Prefiling Notice), as required in “significant” transactions, see 49 CFR 1180.4(b)(1), thus permitting Applicants to perfect their application by supplementing their submission with the requisite information for a “significant” transaction in accordance with the Board’s regulations, between April 25 and June 25, 2021. The Board also required Applicants to submit the difference between the filing fee for a “minor” transaction (which Applicants had already paid) and the fee for a “significant” transaction.

On April 26, 2021, Applicants submitted an application for a “significant” transaction and paid the difference in filing fees. However, by decision served May 26, 2021, the Board concluded that the Applicants’ significant application failed to include the information needed to satisfy the Market Analysis requirement for a “significant” transaction application under 49 CFR 1180.7. *Decision No. 3*, FD 36472 et al., slip op. at 2. Specifically, the Board found that the Market Analysis and supporting verified statements did not sufficiently describe “the impacts of the proposed transaction—both adverse and beneficial—on inter-and intramodal competition,” nor did they meet the

and Springfield Terminal. Boston & Maine directly and wholly owns Northern, as well as a 99.27% interest in Stony Brook and a 98% interest in V&M.

other specific requirements for a Market Analysis, including the requirement for supporting data. *Id.* at 7.<sup>3</sup> Because the Market Analysis was incomplete, the significant application was rejected. However, the Board held that Applicants were permitted to file a revised application to remedy the deficiencies identified in *Decision No. 3. Id.* at 15.

On July 1, 2021, Applicants submitted the Revised Application.<sup>4</sup> As noted, Systems directly and wholly owns PAR, which in turn directly and wholly owns four rail carriers: Boston & Maine, Maine Central, Portland Terminal, and Springfield Terminal. Boston & Maine directly and wholly owns Northern, as well as a 99.27% interest in Stony Brook and a 98% interest in V&M. (Revised Appl. 6.) These seven rail carriers will be referred to collectively as the PAR Railroads. The PAR Railroads own rail lines and provide rail service on a freight rail network (PAR System) in New England, from Maine in the north to the Boston region in the south.<sup>5</sup> Springfield Terminal operates rail service on the PAR System on behalf of the PAR Railroads pursuant to leases over lines owned and leased by the other PAR Railroads. (*Id.*)

Additionally, Boston & Maine owns a 50% interest in PAS, a Class II carrier. (*Id.*) PAS is a 50/50 joint venture between Boston & Maine and NSR.<sup>6</sup> (*Id.*) The PAS lines include two main line corridors, referred to as the Patriot Corridor and the Knowledge Corridor. The Patriot Corridor runs east-west between milepost 467.4 at Mechanicville, N.Y., and milepost 311.97 near Willows, Mass., a distance of approximately 151.4 miles. (*Id.* at 39.) The Patriot Corridor includes a segment of rail line between Fitchburg, Mass.,

and Willows that is owned by Massachusetts Bay Transportation Authority (MBTA) and over which PAS has freight easement rights, and a segment owned by Canadian Pacific Railway Company (CP) between Mohawk Yard, N.Y., and Mechanicville and over which PAS has trackage rights. (Revised Appl., Ex. 13, Operating Plan 24.) The Patriot Corridor is sometimes referred to herein as the Northern Route.

The Knowledge Corridor runs north-south between milepost 183.4 at White River Junction, Vt., and milepost 0.0 at New Haven, Conn., a distance of approximately 183.4 miles. (*Id.*, Ex. 13, Operating Plan 24–25.) The Knowledge Corridor includes segments of rail line owned by New England Central Railroad (NECR), a subsidiary of Genesee & Wyoming, Inc. (GWI), and the National Railroad Passenger Corporation (Amtrak), each of which PAS has trackage rights over, and a segment owned by the Massachusetts Department of Transportation (MassDOT), over which PAS has freight easement rights. (*Id.*)

Springfield Terminal, also a Class II rail carrier, operates PAS as PAS's agent. (Revised Appl. 6.) NSR has reserved trackage rights on the PAS line between Mechanicville and Ayer, Mass., and rights to interchange certain traffic with other connecting regional lines. (Revised Appl., Ex. 22–E, V.S. Reishus 45.) Springfield Terminal currently operates NSR trains over the PAS line between Mechanicville and Ayer, pursuant to a haulage agreement between PAS and NSR. (Revised Appl., Ex. 13, Operating Plan 13.)

CSXT, a Class I rail carrier, owns and operates approximately 19,500 miles of railroad in 23 states<sup>7</sup> and the District of Columbia, as well as in the Canadian Provinces of Ontario and Quebec. (Revised Appl. 32.) The CSXT network includes a rail line between the Boston, Mass. region and Rotterdam Junction, N.Y., via Selkirk, N.Y. (*Id.* at 34.) CSXT primarily interchanges traffic with Springfield Terminal/PAS at Rotterdam Junction, and with Springfield Terminal/PAR at Barbers Station, Mass. (*Id.* at 35.)

**Merger Transaction.** Under the proposed Merger Transaction, CSX and 747 Merger Sub 2 would acquire control of the PAR Railroads, and CSXT would merge the PAR Railroads, except V&M,

into CSXT.<sup>8</sup> (Revised Appl. 6–7.) As CSXT would wholly own and control Boston & Maine, CSX and 747 Merger Sub 2 also seek authority to acquire Boston & Maine's 50% joint ownership in PAS. (*Id.* at 7–8.) Applicants state that CSXT, NSR, and GWI have entered into agreements regarding the operation of PAS upon consummation of the Merger Transaction, specifically: (1) A settlement agreement between CSXT and NSR (NSR Settlement Agreement), which includes an agreement relating to operations at Ayer; and (2) a Term Sheet Agreement among CSXT, NSR, and GWI (Term Sheet Agreement). (*Id.* at 8–9.) Applicants state that these two agreements contemplate transactions that are related to the Merger Transaction and require Board authorization. These Related Transactions are discussed in the following section.

**Related Filings.** Several notices of exemption and a petition for exemption were filed in connection with the Revised Application.

**NSR Trackage Rights Authority.** NSR filed four verified notices of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights pursuant to four separate trackage rights agreements with CSXT, Providence & Worcester Railroad Company (P&W) (a GWI subsidiary), Boston & Maine, and PAS.<sup>9</sup> Specifically:

- In *Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc.*, Docket No. FD 36472 (Sub-No. 1), NSR seeks approximately 161.5 miles of overhead trackage rights on CSXT's mainline between approximately Voorheesville, N.Y. (at or near milepost QG 22.5) and Worcester, Mass. (at or near milepost QB 44.5) (inclusive of appurtenant passing tracks and sidings).
- In *Norfolk Southern Railway—Trackage Rights Exemption—Providence & Worcester Railroad*, Docket No. FD 36472 (Sub-No. 2), NSR seeks approximately 2.90 miles of

<sup>8</sup> Specifically, Systems would be merged with 747 Merger Sub 1, Inc., with Systems surviving. Immediately thereafter, Systems would be merged with 747 Merger Sub 2, with 747 Merger Sub 2 surviving and the separate corporate existence of Systems ceasing. 747 Merger Sub 2, as the surviving corporation, would be renamed Pan Am Systems, Inc., and would be a wholly owned subsidiary of CSXC. Concurrent with closing, CSXC would contribute Pan Am Systems, Inc., and all of its subsidiaries to CSXT. CSXT would thereafter control the rail carrier subsidiaries of Pan Am Systems, Inc., and at a future time yet to be determined, would merge those subsidiaries, except V&M, into CSXT. (Revised Appl. 6–7.)

<sup>9</sup> NSR has filed public and highly confidential versions of the trackage rights agreements in each of these sub-dockets. Persons seeking access to the highly confidential versions must do so pursuant to the protective order adopted in this proceeding by a decision served on March 3, 2021.

<sup>3</sup> Applicants are also required to submit an Operating Plan, which must be based on the Market Analysis. 49 CFR 1180.8(b). Because the Market Analysis was incomplete, the Board also held that the Operating Plan must be considered incomplete. *Decision No. 3*, FD 36472 et al., slip op. at 7 n.16.

<sup>4</sup> Applicants submitted a public version and highly confidential version of their Revised Application. The public version is available on the Board's website. The highly confidential version may be obtained subject to the provisions of the protective order issued by the Board on March 3, 2021.

<sup>5</sup> The PAR System consists of approximately 808 route miles of rail lines, including approximately 724.53 owned and leased (including perpetual freight easement) route miles and approximately 83.62 trackage-rights route miles in Massachusetts, Maine, New Hampshire, and Vermont. (Revised Appl. 32.)

<sup>6</sup> PAS's network consists of approximately 425 route miles, including approximately 281.38 owned route miles (including perpetual freight easement) and approximately 143.62 trackage-rights route miles in Connecticut, Massachusetts, New Hampshire, New York, and Vermont. (Revised Appl. 32.)

<sup>7</sup> The states are: Alabama, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and West Virginia.



overhead trackage rights on P&W's mainline between a connection with the tracks of CSXT at Worcester at milepost 0.0, over Track 1 extending from the east side of Green Street to the point of merger of said Track 1 and the so-called Main Track at milepost 1.05, south of Garden Street, and over the Main Track thereafter from milepost 1.05 to P&W's Gardner Branch baseline station 153+50, which is the point of connection with the tracks of Boston & Maine at Barbers Station at milepost 2.90.

- In *Norfolk Southern Railway—Trackage Rights Exemption—Boston & Maine Corp.*, Docket No. FD 36472 (Sub-No. 3), NSR seeks approximately 22.08 miles of overhead trackage rights on Boston & Maine's line from milepost X 2.92 at Barber, Mass.<sup>10</sup> and connection to P&W, to milepost X 25.0 at Harvard, Mass., and connection to PAS.<sup>11</sup>

- In *Norfolk Southern Railway—Trackage Rights Exemption—Pan Am Southern LLC*, Docket No. FD 36472 (Sub-No. 4), NSR seeks approximately 3.01 miles of overhead trackage rights on PAS's line from milepost X 25.0 at Harvard, and a connection to Boston & Maine, to milepost X 28.01 at Ayer.<sup>12</sup>

The combination of these four trackage rights agreements would create a new route that would allow NSR to move intermodal and automobile trains from Voorheesville in eastern New York State to Ayer. This route is sometimes referred to herein as the Southern Route. Applicants state that these trackage rights comprising the Southern Route would give NSR the capability to provide double-stack intermodal service by avoiding a tunnel constraint that exists on the Patriot Corridor, *i.e.*, the Northern Route. (Revised Appl., Ex. 12, Market Analysis 24.) Specifically, the height limitations of the Hoosac Tunnel on the Northern Route prevent NSR from double-stacking containers. (Revised Appl. 24.) Pursuant to these trackage rights, NSR's trains could instead take the Southern Route and NSR could double-stack its trains.

NSR states that the trackage rights being acquired pursuant to these verified notices of exemption would not

<sup>10</sup> In the verified notice, NSR uses milepost X 2.92 at Barber to describe the overhead trackage rights it seeks. (NSR Notice 3, FD 36472 (Sub-No. 3).) The trackage rights agreement governing this transaction refers to this point as being in Barbers Station. (*Id.* at Ex. 2.)

<sup>11</sup> If the Merger Transaction is approved and consummated, this Boston & Maine line would be owned by CSXT. (*Id.* at 2 n.1.)

<sup>12</sup> As noted, PAS is jointly owned by NSR and Boston & Maine. (NSR Notice at 2, FD 36472 (Sub-No. 4).) If the Merger Transaction is approved and consummated, the PAS lines—including the line that is the subject of this trackage rights proceeding—would be jointly owned by NSR and CSXT. (*Id.* at n.1.)

take effect until the Merger Transaction is approved and consummated. (NSR Notice 2 nn.1, 4, FD 36472 (Sub-No. 1); NSR Notice 2 nn.1, 4, FD 36472 (Sub-No. 2); NSR Notice 2 nn.1, 4, FD 36472 (Sub-No. 3); NSR Notice 2 nn.1, 4, FD 36472 (Sub-No. 4).) It also states that it does not anticipate any adverse labor impacts as a result of these transactions; however, it agrees to the imposition of the employee protective conditions established in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980). (NSR Notice 6, FD 36472 (Sub-No. 1); NSR Notice 6, FD 36472 (Sub-No. 2); NSR Notice 6, FD 36472 (Sub-No. 3); NSR Notice 5–6, FD 36472 (Sub-No. 4).)

*B&E Operating Authority. In Pittsburg & Shawmut Railroad—Operation Exemption—Pan Am Southern LLC*, Docket No. FD 36472 (Sub-No. 5), B&E filed an amended petition for exemption under 49 U.S.C. 10502 and 49 CFR part 1121 from the provisions of 49 U.S.C. 11323(a)(2) and 11324 to allow B&E to enter into contracts to operate on behalf of PAS, and to accept an assignment from Springfield Terminal of Springfield Terminal's current rights to operate the PAS lines, totaling approximately 425 route miles of rail line and incidental trackage rights. (B&E Amended Pet. 3, FD 36472 (Sub-No. 5).) B&E is a wholly owned subsidiary of GWI.<sup>13</sup> B&E notes that its petition is filed as a transaction integrally related to, and dependent upon, approval of the Merger Transaction. (B&E Amended Pet. 1–2, FD 36472 (Sub-No. 5).)

As noted above, Springfield Terminal, an affiliate of PAR, currently operates PAS as PAS's agent. (Revised Appl. 6.) Springfield Terminal also operates NSR trains over the PAS-owned line between Mechanicville and Ayer pursuant to a

<sup>13</sup> According to its petition, B&E is the same entity as Pittsburg & Shawmut Railroad, LLC (P&S), an existing Class III carrier, but the business name Berkshire & Eastern Railroad would be used only for P&S's operations of PAS lines. (B&E Amended Pet. 3 n.5, FD 36472 (Sub-No. 5).) On July 1, 2021, B&E filed a supplement to its Amended Petition, in response to a Board request for clarification regarding: (i) B&E's relationship with P&S and P&S's parent company, Buffalo & Pittsburgh Railroad, Inc. (BPRR), and (ii) which of these entities would be providing rail service as PAS's operating carrier. *Decision No. 3*, FD 36472 et al., slip op. at 14–15. B&E states that P&S is currently a residual common carrier by virtue of its ownership of active rail lines in Pennsylvania, but that those lines are currently operated by P&S parent company, BPRR. (B&E Suppl. 2, FD 36472 (Sub-No. 5).) BPRR is itself a subsidiary of GWI. According to B&E, BPRR would continue to operate P&S's lines in Pennsylvania, but P&S—doing business as B&E—would operate the PAS lines as PAS's agent. (*Id.* at 2–3.)

haulage agreement between PAS and NSR. (Revised Appl., Ex. 13, Operating Plan 13.) According to Applicants, CSXT has ensured that there will be no anticompetitive effects as a result of its acquisition of 50% ownership of PAS by entering into an agreement with NSR and GWI to have Springfield Terminal replaced by B&E as operator of PAS. (Revised Appl. 12.)

B&E indicates that the PAS lines that B&E would operate over connect with several other railroads, including CSXT, NSR, Delaware and Hudson Railway Company, Inc./CP, Boston & Maine, Batten Kill Railroad, Connecticut Southern Railroad, Inc. (CSO), NECR, P&W, and the Vermont Railway System. (B&E Amended Pet. 3–4, FD 36472 (Sub-No. 5).) NECR, CSO, and P&W—like B&E—are owned, directly or indirectly, by GWI. (*Id.* at 4.) B&E states that, as PAS's operator, it would maintain PAS's access to all of the carriers that connect to the PAS lines and that all shippers that have access to PAS would continue to have access to PAS. (*Id.*) It further states that it would be responsible for setting rates for PAS in a non-discriminatory fashion as to all rail carriers that have the ability to interchange traffic with PAS or otherwise connect to PAS. (*Id.* at 4–5.)

B&E states that its contract to operate the PAS lines would not become effective unless and until the Merger Transaction is approved by the Board and consummated by the Applicants, the exemption sought by B&E becomes effective, and Springfield Terminal and B&E enter into implementing agreements with the relevant labor unions representing Springfield Terminal employees. (*Id.* at 6.)<sup>14</sup> According to B&E, it currently has no employees, but intends to offer employment to Springfield Terminal employees working on the PAS lines with a goal of filling 159 positions. (*Id.* at 15.) B&E further asserts that the standard labor protection requirements of 49 U.S.C. 11326(a), as set forth by in *New York Dock Railway—Control—Brooklyn Eastern District (Terminal) (New York Dock)*, 360 I.C.C. 60 (1979), should apply to this transaction. (Revised Appl. 15–16.)

*Discontinuance Authority Over NSR Line. In SMS Rail Lines of New York, LLC—Discontinuance Exemption—in Albany County, N.Y.*, Docket No. AB 1312X, NSR filed, on behalf of SMS and

<sup>14</sup> CSXT, NSR, and GWI have agreed that, if the Merger Transaction is consummated prior to the replacement of Springfield Terminal by B&E and the initiation of PAS operations by B&E, then Springfield Terminal would continue to operate PAS until Springfield Terminal is replaced as the PAS operator. (Revised Appl. 9.)

with SMS's consent, a verified notice of exemption for SMS to discontinue common carrier service and terminate its lease operations over approximately 15 miles of rail line owned by NSR and located between milepost 11.00 in Voorheesville and a point 50 feet south of the centerline of the bridge at milepost 26.14 (or engineering station 6136±) in Delanson, N.Y., including the use of a wye track and any track leading to the Northeast Industrial Park at mileposts 12.1 and 12.29, in Albany County, N.Y. (Delanson-Voorheesville Line).<sup>15</sup> According to NSR, SMS' request for discontinuance authority is related to the trackage rights NSR is seeking in Docket No. FD 36472 (Sub-Nos. 1–4). (SMS Notice 3 n.5, AB 1312X.) Specifically, NSR asserts that the discontinuance, along with the trackage rights it would receive, are necessary to improve NSR's ability to move intermodal traffic and automotive vehicles into the greater Boston marketplace. (*Id.*) In particular, NSR trains that utilize the proposed CSXT/P&W/Boston & Maine/PAS trackage rights over the lines from Voorheesville to Ayer—*i.e.*, the Southern Route—would enter the line from the Delanson-Voorheesville Line. (*See* Letter from CSX to Danielle Gosselin, Acting Director, OEA, at 5 (Apr. 7, 2021) (Envtl. Comment EI–30550) (herein referred to as CSX Env'tl. Comment).)<sup>16</sup>

The notice includes the required certification from SMS that the line satisfies the criteria for discontinuance under the exemption provisions at 49 CFR 1152.50(b); specifically, that no local traffic has moved over the line during the last two years, that any common carrier overhead traffic on the line can be rerouted, and that no formal complaint filed by a user of rail service on the line (or a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period. (SMS Notice 7–8, AB 1312X.)<sup>17</sup>

<sup>15</sup> NSR, on behalf of SMS, filed the verified notice of exemption on February 25, 2021. Pursuant to 49 CFR 1152.50(d), the railroad seeking the exemption must notify certain parties at least 10 days prior to filing with the Board. NSR states that it provided notice to these parties on the same day that it filed its notice with the Board and, therefore, it would not object to the Board treating the verified notice as filed on March 8, 2021. (SMS Notice 1 n.2, AB 1312X.) Accordingly, the Board will consider March 8, 2021, as the filing date of the verified notice.

<sup>16</sup> The CSX Environmental Comment is attached as Exhibit 4–A to the Revised Application.

<sup>17</sup> On July 1, 2021, NSR filed a letter in response to a Board request for clarification regarding a statement in the notice of exemption stating that

According to the notice, SMS would consummate discontinuance authority upon approval of the Merger Transaction. (SMS Notice 2 nn.1, 4, AB 1312X.) SMS does not anticipate that any employees would be adversely affected by the proposed discontinuance. However, it acknowledges that the discontinuance would be subject to the labor protective conditions set forth in *Oregon Short Line Railroad—Abandonment—Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). (*Id.* at 5.)

**Financial Arrangements.** According to Applicants, no new securities would be issued in connection with the Merger Transaction. Applicants state that the purchase price for Systems would be paid by CSXC through a combination of cash and CSXC stock as detailed in their merger agreement. (Revised Appl. 22.)

**Passenger Service Impacts.** There are several passenger and commuter service carriers that operate over rail lines that are subject to the Merger and Related Transactions. The Revised Application includes a verified statement from Andy Daly, Senior Director of Passenger Operations for CSXT. According to Mr. Daly, the following Amtrak passenger services are provided over rail lines subject to the Merger and Related Transactions:

- **Vermont:** Amtrak operates the Vermont service between Washington, DC and St. Albans, Vt. Part of the service includes operations over the Knowledge Corridor (between New Haven and White River Junction), over which PAS has operating rights. The segment from New Haven to Springfield, Mass., is owned, maintained, and dispatched by Amtrak, while the segment between Springfield and East Northfield, Mass., is owned by MassDOT and dispatched and maintained by PAS/Springfield Terminal. (Revised Appl., Ex. 13–C, V.S. Daly 4.)

- **Valley Flyer:** Amtrak operates a second service over the Knowledge Corridor known as the Valley Flyer

“SMS will continue to utilize overhead operating rights over the Line for the sole purpose of interchanging with NSR.” *See Decision No. 3*, FD 36472 et al., slip op. at 14 (quoting SMS Notice 3 n.4, AB 1312X). In the letter, NSR explains that SMS currently serves the Northeast Industrial Plant, which connects to the Delanson-Voorheesville Line. (SMS Letter 1–2, AB 1312X.) NSR explains that, even after SMS's authority to operate over the Delanson-Voorheesville Line is discontinued, SMS would continue to move traffic to and from the Northeast Industrial Plant over this line, but solely for interchange purposes. (*Id.* at 2.) NSR asserts that no Board authority is needed to operate over another carrier's track for interchange purposes only. (*Id.*)

service, which runs between New Haven and Greenfield, Mass. (*Id.*, Ex. 13–C, V.S. Daly at 5.)

- **Springfield to New Haven:** Amtrak operates service between Springfield and New Haven, also over the Knowledge Corridor. (*Id.*)<sup>18</sup>

- **Downeaster:** Amtrak operates the Downeaster service between Boston North Station and Brunswick, Me. (Revised Appl., Ex. 13–C, V.S. Daly 5.) MBTA owns and maintains the line between Boston and the Massachusetts/New Hampshire state line, while PAR subsidiaries<sup>19</sup> own and maintain the line between the Massachusetts/New Hampshire state line and Brunswick. The State of Maine owns approximately one mile of the line leading into Brunswick Station in Brunswick. According to Applicants, MBTA dispatches the segment from Boston to signal CPF–LJ (Lowell Junction, Mass.), while the PAR System/Springfield Terminal dispatches from signal CPF–LJ to Brunswick. (*Id.*, Ex. 13–C, V.S. Daly 6.)

- **Adirondack and Ethan Allen:** Amtrak operates the Adirondack service between New York City and Montreal, Quebec, and operates the Ethan Allen Express service between New York City and Rutland, Vt., though both services are currently suspended because of COVID–19. Applicants state that, when in operation, these Amtrak services operate on 4.6 miles of rail line owned by CP between Schenectady, N.Y., and Glenville, N.Y., the same segment of track over which PAS has trackage rights to reach CP's Mohawk Yard. (*Id.*, Ex. 13–C, V.S. Daly at 6.)

- **Lake Shore Limited:** Amtrak operates the Lake Shore Limited service between Boston and Chicago, Ill.<sup>20</sup> Part of this service, from near to Albany, N.Y., to Worcester, runs over a CSXT-owned line. (Revised Appl., Ex. 13–C, V.S. Daly at 6.)

According to Mr. Daly, the following commuter services are provided over rail lines subject to the Merger and Related Transactions:

- **Springfield to New Haven:** The Connecticut Department of Transportation (CDOT), in conjunction with CTrail and Amtrak, operates a commuter service between Springfield

<sup>18</sup> This service is also known as the Amtrak Hartford Line. *See* Amtrak, Amtrak Hartford Line, <https://www.amtrak.com/amtrak-hartford-line-train> (last visited July 25, 2021).

<sup>19</sup> According to the map provided by Applicants, the PAR subsidiaries are Boston & Maine and Maine Central. (*See* Revised Appl., Ex. 1, Maps.)

<sup>20</sup> Some of the Lake Shore Limited trains run from Chicago to New York City, rather than Boston. *See* Amtrak, Lake Shore Limited, <https://www.amtrak.com/lake-shore-limited-train> (last visited July 25, 2021).

and New Haven, over the Knowledge Corridor. (*Id.*, Ex. 13–C, V.S. Daly 5.)<sup>21</sup>

- *Waterbury, Conn., to Bridgeport, Conn.*: The Metropolitan Transportation Authority, through its operating agency Metro-North Railroad, operates commuter service between Waterbury, Conn., and Bridgeport, Conn. (Revised Appl., Ex. 13–C, V.S. Daly 5.) The line between Waterbury and Bridgeport is owned by CDOT and maintained and dispatched by Metro-North Railroad. According to Applicants, PAS has freight easement rights over the segment of rail line from Waterbury to Derby, Conn. (*Id.*) According to Applicant's map, the remaining portion of the route, from Derby to Bridgeport, is owned by P&W. (Revised Appl., Ex. 1, Maps.)

- *Fitchburg Line*: MBTA operates the Fitchburg Line commuter service between Wachusett, Mass., and Boston North Station. (Revised Appl., Ex. 13–C, V.S. Daly 6.) PAS owns the tracks between Wachusett and Fitchburg, while MBTA owns the tracks from Fitchburg to Boston North Station, but both PAS and PAR subsidiaries hold perpetual freight easements over the MBTA-owned track. (*Id.*) Applicants state that Springfield Terminal dispatches MBTA's trains from Wachusett to signal CPF–WL, near Willows, while MBTA dispatches the line between signal CPF–WL and Boston North Station. (*Id.*, Ex. 13–C, V.S. Daly 7.)

- *Haverhill Line*: MBTA operates the Haverhill Line commuter service between Haverhill, Mass., and Boston North Station, on a line segment owned and maintained by MBTA but over which a PAR subsidiary holds a perpetual freight easement. (*Id.*) Springfield Terminal dispatches trains between Lowell Junction and MBTA's Haverhill station, while MBTA dispatches between Lowell Junction and Boston North Station. (*Id.*)

- *Lowell Line*: MBTA operates the Lowell Line commuter service between Lowell, Mass., and Boston North Station, on a line segment owned and maintained by MBTA but over which a PAR subsidiary holds a perpetual freight easement. (*Id.*) Springfield Terminal dispatches the line between MBTA's Lowell Station and signal CPF–BY in Lowell, while MBTA dispatches between signal CPF–BY and Boston North Station. (*Id.*)

Mr. Daly asserts that the Merger and Related Transactions would have no negative impact on passenger service operated on the rail lines affected by

these proceedings. (*Id.*, Ex. 13–C, V.S. Daly 4.) He further states that passenger service would benefit from the more consistent and reliable network that would result from the Merger and Related Transactions. (*Id.*) In particular, he notes that passenger service would benefit from, among other things, greater deployment of technology and digitization of railroad operation and CSXT's experience with installing and operating Positive Train Control. (*Id.*, Ex. 13–C, V.S. Daly 8–9.) According to Mr. Daly, CSXT plans to install Positive Train Control on the PAR line between the Massachusetts/New Hampshire state line in Brunswick, which hosts the Downeaster service. (*Id.*, Ex. 13–C, V.S. Daly 15.)

CSXT and B&E further state that they commit to fully stepping into the shoes of Springfield Terminal regarding any agreements or commitments made by Springfield Terminal to MassDOT and MBTA, including with respect to Springfield Terminal's dispatching responsibilities and that dispatching operations of MBTA and MassDOT passenger trains would continue to be located in North Billerica, Mass., for the foreseeable future. (Revised Appl., Ex. 13, Operating Plan 47.) Mr. Daly also states that CSXT commits to continuing to route traffic from the existing CSXT network onto the existing PAR/Springfield Terminal network through Barbers Station and Ayer, rather than using the Grand Junction Branch, which runs from Worcester to Framingham, Mass. (Revised Appl., Ex. 13–C, V.S. Daly 10.) He further states that if CSXT sees the need in the future to consistently operate over the Grand Junction Branch, it is committed to working cooperatively with MBTA to implement capital improvements to accommodate any changes in CSXT freight service. (*Id.*)

Mr. Daly also asserts that the rerouting of NSR intermodal and automobile trains from the Northern Route to the Southern Route would not impact passenger service, including the Lake Shore Limited service. (*Id.*, Ex. 13–C, V.S. Daly 12–14.)

**Discontinuances/Abandonments.** CSXT states that it does not anticipate discontinuing service over or abandoning any rail lines because of the Merger Transaction. (Prefiling Notice 39; *see also* Revised Appl., Ex. 13, Operating Plan 54.) However, as noted above, in a Related Transaction, NSR has filed on behalf of SMS a verified notice of exemption to discontinue service and terminate SMS's lease operations over the Delanson-Voorheesville Line (approximately 15 miles of rail line owned by NSR located

between milepost 11.00 in Voorheesville, and a point 50 feet south of the centerline of the bridge at milepost 26.14 (or engineering station 6136±) in Delanson, including the use of wye track and any track leading to the Northeast Industrial Park at milepost 12.1 and 12.29, in Albany County, N.Y.). NSR states that SMS would not consummate discontinuance authority until the Merger Transaction is completed. (SMS Notice 2 n.1.)<sup>22</sup>

**Public Interest Considerations.** Applicants assert that the PAR System is an under-resourced regional railroad and the proposed integration of the PAR System into the CSXT rail network would bring substantial benefits to shippers and local communities. (Revised Appl. 2.) They further state that CSXT has worked to ensure that the Merger Transaction would serve the public interest and not cause any competitive harm, specifically through the NSR Settlement Agreement and Term Sheet Agreement. (*Id.* at 2–3.) Applicants request that the Board impose the commitments in these agreements as conditions to approval of the Merger Transaction. (*Id.* at 12.) Applicants further state that the Merger Transaction would be a straight end-to-end combination of two railroad networks, the type of transaction that the Board has acknowledged is likely to improve rail operations and unlikely to have any adverse competitive effect. (*Id.* at 3.) They also discuss the benefits that the Merger and Related Transactions would bring and state that public support for the transactions is evidenced by the 81 support letters that have been submitted to the Board. (*Id.* at 4.) For these reasons, Applicants assert that the Merger Transaction meets the requirements for approval under 49 U.S.C. 11324(d). (*Id.* at 14, 18.)

Following is a summary of the significant aspects of the proposed

<sup>22</sup> On June 24, 2021, Maine Central and Springfield Terminal filed for abandonment and discontinuance authority, respectively, in *Maine Central Railroad Co.—in Kennebec & Somerset Counties, Me.*, Docket No. AB 83 (Sub-No.17X) and *Springfield Terminal Railway—Discontinuance of Service Exemption—in Kennebec & Somerset Counties, Me.*, Docket No. AB 355 (Sub-No. 44X), for an out-of-service rail line known as the Madison Branch, that runs from Oakland, Me. (milepost 0.4) to North Anson, Me. (milepost 25.7). Applicants do not seek to include this potential abandonment as a Related Transaction. The Board finds that this abandonment is unrelated to the other transactions at issue in these dockets and therefore need not be embraced as a Related Transaction. *See Norfolk S. Ry.—Acquis. & Operation—Certain Rail Lines of the Del. & Hudson Ry.*, FD 35873, slip op. at 15 (STB served May 15, 2015) (holding that authority for two discontinuance of trackage rights proceedings existed independently from the acquisition transaction and therefore need not be embraced).

<sup>21</sup> This commuter service is separate from the New Haven-Springfield passenger service that is offered by Amtrak.

Merger and Related Transactions, as explained by Applicants.

*Improved Service.* Applicants state that the Merger Transaction would substantially improve rail service in New England and expand market opportunities for shippers. (Revised Appl. 16.) According to CSXT, a key benefit to the Merger Transaction would be the ability to consolidate the PAR System and CSXT's system into single-line service, creating more efficient and reliable service for each carrier's customers. (Revised Appl., Ex. 13, Operating Plan 43.) Specifically, CSXT states that single-line service would reduce switching and interchange, eliminate the need to coordinate a hand-off between separate rail carriers, result in a savings in transit times, and reduce the chance of unexpected problems in the physical interchange of traffic between two independent carriers. (*Id.*)

CSXT states that it would also make significant and much-needed capital investments in the PAR System. (Revised Appl., Ex. 13, Operating Plan 3; *see also id.* at 48–54 (listing CSXT's specific planned capital investments).)

CSXT claims that the basic routes and traffic flow would not change significantly as a result of the transaction, but that improvements would also be achieved through implementation of CSXT's operating philosophy, which places greater emphasis on operating reliably and consistently. (Revised Appl., Ex. 22–C, V.S. Pelkey 6.) It states that shippers would also be able to better manage their own logistics costs, particularly by using CSXT's web-based tool, ShipCSX, that allows customers to monitor their shipments. (*Id.*, Ex. 22–C, V.S. Pelkey 7.) It further states that by having more reliable rail service, CSXT would be able to attract more business from trucks, thereby reducing congestion on the region's highways. (*Id.*)

*Commitments Toward Preserving CSX-PAR Competition.* Applicants state that CSXT has made a number of commitments as part of the Merger and Related Transactions that would preserve competition. First, Applicants state that there are only three shippers, located just north of Boston, whose rail alternatives would go from two to one. (Revised Appl., Ex. 22–C, V.S. Pelkey 16–17.)<sup>23</sup> CSXT states that it commits to providing switching service that would allow these 2-to-1 shippers to reach PAS, thus preserving their current access to multiple rail carriers. (*Id.*, Ex.

22–C, V.S. Pelkey 17.) CSXT states that it also commits to keeping all existing active gateways affected by the Merger Transaction open on commercially reasonable terms, and waiving any right it might otherwise have under the Board's rules to refuse requests by shippers to establish local, separately challengeable rates for movements on the PAR System to an interchange with another rail carrier (*i.e.*, agreeing to establish what is commonly referred to in the railroad industry as Rule 11 rates). (*Id.*)

*Rerouted Traffic.* As discussed above, the NSR Settlement Agreement establishes the trackage rights for NSR to move a pair of intermodal and automotive trains over the CSXT/P&W/Boston & Maine/PAS lines—*i.e.*, the Southern Route—so that NSR trains between eastern New York and Ayer can be double-stacked. (Revised Appl. 9–10, 24–25.) These trackage rights over the Southern Route would allow NSR to move double-stack intermodal trains into Ayer, which NSR cannot do today on the Northern Route. (*Id.*, Ex. 13, Operating Plan 41.) While this would take some traffic off of the Northern Route, CSXT has indicated that certain traffic from Ayer customers would utilize the Northern Route rather than the Southern Route for a transitional period. (*Id.*, Ex. 22–E, V.S. Reishus 105; CSX Env'tl. Comment 2–3.) The impact of this rerouted traffic on volumes for the Northern and Southern Routes is discussed in more detail below, under the heading “Environmental Matters.”

*Ayer Switching District.* The Ayer Switching District is the area where CSXT, PAR Systems, and PAS converge, as well as the eastern terminus of the Northern and Southern Routes. CSXT states that the Ayer Switching District contains an intermodal facility that can handle 75,000 truckload equivalent units (TEUs) annually, with the potential to expand to 175,000 TEUs of capacity, and also includes a terminal for automobile shipments. (Revised Appl., Ex. 13, Operating Plan 31.)

Applicants assert that the Merger and Related Transactions would result in significant improvements to the Ayer Switching District. First, under the NSR Settlement Agreement, CSXT and NSR have agreed to modify the existing trackage rights cap on PAS's Island Line, a short segment of rail line between Harvard and signal CPF 312, just east of Ayer. (Revised Appl., Ex. 22–C, V.S. Pelkey 13.) CSXT explains that when PAS was created, PAS granted Springfield Terminal overhead trackage rights over the Island Line, allowing Springfield Terminal to connect the northern lines of the PAR

System to CSXT, but the trackage rights had a volume cap that is consistently exceeded. (Revised Appl., Ex. 12, Market Analysis 25.) CSXT states that it has reached an agreement with NSR to modify that volume cap and replace it with a process that would allow current traffic volume to move over the overhead trackage rights and to enable the development of capacity to handle any increase in that traffic. (*Id.*)

Second, CSXT states that the NSR Settlement Agreement also sets forth certain principles to strengthen Ayer operations and that CSXT has agreed to fund the construction of certain improvements in facilities in Ayer to ensure efficient operations. (*Id.*, Ex. 22–C, V.S. Pelkey 13–14.) As part of the plan to strengthen Ayer operations, the parties have agreed that, once CSXT owns a one-half interest in PAS and B&E is the contract operator of PAS, they intend to implement levels of service metrics and goals and a “static yard plan” for traffic moving on the Island Line, which includes the Ayer yard. (*Id.*, Ex. 13, Operating Plan 39.)

Third, CSXT explains that the NSR Settlement Agreement provides new switching rights for CSXT to serve customers in Ayer that were not previously available to CSXT shippers. (*Id.*, Ex. 22–E, V.S. Reishus 112.) Specifically, it states that the PAR System currently lacks the right to switch traffic that is to or from the south of Ayer (*i.e.*, off CSXT at Barber Station), but CSXT would have new competitive access for some shippers at Ayer to the integrated CSXT. (*Id.*)

*B&E Acquisition.* As noted, Applicants propose to replace Springfield Terminal with B&E as the contract operator of PAS. Applicants state that the two agreements—the NSR Settlement Agreement and the Term Sheet Agreement—would ensure that CSXT's half ownership of PAS would not have any adverse impact on competition for transportation within, into, and out of New England, and that PAS would in fact be strengthened as an independent carrier for the region. (Revised Appl. 3.) Specifically, CSXT states that under the GWI Term Sheet Agreement, B&E would be required to act exclusively in the interest of PAS as an independent rail carrier and provide non-discriminatory service to all carriers connecting with PAS. (Revised Appl., Ex. 22–C, V.S. Pelkey 14.) CSXT asserts that it would not have any control over the rates set by PAS, as rate-setting would be exclusively the responsibility of B&E. (*Id.*, Ex. 22–C, V.S. Pelkey 12.) To that end, CSXT notes that there are some shippers in Springfield and Holyoke, Mass., that

<sup>23</sup> In his verified statement, Dr. Reishus discusses the methodology he used to identify 2-to-1 shippers (*i.e.*, those shippers that currently have access to both CSXT and PAR Systems.) (*See* Revised Appl., Ex. 22–E, V.S. Reishus 50–52.)

currently have access to both CSXT and PAS. CSXT claims that because it would retain no pricing or operational control with respect to PAS, these shippers would continue to have two independent rail options. (Revised Appl., Ex. 22–E, V.S. Reishus 85.) CSXT states that it also has agreed to “transitional restrictions” on the rates it could charge for future movements originating or terminating on the existing PAR System lines to and from PAS. (*Id.*, Ex. 22–C, V.S. Pelkey 12.)

To further ensure that PAS remains competitively neutral, CSXT states that it has also agreed to sell its 50% interest in PAS under specified terms if NSR wishes to acquire it within seven years, and that NSR would have a right of first refusal if any other offers are made to acquire CSXT’s interest. (*Id.*) CSXT claims that there would be other benefits from being a half-owner of PAS, including the fact that B&E’s focus would be exclusively on PAS and not divided between PAS and any other rail operations (as was the case with Springfield Terminal) and that CSXT and NSR would be able to ensure that PAS has adequate funding for maintenance and capital work. (Revised Appl., Ex. 22–F, V.S. Huneke 12–13.)

*Potential PAS–NECR Conflicts.* CSXT acknowledges that there could be concerns about the impact on competition resulting from B&E’s serving as the operator for PAS on the line from White River Junction to East Northfield (often referred to as the Connecticut River Line, which comprises the northern end of the Knowledge Corridor). The line is owned by NECR, a GWI subsidiary, but PAS has trackage rights over the line. As a result of the Merger and Related Transactions, the two carriers operating over the line—NECR and B&E (on behalf of PAS)—would both be GWI subsidiaries. Applicants argue, however, that this common ownership would not have an adverse impact on competition because, as the contract operator of PAS, B&E would be obligated and incentivized to operate PAS in the interest of PAS and not in the interest of any affiliated rail carrier. (Revised Appl. 12–13.)<sup>24</sup>

<sup>24</sup> CSXT identifies the line from Springfield to New Haven (which comprises the southern portion of the Knowledge Corridor) as another line where such a concern could be perceived. That line is owned by Amtrak, but three freight railroad carriers have rights to operate over it: CSO (a GWI affiliate); CSXT; and PAS. (Revised Appl., Ex. 22–E, V.S. Reishus 88.) CSXT operates on the line via a haulage arrangement with CSO. (*Id.*) Although CSO and PAS would both be operated as GWI affiliates after the Merger Transaction, CSXT states that PAS does not have rights to serve customers along the line that are served by CSO and, therefore,

In addition, Applicants claim that CSXT and NSR have made commitments regarding PAS that would ensure that no shipper or connecting rail carrier on that rail segment would lose the benefits of multi-carrier competition. (Revised Appl. 13.) According to CSXT, there are only two shippers currently served by both PAS and NECR on the line, and CSXT and NSR have committed that PAS would establish rates for these customers at current levels, subject to future reasonable escalation, for as long as B&E is operator of PAS. (Revised Appl., Ex. 22–C, V.S. Pelkey 18.) The other commitments involve service with a connecting short line carrier, the Vermont Railway, Inc. (VTR).<sup>25</sup> VTR can currently interchange with both PAS and NECR at Bellows Falls, Vt., and White River Junction. (Revised Appl., Ex. 12, Market Analysis 19.)<sup>26</sup> VTR also connects with PAS on the Patriot Corridor at Hoosick Junction, N.Y.<sup>27</sup> CSXT states that, to ensure that B&E’s operation of PAS would not have an adverse impact on VTR’s choice of interchange partners, CSXT and NSR have agreed to the following commitments on behalf of PAS:

- For movements to and from the east with connections to PAR, PAS would establish rates on existing lanes via Deerfield<sup>28</sup> and Ayer at current levels, subject to future reasonable escalation, for as long as B&E is operator of PAS;
- For movements to and from the west with connections to CSXT at Rotterdam Junction, PAS would establish rates for movements between Hoosick Junction (where VTR

customers on this line would continue to have the same two-carrier competitive service (CSXT and CSO) that they have today. (Revised Appl., Ex. 12, Market Analysis 21–22.)

<sup>25</sup> VTR is a subsidiary of Vermont Rail System (VRS). VRS is a business name used by six short line railroads controlled by Trans Rail Holding Company, including VTR, that operate in the northeast. There are, in fact, three VRS carriers that connect with PAS: VTR, Washington County Railroad Company, and Green Mountain Railroad Corporation. (See VRS Reply to Prefiling Notice 3, Mar. 16, 2021.) In some parts of the Revised Application, CSXT states that it refers to the affiliated VRS railroads collectively as VTR. (Revised Appl., Ex. 12, Market Analysis 5 n.2; Rev. Appl., Ex. 22–E, V.S. Reishus 94.) The Board presumes that other references to VTR throughout the Revised Application similarly refer to all three of the connecting VRS rail carriers.

<sup>26</sup> CSXT states that NECR currently provides VTR with haulage to connect its lines between Bellows Falls and White River Junction, and those haulage rights will be unaffected by B&E’s operation of PAS. (Revised Appl., Ex. 22–C, V.S. Pelkey 18.)

<sup>27</sup> CSXT states that NSR can also interchange traffic with VTR at Hoosick Junction pursuant to NSR’s haulage rights over the Patriot Corridor. (Revised Appl., Ex. 22–E, V.S. Reishus 99.)

<sup>28</sup> CSXT lists the location as Deerfield, which the Board presumes is East Deerfield.

interchanges with PAS today) and Rotterdam Junction (where PAS connects with CSXT) on existing lanes at current levels, subject to future reasonable escalation, for as long as B&E is operator of PAS;

- For VTR traffic that moves to and from storage facilities at East Deerfield (a location on PAS), PAS would provide haulage between the storage facilities at East Deerfield and Bellows Falls at rates that are the average of current commodity-specific interline rates for those movements, for as long as B&E is operator of PAS; and

- For VTR traffic, B&E would provide VTR with 5-day per week service in the above lanes as long as volumes support this level of service. (Revised Appl., Ex. 22–C, V.S. Pelkey 18–19.) CSXT states that it has also agreed with NSR that B&E would not be permitted to share with any other GWI-controlled rail carriers any information regarding rate divisions from connecting railroads that B&E becomes aware of as a result of operating PAS. (*Id.*) In other words, B&E would not be able to share information with NECR, even though they are both GWI affiliates.<sup>29</sup>

*Maine Department of Transportation Settlement Agreement.* CSXT states that it has entered into a settlement agreement with the Maine Department of Transportation (Maine DOT), in which they have agreed to work cooperatively to complete certain federal infrastructure grants to upgrade PAR System line segments in Maine, and to work together on future projects to increase capacity, enhance safety, and promote efficient railroad operations. (Revised Appl., Ex. 22–C, V.S. Pelkey 15.)<sup>30</sup> CSXT requests that the Board impose the commitments in this settlement agreement as conditions to approval of the Merger Transaction. (*Id.*)

#### *Schedule for Consummation.*

Applicants state that they seek to consummate the Merger Transaction once the Board’s decision granting

<sup>29</sup> The Board noted in *Decision No. 3* that Applicants had not provided the specific terms of its service or information-sharing commitment and that “the Board cannot assess whether these commitments would sufficiently preserve competition as the Applicants claim.” *Decision No. 3*, FD 36472 et al., slip op. at 12. Applicants do not provide any more details on how these commitments would work in practice, other than noting that the service commitment would be for 5-day a week service. Although the specific terms of these commitments are important, the Board also understands that the specifics may not have yet been agreed to by the parties. The Board notes that it may consider the need to review the specific provisions as the record further develops.

<sup>30</sup> Senator Susan Collins of Maine also submitted a letter on May 21, 2021, noting her support for the Merger Transaction, subject to the execution of a settlement agreement between Maine DOT and CSXT.

approval becomes effective. (Revised Appl. 22.) The Applicants anticipate consummating the Merger Transaction and the Related Transactions at the same time, subject to Board approval of each transaction. (*Id.* at 9.)

*Environmental Impacts.* Applicants contend that the transaction would not result in any operational changes (such as increases in rail traffic, train operations, or yard activity) that would exceed the Board's thresholds for environmental review in 49 CFR 1105.7(e)(4) and (5). (Revised Appl., Ex. 4, Env'tl. Matters 1.) Applicants therefore assert that the Merger Transaction does not require the preparation of environmental documentation under 49 CFR 1105.6(b)(4). (*Id.*) On April 7, 2021, CSX submitted a letter to OEA with segment-specific traffic information through 2022 for the rail lines that are covered by the Merger and Related Transactions in support of its assertion that none of the thresholds for environmental review would be exceeded. (CSX Env'tl. Comment.) CSX provided additional projected traffic information through 2024 in its Revised Application. (*See* Revised Appl., Ex. 22–D V.S. Wallace; *see also* Revised Appl., Ex. 14, Density Charts.) Applicants plan to prepare a SIP under the Board's rules at 49 CFR 1106 and 49 CFR 1180.1(f)(3) setting out how they would ensure that safe operations are maintained throughout the acquisition-implementation process, if the Merger Transaction is approved.

In *Decision No. 3*, the Board noted that CSXT, NSR, and GWI have agreed to modify the "Ayer Operations Protocols, Engineering Planning, and Capacity Roadmap" by, among other things, raising the volume cap for certain trackage rights traffic. *Decision No. 3*, FD 36472 et al., slip op. at 16 n.28. Accordingly, the Board directed Applicants to provide further explanation and data concerning this possible change in yard traffic, including the total amount of yard activity in the Ayer Switching District. *Id.* In the Revised Application, CSXT states that it "does not expect the terms of the NSR Settlement Agreement, including raising the volume cap for certain trackage rights traffic, to result in any change in the shipment weight of Ayer Yard traffic." (Revised Appl., Ex. 13, Operating Plan 45.) It claims that while the routing of some traffic into and out of Ayer may change—due to the rerouting of NSR's intermodal and automobile trains—this would not result in any change in the shipment weight of traffic in the Ayer Switching District. (*Id.*) Accordingly, CSXT maintains that the anticipated changes in yard traffic

that would result from the Merger Transaction do not trigger the thresholds for environmental review in the Board's regulations. (*Id.* at 46.)

The existing PAR system between Worcester and Ayer runs for short segments along or over the Wachusett Reservoir. Concerns about the need to improve the rail infrastructure immediately adjacent to or over the Wachusett Reservoir to protect the Wachusett Watershed and Reservoir were raised by several commenters in response to the Prefiling Notice, including the Massachusetts Water Resources Authority (MWRA), a public authority that provides wholesale water and sewer services to over three million people in the Boston area. (MWRA Letter 1, Mar. 17, 2021.) MassDOT and MBTA (collectively MassDOT/MBTA) state that an increase in traffic from NSR's rerouted intermodal trains under the Merger Transaction "would increase proportionately the risk of a derailment or other accident that could release toxic or other harmful substances into the reservoir." (MassDOT/MBTA Letter 3, Mar. 16, 2021; *see also* MWRA Letter 2, Mar. 17, 2021.)<sup>31</sup> Several Members of the Massachusetts Congressional delegation also raise concerns about the need to protect the Wachusett Reservoir.<sup>32</sup>

In response, CSX states that the only additional traffic over the line that traverses the reservoir would be the pair of NSR intermodal and automotive trains. (CSX Env'tl. Comment 4.) CSX further notes that such trains are less prone to rail accidents than carload trains and that the number of carload trains on the line that traverses the reservoir would actually be reduced as a result of the Merger Transaction. (*Id.*) CSX states that it is actively engaged in discussions with representatives from local communities to explore ways to strengthen the rail infrastructure in the area and has identified concrete steps to take to effect such upgrades (at CSXT's expense). As an initial step, CSXT states that it plans to upgrade approximately

<sup>31</sup> MWRA asks that, because of its concerns regarding the Wachusett Reservoir, the Board consider the Merger Transaction as a "significant" transaction instead of a "minor" transaction, which has shorter timeframes. Letters echoing this request were also filed by the MWRA Advisory Board and the Water Supply Citizens Advisory Committee to the MWRA. As noted, the Board determined the Merger Transaction to be "significant" in *Decision No. 2*.

<sup>32</sup> (*See* Letter from U.S. Senators Elizabeth Warren and Edward Markey and U.S. Representatives Richard E. Neal, James P. McGovern, Stephen F. Lynch, William R. Keating, Katherine M. Clark, Seth Moulton, Lori Trahan, Ayanna Pressley, and Jake Auchincloss to STB (Mar. 22, 2021); *see also* Letter from U.S. Representative Richard E. Neal to STB (July 12, 2021).)

7.6 miles of track adjacent to the Wachusett Reservoir to FRA Class 3 track standards. (Revised Appl., Ex. 4, Env'tl. Matters 6.) It further notes that, unlike the PAR Railroads, CSXT has the financial ability to reasonably address these stakeholder concerns, and that CSXT is confident that issues regarding the Wachusett Reservoir can be resolved. (*Id.*)

CSXT also claims that there will be no adverse impacts on passenger rail and no construction of new rail lines.<sup>33</sup> CSXT expects positive effects on energy efficiency due to better infrastructure and operational efficiency. (Revised Appl., Ex. 4, Env'tl. Matters 8.)

*Historic Impacts.* Applicants contend that a historic review is not required for this transaction because there would be no significant change in operations and no property 50 years old or older would be affected. (Prefiling Notice 9.)

*Labor Impacts.* CSXT states that it does not expect to establish or abolish craft positions on CSXT as a result of the Merger Transaction. (Revised Appl., App. 1.) Applicants state that they also do not expect the acquisition of the PAR System to impact Springfield Terminal employees involved in the operation of the PAR System lines. (Revised Appl. 26 & Ex. 22–C, V.S. Pelkey 21.) Regardless, Applicants state that the standard labor protective conditions imposed in *New York Dock* should apply to those employees. (*Id.*)<sup>34</sup>

According to B&E (which currently has no employees), although it intends to offer employment to Springfield Terminal employees working on the PAS lines with a goal of filling 159 positions, it plans to utilize fewer employees than Springfield Terminal to operate PAS. (B&E Amended Pet. 15, FD 36472 (Sub-No. 5).)<sup>35</sup> B&E states that adversely affected employees would be

<sup>33</sup> NSR includes a copy of the trackage rights agreement to acquire trackage rights over the CSXT line from Voorheesville to Worcester with its notice of exemption. The agreement references "construction" of a connecting track. CSX claims that no construction authority is required in this instance because the "construction" referred to entails the rehabilitation of existing track. (CSX Env'tl. Comment 5.) On July 20, 2021, the Village of Voorheesville (Village) filed a letter raising concerns about the plans for this connection. (Village Letter 1–2, July 20, 2021.) The Board will address the Village's letter in a subsequent decision.

<sup>34</sup> Applicants state that application of the *New York Dock* conditions would also satisfy rail labor's request, made during Pan Am Southern's formation in *Norfolk Southern Railway—Joint Control & Operation/Pooling Agreement—Pan Am Southern LLC*, Docket No. FD 35147, that the Board impose *New York Dock* conditions on any future change in PAS operator. (Revised Appl. 27.)

<sup>35</sup> According to the Revised Application, this would be a reduction from the current 214 Springfield Terminal employees that serve the PAS lines. (Revised Appl., App. 1.)



eligible for *New York Dock* labor protective conditions. (*Id.* at 15–16.) In addition, it states that it intends to recognize unions currently representing Springfield Terminal’s employees that would be hired by B&E, and to enter into agreements providing substantially similar terms and conditions to those contained in existing agreements. (*Id.* at 15.)

As noted above, NSR states that it agrees that the labor protective conditions established in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.*, 354 1.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad*, 360 I.C.C. 653 (1980), should be imposed in its trackage rights proceedings, and SMS acknowledges that the discontinuance would be subject to the labor protective conditions set forth in *Oregon Short Line Railroad*, 360 I.C.C. 91 (1979).

*Primary Application and Related Filings Accepted.* The Board finds Applicants have provided sufficient information to satisfy the requirements for a “significant” transaction application. In particular, Applicants have addressed or clarified all of the issues that the Board found insufficient in the Applicants’ original Market Analysis, and by association, original Operating Plan. The revised Market Analysis describes in sufficient detail “the impacts of the proposed transaction—both adverse and beneficial—on inter- and intramodal competition,” “identifies and address[es] relevant markets and issues,” and “reflects the consolidated company’s marketing plan and existing and potential competitive alternatives (inter- as well as intramodal).” 49 CFR 1180.7(a). Applicants also provide supporting data, as required by the regulations. 49 CFR 1180.7(c). All of the other requirements for a “significant” transaction application have also been addressed.<sup>36</sup> Accordingly, the Board accepts the Revised Application for consideration. See 49 U.S.C. 11321–26; 49 CFR 1180. The Board also accepts the filings for the Related Transactions. The Board reserves the right to require the filing of additional supplemental information, if necessary for a full record.

*B&E Transaction.* Several parties argue that the proceeding in Docket No. FD 36472 (Sub-No. 5), in which B&E seeks authority to serve as PAS’s

operator (B&E Transaction), should be included as part of the Revised Application.<sup>37</sup> MassDOT/MBTA argue that the Merger Transaction and B&E Transaction are interdependent and that the Applicants “have attempted to compartmentalize those transactions in order to shield the B&E–PAS Transaction from Board scrutiny and, in turn, Board-imposed protective conditions.” (MassDOT/MBTA Reply to Prefiling Notice 5; see also MassDOT/MBTA Reply to Surreply 3–4; Republic Services, Inc., ECDC Environmental, L.C., and Devens Recycling Center, LLC Reply to Prefiling Notice 6.) VRS argues that the Revised Application is incomplete because of the “highly questionable” attempt to segregate the B&E Transaction from the “more searching” application process. (VRS Reply to Prefiling Notice 5.) Applicants respond that they have properly complied with the Board’s rules and that the B&E transaction was appropriately filed as a “directly related” request. (Applicants Surreply 5.) B&E responds that its separate filing does not mean that the terms of its proposed agreement to operate the PAS lines would not be subject to review as part of the Revised Application. (B&E Surreply 4–5.)

The Board finds that B&E’s utilization of a separate petition for exemption is permissible. There are no specific regulations governing which parts of a multifaceted merger transaction should be included as part of the primary application or a related transaction, or if they may be submitted as an unrelated transaction.<sup>38</sup> However, in past merger/control proceedings, related transactions

<sup>37</sup> The parties raised their arguments in response to the Applicants’ Prefiling Notice. There is no indication that the parties intended to withdraw these arguments. Accordingly, the Board will treat these arguments as having been made in response to the Revised Application.

<sup>38</sup> Applicants argue that a separate application and petition for exemption comply with the Board’s regulation at 49 CFR 1180.4(c)(2)(vi), which states that “Applicants shall file concurrently all directly related applications, e.g., those seeking authority to construct or abandon rail lines, obtain terminal operations, acquire trackage rights, etc.” (Applicants Surreply 5.) MassDOT/MBTA argue, however, that use of the term “Applicant” when referring to related applications means that B&E must be considered an applicant to the main docket (*i.e.*, the Merger Transaction). (MassDOT/MBTA Reply to Surreply 3–4.) The Board disagrees. There is no statutory or regulatory requirement that applicants in a related transaction be affiliated with the primary applicants in the merger or control transaction. Indeed, such an interpretation would limit the ability of parties to the merger/control transaction to negotiate separate settlement agreements with affected third parties. A third party might be unwilling to agree, for example, to a merger applicant’s offer of trackage rights to offset a competitive harm if it were required to be a party to the merger application.

have generally been ones that are separate from the merger/control transaction but contingent upon approval and consummation of the merger/control transaction. Here, the B&E Transaction is such a transaction and thus properly included as a Related Transaction.

MassDOT/MBTA’s argument that the parties are trying to shield the B&E transaction from potential conditions is also unfounded. The Board can still impose conditions relating to B&E operations of PAS lines as part of the Merger Transaction approval, even if the B&E Transaction is in a separate docket. Indeed, that is why such transactions are considered as *related* transactions—so that the Board can consider the transactions together (even if approval for some transactions are being sought under different approval standards). VRS’s concern that the B&E transaction would not be subject to the “more searching” application process is also unconvincing. Parties seeking operating authority are free to seek approval using the exemption process of 49 U.S.C. 10502. VRS and others will have an opportunity to present their arguments for why the exemption standard has not been met.

*Procedural Schedule.* On April 1, 2021, Applicants filed a petition to establish a procedural schedule as directed by the Board in *Decision No. 1*. In *Decision No. 2* (published in the **Federal Register** on April 26, 2021 (86 FR 22,091)), the Board issued a notice of the proposed procedural schedule and requested public comments. The Board proposed modifications to the Applicants’ proposed schedule. CSX proposed a 127-day schedule, but the Board stated that because of the procedural features involved in considering a “significant” transaction, such a schedule would be too compressed. The Board instead proposed a 180-day schedule, the maximum period of time permitted under 49 U.S.C. 11325(c), similar in duration to the schedule adopted for a “significant” transaction in *Canadian Pacific Railway—Control—Dakota, Minnesota & Eastern Railroad*, FD 35081 (STB served Dec. 27, 2007). No comments were received in opposition to the Board’s proposed procedural schedule.

However, in the Revised Application, Applicants propose a modified procedural schedule. (Revised Appl. 18–19.) Under this modified procedural schedule, the period for developing the evidentiary record would be approximately 132 days, 48 days less than the Board’s proposed 180-day schedule. Under Applicants’ proposed

<sup>36</sup> In *Decision No. 3*, the Board also directed Applicants to address a few minor discrepancies in its “significant” transaction application. *Decision No. 3*, FD 36472 et al., slip op. at 13–14. Applicants have sufficiently amended or clarified those discrepancies.



schedule, the time for parties to file: (i) Responses to comments, protests, requests for conditions, and other opposition due; (ii) responses to responsive, including inconsistent, applications; and (iii) rebuttals in support of the Revised Application and Related Transactions, would all be shortened by approximately 25 days. Applicants' proposed schedule would also shorten the due date for rebuttals in support of responsive applications by about 10 days and the period for filing final briefs by about 14 days. (*Id.* at 19) Applicants state that a shorter schedule is appropriate because they have invested significant time and resources in negotiating and finalizing settlement agreements to resolve potential issues related to the Merger and Related Transactions, and that interested parties have been on notice of this proceeding for several months. (*Id.* at 20.)

The Board will not modify the procedural schedule in a manner that would shorten non-Applicant parties' time periods to file. Accordingly, the Board rejects Applicants' proposal to shorten the time periods for parties to file rebuttals in support of responsive applications or final briefs. However, because the Applicants themselves are most likely to be affected by the shortening of the time period to file response to comments, responsive applications, and rebuttals in support of the Revised Application, the Board will accept that modification to the procedural schedule. This modification would result in a procedural schedule in which a decision approving the Merger and Related Transactions would become effective on May 3, 2022. That should give Applicants sufficient time to complete the transaction in accordance with their own schedule if approval is granted. The procedural schedule is shown in the Appendix. The Board notes that the procedural schedule is subject to change based on case developments.

*Notices of Intent to Participate.* Any person who wishes to participate in this proceeding as a Party of Record must file with the Board, no later than August 20, 2021, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, Mr. LaRocca (representing CSX and 747 Merger Sub 2), and Mr. Culliford (representing Systems, PAR, and PAR Railroads). Parties who have already submitted a notice of intent to participate are not required to resubmit an additional notice.

If a request is made in the notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name(s) will be added to the service list as a "Non-Party." Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but not copies of official filings.

*Service of Parties of Record.* Each Party of Record will be required to serve upon all other Parties of Record, within 10 days of the service date of this decision, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each Party of Record will also be required to file with the Board, within 10 days of the service date of this decision, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of this decision must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

*Environmental Matters.* Under both the regulations of the Council on Environmental Quality (CEQ) implementing the National Environmental Policy Act of 1969, 42 U.S.C. 4321–4370m–12 (NEPA), and the Board's own environmental rules, actions with environmental effects that are ordinarily insignificant may be excluded from NEPA review without a case-by-case environmental review. Such activities are covered by "categorical exclusions," which CEQ defines at 40 CFR 1501.4 as "categories of actions that normally do not have a significant effect on the human environment, and therefore do not require preparation of an environmental assessment or environmental impact statement."

If an agency determines that a categorical exclusion applies to a proposed action, the agency "shall evaluate the action for extraordinary circumstances in which a normally excluded action may have a significant effect," thus requiring preparation of either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). *Id.*; see also 49 CFR 1105.6(d). But absent extraordinary circumstances, once a project is found to fit within a categorical exclusion, no

further environmental review under NEPA is warranted.

In its environmental rules, the Board has promulgated several categorical exclusions. As pertinent here, a rail merger is a classification of action that normally requires no environmental review if certain thresholds would not be exceeded.<sup>39</sup> See 49 CFR 1105.6(b)(4), 1105.6(c)(1)(i).

*The Merger and Related Transactions.* OEA has reviewed the data provided by Applicants, including the information on traffic projections through 2024, and based on the current record has preliminarily determined that none of the Board's thresholds would be exceeded as a result of the Merger or Related Transactions because there would be no increase of eight trains per day or 100% increase in rail traffic or gross-ton miles. See 49 CFR 1105.7(e)(5)(i). According to CSX, there would only be two notable traffic changes. The first would be the diversion of the daily NSR intermodal/automobile trains between Voorheesville and Ayer from the PAS line (*i.e.*, the Northern Route) to the CSXT/P&W/Boston & Maine/PAS lines (*i.e.*, the Southern Route) via the trackage rights being obtained by NSR (*i.e.*, the Southern Route). (CSX Env'tl. Comment 2.) The second would be the diversion of some traffic that is local to Ayer from the Southern Route to the Northern Route. (*Id.*) CSX provides data on the expected changes in traffic volume for the Northern and Southern

<sup>39</sup>The thresholds that are typically applicable to a transaction such as this are the air quality thresholds at 49 CFR 1105.7(e)(5). These thresholds differ depending on whether a rail line segment is in an area designated as in "attainment" or "nonattainment" with the National Ambient Air Quality Standards established under the Clean Air Act. For rail lines located in attainment areas, environmental documentation normally will be prepared if the proposed action would result in (1) an increase of at least eight trains per day on any segment of rail line affected by the proposal, (2) an increase in rail traffic of at least 100% (measured in annual gross ton miles), (3) an increase in carload activity at rail yards of at least 100%, or (4) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any affected road segment. See 49 CFR 1105.7(e)(5)(i). For rail lines in nonattainment areas, environmental documentation typically is required when the proposed action would result in (1) an increase of at least three trains per day on any segment of rail line, (2) an increase in rail traffic of at least 50% (measured in annual gross ton miles), (3) an increase in carload activity at rail yards of at least 20%, or (4) an average increase in truck traffic of more than 10% of the average daily traffic or 50 vehicles a day on any given road segment. See 49 CFR 1105.7(e)(5)(ii). OEA has confirmed that none of the lines in which there would be an increase in traffic pass through any nonattainment areas. The energy thresholds at 49 CFR 1105.7(e)(4) and the truck traffic thresholds at 49 CFR 1105.7(e)(5) are not relevant here because no diversion of rail carloads to motor carriage is expected as part of this transaction.

Routes by line segment from 2019 to 2022 as measured by gross ton-miles. (CSX Env'tl. Comment 3 & Attachment 3.) Traffic growth projections through 2024 are included in its Revised Application. (See Revised Appl., Ex. 22–D V.S. Wallace; see also Revised Appl., Ex. 14, Density Charts.)<sup>40</sup> According to the information provided in CSX's Environmental Comment, the only line segment on the Northern Route that would see an increase in traffic would be between Mechanicville and Rotterdam Junction, where traffic would increase 24%. (CSX Env'tl. Comment 2.) CSX notes that this additional traffic would be added to existing trains and so would not result in any additional trains. (*Id.* at 2.) For the Southern Route, CSX asserts that the line segment between Worcester and Ayer would see a 67% increase in traffic, but that for all other segments, traffic would increase by 15% or less. (*Id.*, Attach. 3.)

Applicants also contend that there would not be an increase in yard activity at the Ayer Switching District that exceeds the threshold for carload activity at rail yards (an increase of at least 100%). Although the Board would have preferred that Applicants provide more precise information, including the exact figures on the volume cap threshold at the Ayer rail yard today and by how many cars it is being exceeded, the record indicates that the volume cap on trackage rights is merely being raised to more appropriately match the amount of traffic that is currently moving through Ayer. In other words, even though the volume cap would be raised as a result of the Merger and Related Transactions, the actual amount of traffic that would move through Ayer would not significantly change. Applicants provide data that appears to support this conclusion. (See Revised Appl., Ex. 22–F, V.S. Huneke 9.) In addition, Applicants forecast that traffic growth on the CSXT network, PAR System, and PAS network would be only about 1.5% from 2019 to 2024. (See Revised Appl., Ex. 13, Operating Plan 5.) Even accounting for this growth and other changes resulting from the Merger and Related Transactions, it appears that there would still only be a modest increase in traffic that falls below the threshold for carload activity of at least 100%.

*Historic Review.* The Board's regulations also provide that historic review normally is not required for

<sup>40</sup> The Density Charts in the Revised Application includes segment-specific information, but not for the specific segments between Voorheesville and Worcester along the Southern Route.

mergers where there would be no significant change in operations and properties 50 years old and older would not be affected. See 49 CFR 1105.8. Applicants contend that no historic review is required, and it appears there would be no impacts to historic resources as a result of the proposed Merger Transaction or Related Transactions.

*Preliminary Conclusions.* Based on the information provided to date and after consultations with OEA, the Board preliminarily determines that an environmental and historic review for the proposed merger is not warranted because, based on the current record, it does not appear that the thresholds triggering an environmental review would be met, and there is nothing in the available environmental information to indicate the potential for significant environmental or historic impacts resulting from the proposed merger transaction.

While environmental concerns relating to the Wachusett Reservoir have been raised by several commenters, most of the impacts they raise are already present given that there is existing PAR carload train traffic on the line in that area. Thus, those impacts would not be caused by the Merger and Related Transactions. Although there would be some additional traffic on the line that traverses the reservoir under the Merger and Related Transactions, it amounts to only one pair of trains per day (one loaded and one empty). CSX states that those intermodal and automotive trains would be less prone to accidents and derailments than carload trains and that the number of carload trains actually would be reduced under the Merger Transaction. (CSX Env'tl. Comment 4.) In addition, CSX has committed to actively working with all interested parties to explore ways to strengthen the existing rail infrastructure in the area around the reservoir, including by agreeing to upgrade 7.6 miles of line adjacent to the reservoir to FRA Class 3 standards. (See *id.*; Revised Appl., Ex. 4, Env'tl. Matters 6.)

For these reasons, the Board preliminarily concludes, based on the current record, that the Merger Transaction qualifies for a categorical exclusion from environmental review under 49 CFR 1105.6(c)(1)(i) and that no historic reporting under 49 CFR 1105.8 is required. Similarly, based on the current record, the other Related Transactions do not appear to require environmental or historic reviews.

*Request that Applicants Provide Certain Additional Environmental Information.* The Board does, however,

find that it is appropriate to consider the potential for traffic growth beyond the three years of traffic projections (estimated forecasts for 2022 through 2024) submitted with the Revised Application. Even though CSXT asserts there would not be significant traffic growth during the first three years after the proposed Merger Transaction, CSXT also states that “[f]ollowing the integration of PAR and the implementation of the operating and infrastructure improvements, CSXT expects to see additional traffic growth opportunities over a multi-year horizon in certain areas.” (Revised Appl., Ex. 22–D, V.S. Wallace 7.) So that the Board can fully evaluate whether the impact of the Merger and Related Transactions would have any potential for environmental impacts warranting environmental review when the PAR System integration has occurred, the Board directs CSXT to update its projections by providing traffic forecasts through 2027—five years after the date of the anticipated year of the issuance of a final decision from the Board.<sup>41</sup> For the updated projections, and to the extent that it has not already done so in previously submitted projections (e.g., for segments on the Southern Route), CSXT should ensure that the traffic forecasts are on a segment-specific basis (using the same segments shown in CSX Env'tl. Comment). As with the forecasts that have already been provided, CSXT may submit this information under seal.

CSXT is directed to provide this information no later than August 19, 2021 (CSXT should request an extension as soon as possible if additional time is needed to compile the updated information). Barring any such extension to CSXT, environmental comments must be submitted to the Board by September 17, 2021. After considering the additional information from CSXT and any public comments received during the environmental comment period, OEA will make a final recommendation to the Board regarding whether any environmental or historic review is required.

<sup>41</sup> Requiring this additional traffic information is consistent with the information requests that OEA issued in *Canadian Pacific Railway—Control—Kansas City Southern Railway*, Docket No. FD 36500, and *Canadian National Railway—Control—Kansas City Southern Railway*, Docket No. FD 36514, shortly after *Decision No. 3* was issued in this proceeding. See also *Canadian National Ry.—Control—EJ&E W. Co.*, FD 35087 et al., slip op. at 7 (STB served Dec. 24, 2008) (finding that use of a five-year forecast instead of a three-year forecast was reasonable). The air quality thresholds at 49 CFR 1105.7(e)(5) apply regardless of whether the proposed action is a “major” transaction, like those contemplated in dockets FD 36500 and FD 36514 referenced above, or a “significant” transaction, like the Merger Transaction at issue here.

**Safety Integration Plan.** Even if an environmental and historic review is not required, Applicants are required to prepare a SIP. 49 CFR 1106.2 and 1106.3 (requiring applicants to prepare a SIP in consultation with FRA when a Class I railroad proposes to consolidate with, merge with, or acquire control of under 49 U.S.C. 11323(a) a Class II railroad where there is a proposed amalgamation of operations as defined by FRA's regulations); *see also* 49 CFR 244.9. A SIP is a comprehensive written plan, prepared in accordance with FRA guidelines or regulations, explaining the process by which Applicants intend to integrate the operation of the properties involved in a manner that would maintain safety at every step of the integration process, in the event the Board approves the Merger Transaction. 49 CFR 1106.2; 49 CFR 244.9. The proposed SIP is normally included as part of the environmental record, reviewed by OEA, and put out for public review and comment during the environmental review process. 49 CFR 1106.4(b); 49 CFR 244.17. However, in cases where no formal environmental review is required under NEPA, the Board will develop appropriate case-specific SIP procedures based on the facts and circumstances presented. 49 CFR 1106.4(c). If the Board authorizes the proposed transaction and adopts the SIP, the Board requires compliance with the SIP as a condition to its authorization. 49 CFR 1106.4(b)(4).

In its original petition for a procedural schedule, Applicants proposed that the SIP be filed with OEA and FRA on what would have been 15 days after the decision accepting the "significant" transaction application. However, the Board and FRA's regulations allow for Applicants to submit the proposed SIP up to 60 days after the application is filed, which would be August 30, 2021. Accordingly, the Board will also allow Applicants the full 60 days to submit the SIP. Comments in response to the proposed SIP will be due on October 4, 2021. Applicants' response to comments on the SIP will be due on October 18, 2021.

**Service of Decisions, Orders, and Notices.** The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the official service list as a Party of Record or Non-Party. All other interested persons are encouraged to secure copies of decisions, orders, and notices via the Board's website at [www.stb.gov](http://www.stb.gov).

**Access to Filings.** Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on

request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The Revised Application and other filings in this proceeding will be furnished to interested persons upon request and will also be available on the Board's website at [www.stb.gov](http://www.stb.gov). In addition, the Revised Application may be obtained from Messrs. LaRocca and Culliford at the addresses indicated above.

**It is ordered:**

1. The Revised Application in Docket No. FD 36472 is accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in the Appendix to this decision. The parties to this proceeding must comply with the procedural requirements described in this decision.

3. CSXT shall provide updated traffic forecasts through 2027, as discussed above.

4. This decision is effective on July 30, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

**Eden Besera,**

*Clearance Clerk.*

**Appendix**

**Procedural Schedule**

July 1, 2021—Revised Application filed.

July 30, 2021—Board notice of acceptance of Revised Application to be published in the **Federal Register**.

Aug. 19, 2021—CSXT supplement containing 2025, 2026, and 2027 traffic forecasts due (unless extended based on a CSXT request for additional time).

Aug. 20, 2021—Notices of intent to participate in this proceeding due.

Aug. 27, 2021—Descriptions of anticipated responsive, including inconsistent, applications due. Petitions for waiver or clarification with respect to such applications due.

Comments, protests, requests for conditions, and any other evidence and argument in opposition to the Revised Application or Related Transactions due. This includes any comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (USDOT).

Aug. 30, 2021—Proposed SIP to be filed with OEA and FRA.

Sept. 17, 2021—Environmental comments due, addressed to the attention of OEA (unless extended based on a CSXT request for additional time).

Sept. 28, 2021—Responsive, including inconsistent, applications due.

October 4, 2021—Comments in response to the Proposed SIP due.

October 18, 2021—Responses to comments, protests, requests for conditions, and other opposition due, including to DOJ and USDOT filings.

Responses to responsive, including inconsistent, applications due.

Rebuttal in support of the Revised Application and Related Transactions due.

Applicants' response to comments regarding the SIP due.

Nov. 17, 2021—Rebuttal in support of responsive, including inconsistent, applications due.

TBD—Public hearing (if necessary).<sup>42</sup>

Jan. 3, 2022—Final briefs due.<sup>43</sup> (Close of the record.)

April 1, 2022—Service date of final decision.

May 1, 2022—Effective date of final decision.

[FR Doc. 2021–16328 Filed 7–29–21; 8:45 am]

**BILLING CODE 4915–01–P**

**SURFACE TRANSPORTATION BOARD**

[Docket No. FD 36528]

**South Point & Ohio Railroad, LLC—  
Operation Exemption—Lawrence  
Economic Development Corporation**

South Point & Ohio Railroad, LLC (SPOR), a noncarrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.31 to operate approximately 1,277 feet of track in South Point, Ohio (the Line), owned by Lawrence Economic Development Corporation (LEDC), also a noncarrier. The Line extends from a point of connection with the Kenova District main line of Norfolk Southern Railway Company northward to an industrial park owned by LEDC. The Line has no mileposts. According to SPOR, no common carrier service has previously been offered on the Line.

Pursuant to a Lease, Development and Marketing Services Agreement (Agreement) between SPOR and LEDC,<sup>1</sup> SPOR will lease the Line, provide common carrier rail service on the Line, and operate as needed over connecting ancillary track located within the LEDC-owned industrial park. SPOR states that the Agreement would be effectuated upon the effective date of the exemption, and upon the satisfaction of several other conditions precedent as set forth in the Agreement. According to SPOR, its obligation to provide common

<sup>42</sup>The Board will decide whether to conduct a public hearing, which would be held between the filing of rebuttals and final briefs, in a later decision after the record has been more fully developed. *See* 49 U.S.C. 11324(a) ("The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.")

<sup>43</sup>The Board will also determine the page limits for final briefs in a later decision after the record has been more fully developed.

<sup>1</sup>SPOR filed a copy of the Agreement, *see Macrie—Continuance in Control Exemption—N.J. Seashore Lines, Inc.*, FD 35296, slip op. at 3–4 (STB served Aug. 31, 2010), in both redacted, public form and under seal in unredacted form, along with a motion for protective order pursuant to 49 CFR 1104.14. That motion was granted in a decision served on July 20, 2021.

carrier rail service is anticipated to commence on or after August 15, 2021.

SPOR states that the proposed transaction does not involve, and the Agreement does not contain, any provision or agreement that would limit future interchange on the Line with a third-party connecting carrier.

Further, SPOR certifies that its projected annual revenue will not exceed \$5 million and that the proposed transaction will not result in SPOR's becoming a Class I or II rail carrier.

The earliest this transaction may be consummated is August 15, 2021, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than August 6, 2021.

All pleadings, referring to Docket No. FD 36528, should be filed with the Surface Transportation Board via e-filing on the Board's website. In addition, a copy of each pleading must be served on SPOR's representative, Thomas J. Healey, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

According to SPOR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

Decided: July 26, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Brendetta Jones,**  
*Clearance Clerk.*

[FR Doc. 2021-16243 Filed 7-29-21; 8:45 am]

**BILLING CODE 4915-01-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### Notice of Intent

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

**ACTION:** Request for public comment.

**SUMMARY:** The FAA hereby provides notice of intent to release 14.03 acres at the Melbourne International Airport, Melbourne, FL from the conditions, reservations, and restrictions as contained in a Quitclaim Deed

agreement between the FAA and the City of Melbourne, dated August 6, 1947. The release of property will allow the City of Melbourne to use the property for other than aeronautical purposes. The property is located located on the Northeast Corner of Martin Luther King Jr. Boulevard and NASA Boulevard at the Melbourne International Airport in Brevard County. The parcel is currently designated as surplus property. The property will be released of its federal obligations for the purpose of building a consolidated City of Melbourne Police Headquarters. The fair market value lease of this parcel has been determined to be \$3,367,000. Documents reflecting the Sponsor's request are available, by appointment only, for inspection at the Melbourne International Airport and the FAA Airports District Office.

**DATES:** Comments are due on or before August 30, 2021.

**ADDRESSES:** Documents are available for review at Melbourne International Airport, and the FAA Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819. Written comments on the Sponsor's request must be delivered or mailed to: Marisol Elliott, Community Planner, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819.

**FOR FURTHER INFORMATION CONTACT:** Marisol Elliott, (407) 487-7231, Community Planner, Orlando Airports District Office, 8427 SouthPark Circle, Suite 524, Orlando, FL 32819.

**SUPPLEMENTARY INFORMATION:** Section 125 of The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) requires the FAA to provide an opportunity for public notice and comment prior to the "waiver" or "modification" of a sponsor's Federal obligation to use certain airport land for non-aeronautical purposes.

**Bartholomew Vernace,**

*Manager, Orlando Airports District Office, Southern Region.*

[FR Doc. 2021-16256 Filed 7-29-21; 8:45 am]

**BILLING CODE 4910-13-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of limitation on claims for judicial review of actions by the

California Department of Transportation (Caltrans).

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(I)(1). The actions relate to a proposed highway project, the State Route 29 (SR 29) Ritchie Creek Bridge Replacement Project for Fish Passage Improvement at post mile 33.13 in Napa County, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(I)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 27, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For Caltrans: Maxwell Lammert, Environmental Branch Chief, 111 Grand Avenue MS 8B, Oakland, CA 94612, 510-506-9862 (Voice) and email [Maxwell.Lammert@dot.ca.gov](mailto:Maxwell.Lammert@dot.ca.gov). For FHWA, contact David Tedrick at (916) 498-5024 or email [David.tedrick@dot.gov](mailto:David.tedrick@dot.gov).

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans has taken final agency actions subject to 23 U.S.C. 139(I)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Caltrans proposes to replace the existing Ritchie Creek Bridge (Bridge No. 21-0057) with a new bridge at post mile (PM) 33.13, located on State Route 29 (SR 29) southeast of the city of Calistoga and to the north of the city of St. Helena in Napa County. The existing bridge on SR 29 is classified as a depth and jump barrier to adult and juvenile salmonids. The purpose of the proposed project is to address fish passage barriers at the SR 29 crossing over Ritchie Creek to obtain Total Maximum Daily Load compliance unit credits from State Water Resources Control Board under the Caltrans Statewide National Pollutant Discharge Elimination System permit.

The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Environmental Assessment (EA) and Finding of No Significant Impact

(FONSI) for the project, approved on June 25, 2021. The EA, FONSI, and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans EA and FONSI can be viewed and downloaded from the project website at <https://dot.ca.gov/caltrans-near-me/district-4/d4-popular-links/d4-environmental-docs>, or viewed at the St. Helena Public Library, 1492 Library Ln No. 1143, St. Helena, CA.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. National Environmental Policy Act
2. Federal Clean Air Act
3. Federal-Aid Highway Act
4. Clean Water Act
5. Fixing American's Surface Transportation Act (Fast Act)
6. Archeological and Historic Preservation Act
7. Section 106 of the National Historic Preservation Act
8. Federal Endangered Species Act
9. Migratory Bird and Treaty Act
10. Fish and Wildlife Coordination Act
11. Section 4(f) of the Department of Transportation Act
12. Civil Rights Act, Title VI
13. Farmland Protection Policy Act
14. Uniform Relocation Assistance and Real Property Acquisition Policies Act
15. Rehabilitation Act
16. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
17. Resource Conservation and Recovery Act (RCRA)
18. Safe Drinking Water Act
19. Occupational Safety and Health Act
20. Atomic Energy Act
21. Toxic Substances Control Act
22. Federal Insecticide, Fungicide and Rodenticide Act
23. E.O. 11988 Floodplain Management
24. 29. E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations
25. 30. E.O. 12088, Federal Compliance with Pollution Control Standards
26. 31. Park Preservation Act
27. 32. American with Disabilities Act
28. 33. Historic Sites Act
29. 34. Community Environmental Response Facilitation Act of 1992
30. 35. E.O. 13112, Invasive Species

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

*Authority:* 23 U.S.C. 139(l)(1).

Issued on: July 26, 2021.

**Rodney Whitfield,**

*Director, Financial Services, Federal Highway Administration, California Division.*

[FR Doc. 2021-16236 Filed 7-29-21; 8:45 am]

**BILLING CODE 4910-RY-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final State Agency Actions on Avenue E, State Route 195 to County 18th Street in Yuma County, AZ

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The FHWA, on behalf of the Arizona Department of Transportation (ADOT), is issuing this notice to announce actions taken by ADOT and other relevant Federal agencies that are final. The actions relate to the Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for the proposed project Avenue E, State Route 195 to County 18th Street in Yuma County, AZ. The actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, FHWA, on behalf of ADOT, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions with authority on the highway project will be barred unless the claim is filed on or before December 27, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steven Olmsted, NEPA Assignment Manager, Environment Planning, Arizona Department of Transportation, 205 S 17th Avenue, MD EM02, Phoenix, Arizona 85007; telephone: (480) 202-6050, email: [solmsted@azdot.gov](mailto:solmsted@azdot.gov). The Arizona Department of Transportation normal business hours are 8:00 a.m. to 4:30 p.m. (Mountain Standard Time).

You may also contact: Mr. Paul O'Brien, Environmental Planning Administrator, Arizona Department of Transportation, 205 S 17th Avenue, MD EM02, Phoenix, Arizona 85007; telephone: (480) 356-2893, email: [POBrien@azdot.gov](mailto:POBrien@azdot.gov).

**SUPPLEMENTARY INFORMATION:** Effective April 16, 2019, the FHWA assigned and ADOT assumed environmental responsibilities for this project pursuant

to 23 U.S.C. 327 and a Memorandum of Understanding executed by FHWA and ADOT.

Notice is hereby given that ADOT and other relevant Federal agencies have taken final agency actions by issuing licenses, permits, and approvals for the following project in the State of Arizona: Avenue E, State Route 195 to County 18th Street in Yuma County, AZ. The actions by ADOT and other relevant Federal agencies and the laws under which such actions were taken, are described in the Draft EA approved on February 21, 2021, Final EA approved within the Finding of No Significant Impact issued on June 21, 2021, and in other documents in the administrative record. The FEA, FONSI, and other project records are available by contacting ADOT at the addresses provided above. Project decision documents are also available online at: <https://www.yumacountyaz.gov/government/development-services/divisions/engineering/current-cip-projects-update/avenue-e-avenue-d-state-route-195-to-county-18th-street-corridor-study>.

This notice applies to all ADOT and other relevant Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321-4351]; Federal-Aid Highway Act [23 U.S.C. 109].
2. *Air:* Clean Air Act [42 U.S.C. 7401-7671(q)].
3. *Land:* Section 4(f) of the U.S. Department of Transportation Act of 1966 [49 U.S.C. 303]; Landscaping and Scenic Enhancement (Wildflowers) [23 U.S.C. 319].
4. *Wildlife:* Endangered Species Act [16 U.S.C. 1531-1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Fish and Wildlife Coordination Act [16 U.S.C. 661-667(d)], Migratory Bird Treaty Act [16 U.S.C. 703-712].
5. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)-11]; Archeological and Historic Preservation Act [16 U.S.C. 469-469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001-3013].

6. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)-2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996]; Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201-4209].

7. *Wetlands and Water Resources: Land and Water Conservation Fund (LWCF)* [16 U.S.C. 4601–4604]; *Safe Drinking Water Act (SDWA)* [42 U.S.C. 300(f)–300(j)(6)]; *Rivers and Harbors Act of 1899* [33 U.S.C. 401–406]; *Wild and Scenic Rivers Act* [16 U.S.C. 1271–1287]; *Emergency Wetlands Resources Act* [16 U.S.C. 3921, 3931]; *Flood Disaster Protection Act* [42 U.S.C. 4001–4128].

8. *Water: Clean Water Act* 33 U.S.C. 1251–1387.

9. *Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13007 Indian Sacred Sites; E.O. 13287 Preserve America; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.*

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction.)

*Authority:* 23 U.S.C. 139(l)(1).

Issued on: July 1, 2021.

**Karla S. Petty,**

*Arizona Division Administrator, Phoenix, Arizona.*

[FR Doc. 2021–16086 Filed 7–29–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

#### Notice of Final Federal Agency Actions on Proposed Highway in California

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

**SUMMARY:** The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans that are final within the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project, on Interstate 5 from post miles 26.1 to 27.6 in the San Joaquin, State of California. Those actions grant licenses, permits, and approvals for the project.

**DATES:** By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking

judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 27, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

**FOR FURTHER INFORMATION CONTACT:** For Caltrans: C. Scott Guidi—Branch Chief, California Department of Transportation, Northern San Joaquin Environmental Management Branch A, 1976 Doctor Martin Luther King Junior Boulevard, Stockton, CA 95205. Office Hours 8:00 a.m.–5:00 p.m., Pacific Standard Time, (209) 479–1839 or email at [scott.guidi@dot.ca.gov](mailto:scott.guidi@dot.ca.gov). For FHWA, contact David Tedrick at (916) 498–5024 or email [David.tedrick@dot.gov](mailto:David.tedrick@dot.gov).

**SUPPLEMENTARY INFORMATION:** Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that the Caltrans, have taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: The Stockton Channel Viaduct Bridge Improvements Project will replace the Stockton Channel Viaduct Bridge (Bridge numbers 29–0176L and 26–0176L) on Interstate 5 from post miles 26.1 to 27.6. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on June 30, 2021, and in other documents in the FHWA project records. The Final EA/FONSI and other project records are available by contacting Caltrans at the addresses provided above. The Caltrans Final EA and FONSI can be viewed and downloaded from the project website at online on the Caltrans District 10 website at <https://dot.ca.gov/caltrans-near-me/district-10>.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
3. Federal-Aid Highway Act of 1970, 23 U.S.C. 109
4. MAP–21, the Moving Ahead for Progress in the 21st Century Act, (Pub. L. 112–141)
5. Clean Air Act Amendments of 1990 (CAAA)

6. Clean Water Act of 1977 and 1987
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 and 1987)
8. Federal Land Policy and Management Act of 1976 (Paleontological Resources)
9. Noise Control Act of 1972
10. Safe Drinking Water Act of 1944, as amended
11. Endangered Species Act of 1973
12. Executive Order 11990, Protection of Wetlands
13. Executive Order 13112, Invasive Species
14. Executive Order 13186, Migratory Birds
15. Fish and Wildlife Coordination Act of 1934, as amended
16. Migratory Bird Treaty Act
17. Executive Order 11988, Floodplain Management
18. Department of Transportation (DOT) Executive Order 5650.2—Floodplain Management and Protection (April 23, 1979)
19. Title VI of the Civil Rights Act of 1964, as amended
20. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

*Authority:* 23 U.S.C. 139(l)(1).

Issued on: July 26, 2021.

**Rodney Whitfield,**

*Director, Financial Services, Federal Highway Administration, California Division.*

[FR Doc. 2021–16235 Filed 7–29–21; 8:45 am]

**BILLING CODE 4910-RY-P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0171]

### Agency Information Collection Activity: Application for Individualized Tutorial Assistance

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of

1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before September 28, 2021.

**ADDRESSES:** Submit written comments on the collection of information through Federal Docket Management System (FDMS) at [www.Regulations.gov](http://www.Regulations.gov) or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to [nancy.kessinger@va.gov](mailto:nancy.kessinger@va.gov). Please refer to “OMB Control No. 2900–0171” in any correspondence. During the comment period, comments may be viewed online through FDMS.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email [maribel.aponte@va.gov](mailto:maribel.aponte@va.gov). Please refer to “OMB Control No. 2900–0171” in any correspondence.

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA’s functions, including whether the information will have practical utility; (2) the accuracy of VBA’s estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Authority:* Section 903 of Public Law 96–342, and the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

*Title:* Application for Individualized Tutorial Assistance

*OMB Control Number:* 2900–0171.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* VA uses the information collected to determine eligibility and payment for tutorial assistance. Without the information on this form, VA would be unable to determine the applicant’s eligibility for tutorial assistance.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 2,571 hours.

*Estimated Average Burden per Respondent:* 30 minutes.

*Frequency of Response:* Once Annually.

*Estimated Number of Respondents:* 5,143.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2021–16321 Filed 7–29–21; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0876]

### Agency Information Collection Activity Under OMB Review: Clearance for A–11 Section 280 Improving Customer Experience Information Collection

**AGENCY:** Veterans Experience Office, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Experience Office, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

**DATES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function. Refer to “Clearance for A–11 Section 280 Improving Customer Experience Information Collection” in any correspondence.

**FOR FURTHER INFORMATION CONTACT:** Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW,

Washington, DC 20006, (202) 266–4688 or email [maribel.aponte@va.gov](mailto:maribel.aponte@va.gov). Please refer to “OMB Control No. 2900–0876” in any correspondence.

### SUPPLEMENTARY INFORMATION:

*Authority:* 44 U.S.C. 3501–21.

*Title:* Clearance for A–11 Section 280 Improving Customer Experience Information Collection.

*OMB Control Number:* 2900–0876.

*Type of Review:* ICR Revision.

*Abstract:* This ICR Revision seeks to enhance and expand the scope of the “burden hours” associated with the Department of Veterans Affairs customer experience data collection system from 625,000 to 1,750,000. “Burden Hours” are defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information in a survey or other associated data collection instrument. In layman’s terms, burden relates to the time it takes a respondent to complete and submit a customer satisfaction survey or questionnaire. VA, when it submitted the original Clearance for A–11 Section 280 Improving Customer Experience Information Collection, calculated total the Burden needed based on the number of Customer Satisfaction surveys under management (43 in calendar year 2020) and our informed estimate of growth in number of surveys under management. As a result of unexpectedly strong and robust need (and corresponding requests) for new customer experience surveys by VA customers (stakeholders and partners), VA has already reached 94 surveys under management and anticipate to reach 130 or 140 by the end of Fiscal Year 2022. This anticipated FY22 growth, and per our models for growth from now until our current ICR expires in March, 2023, directly translates into a corresponding need for an increase in associated “burden hours” from 625,000 to 1,750,000 to accommodate the current and future demand. This action is necessary now so that our ICR remains in good standing and VA does not exceed our approved burden hour grand total approved figure and risk being in non-compliance of our approved ICR.

General Background on our Customer Experience data collection listening tools Whether seeking a loan, Social Security benefits, Veterans benefits, or other services provided by the Federal Government, individuals and businesses expect Government customer services to be efficient and intuitive, just like services from leading private-sector organizations. Yet the 2016 American Consumer Satisfaction Index and the



2017 Forrester Federal Customer Experience Index show that, on average, Government services lag nine percentage points behind the private sector. A modern, streamlined and responsive customer experience means: Raising government-wide customer experience to the average of the private sector service industry; developing indicators for high-impact Federal programs to monitor progress towards excellent customer experience and mature digital services; and providing the structure (including increasing transparency) and resources to ensure customer experience is a focal point for agency leadership. To support this, OMB Circular A-11 Section 280 established government-wide standards for mature customer experience organizations in government and measurement. To enable Federal programs to deliver the experience taxpayers deserve, they must undertake three general categories of activities: Conduct ongoing customer research, gather and share customer feedback, and test services and digital products.

These data collection efforts may be either qualitative or quantitative in nature or may consist of mixed methods. Additionally, data may be collected via a variety of means, including but not limited to electronic or social media, direct or indirect observation (*i.e.*, in person, video and audio collections), interviews, questionnaires, surveys, and focus groups. Veterans Experience Office will limit its inquiries to data collections that solicit strictly voluntary opinions or responses. Steps will be taken to ensure anonymity of respondents in each activity covered by this request.

The results of the data collected will be used to improve the delivery of Federal services and programs. It will include the creation of personas, customer journey maps, and reports and summaries of customer feedback data and user insights. Veterans Experience Office will collect this information by electronic means when possible, as well as by mail, fax, telephone, technical discussions, and in-person interviews. Veterans Experience Office may also utilize observational techniques to collect this information.

Collections will be targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future. For the purposes of this request, “customers” are individuals, businesses, and organizations that interact with a Federal Government agency or program, either directly or via a Federal contractor. This could include

individuals or households; businesses or other for-profit organizations; not-for-profit institutions; State, local or tribal governments; Federal government; and Universities.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 84 FR 149 on August 2, 2019, pages 37953 and 37954. No comments on this data collection request were submitted by the public.

*Affected Public:* Individuals or Households.

*Estimated Annual Burden:* 1,750,000.

*Estimated Average Burden per*

*Respondent:* Varied, dependent upon the data collection method used. The possible response time to complete a questionnaire or survey may be 2 minutes or up to 2 hours to participate in an interview.

*Frequency of Response:* Varied, dependent upon the data collection method used.

*Estimated Number of Respondents:* 3,500,000.

By direction of the Secretary.

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2021-16224 Filed 7-29-21; 8:45 am]

**BILLING CODE 8320-01-P**

## DEPARTMENT OF VETERANS AFFAIRS

### AR27—Notice of Request for Information on the Department of Veterans Affairs’ Eligibility Considerations for the Veterans Cemetery Grants Program

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Request for information.

**SUMMARY:** State and Tribal veterans’ cemetery grant applicants that seek to participate in the Department of Veterans Affairs (VA) Veterans Cemetery Grants Program (VCGP) must, to qualify for a grant, solely inter and memorialize eligible persons, which includes Veterans and certain family members. Through this request for information, VA seeks comments to help inform VA’s understanding of issues affecting States and Tribal Organizations in meeting burial and other needs of their National Guard and Reservist populations with respect to burial in VA grant-funded cemeteries.

**DATES:** Comments are due by August 30, 2021.

**ADDRESSES:** Comments must be submitted through [www.Regulations.gov](http://www.Regulations.gov) and will be available for public viewing, inspection or copies.

**FOR FURTHER INFORMATION CONTACT:** George Eisenbach, Director, Veterans Cemetery Grants Program, National Cemetery Administration (40), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, (202) 632-7369 (this is not a toll-free telephone number).

**SUPPLEMENTARY INFORMATION:** VA seeks stakeholder input to improve our understanding of issues impacting States and Tribal Organizations (as those terms are defined in 38 CFR 39.2) in serving their National Guard servicemembers and Reservists. The Secretary seeks information on the questions listed below. Commenters do not need to address each question and should focus on those that relate to their expertise or perspectives. To the extent possible, please clearly indicate which questions you address in your response. We are particularly interested in feedback from States and Tribal Organizations that are participating in VCGP or that are contemplating participation.

Currently for VCGP purposes, a State or Tribal veterans cemetery must be operated solely for the interment of Veterans, their spouses, surviving spouses, minor children, unmarried adult children who were physically or mentally disabled and incapable of self-support, and eligible parents of certain deceased service members, as set out in section 38 CFR 39.10(a). We seek input on the below questions:

- Should VCGP cemeteries be able to inter non-Veteran members of the Reserve components of the U.S. Armed Forces (including members of the Army and Air National Guard of the United States) who otherwise would not be eligible for burial in a VA national cemetery, as well as their spouses and certain dependents? Why or why not?

- If VCGP cemeteries were permitted to inter these individuals, are there any conditions that should be met or certain ways that VA should administer this extension to the program? For example, should grantees pay costs associated with cemetery development, interment, and memorialization relating to the non-Veteran decedents referenced above? Again, we welcome your feedback on these questions.

### Paperwork Reduction Act

This request for information constitutes a general solicitation of

public comments as described in the implementing regulations of the Paperwork Reduction Act of 1995 at 5 CFR 1320.3(h)(4). Therefore, this request for information does not constitute an information collection under the Paperwork Reduction Act of 1995 and does not impose any information collection requirements. Consequently, there is no need for review by the Office

of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs approved this document on July 15, 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.

**Luvenia Potts,**

*Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2021-16291 Filed 7-29-21; 8:45 am]

**BILLING CODE 8320-01-P**



# FEDERAL REGISTER

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Part II

## Regulatory Information Service Center

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Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

## REGULATORY INFORMATION SERVICE CENTER

### Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Regulatory Information Service Center.

**ACTION:** Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions.

**SUMMARY:** Spring 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions.

Publication of the Spring 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions represents a key component of the regulatory planning mechanism prescribed in Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” (58 FR 51735) and reaffirmed in E.O. 13563, “Improving Regulation and Regulatory Review,” (76 FR 3821). The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas in the **Federal Register** describing regulatory actions they are developing that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602).

In the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda) agencies report regulatory actions upcoming in the next year. Executive Order 12866 “Regulatory Planning and Review,” signed September 30, 1993 (58 FR 51735), and Office of Management and Budget memoranda implementing section 4 of that Order establish minimum standards for agencies’ agendas, including specific types of information for each entry.

The Unified Agenda helps agencies fulfill these requirements. All Federal regulatory agencies have chosen to publish their regulatory agendas as part of the Unified Agenda. The complete publication of the Spring 2021 Unified Agenda containing the regulatory agendas for 70 Federal agencies, is available to the public at <http://reginfo.gov>.

The Spring 2021 Unified Agenda publication appearing in the **Federal Register** consists of agency regulatory flexibility agendas, in accordance with the publication requirements of the Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under

section 610 of the Regulatory Flexibility Act.

**ADDRESSES:** Regulatory Information Service Center (M1RB), General Services Administration, 1800 F Street NW, Boris Arratia, Director, Washington, DC 20405.

**FOR FURTHER INFORMATION CONTACT:** For further information about specific regulatory actions, please refer to the agency contact listed for each entry. To provide comment on or to obtain further information about this publication, contact: Boris Arratia, Director, Regulatory Information Service Center (M1RB), General Services Administration, 1800 F Street NW, Washington, DC 20405, 703-795-0816. You may also send comments to us by email at: [RISC@gsa.gov](mailto:RISC@gsa.gov).

#### SUPPLEMENTARY INFORMATION:

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##### Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

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- II. Why is the Unified Agenda Published?
- III. How is the Unified Agenda Organized?
- IV. What information appears for each entry?
- V. Abbreviations
- VI. How can users get copies of the plan and the Agenda?

##### Agency Agendas

###### Cabinet Departments

Department of Agriculture  
Department of Commerce  
Department of Defense  
Department of Education  
Department of Energy  
Department of Health and Human Services  
Department of Homeland Security  
Department of the Interior  
Department of Labor  
Department of Transportation  
Department of the Treasury

###### Other Executive Agencies

Committee for Purchase From People Who Are Blind or Severely Disabled  
Environmental Protection Agency  
General Services Administration  
Office of Management and Budget  
Railroad Retirement Board  
Small Business Administration

###### Joint Authority

Department of Defense/General Services Administration/National Aeronautics and Space Administration (Federal Acquisition Regulation)

###### Independent Regulatory Agencies

Consumer Financial Protection Bureau  
Consumer Product Safety Commission  
Federal Communications Commission  
Federal Reserve System  
Nuclear Regulatory Commission  
Securities and Exchange Commission  
Surface Transportation Board  
Federal Permitting Improvement Steering Council

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### Agency Agendas

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Railroad Retirement Board  
Small Business Administration

#### Joint Authority

Department of Defense/General Services Administration/National Aeronautics and Space Administration (Federal Acquisition Regulation)

#### Independent Regulatory Agencies

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Consumer Product Safety Commission  
Federal Communications Commission  
Federal Permitting Improvement Steering Council  
Federal Reserve System  
Nuclear Regulatory Commission  
Securities and Exchange Commission  
Surface Transportation Board

### Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

#### I. What is the Unified Agenda?

The Unified Agenda provides information about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983 and has been available online since 1995. The complete Unified Agenda is available to the public at <http://reginfo.gov>. The online Unified Agenda offers user-friendly flexible search tools and a vast historical database.

The Spring 2021 Unified Agenda publication appearing in the **Federal Register** consists of agency regulatory flexibility agendas, in accordance with the publication requirements of the

Regulatory Flexibility Act. Agency regulatory flexibility agendas contain only those Agenda entries for rules that are likely to have a significant economic impact on a substantial number of small entities and entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Printed entries display only the fields required by the Regulatory Flexibility Act. Complete agenda information for those entries appears, in a uniform format, in the online Unified Agenda at <http://reginfo.gov>.

These publication formats meet the publication mandates of the Regulatory Flexibility Act and Executive Order 12866. The complete online edition of the Unified Agenda includes regulatory agendas from Federal agencies. Agencies of the United States Congress are not included.

The following agencies have no entries identified for inclusion in the printed regulatory flexibility agenda. The regulatory agendas of these agencies are available to the public at <http://reginfo.gov>.

#### *Cabinet Departments*

Department of Education  
Department of Housing and Urban  
Development  
Department of Justice  
Department of State  
Department of Veterans Affairs

#### *Other Executive Agencies*

Architectural and Transportation  
Barriers Compliance Board  
Agency for International Development  
American Battle Monuments  
Commission  
Commission on Civil Rights  
Corporation for National and  
Community Service  
Council on Environmental Quality  
Court Services and Offender  
Supervision Agency for the District  
of Columbia  
Federal Mediation and Conciliation  
Service  
Institute of Museum and Library  
Science  
Inter-American Foundation  
National Aeronautics and Space  
Administration  
National Archives and Records  
Administration  
National Endowment for the Arts  
National Endowment for the Humanities  
National Mediation Board  
National Science Foundation  
Office of Government Ethics  
Office of National Drug Control Policy  
Office of Personnel Management  
Office of the United States Trade  
Representative  
Peace Corps

Pension Benefit Guaranty Corporation  
Presidio Trust  
Privacy and Civil Liberties Oversight  
Board  
Social Security Administration  
Tennessee Valley Authority  
U.S. Agency for Global Media

#### *Independent Agencies*

Council of the Inspectors General on  
Integrity and Efficiency  
Farm Credit Administration  
Farm Credit System Insurance  
Corporation  
Federal Deposit Insurance Corporation  
Federal Energy Regulatory Commission  
Federal Housing Finance Agency  
Federal Maritime Commission  
Federal Mine Safety and Health Review  
Commission  
Federal Trade Commission  
National Credit Union Administration  
National Transportation Safety Board  
Postal Regulatory Commission

The Regulatory Information Service Center compiles the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of Executive Order 12866 (incorporated by reference in Executive Order 13563). The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency officials, and the public.

The activities included in the Unified Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may choose to include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last Unified Agenda. Executive Order 12866 does not require agencies to include regulations concerning military or foreign affairs functions or regulations related to agency organization, management, or personnel matters. Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue or withdraw regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed. The Unified Agenda does not

create a legal obligation on agencies to adhere to schedules in this publication or to confine their regulatory activities to those regulations that appear within it.

## **II. Why is the Unified Agenda published?**

The Unified Agenda helps agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

#### *Executive Order 12866*

*Executive Order 12866* entitled "Regulatory Planning and Review," signed September 30, 1993, (58 FR 51735), requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their "most important significant regulatory actions," which appears as part of the fall Unified Agenda.

#### *Regulatory Flexibility Act*

The *Regulatory Flexibility Act* requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610). Executive Order 13272 entitled "Proper Consideration of Small Entities in Agency Rulemaking," signed August 13, 2002, (67 FR 53461), provides additional guidance on compliance with the Act.

#### *Executive Order 13132*

*Executive Order 13132* entitled "Federalism," signed August 4, 1999, (64 FR 43255), directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications" as defined in the Order. Under the Order, an agency that is proposing a regulation with federalism implications, which either preempt State law or impose non-statutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the Office of Management and Budget a federalism summary impact statement for such a regulation, which consists of a description of the

extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

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

The *Unfunded Mandates Reform Act of 1995* (Pub. L. 104-4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions "that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more . . . in any 1 year. . . ." The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas excluded by section 4 of the Act. Affected agencies identify in the Unified Agenda those regulatory actions they believe are subject to title II of the Act.

#### *Executive Order 13211*

*Executive Order 13211* entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," signed May 18, 2001, (66 FR 28355), directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the Order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for "those matters identified as significant energy actions." As part of this effort, agencies may optionally include in their submissions for the Unified Agenda information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

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

The *Small Business Regulatory Enforcement Fairness Act* (Pub. L. 104-121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 *et seq.*), which defers, unless exempted, the effective date of a "major" rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is "major" if it has resulted, or is likely to result, in an annual effect on

the economy of \$100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

### **III. How is the Unified Agenda organized?**

Agency regulatory flexibility agendas are printed in a single daily edition of the **Federal Register**. A regulatory flexibility agenda is printed for each agency whose agenda includes entries for rules which are likely to have a significant economic impact on a substantial number of small entities or rules that have been selected for periodic review under section 610 of the Regulatory Flexibility Act. Each printed agenda appears as a separate part. The parts are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority; and independent regulatory agencies. Agencies may in turn be divided into sub-agencies. Each agency's part of the Agenda contains a preamble providing information specific to that agency. Each printed agency agenda has a table of contents listing the agency's printed entries that follow.

The online, complete Unified Agenda contains the preambles of all participating agencies. In the online Agenda, users can select the particular agencies whose agendas they want to see. Users have broad flexibility to specify the characteristics of the entries of interest to them by choosing the desired responses to individual data fields. To see a listing of all of an agency's entries, a user can select the agency without specifying any particular characteristics of entries.

Each entry in the Unified Agenda is associated with one of five rulemaking stages. The rulemaking stages are:

1. *Prerule Stage*—actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. *Proposed Rule Stage*—actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. *Final Rule Stage*—actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step.

4. *Long-Term Actions*—items under development but for which the agency

does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.

5. *Completed Actions*—actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

Long-Term Actions are rulemakings reported during the publication cycle that are outside of the required 12-month reporting period for which the Agenda was intended. Completed Actions in the publication cycle are rulemakings that are ending their lifecycle either by Withdrawal or completion of the rulemaking process. Therefore, the Long-Term and Completed RINs do not represent the ongoing, forward-looking nature intended for reporting developing rulemakings in the Agenda pursuant to Executive Order 12866, section 4(b) and 4(c). To further differentiate these two stages of rulemaking in the Unified Agenda from active rulemakings, Long-Term and Completed Actions are reported separately from active rulemakings, which can be any of the first three stages of rulemaking listed above. A separate search function is provided on <http://reginfo.gov> to search for Completed and Long-Term Actions apart from each other and active RINs.

A bullet (•) preceding the title of an entry indicates that the entry is appearing in the Unified Agenda for the first time.

In the printed edition, all entries are numbered sequentially from the beginning to the end of the publication. The sequence number preceding the title of each entry identifies the location of the entry in this edition. The sequence number is used as the reference in the printed table of contents. Sequence numbers are not used in the online Unified Agenda because the unique RIN is able to provide this cross reference capability.

Editions of the Unified Agenda prior to fall 2007 contained several indexes, which identified entries with various characteristics. These included regulatory actions for which agencies believe that the Regulatory Flexibility Act may require a Regulatory Flexibility Analysis, actions selected for periodic review under section 610(c) of the Regulatory Flexibility Act, and actions that may have federalism implications as defined in Executive Order 13132 or other effects on levels of government. These indexes are no longer compiled, because users of the online Unified

Agenda have the flexibility to search for entries with any combination of desired characteristics.

#### IV. What information appears for each entry?

All entries in the online Unified Agenda contain uniform data elements including, at a minimum, the following information:

**Title of the Regulation**—a brief description of the subject of the regulation. In the printed edition, the notation “Section 610 Review” following the title indicates that the agency has selected the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)). Some agencies have indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews. In the online edition, these notations appear in a separate field.

**Priority**—an indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance.

##### (1) Economically Significant

As defined in Executive Order 12866, a rulemaking action that will have an annual effect on the economy of \$100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The definition of an “economically significant” rule is similar but not identical to the definition of a “major” rule under 5 U.S.C. 801 (Pub. L. 104–121). (See below.)

##### (2) Other Significant

A rulemaking that is not Economically Significant but is considered Significant by the agency. This category includes rules that the agency anticipates will be reviewed under Executive Order 12866 or rules that are a priority of the agency head. These rules may or may not be included in the agency’s regulatory plan.

##### (3) Substantive, Nonsignificant

A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

##### (4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

##### (5) Informational/Administrative/Other

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency’s regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

**Major**—whether the rule is “major” under 5 U.S.C. 801 (Pub. L. 104–121) because it has resulted or is likely to result in an annual effect on the economy of \$100 million or more or meets other criteria specified in that Act. The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.

**Unfunded Mandates**—whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than \$100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate.

**Legal Authority**—the section(s) of the United States Code (U.S.C.) or Public Law (Pub. L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

**CFR Citation**—the section(s) of the Code of Federal Regulations that will be affected by the action.

**Legal Deadline**—whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

**Abstract**—a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

**Timetable**—the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 06/00/14 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is “To Be Determined.” “Next Action Undetermined” indicates the agency does not know what action it will take next.

**Regulatory Flexibility Analysis Required**—whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

**Small Entities Affected**—the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

**Government Levels Affected**—whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

**International Impacts**—whether the regulation is expected to have international trade and investment effects, or otherwise may be of interest to the Nation’s international trading partners.

**Federalism**—whether the action has “federalism implications” as defined in Executive Order 13132. This term refers to actions “that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Independent regulatory agencies are not required to supply this information.

**Included in the Regulatory Plan**—whether the rulemaking was included in the agency’s current regulatory plan published in fall 2019.

**Agency Contact**—the name and phone number of at least one person in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, email address, and TDD for each agency contact.

Some agencies have provided the following optional information:

**RIN Information URL**—the internet address of a site that provides more information about the entry.

**Public Comment URL**—the internet address of a site that will accept public comments on the entry.

Alternatively, timely public comments may be submitted at the government-wide e-rulemaking site, <http://www.regulations.gov>.

**Additional Information**—any information an agency wishes to include that does not have a specific corresponding data element.



*Compliance Cost to the Public*—the estimated gross compliance cost of the action.

*Affected Sectors*—the industrial sectors that the action may most affect, either directly or indirectly. Affected sectors are identified by North American Industry Classification System (NAICS) codes.

*Energy Effects*—an indication of whether the agency has prepared or plans to prepare a Statement of Energy Effects for the action, as required by Executive Order 13211 “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,” signed May 18, 2001 (66 FR 28355).

*Related RINs*—one or more past or current RIN(s) associated with activity related to this action, such as merged RINs, split RINs, new activity for previously completed RINs, or duplicate RINs.

Some agencies that participated in the fall 2017 edition of The Regulatory Plan have chosen to include the following information for those entries that appeared in the Plan:

*Statement of Need*—a description of the need for the regulatory action.

*Summary of the Legal Basis*—a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.

*Alternatives*—a description of the alternatives the agency has considered or will consider as required by section 4(c)(1)(B) of Executive Order 12866.

*Anticipated Costs and Benefits*—a description of preliminary estimates of the anticipated costs and benefits of the action.

*Risks*—a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency’s jurisdiction.

## V. Abbreviations

The following abbreviations appear throughout this publication:

*ANPRM*—An Advance Notice of Proposed Rulemaking is a preliminary notice, published in the **Federal Register**, announcing that an agency is considering a regulatory action. An agency may issue an ANPRM before it develops a detailed proposed rule. An ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more

information before proceeding to a notice of proposed rulemaking.

*CFR*—The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the agencies of the Federal Government. The Code is divided into 50 titles, each title covering a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register**.

*E.O.*—An Executive order is a directive from the President to Executive agencies, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

*FR*—The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal agencies.

*FY*—The Federal fiscal year runs from October 1 to September 30.

*NPRM*—A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum:

A statement of the time, place, and nature of the public rulemaking proceeding; a reference to the legal authority under which the rule is proposed; and either the terms or substance of the proposed rule or a description of the subjects and issues involved.

*Pub. L.*—A public law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public Laws are numbered in sequence throughout the 2-year life of each Congress; for example, Public Law 110–4 is the fourth public law of the 110th Congress.

*RFA*—A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic

impact on a substantial number of small entities.

*RIN*—The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in the Unified Agenda, as directed by Executive Order 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register**, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

*Seq. No.*—The sequence number identifies the location of an entry in the printed edition of the Unified Agenda. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers if it appears in different printed editions of the Unified Agenda. Sequence numbers are not used in the online Unified Agenda.

*U.S.C.*—The United States Code is a consolidation and codification of all general and permanent laws of the United States. The U.S.C. is divided into 50 titles, each title covering a broad area of Federal law.

## VI. How can users get copies of the Agenda?

Copies of the **Federal Register** issue containing the printed edition of the Unified Agenda (agency regulatory flexibility agendas) are available from the Superintendent of Documents, U.S. Government Publishing Office, P.O. Box 371954, Pittsburgh, PA 15250–7954. Telephone: (202) 512–1800 or 1–866–512–1800 (toll-free).

Copies of individual agency materials may be available directly from the agency or may be found on the agency’s website. Please contact the particular agency for further information.

All editions of The Regulatory Plan and the Unified Agenda of Federal Regulatory and Deregulatory Actions since fall 1995 are available in electronic form at <http://reginfo.gov>, along with flexible search tools. The Government Publishing Office’s GPO FDsys website contains copies of the Agendas and Regulatory Plans that have been printed in the **Federal Register**. These documents are available at <http://www.fdsys.gov>.

Dated: June 3, 2021.

**Boris Arratia**,  
Director.

[FR Doc. 2021–15272 Filed 7–29–21; 8:45 am]

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Part III

Department of Agriculture

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Semiannual Regulatory Agenda

**DEPARTMENT OF AGRICULTURE**

**Office of the Secretary**

**2 CFR Subtitle B, Ch. IV**

**5 CFR Ch. LXXIII**

**7 CFR Subtitle A; Subtitle B, Chs. I–XI, XIV–XVIII, XX, XXV–XXXVIII, XLII**

**9 CFR Chs. I–III**

**36 CFR Ch. II**

**48 CFR Ch. 4**

**Semiannual Regulatory Agenda, Spring 2021**

**AGENCY:** Office of the Secretary, USDA.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in

conformance with Executive Orders (E.O.) 12866, “Regulatory Planning and Review,” and 13563, “Improving Regulation and Regulatory Review.” The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96–354. This agenda also identifies regulatory actions that are being reviewed in compliance with section 610(c) of the Regulatory Flexibility Act. We invite public comment on those actions as well as any regulation consistent with Executive Order 13563.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

USDA’s complete regulatory agenda is available online at [www.reginfo.gov](http://www.reginfo.gov).

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), USDA’s printed agenda entries include only:

(1) Rules that are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules identified for periodic review under section 610 of the Regulatory Flexibility Act.

**FOR FURTHER INFORMATION CONTACT:** For further information on any specific entry shown in this agenda, please contact the person listed for that action. For general comments or inquiries about the agenda, please contact Mr. Michael Poe, Office of Budget and Program Analysis, U.S. Department of Agriculture, Washington, DC 20250, (202) 720–3257.

Dated: March 31, 2021.

**Michael Poe,**  
*Legislative and Regulatory Staff.*

**AGRICULTURAL MARKETING SERVICE—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
1 .....	Poultry Grower Ranking Systems .....	0581–AE03
2 .....	Clarification of Scope of the Packers and Stockyards Act .....	0581–AE04
3 .....	Unfair Practices in Violation of the Packers and Stockyards Act .....	0581–AE05

**AGRICULTURAL MARKETING SERVICE—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
4 .....	Dairy Donation Program (AMS–DA–21–0013) .....	0581–AE00

**AGRICULTURAL MARKETING SERVICE—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
5 .....	NOP; Strengthening Organic Enforcement (AMS–NOP–17–0065) .....	0581–AD09
6 .....	National Organic Program—Organic Aquaculture Standards .....	0581–AD34
7 .....	NOP; Inert Ingredients in Pesticides for Organic Production (AMS–NOP–21–0008) .....	0581–AE02

**AGRICULTURAL MARKETING SERVICE—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
8 .....	Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act (AMS–FTTP–18–0101).	0581–AD81
9 .....	Establishment of a Domestic Hemp Production Program (AMS–SC–19–0042) .....	0581–AD82

**ANIMAL AND PLANT HEALTH INSPECTION SERVICE—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
10 .....	Handling of Animals; Contingency Plans .....	0579–AC69

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
11 .....	Animal Disease Traceability; Electronic Identification .....	0579—AE64

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
12 .....	Bovine Spongiform Encephalopathy and Scrapie; Importation of Small Ruminants and Their Germplasm, Products, and Byproducts.	0579—AD10

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
13 .....	Importation of Fresh Citrus Fruit From the Republic of South Africa Into the Continental United States .....	0579—AD95
14 .....	Horse Protection; Licensing of Designated Qualified Persons and Other Amendments .....	0579—AE19
15 .....	National List of Reportable Animal Diseases .....	0579—AE39
16 .....	Requiring Microchipping, Verifiable Signatures, Government Official Endorsement, and Mandatory Forms for Importation of Live Dogs.	0579—AE58

## ANIMAL AND PLANT HEALTH INSPECTION SERVICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
17 .....	Animal Welfare: Marine Mammals; Nonconsensus Language and Interactive Programs .....	0579—AB24
18 .....	Removal of Emerald Ash Borer Domestic Quarantine Regulations .....	0579—AE42

## FOOD AND NUTRITION SERVICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
19 .....	Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP).	0584—AE71
20 .....	Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC Online Ordering and Transactions.	0584—AE85

## FOOD AND NUTRITION SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
21 .....	National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010.	0584—AE11
22 .....	Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems .....	0584—AE37
23 .....	Supplemental Nutrition Assistance Program (SNAP): Electronic Benefits Transfer Requirements for Scanning and Product-Lookup Technology.	0584—AE39
24 .....	National School Lunch and School Breakfast Programs: Nutrition Standards for All Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010.	0584—AE55
25 .....	Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP) ....	0584—AE61

## FOREST SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
26 .....	Special Uses—Communications Uses Rent .....	0596—AD43

**DEPARTMENT OF AGRICULTURE (USDA)**

*Agricultural Marketing Service (AMS)*

Proposed Rule Stage

**1. • Poultry Grower Ranking Systems**

*Legal Authority:* 7 U.S.C. 181 to 229c  
*Abstract:* The U.S. Department of Agriculture’s Agricultural Marketing Service proposes to amend the regulations issued under the Packers and Stockyards Act (P&S Act) to address the use of poultry grower ranking systems as a method of payment and settlement grouping for poultry growers under contract in poultry growing arrangements with live poultry dealers. The proposed regulation would establish certain requirements with which a live poultry dealer must comply if a poultry grower ranking system is utilized to determine grower payment. A live poultry dealer’s failure to comply would be deemed an unfair, unjustly discriminatory, and deceptive practice.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael V. Durando, Deputy Administrator, Fair Trade Practices Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250–0237, *Phone:* 202 720–0219, *RIN:* 0581–AE03

**2. • Clarification of Scope of the Packers and Stockyards Act**

*Legal Authority:* 7 U.S.C. 181 to 229c  
*Abstract:* USDA proposes to revise the regulations issued under the Packers and Stockyards Act (Act) (7 U.S.C. 181 229c) to provide clarity regarding conduct that may violate the Act. This action is intended to support market growth, assure fair trade practices and competition, and protect livestock and poultry growers and producers. The proposed rule addresses long-standing issues related to competitiveness and whether all allegations of violations of the Act must be accompanied by a showing of harm or likely harm to competition.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael V. Durando, Deputy Administrator, Fair Trade Practices Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250–0237, *Phone:* 202 720–0219, *RIN:* 0581–AE04

**3. • Unfair Practices in Violation of the Packers and Stockyards Act**

*Legal Authority:* 7 U.S.C. 181 to 229c  
*Abstract:* USDA proposes to supplement a recent revision to regulations issued under the Packers and Stockyards Act (Act) (7 U.S.C. 181 229c) that provided criteria for the Secretary to consider when determining whether certain conduct or action by packers, swine contractors, or live poultry dealers is unduly or unreasonably preferential or advantageous. The proposed supplemental amendments would clarify the conduct the Department considers unfair, unjustly discriminatory, or deceptive and a violation of sections 202(a) and (b) of the Act. USDA would also clarify the criteria and types of conduct that would be considered unduly or unreasonably preferential, advantageous, prejudicial, or disadvantageous and violations of the Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael V. Durando, Deputy Administrator, Fair Trade Practices Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250–0237, *Phone:* 202 720–0219, *RIN:* 0581–AE05

**DEPARTMENT OF AGRICULTURE (USDA)**

*Agricultural Marketing Service (AMS)*

Final Rule Stage

**4. • Dairy Donation Program (AMS–DA–21–0013)**

*Legal Authority:* Pub. L. 116–260, sec. 762  
*Abstract:* The Dairy Donation Program rulemaking will comply with Consolidated Appropriations Act of 2021 mandates. Dairy Donation Program will implement a voluntary program that will reimburse eligible dairy organizations for milk used to make

eligible dairy products donated to non-profit groups for distribution to low-income persons.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	06/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Erin Taylor, Acting Director, Order Formulation and Enforcement Division, Department of Agriculture, Agricultural Marketing Service, Dairy Program, 1400 Independence Avenue SW, Room 2969–S, Washington, DC 20250, *Phone:* 202 720–7311, *Email:* erin.taylor@ams.usda.gov, *RIN:* 0581–AE00

**DEPARTMENT OF AGRICULTURE (USDA)**

*Agricultural Marketing Service (AMS)*

Long-Term Actions

**5. NOP; Strengthening Organic Enforcement (AMS–NOP–17–0065)**

*Legal Authority:* 7 U.S.C. 6501  
*Abstract:* The Strengthening Organic Enforcement (SOE) rulemaking will address 2018 Farm Bill mandates. In summary, SOE will follow requirements that align with the Farm Bill:

- Limiting the types of operations in the organic supply chain that are not required to obtain organic certification;
- Imported organic products must be accompanied by an electronic import certificate to validate organic status;
- Import certificates will be submitted to the U.S. Customs and Border Protection’s Automated Commercial Environment (ACE);
- Certifying agents must notify USDA within 90 days of the opening of any new office that conducts certification activities; and,
- Entities acting on behalf of certifying agents may be suspended when there is noncompliant activity.

*Timetable:*

Action	Date	FR Cite
Proposed Rule ....	08/05/20	85 FR 47536
Comment Period End.	10/05/20	
Final Rule .....	To Be Determined	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Tucker, *Phone:* 202 260–8077, *RIN:* 0581–AD09

**6. National Organic Program—Organic Aquaculture Standards**

*Legal Authority:* 7 U.S.C. 6501 to 6522

*Abstract:* This action proposes to establish standards for organic production and certification of farmed aquatic animals and their products in the USDA organic regulations. This action would also add aquatic animals as a scope of certification and accreditation under the National Organic Program (NOP).

*Timetable:* Next Action Undetermined.

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Jennifer Tucker,

*Phone:* 202 260–8077.

*RIN:* 0581–AD34

**7. • NOP; Inert Ingredients in Pesticides for Organic Production (AMS–NOP–21–0008)**

*Legal Authority:* 7 U.S.C. 6501 to 6524

*Abstract:* This Advanced Notice of Proposed Rulemaking (ANPR) requests comments on options for replacing outdated references in USDA’s organic regulations to U.S. Environmental Protection Agency (EPA) policy on inert ingredients in pesticides. Inerts, also known as other ingredients, are any substances other than the active ingredient that are intentionally added to pesticide products. The references to outdated EPA policy appear in the USDA organic regulations in the National List of Allowed and Prohibited Substances (National List) and identify the inert ingredients allowed in pesticides for organic production.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	To Be Determined	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Jennifer Tucker, Deputy Administrator, USDA National Organic Program, Department of Agriculture, Agricultural Marketing Service, 1400 Independence Avenue SW, Washington, DC 20250, *Phone:* 202 260–8077.

*RIN:* 0581–AE02

**DEPARTMENT OF AGRICULTURE (USDA)**

*Agricultural Marketing Service (AMS)*

Completed Actions

**8. Undue and Unreasonable Preferences and Advantages Under the Packers and Stockyards Act (AMS–FTTP–18–0101)**

*Legal Authority:* Pub. L. 110–234

*Abstract:* This final rule amended the regulations issued under the Packers and Stockyards Act (P&S Act) by adding new regulations that specify the criteria the Secretary could consider in determining whether conduct or action by packers, swine contractors, or live poultry dealers constitutes an undue or unreasonable preference or advantage and a violation of the P&S Act.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	12/11/20	85 FR 79779
Effective .....	01/11/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Michael V. Durando,

*Phone:* 202 720–0219.

*RIN:* 0581–AD81

**9. Establishment of a Domestic Hemp Production Program (AMS–SC–19–0042)**

*Legal Authority:* 7 U.S.C. 1621

*Abstract:* This action added new part 990 establishing rules and regulations for the domestic production of hemp. This action implemented provisions of the Agriculture Improvement Act of 2018 (Farm Bill).

*Completed:*

Reason	Date	FR Cite
Reopening of Comment Period End.	10/08/20	
Final Rule .....	01/19/21	86 FR 5596
Final Rule Effective.	03/22/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Sonia Jimenez,

*Phone:* 202 720–4722, *Email:*

*sonia.jimenez@usda.gov.*

*RIN:* 0581–AD82

**BILLING CODE 3410–02–P**

**DEPARTMENT OF AGRICULTURE (USDA)**

*Animal and Plant Health Inspection Service (APHIS)*

Proposed Rule Stage

**10. Handling of Animals; Contingency Plans**

*Legal Authority:* 7 U.S.C. 2131 to 2159

*Abstract:* The Animal and Plant Health Inspection Service issued a final rule on December 31, 2012, to establish regulations under which research facilities and dealers, exhibitors, intermediate handlers, and carriers must

meet certain requirements for contingency planning and training of personnel. Implementation of the final rule was stayed on July 31, 2013, so that the agency could conduct additional review to further consider the impact of contingency plan requirements on regulated entities. Since that time, we have conducted such a review, and the 2021 Congressional Appropriations Act has required us to propose to lift the stay. We are therefore proposing to lift the stay and make minor revisions to the requirements in order to update compliance dates and clarify intent. The lifting of the stay and proposed revisions would better ensure that entities responsible for animals regulated under the Animal Welfare Act are prepared to safeguard the health and welfare of such animals in the event of possible emergencies or disasters.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/23/08	73 FR 63085
NPRM Comment Period End.	12/22/08	
NPRM Comment Period Extended.	12/19/08	73 FR 77554
NPRM Comment Period Extended End.	02/20/09	
Final Rule .....	12/31/12	77 FR 76815
Final Rule Effective.	01/30/13	
Final Rule—Stay of Regulations.	07/31/13	78 FR 46255
Final Rule Effective—Stay of Regulations.	07/31/13	
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Elizabeth Theodorson, Assistant Deputy Administrator, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 86, Riverdale, MD 20737, *Phone:* 970 494–7473.

*RIN:* 0579–AC69

**11. • Animal Disease Traceability; Electronic Identification**

*Legal Authority:* 7 U.S.C. 8301, *et seq.*

*Abstract:* This action would amend APHIS’ animal disease traceability regulations, currently codified at 9 CFR part 86. The primary proposed change would require that beginning January 1, 2023, APHIS would only recognize identification devices (e.g., eartags) as official identification for cattle and bison covered by the regulations if the devices have both visual and electronic readability (EID). Other proposed changes are intended to clarify language

and requirements in several sections of part—86. These changes would enhance the U.S. traceability system to better achieve goals of rapidly tracing diseased and exposed animals and containing outbreaks.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Aaron Scott Ph.D., DACVPM, Director, Department of Agriculture, Animal and Plant Health Inspection Service, National Animal Disease Traceability and Veterinary Accreditation Center, APHIS Veterinary Services Strategy and Policy, 2150 Centre Avenue, Building B (Mail Stop 3E87), Fort Collins, CO 80526, *Phone:* 970 494-7249, *Email:* traceability@usda.gov).

*RIN:* 0579-AE64

**DEPARTMENT OF AGRICULTURE (USDA)**

*Animal and Plant Health Inspection Service (APHIS)*

Final Rule Stage

**12. Bovine Spongiform Encephalopathy and Scrapie; Importation of Small Ruminants and Their Germplasm, Products, and Byproducts**

*Legal Authority:* 7 U.S.C. 450; 7 U.S.C. 1622; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 7 U.S.C. 8301 to 8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701

*Abstract:* We are amending the regulations governing the importation of animals and animal products to revise conditions for the importation of live sheep, goats, and certain other non-bovine ruminants, and products derived from sheep and goats, with regard to transmissible spongiform encephalopathies such as bovine spongiform encephalopathy (BSE) and scrapie. We are removing BSE-related import restrictions on sheep and goats and most of their products and adding import restrictions related to transmissible spongiform encephalopathies for certain wild, zoological, or other non-bovine ruminant species. The conditions we are adopting for the importation of specified commodities are based on internationally accepted scientific literature and will, in general, align our regulations with guidelines established in the World Organization for Animal Health's Terrestrial Animal Health Code.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/18/16	81 FR 46619
NPRM Comment Period End.	09/16/16	
Final Rule .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Alexandra MacKenzie, Veterinary Medical Officer, Animal Permitting and Negotiating Services, NIES, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Unit 39, Riverdale, MD 20737, *Phone:* 301 851-3300.

*RIN:* 0579-AD10

**DEPARTMENT OF AGRICULTURE (USDA)**

*Animal and Plant Health Inspection Service (APHIS)*

Long-Term Actions

**13. Importation of Fresh Citrus Fruit From the Republic of South Africa Into the Continental United States**

*Legal Authority:* 7 U.S.C. 450; 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786; 21 U.S.C. 136 and 136a

*Abstract:* This rulemaking will amend the fruits and vegetables regulations to allow the importation of several varieties of fresh citrus fruit, as well as citrus hybrids, into the continental United States from areas in the Republic of South Africa where citrus black spot has been known to occur. As a condition of entry, the fruit will have to be produced in accordance with a systems approach that includes shipment traceability, packinghouse registration and procedures, and phytosanitary treatment. The fruit will also be required to be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of the Republic of South Africa with an additional declaration confirming that the fruit has been produced in accordance with the systems approach. This action will allow for the importation of fresh citrus fruit, including citrus hybrids, from the Republic of South Africa while continuing to provide protection against the introduction of plant pests into the United States.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/28/14	79 FR 51273

Action	Date	FR Cite
NPRM Comment Period End. Next Action Undetermined.	10/27/14	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Tony Román, *Phone:* 301 851-2242.

*RIN:* 0579-AD95

**14. Horse Protection; Licensing of Designated Qualified Persons and Other Amendments**

*Legal Authority:* 15 U.S.C. 1823 to 1825; 15 U.S.C. 1828

*Abstract:* We proposed amending the horse protection regulations to provide that the Animal and Plant Health Inspection Service (APHIS) would train and license horse protection inspectors (HPIs) to inspect horses at horse shows, exhibitions, sales, and auctions for compliance with the Horse Protection Act. Those changes to the regulations would strengthen enforcement of the Horse Protection Act and regulations and relieve horse industry organizations or associations of their regulatory burdens and responsibilities. We also proposed establishing a process by which APHIS can deny an application for a HPI license or revoke the license of a HPI who does not meet the minimum requirements, who fails to follow the designated inspection procedures, or who otherwise fails to carry out his or her duties and responsibilities in a satisfactory manner. In addition, we proposed making several changes to the requirements that pertain to the management of any horse show, exhibition, sale, and auction, as well as changes to the list of devices, equipment, substances, and practices that are prohibited to prevent the sorning of horses. Finally, we proposed revising the inspection procedures that inspectors are required to perform. These actions would help to protect horses from the cruel and inhumane practice of sorning and eliminate unfair competitive advantage that sore horses have over horses that are not sore.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/26/16	81 FR 49111
NPRM Comment Period Extended.	09/22/16	81 FR 65307
NPRM Comment Period End. Next Action Undetermined.	10/26/16	



*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Aaron Rhyner,  
*Phone:* 970 494-7484.  
*RIN:* 0579-AE19

**15. National List of Reportable Animal Diseases**

*Legal Authority:* 7 U.S.C. 8301 to 8317  
*Abstract:* This rulemaking amends our disease regulations to provide for a National List of Reportable Animal Diseases, along with reporting responsibilities for animal health professionals that encounter or suspect cases of communicable animal diseases and disease agents. The changes are necessary to streamline State and Federal cooperative animal disease detection, response, and control efforts. This action will consolidate and enhance current disease reporting mechanisms, and it will complement and supplement existing animal disease tracking and reporting at the State level.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	04/02/20	85 FR 18471
NPRM Comment Period End.	06/01/20	
NPRM Comment Period Re-opened.	08/18/20	85 FR 50796
NPRM Comment Period Re-opened End.	08/21/20	
Final Action .....	To Be Determined	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Jane Rooney, *Phone:* 970 494-7397.  
*RIN:* 0579-AE39

**16. Requiring Microchipping, Verifiable Signatures, Government Official Endorsement, and Mandatory Forms for Importation of Live Dogs**

*Legal Authority:* 7 U.S.C. 2131 to 2159  
*Abstract:* We are proposing to amend the regulations regarding the importation of live dogs by requiring all live dogs imported into the United States for resale purposes to be microchipped for permanent identification, and to require importers to procure a microchip reader and make it available to port-of-entry officials as requested. This action would also add microchipping as one of three identification options for dogs and cats used by dealers, exhibitors and research facilities. In addition, APHIS is proposing to require a verifiable signature on the health certificate and rabies certificate accompanying imported live dogs, an endorsement of

the health certificate by a government official in the country of origin, and the mandatory use of forms provided by APHIS.  
*Timetable:*

Action	Date	FR Cite
NPRM .....	To Be Determined	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Elizabeth Theodorson, *Phone:* 970 494-7473.  
*RIN:* 0579-AE58

**DEPARTMENT OF AGRICULTURE (USDA)**

*Animal and Plant Health Inspection Service (APHIS)*

Completed Actions

**17. Animal Welfare: Marine Mammals; Nonconsensus Language and Interactive Programs**

*Legal Authority:* 7 U.S.C. 2131 to 2159  
*Abstract:* This rulemaking would have amended the Animal Welfare Act regulations concerning the humane handling, care, treatment, and transportation of marine mammals in captivity. These proposed changes would have affected sections in the regulations relating to variances and implementation dates, indoor facilities, outdoor facilities, and water quality. It would also have revised the regulations that relate to swim-with-the-dolphin programs. We believed these actions were necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity were based on current industry standards and scientific knowledge and experience. The action is being withdrawn due to the age of the analyses on which it relies.  
*Completed:*

Reason	Date	FR Cite
Withdrawn .....	04/19/21	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Barbara Kohn, *Phone:* 301 851-3751.  
*RIN:* 0579-AB24

**18. Removal of Emerald Ash Borer Domestic Quarantine Regulations**

*Legal Authority:* 7 U.S.C. 7701 to 7772; 7 U.S.C. 7781 to 7786  
*Abstract:* This rulemaking removes the domestic quarantine regulations for the plant pest emerald ash borer. This

action will discontinue the domestic regulatory component of the emerald ash borer program as a means to more effectively direct available resources toward management and containment of the pest. Funding previously allocated to the implementation and enforcement of these domestic quarantine regulations will instead be directed to non-regulatory options to mitigate and control the pest.  
*Completed:*

Reason	Date	FR Cite
Final Rule .....	12/15/20	85 FR 81085
Final Rule Effective.	01/14/21	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Herbert Bolton, *Phone:* 301 851-3594.  
*RIN:* 0579-AE42

BILLING CODE 3410-34-P

**DEPARTMENT OF AGRICULTURE (USDA)**

*Food and Nutrition Service (FNS)*

Proposed Rule Stage

**19. Strengthening Integrity and Reducing Retailer Fraud in the Supplemental Nutrition Assistance Program (SNAP)**

*Legal Authority:* Pub. L. 113-79; Pub. L. 115-334

*Abstract:* This proposed rule would implement statutory provisions of the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill), the Agriculture Improvement Act of 2018 (the 2018 Farm Bill), and other language intended to deter retailer fraud, abuse, and non-compliance in the Supplemental Nutrition Assistance Program (SNAP).  
*Timetable:*

Action	Date	FR Cite
NPRM .....	03/00/22	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Charles H. Watford, Regulatory Review Specialist, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, *Phone:* 703 605-0800, *Email:* charles.watford@usda.gov.  
 Maureen Lydon, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, *Phone:* 703 457-7713, *Email:* maureen.lydon@usda.gov.  
*RIN:* 0584-AE71

**20. • Special Supplemental Nutrition Program for Women, Infants and Children (WIC): WIC Online Ordering and Transactions**

*Legal Authority:* Pub. L. 111–296  
*Abstract:* This rule addresses key regulatory barriers to online ordering in the WIC Program by making changes to the provisions that prevent online transactions and types of online capable stores from participating in the Program. This rule will also allow FNS to modernize WIC vendor regulations that do not reflect current technology and facilitate the Program’s transition to EBT.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/21	

*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Michael DePiro, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, *Phone:* 703 305–2876, *Email:* michael.depiro@usda.gov.  
 Maureen Lydon, Department of Agriculture, Food and Nutrition Service, 1320 Braddock Place, Alexandria, VA 22314, *Phone:* 703 457–7713, *Email:* maureen.lydon@usda.gov.  
*RIN:* 0584–AE85

**DEPARTMENT OF AGRICULTURE (USDA)**

*Food and Nutrition Service (FNS)*

Long-Term Actions

**21. National School Lunch and School Breakfast Programs: School Food Service Account Revenue Amendments Related to the Healthy, Hunger-Free Kids Act of 2010**

*Legal Authority:* Pub. L. 111–296  
*Abstract:* This rule amends National School Lunch Program (NSLP) regulations to conform to requirements contained in the Healthy, Hunger-Free Kids Act of 2010 regarding equity in school lunch pricing and revenue from non-program foods sold in schools. This rule requires school food authorities (SFAs) participating in the NSLP to provide the same level of financial support for lunches served to students who are not eligible for free or reduced price lunches as is provided for lunches served to students eligible for free lunches. This rule also requires that all food sold in a school and purchased with funds from the nonprofit school food service account other than meals and supplements reimbursed by the

Department of Agriculture must generate revenue at least proportionate to the cost of such foods.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule Effective.	06/17/11 07/01/11	76 FR 35301
Interim Final Rule Comment Period End.	09/15/11	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Michael DePiro, *Phone:* 703 305–2876, *Email:* michael.depiro@usda.gov.  
 Maureen Lydon, *Phone:* 703 457–7713, *Email:* maureen.lydon@usda.gov.  
*RIN:* 0584–AE11

**22. Modernizing Supplemental Nutrition Assistance Program (SNAP) Benefit Redemption Systems**

*Legal Authority:* Pub. L. 113–79  
*Abstract:* The Agricultural Act of 2014 (Pub. L. 113–79, the Farm Bill) amended the Food and Nutrition Act of 2008 (the FNA) to include new requirements regarding the acceptance and processing of SNAP client benefits by all non-exempt retailers participating in SNAP. Statutory changes will modernize EBT systems and ensure greater program integrity. The Food and Nutrition Service (FNS) proposes to revise certain SNAP regulations for which multiple State agencies have sought and received approval of waivers. The revisions would streamline program administration, offer greater flexibility to State agencies, and improve customer service.

*Timetable:* Next Action Undetermined.  
*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Charles H. Watford, *Phone:* 703 605–0800, *Email:* charles.watford@usda.gov.  
 Maureen Lydon, *Phone:* 703 457–7713, *Email:* maureen.lydon@usda.gov.  
*RIN:* 0584–AE37

**23. Supplemental Nutrition Assistance Program (SNAP): Electronic Benefits Transfer Requirements for Scanning and Product-Lookup Technology**

*Legal Authority:* Pub. L. 113–79  
*Abstract:* This rule will align program regulations with changes made by section 4002 of the Agricultural Act of 2014 (Pub. L. 113–79, the Farm Bill), which introduced new technical requirements for point-of-sale (POS) devices in the Electronic Benefits

Transfer (EBT) system in section 7(h)(2)(C) of the Food and Nutrition Act of 2008 (the FNA). The Food and Nutrition Service (FNS) will propose to revise existing regulations both to codify these statutory requirements as well as to provide for their effective implementation and enforcement through the clarification of the technical specifications and capabilities required of this equipment and by addressing methods for ensuring compliance. In addition, USDA will define what constitutes an area that has significantly limited access to food to determine who is exempt from this requirement.

*Timetable:* Next Action Undetermined.  
*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Charles H. Watford, *Phone:* 703 605–0800, *Email:* charles.watford@usda.gov.  
 Maureen Lydon, *Phone:* 703 457–7713, *Email:* maureen.lydon@usda.gov.  
*RIN:* 0584–AE39

**24. National School Lunch and School Breakfast Programs: Nutrition Standards for all Foods Sold in School, as Required by the Healthy, Hunger-Free Kids Act of 2010**

*Legal Authority:* Pub. L. 111–296  
*Abstract:* This rule codifies a provision of the Healthy, Hunger-Free Kids Act (Pub. L. 111–296; the Act) under 7 CFR parts 210 and 220. Section 208 requires the Secretary to promulgate regulations to establish science-based nutrition standards for all foods sold in schools. The nutrition standards apply to all food sold outside the school meal programs, on the school campus, and at any time during the school day.

*Timetable:* Next Action Undetermined.  
*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Michael DePiro, *Phone:* 703 305–2876, *Email:* michael.depiro@usda.gov.  
 Maureen Lydon, *Phone:* 703 457–7713, *Email:* maureen.lydon@usda.gov.  
*RIN:* 0584–AE55

**25. Providing Regulatory Flexibility for Retailers in the Supplemental Nutrition Assistance Program (SNAP)**

*Legal Authority:* Pub. L. 113–79; 7 U.S.C. 2011 to 2036  
*Abstract:* The Agricultural Act of 2014 amended the Food and Nutrition Act of 2008 to increase the requirement that certain Supplemental Nutrition Assistance Program (SNAP) authorized retail food stores have available on a continuous basis at least three varieties of items in each of four staple food categories, to a mandatory minimum of

seven varieties. The Food and Nutrition Service (FNS) codified these mandatory requirements. Subsequent annual Agency appropriations bill language prohibited implementation of certain final rule provisions. In response, this change will provide some retailers participating in SNAP as authorized food stores with more flexibility in meeting the enhanced SNAP eligibility requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/05/19	84 FR 13555
NPRM Comment Period End.	06/04/19	
NPRM Comment Period Re-opened.	06/14/19	84 FR 27743
NPRM Comment Period Reopen End.	06/20/19	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Charles H. Watford, *Phone:* 703 605-0800, *Email:* [charles.watford@usda.gov](mailto:charles.watford@usda.gov).  
 Maureen Lydon, *Phone:* 703 457-7713, *Email:* [maureen.lydon@usda.gov](mailto:maureen.lydon@usda.gov).  
*RIN:* 0584-AE61

**BILLING CODE 3410-30-P**

**DEPARTMENT OF AGRICULTURE (USDA)**

*Forest Service (FS)*  
 Long-Term Actions

**26. Special Uses—Communications Uses Rent**

*Legal Authority:* 43 U.S.C. 1761 to 1771  
*Abstract:* Consistent with the requirement in title V, section 504 (g) of the Federal Land Policy and

Management Act, the proposed rule would update the Forest Service’s rental fee schedule for communications uses based on market value. Updated rental fees that exceed 100 percent of current rental fees would be phased in over a 3-year period. USDA is coordinating development of the information base to support this rulemaking with the Department of the Interior.

*Timetable:* Next Action Undetermined.

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Edwina Howard-Agu, *Phone:* 202 205-1419, *Email:* [edwina.howard-agu@usda.gov](mailto:edwina.howard-agu@usda.gov).

*RIN:* 0596-AD43

[FR Doc. 2021-15083 Filed 7-29-21; 8:45 am]

**BILLING CODE 3410-11-P**





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Part IV

Department of Commerce

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Semiannual Regulatory Agenda

**DEPARTMENT OF COMMERCE****Office of the Secretary****13 CFR Ch. III****15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI****19 CFR Ch. III****37 CFR Chs. I, IV, and V****48 CFR Ch. 13****50 CFR Chs. II, III, IV, and VI****Spring 2021 Semiannual Agenda of Regulations**

**AGENCY:** Office of the Secretary, Commerce.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** In compliance with Executive Order 12866, entitled “Regulatory Planning and Review,” and the Regulatory Flexibility Act, as amended, the Department of Commerce (Commerce), in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to pre-rulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the fall 2020 agenda. The purpose of the Agenda is to provide information to the public on regulations that are currently under review, being proposed, or issued by Commerce. The agenda is intended to facilitate comments and views by interested members of the public.

Commerce’s spring 2021 regulatory agenda includes regulatory activities that are expected to be conducted during the period May 1, 2021, through April 31, 2022.

**FOR FURTHER INFORMATION CONTACT:**

*Specific:* For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

*General:* Comments or inquiries of a general nature about the agenda should be directed to Asha Mathew, Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230, telephone: 202-482-3151.

**SUPPLEMENTARY INFORMATION:** Commerce hereby publishes its spring 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions pursuant to Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 601

*et seq.* Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration pursuant to this order. By memorandum of February 17, 2021, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the spring 2021 Unified Agenda. The Regulatory Flexibility Act requires agencies to publish, in the spring and fall of each year, a regulatory flexibility agenda that contains a brief description of the subject of any rule likely to have a significant economic impact on a substantial number of small entities.

Beginning with the fall 2007 edition, the internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at [www.reginfo.gov](http://www.reginfo.gov), in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

In this edition of Commerce’s regulatory agenda, a list of the most important significant regulatory and deregulatory actions and a Statement of Regulatory Priorities are included in the Regulatory Plan, which appears in both the online Unified Agenda and in part II of the issue of the **Federal Register** that includes the Unified Agenda.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act, Commerce’s printed agenda entries include only:

(1) Rules that are in the Agency’s regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act’s Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the internet. In addition, for fall editions of the Agenda, Commerce’s entire Regulatory Plan will continue to be printed in the **Federal Register**.

Within Commerce, the Office of the Secretary and various operating units may issue regulations. Among these operating units, the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Industry and Security, and the Patent and Trademark Office issue the greatest share of Commerce’s regulations.

A large number of regulatory actions reported in the Agenda deal with fishery management programs of NOAA’s National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of NMFS’ programs, an “Explanation of Information Contained in NMFS Regulatory Entries” is provided below.

**Explanation of Information Contained in NMFS Regulatory Entries**

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (the Act) governs the management of fisheries within the Exclusive Economic Zone of the United States (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. For fisheries that require conservation and management measures, eight Regional Fishery Management Councils (Councils) prepare and submit to NMFS Fishery Management Plans (FMPs) for the fisheries within their respective areas in the EEZ. Membership of these Councils is comprised of representatives of the commercial and recreational fishing sectors in addition to environmental, academic, and government interests. Council members are nominated by the governors and ultimately appointed by the Secretary of Commerce. The Councils are required by law to conduct public hearings on the development of FMPs and FMP amendments. Consistent with applicable law, environmental and other analyses are developed that consider alternatives to proposed actions.

Pursuant to the Magnuson-Stevens Act, the Councils also submit to NMFS proposed regulations they deem necessary or appropriate to implement FMPs. The proposed regulations, FMPs, and FMP amendments are subject to review and approval by NMFS, based on consistency with the Magnuson-Stevens Act and other applicable law. The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

Commerce’s spring 2021 regulatory agenda follows.

This document of the Department of Commerce was signed on June 22, by Quentin Palfrey, Deputy General Counsel. That document with the original signature and date is maintained by the Department of Commerce. For administrative purposes

only, and in compliance with requirements of the Office of the Federal Register, the undersigned Department of Commerce **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic

format for publication, as an official document of the Department of Commerce. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 23, 2021.

**Asha Mathew,**  
Federal Register Liaison Officer, U.S.  
Department of Commerce.

#### GENERAL ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
27 .....	Securing the Information and Communications Technology and Services Supply Chain: Licensing Procedures.	0605-AA60

#### GENERAL ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
28 .....	Concrete Masonry Products Research, Education, and Promotion .....	0605-AA53

#### GENERAL ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
29 .....	Concrete Masonry Products Research, Education, and Promotion Information Order; Referendum Procedures.	0605-AA56

#### INTERNATIONAL TRADE ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
30 .....	Modifications to Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws.	0625-AB10

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
31 .....	Reduce Incidental Bycatch and Mortality of Sea Turtles in the Southeast U.S. Shrimp Fisheries .....	0648-BK49

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
32 .....	Comprehensive Fishery Management Plan for Puerto Rico, Comprehensive Fishery Management Plan for St. Croix, Comprehensive Fishery Management Plan for St. Thomas/St. John.	0648-BD32
33 .....	International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Treatment of U.S. Purse Seine Fishing With Respect to U.S. Territories.	0648-BF41
34 .....	International Fisheries; South Pacific Tuna Fisheries; Implementation of Amendments to the South Pacific Tuna Treaty.	0648-BG04
35 .....	Illegal, Unregulated, and Unreported Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act.	0648-BG11
36 .....	Regulatory Amendment to the Pacific Coast Groundfish Fishery Management Plan to Implement an Electronic Monitoring Program for Bottom Trawl and Non-Whiting Midwater Trawl Vessels.	0648-BH70
37 .....	Atlantic Highly Migratory Species; Research and Data Collection in Support of Spatial Fisheries Management.	0648-BI10
38 .....	Establish National Insurance Requirements for Observer Providers .....	0648-BJ33
39 .....	Amendment 23 to the Northeast Multispecies Fishery Management Plan .....	0648-BK17
40 .....	Framework Adjustment 61 to the Northeast Multispecies Fishery Management Plan .....	0648-BK24
41 .....	Amendment 14 to the Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska .....	0648-BK31
42 .....	Establishment of Time-Area Closures for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act.	0648-BK04



NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
43 .....	International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Requirements to Safeguard Fishery Observers.	0648–BG66
44 .....	Omnibus Deep-Sea Coral Amendment .....	0648–BH67
45 .....	Generic Amendment to the Fishery Management Plans for the Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region.	0648–BH72
46 .....	Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood.	0648–BH87
47 .....	Modification of Multi-Day Trip Possession Limits for Federally-Permitted Charter/Headboat Vessels in the Fishery Management Plans (FMP) in the Gulf of Mexico.	0648–BJ60
48 .....	Framework Adjustment 8 to the Atlantic Herring Fishery Management Plan .....	0648–BK11
49 .....	Framework Adjustment 33 to the Atlantic Sea Scallop Fishery Management Plan .....	0648–BK51
50 .....	Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Emergency Action to Change Seasonal Processing Limitations in the At-sea Whiting Fishery.	0648–BK52
51 .....	Reducing Disturbances to Hawaiian Spinner Dolphins From Human Interactions .....	0648–AU02
52 .....	Designation of Critical Habitat for the Arctic Ringed Seal .....	0648–BC56
53 .....	Amendment and Updates to the Pelagic Longline Take Reduction Plan .....	0648–BF90
54 .....	Designation of Critical Habitat for the Threatened Caribbean Corals .....	0648–BG26
55 .....	Revision to Critical Habitat Designation for Endangered Southern Resident Killer Whales .....	0648–BH95
56 .....	Atlantic Large Whale Take Reduction Plan Modifications to Reduce Serious Injury and Mortality of Large Whales in Commercial Trap/Pot Fisheries Along the U.S. East Coast.	0648–BJ09
57 .....	Designation of Critical Habitat for Threatened Indo-Pacific Reef-Building Corals .....	0648–BJ52
58 .....	Designation of Critical Habitat for the Beringia Distinct Population Segment of the Bearded Seal .....	0648–BJ65
59 .....	Wisconsin-Lake Michigan National Marine Sanctuary Designation .....	0648–BG01

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
60 .....	Implementation of a Program for Transshipments by Large Scale Fishing Vessels in the Eastern Pacific Ocean.	0648–BD59
61 .....	Amendment 111 to the Fishery Management Plan for Groundfish of the Gulf of Alaska to Reauthorize the Central Gulf of Alaska Rockfish Program.	0648–BJ73

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
62 .....	Area of Overlap Between the Convention Areas of the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission.	0648–BH59
63 .....	Atlantic Highly Migratory Species; Regulatory Amendment for the Management of Atlantic Swordfish .....	0648–BI09
64 .....	Amendment 8 to the Atlantic Herring Fishery Management Plan .....	0648–BI80
65 .....	Amendment 21 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan .....	0648–BJ18
66 .....	Salmon Bycatch Minimization in the Pacific Coast Groundfish Fishery .....	0648–BJ50
67 .....	International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Tropical Tuna in the Eastern Pacific Ocean for 2021.	0648–BK08
68 .....	Taking and Importing Marine Mammals: Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico.	0648–BB38
69 .....	Designation of Critical Habitat for the Mexico, Central American, and Western Pacific Distinct Population Segments of Humpback Whales Under the Endangered Species Act.	0648–BI06

PATENT AND TRADEMARK OFFICE—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
70 .....	Changes To Implement Provisions of the Trademark Modernization Act of 2020 .....	0651–AD55

PATENT AND TRADEMARK OFFICE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
71 .....	Trademark Fee Adjustment .....	0651–AD42

**DEPARTMENT OF COMMERCE (DOC)**

General Administration (ADMIN)

Proposed Rule Stage

**27. • Securing the Information and Communications Technology and Services Supply Chain: Licensing Procedures**

Legal Authority: Not Yet Determined

Abstract: The Department is seeking public input regarding establishing a licensing process for entities to seek pre-approval before engaging in or continuing to engage in potentially regulated ICTS Transactions under the “Securing the Information and Communications Technology and Services Supply Chain” rule.

Timetable:

Action	Date	FR Cite
ANPRM .....	03/29/21	86 FR 16312
ANPRM Comment Period End.	04/28/21	
NPRM .....	10/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Joe Bartles, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, Phone: 202 482–3084, Email: jbartles@doc.gov.

RIN: 0605–AA60

**DEPARTMENT OF COMMERCE (DOC)**

General Administration (ADMIN)

Final Rule Stage

**28. Concrete Masonry Products Research, Education, and Promotion**

Legal Authority: 15 U.S.C. 8701 et seq.

Abstract: The Concrete Masonry Products Research, Education, and Promotion Act of 2018 (Act) (15 U.S.C. 8701 et seq.) authorizes the establishment of an orderly program for a program of research, education, and promotion, including funds for marketing and market research activities, that is designed to promote the use of concrete masonry products in construction and building (a checkoff program). The Act allows industry to submit a proposed order establishing such a program. If the Secretary determines that such a proposed order is consistent with and will effectuate the purpose of the Act, the Secretary is directed to publish the proposed order in the **Federal Register** not later than 90 days after receiving the order.

Timetable:

Action	Date	FR Cite
NPRM .....	08/24/20	85 FR 52059
NPRM Comment Period End.	10/08/20	
Final Action .....	07/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Asha Mathew, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, Phone: 202 306–0487, Email: amathew@doc.gov.

RIN: 0605–AA53

**DEPARTMENT OF COMMERCE (DOC)**

General Administration (ADMIN)

Completed Actions

**29. Concrete Masonry Products Research, Education, and Promotion Information Order; Referendum Procedures**

Legal Authority: 15 U.S.C. 8701 et seq.

Abstract: The Concrete Masonry Products Research, Education, and Promotion Act of 2018 (Act) (15 U.S.C. 8701 et seq.) authorizes the establishment of an orderly program for a program of research, education, and promotion, including funds for marketing and market research activities, that is designed to promote the use of concrete masonry products in construction and building (a checkoff program). The Act allows industry to submit a proposed order establishing such a program. If the Secretary determines that such a proposed order is consistent with and will effectuate the purpose of the Act, this rule will effectuate the referendum process.

Timetable:

Action	Date	FR Cite
NPRM .....	10/15/20	85 FR 65288
NPRM Comment Period End.	11/16/20	
Final Action .....	05/03/21	86 FR 23271
Final Action Effective.	05/03/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Asha Mathew, Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, Phone: 202 306–0487, Email: amathew@doc.gov.

RIN: 0605–AA56

**DEPARTMENT OF COMMERCE (DOC)**

International Trade Administration (ITA)

Final Rule Stage

**30. Modifications to Regulations To Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws**

Legal Authority: 19 U.S.C. 1671 et seq.; Pub. L. 114–125, sec. 421

Abstract: Pursuant to its authority under Title VII of the Tariff Act of 1930, as amended (the Act), the Department of Commerce (Commerce) is considering issuing a final rule, adopting the proposed rule, to modify its regulations under part 351 of title 19 to improve administration and enforcement of the antidumping duty (AD) and countervailing duty (CVD) laws. Specifically, Commerce proposed to modify its regulation concerning the time for submission of comments pertaining to industry support in AD and CVD proceedings; to modify its regulation regarding new shipper reviews; to modify its regulation concerning scope matters in AD and CVD proceedings; to promulgate a new regulation concerning circumvention of AD and CVD orders; to promulgate a new regulation concerning covered merchandise referrals received from U.S. Customs and Border Protection (CBP); to promulgate a new regulation pertaining to Commerce requests for certifications from interested parties to establish whether merchandise is subject to an AD or CVD order; and to modify its regulation regarding importer reimbursement certifications filed with CBP. Finally, Commerce proposed to modify its regulations regarding letters of appearance in AD and CVD proceedings and importer filing requirements for access to business proprietary information.

Timetable:

Action	Date	FR Cite
NPRM .....	08/13/20	85 FR 49472
Extension of Comment Period.	09/10/20	85 FR 55801
NPRM Comment Period End.	09/14/20	
Extension of Comment Period End.	09/28/20	
Final Action .....	07/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Jessica Link, Department of Commerce, International Trade Administration, 1401 Constitution Avenue NW, Washington,

DC 20230, Phone: 202 482-1411, Email: [jessica.link@trade.gov](mailto:jessica.link@trade.gov).  
RIN: 0625-AB10

**DEPARTMENT OF COMMERCE (DOC)**

National Oceanic and Atmospheric Administration (NOAA)

Prerule Stage

**National Marine Fisheries Service**

**31. • Reduce Incidental Bycatch and Mortality of Sea Turtles in the Southeast U.S. Shrimp Fisheries**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*

*Abstract:* As a result of new information on sea turtle bycatch in shrimp trawls and turtle excluder device (TED) testing, NMFS conducted an evaluation of the southeast U.S. shrimp fisheries that resulted in a final environmental impact statement (FEIS) in November 2019 in support of a rule to withdraw the alternative tow time restriction and require TEDs in skimmer trawl vessels 40 feet and greater in length. The rule was promulgated under the authority of the Endangered Species Act (ESA) and its purpose was to aid in the protection and recovery of listed sea turtle populations by reducing incidental bycatch and mortality of small sea turtles in the Southeastern U.S. shrimp fisheries. Additional TED testing has resulted in producing TED designs that are effective on skimmer trawl vessels less than 40 feet in length. Therefore, NMFS is considering additional ESA rulemaking to protect and conserve threatened and endangered sea turtles in the southeast U.S. shrimp fisheries.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	04/20/21	86 FR 20475
ANPRM Comment Period End.	05/20/21	
NPRM .....	07/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Andrew J. Strelcheck, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, Phone: 727 824-5305, Email: [andy.strelcheck@noaa.gov](mailto:andy.strelcheck@noaa.gov).

RIN: 0648-BK49

**DEPARTMENT OF COMMERCE (DOC)**

National Oceanic and Atmospheric Administration (NOAA)

Proposed Rule Stage

**National Marine Fisheries Service**

**32. Comprehensive Fishery Management Plan for Puerto Rico, Comprehensive Fishery Management Plan for St. Croix, Comprehensive Fishery Management Plan for St. Thomas/St. John**

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

*Abstract:* In response to a recommendation of the Caribbean Fishery Management Council, this action would establish three new Fishery Management Plans (FMPs) (Puerto Rico FMP, St. Thomas/St. John FMP and St. Croix FMP) and repeal and replace the existing U.S. Caribbean-wide FMPs (the FMP for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands (USVI), the FMP for the Spiny Lobster Fishery of Puerto Rico and the USVI, the FMP for Queen Conch Resources of Puerto Rico and the USVI, and the FMP for the Corals and Reef Associated Plants and Invertebrates of Puerto Rico and the USVI). For each of the Puerto Rico, St. Thomas/St. John, and St. Croix FMPs, the action would also modify the composition of the stocks to be managed; organize those stocks for effective management; establish status determination criteria, management reference points, and accountability measures for managed stocks; identify essential fish habitat for stocks new to management; and establish framework measures.

*Timetable:*

Action	Date	FR Cite
Notice of Availability.	06/26/20	85 FR 38350
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Andrew J. Strelcheck, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, Phone: 727 824-5305, Email: [andy.strelcheck@noaa.gov](mailto:andy.strelcheck@noaa.gov).  
RIN: 0648-BD32

**33. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Treatment of U.S. Purse Seine Fishing With Respect to U.S. Territories**

*Legal Authority:* 16 U.S.C. 6901 *et seq.*

*Abstract:* This action would establish rules and/or procedures to address the treatment of U.S.-flagged purse seine vessels and their fishing activities in regulations issued by the National Marine Fisheries Service that implement decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission), of which the United States is a member. Under the Western and Central Pacific Fisheries Convention Implementation Act, the National Marine Fisheries Service exercises broad discretion when determining how it implements Commission decisions, such as purse seine fishing restrictions. The National Marine Fisheries Service intends to examine the potential impacts of the domestic implementation of Commission decisions, such as purse seine fishing restrictions, on the economies of the U.S. territories that participate in the Commission, and examine the connectivity between the activities of U.S.-flagged purse seine fishing vessels and the economies of the territories. Based on that and other information, the National Marine Fisheries Service might propose regulations that mitigate adverse economic impacts of purse seine fishing restrictions on the U.S. territories and/or that, in the context of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), recognize that one or more of the U.S. territories have their own purse seine fisheries that are distinct from the purse seine fishery of the United States and that are consequently subject to special provisions of the Convention and of Commission decisions.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	10/23/15	80 FR 64382
ANPRM Comment Period End.	11/23/15	
NPRM .....	02/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Tosatto, Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818, Phone: 808 725-5000, Email: [michael.tosatto@noaa.gov](mailto:michael.tosatto@noaa.gov).

RIN: 0648-BF41

**34. International Fisheries; South Pacific Tuna Fisheries; Implementation of Amendments to the South Pacific Tuna Treaty**

*Legal Authority:* 16 U.S.C. 973 *et seq.*  
*Abstract:* Under authority of the South Pacific Tuna Act of 1988, this rule would implement recent amendments to the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America (also known as the South Pacific Tuna Treaty). The rule would include modification to the procedures used to request licenses for U.S. vessels in the western and central Pacific Ocean purse seine fishery, including changing the annual licensing period from June-to-June to the calendar year, and modifications to existing reporting requirements for purse seine vessels fishing in the western and central Pacific Ocean. The rule would implement only those aspects of the Treaty amendments that can be implemented under the existing South Pacific Tuna Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael Tosatto, Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818, *Phone:* 808 725-5000, *Email:* michael.tosatto@noaa.gov.  
*RIN:* 0648-BG04

**35. Illegal, Unregulated, and Unreported Fishing; Fisheries Enforcement; High Seas Driftnet Fishing Moratorium Protection Act**

*Legal Authority:* Pub. L. 114-81  
*Abstract:* This proposed rule would make conforming amendments to regulations implementing the various statutes amended by the Illegal, Unreported and Unregulated Fishing Enforcement Act of 2015 (Pub. L. 114-81). The Act amends several regional fishery management organization implementing statutes as well as the High Seas Driftnet Fishing Moratorium Protection Act. It also provides authority to implement two new international agreements under the Antigua Convention, which amends the Convention for the establishment of an Inter-American Tropical Tuna Commission, and the United Nations Food and Agriculture Organization

Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing (Port State Measures Agreement), which restricts the entry into U.S. ports by foreign fishing vessels that are known to be or are suspected of engaging in illegal, unreported, and unregulated fishing. This proposed rule would also implement the Port State Measures Agreement. To that end, this proposed rule would require the collection of certain information from foreign fishing vessels requesting permission to use U.S. ports. It also includes procedures to designate and publicize the ports to which foreign fishing vessels may seek entry and procedures for conducting inspections of these foreign vessels accessing U.S. ports. Further, the rule would establish procedures for notification of: The denial of port entry or port services for a foreign vessel, the withdrawal of the denial of port services if applicable, the taking of enforcement action with respect to a foreign vessel, or the results of any inspection of a foreign vessel to the flag nation of the vessel and other competent authorities as appropriate.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Alexa Cole, Director, Office of International Affairs and Seafood Inspection, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427-8286, *Email:* alexa.cole@noaa.gov.  
*RIN:* 0648-BG11

**36. Regulatory Amendment to the Pacific Coast Groundfish Fishery Management Plan To Implement an Electronic Monitoring Program for Bottom Trawl and Non-Whiting Midwater Trawl Vessels**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* The proposed action would implement a regulatory amendment to the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan to allow bottom trawl and midwater trawl vessels targeting non-whiting species the option to use electronic monitoring (video cameras and associated sensors) in place of observers to meet requirements for 100-percent observer coverage. By allowing vessels the option to use electronic monitoring to meet monitoring requirements, this action is

intended to increase operational flexibility and reduce monitoring costs for the fleet.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231-6266, *Email:* barry.thom@noaa.gov.  
*RIN:* 0648-BH70

**37. Atlantic Highly Migratory Species; Research and Data Collection in Support of Spatial Fisheries Management**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* This rulemaking would address conducting research in areas currently closed to fishing for Atlantic highly migratory species (HMS)—during various times or by certain gear—to collect fishery-dependent data. A number of time/area closures or gear-restricted areas have been implemented over the years through various rulemakings, limiting fishing for Atlantic highly migratory species in those areas for a variety of reasons including reducing bycatch. These time/area closures have been implemented in consultation with the HMS Advisory Panel to protect species consistent with the Magnuson-Stevens Fisheries Conservation and Management Act (*e.g.*, to reduce bycatch in the pelagic longline fishery off the east coast of Florida), the Endangered Species Act (*e.g.*, to protect sea turtles in the North Atlantic), and the Atlantic Tunas Convention Act (*e.g.*, to protect spawning bluefin tuna in the Gulf of Mexico). Fishery-dependent data supports effective fisheries management, and areas that restrict fishing effort often have a commensurate decrease in fishery-dependent data collection. Programs to facilitate research and data collection, such as those that would be covered by this rulemaking, could assess the efficacy of closed areas, improve sustainable management of highly migratory species, and may provide benefits to commercial and recreational fishermen.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Kelly Denit, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, *Phone:* 301 427-8500, *Email:* kelly.denit@noaa.gov.  
*RIN:* 0648-BI10

**38. Establish National Insurance Requirements for Observer Providers**

*Legal Authority:* 16 U.S.C. 1855(d)  
*Abstract:* NMFS is proposing to establish uniform, nationally applicable minimum insurance requirements for companies that provide observer or at-sea monitor services for federally managed fisheries subject to monitoring requirements. This action would supersede outdated or inappropriate regulatory insurance requirements thereby easing the regulatory and cost burden for observer/at-sea monitor providers. Additionally, this action would mitigate potential liability risks associated with observer and at-sea monitor deployments for vessel owners and shore side processors that are subject to monitoring requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/21	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Evan Howell, Director, Office of Science and Technology, National Marine Fisheries Service, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427-8100, *Email:* evan.howell@noaa.gov.  
*RIN:* 0648-BJ33

**39. • Amendment 23 to the Northeast Multispecies Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* This action proposes measures recommended by the New England Fishery Management Council in Amendment 23 to the Northeast Multispecies Fishery Management Plan. The Council developed this action to implement measures to improve the reliability and accountability of catch reporting in the commercial groundfish fishery to ensure there is a precise and accurate representation of catch (landings and discards). The purpose of this action is to adjust the existing industry-funded monitoring program to improve accounting and accuracy of

collected catch data. Specifically, this action would set a fixed target coverage rate as a percentage of fishing trips to replace the current annual method for calculating a coverage target. This action would exclude from the monitoring requirement all trips in geographic areas with low groundfish catch; allow for increased coverage when federal funding is available to reimburse industry's costs; set a baseline coverage target for which there is no reimbursement for industry's costs in the absence of federal funding; approve electronic monitoring technologies as an alternative to human at-sea monitors; require periodic evaluation of the monitoring program; allow for waivers from monitoring for good cause; and grant authority to the Northeast Regional Administrator to streamline industry's reporting requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281-9283, *Fax:* 978 281-9207, *Email:* michael.pentony@noaa.gov  
*RIN:* 0648-BK17

**40. • Framework Adjustment 61 to the Northeast Multispecies Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* In response to action by the New England Fishery Management Council due to new scientific information, the proposed action would implement management measures included in Framework Adjustment 61 to the Northeast Multispecies Fishery Management Plan (Framework 61). The proposed action would set fishing years 2021-2023 specifications for about half of groundfish stocks, and fishing year 2021 total allowable catches (TAC) for the three U.S./Canada stocks Eastern Georges Bank cod, Eastern Georges Bank haddock, and Georges Bank yellowtail flounder. This action would also address white hake rebuilding measures and potentially create a universal sector exemption to allow fishing for redfish, pollock, and haddock.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/21	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281-9283, *Fax:* 978 281-9207, *Email:* michael.pentony@noaa.gov  
*RIN:* 0648-BK24

**41. • Amendment 14 to the Fishery Management Plan for the Salmon Fisheries in the EEZ Off Alaska**

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

*Abstract:* This action would modify the Fishery Management Plan for the Salmon Fisheries in the EEZ off Alaska (FMP) and implement regulations to manage the EEZ waters of Cook Inlet under the FMP and prohibit commercial fishing for salmon in this area. Currently, this area is excluded from the FMP and the State of Alaska manages commercial fishing for salmon in this area. If approved, this action would result in all commercial salmon fishing in Cook Inlet occurring within waters of the State of Alaska under State management plans. The North Pacific Fishery Management Council (Council) determined that this action is consistent with the Council's longstanding policy to facilitate management of salmon fishing by the State of Alaska and that the State is the authority best suited for managing Alaska salmon fisheries given its existing infrastructure and expertise. The Council considered, but did not select, two other action alternatives that would delegate management of the Cook Inlet EEZ to the State of Alaska, or establish Council and NMFS management of the commercial salmon fishery within the area. The Council did not select either of these alternatives because the State of Alaska was unwilling to accept delegation of management authority, and due to the substantial increase in management complexity and cost without corresponding benefits of both alternatives.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/21	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* James Balsiger, Regional Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, 709 West Ninth Street, Juneau, AK 99801, *Phone:* 907 586-

7221, Fax: 907 586-7465, Email: jim.balsiger@noaa.gov.  
RIN: 0648-BK31

**42. Establishment of Time–Area Closures for Hawaiian Spinner Dolphins Under the Marine Mammal Protection Act**

*Legal Authority:* 16 U.S.C. 1382 *et seq.*  
*Abstract:* This rulemaking action under the Marine Mammal Protection Act (MMPA) proposes to establish mandatory time-area closures of Hawaiian spinner dolphins’ essential daytime habitats at five selected sites in the Main Hawaiian Islands (MHI). In considering public comments in response to a separate proposed rule related to spinner dolphin interactions (81 FR 57854), NMFS intends these regulatory measures to prevent take of Hawaiian spinner dolphins from occurring in inshore marine areas at essential daytime habitats, and where high levels of disturbance from human activities are most prevalent.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/21	

*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8400.  
RIN: 0648-BK04

**DEPARTMENT OF COMMERCE (DOC)**

*National Oceanic and Atmospheric Administration (NOAA)*

Final Rule Stage  
**National Marine Fisheries Service**

**43. International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Requirements To Safeguard Fishery Observers**

*Legal Authority:* 16 U.S.C. 6901 *et seq.*  
*Abstract:* This rule would establish requirements to enhance the safety of fishery observers on highly migratory species fishing vessels. This rule would be issued under the authority of the Western and Central Pacific Fisheries Convention Implementation Act, and pursuant to decisions made by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. This action is necessary

for the United States to satisfy its obligations under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, to which it is a Contracting Party.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/20/20	85 FR 66513
NPRM Comment Period End.	11/19/20	
Final Action .....	05/00/21	

*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Michael Tosatto, Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard, Building 176, Honolulu, HI 96818, Phone: 808 725-5000, Email: michael.tosatto@noaa.gov.  
RIN: 0648-BG66

**44. Omnibus Deep-Sea Coral Amendment**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* This action would implement the New England Fishery Management Council’s Omnibus Deep-Sea Coral Amendment. The Amendment would implement measures that reduce impacts of fishing gear on deep-sea corals in the Gulf of Maine and on the outer continental shelf. In doing so, this action would prohibit the use of mobile bottom-tending gear in two areas in the Gulf of Maine (Mount Desert Rock and Outer Schoodic Ridge), and it would prohibit the use of all gear (with an exception for red crab pots) along the outer continental shelf in waters deeper than a minimum of 600 meters.

*Timetable:*

Action	Date	FR Cite
Notice of Availability.	08/26/19	84 FR 44596
NPRM .....	01/03/20	85 FR 285
NPRM Comment Period End.	02/18/20	
Final Action .....	06/00/21	

*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, Phone: 978 281-9283, Fax: 978 281-9207, Email: michael.pentony@noaa.gov.  
RIN: 0648-BH67

**45. Generic Amendment to the Fishery Management Plans for the Reef Fish Resources of the Gulf of Mexico and Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* This action, recommended by the Gulf of Mexico Fishery Management Council, would modify data reporting for owners or operators of federally permitted for-hire vessels (charter vessels and headboats) in the Gulf of Mexico, requiring them to declare the type of trip (for-hire or other) prior to departing for any trip, and electronically submit trip-level reports prior to off-loading fish at the end of each fishing trip. The declaration would include the expected return time and landing location. Landing reports would include information about catch and effort during the trip. The action would also require that these reports be submitted via approved hardware that includes a global positioning system attached to the vessel that is capable, at a minimum, of archiving global positioning system locations. This requirement would not preclude the use of global positioning system devices that provide real-time location data, such as the currently approved vessel monitoring systems.

*Timetable:*

Action	Date	FR Cite
Notice of Availability.	06/21/18	83 FR 28797
NPRM .....	10/26/18	83 FR 54069
Correction .....	11/08/18	83 FR 55850
Comment Period Extended.	11/20/18	83 FR 58522
NPRM Comment Period End.	11/26/18	
Comment Period Extended End.	01/09/19	
Final Rule .....	07/21/20	85 FR 44005
Final Rule Effective.	01/05/21	
Final Action; Announcement of Effectiveness for Delayed Provisions.	07/00/21	

*Regulatory Flexibility Analysis Required:* Yes.  
*Agency Contact:* Andrew J. Strelcheck, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, Phone: 727 824-5305, Email: andy.strelcheck@noaa.gov.  
RIN: 0648-BH72

**46. Magnuson-Stevens Fisheries Conservation and Management Act; Traceability Information Program for Seafood**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*; Pub. L. 115–141

*Abstract:* On December 9, 2016, NMFS issued a final rule that established a risk-based traceability program to track seafood from harvest to entry into U.S. commerce. The final rule included, for designated priority fish species, import permitting and reporting requirements to provide for traceability of seafood products offered for entry into the U.S. supply chain, and to ensure that these products were lawfully acquired and are properly represented. Shrimp and abalone products were included in the final rule to implement the Seafood Import Monitoring Program, but compliance with Seafood Import Monitoring Program requirements for those species was stayed indefinitely due to the disparity between Federal reporting programs for domestic aquaculture of shrimp and abalone products relative to the requirements that would apply to imports under Seafood Import Monitoring Program. In section 539 of the Consolidated Appropriations Act, 2018, Congress mandated lifting the stay on inclusion of shrimp and abalone in Seafood Import Monitoring Program and authorized the Secretary of Commerce to require comparable reporting and recordkeeping requirements for domestic aquaculture of shrimp and abalone. This rulemaking would establish permitting, reporting and recordkeeping requirements for domestic producers of shrimp and abalone from the point of production to entry into commerce.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/11/18	83 FR 51426
NPRM Comment Period End.	11/26/18	
Final Action .....	12/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alexa Cole, Director, Office of International Affairs and Seafood Inspection, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427–8286, *Email:* alexa.cole@noaa.gov.

*RIN:* 0648–BH87

**47. Modification of Multi-Day Trip Possession Limits for Federally-Permitted Charter/Headboat Vessels in the Fishery Management Plans (FMP) in the Gulf of Mexico**

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

*Abstract:* This rule would promote efficiency in the utilization of the reef fish and CMP resources and a potential decrease in regulatory discards by providing the owners and operators of federally permitted for-hire vessels greater flexibility in determining when to allow passengers to retain the possession limit on multi-day trips. The rule would modify the on-board possession limit for federal for-hire trips in the Gulf of Mexico, which currently allows anglers to retain two daily bag limits on a trip more than 24 hours, after the first 24 hours of that trip. The rule would increase the required trip duration to more than 30 hours, but would allow anglers to retain the second daily bag limit at any time after the federal for-hire vessel leaves the dock. All other requirements to retain the possession limit would be unchanged. In addition, this rule would modify the language in 622.21(a)(3)(iii) and 622.22(a)(3)(iii). The change would remove the wording ‘sequentially coded’ from the sentence ‘NMFS will provide each Individual Fishing Quota (IFQ) dealer the necessary paper forms, sequentially coded, and instructions for submission of the forms to the RA’.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/28/20	85 FR 45363
NPRM Comment Period End.	08/27/20	
Final Rule .....	02/24/21	86 FR 11152
Final Rule Effective.	03/26/21	
Final Action; Announcement of Effectiveness for VMS Requirement.	05/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Andrew J. Strelcheck, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 263 13th Avenue South, St. Petersburg, FL 33701, *Phone:* 727 824–5305, *Email:* andy.strelcheck@noaa.gov.

*RIN:* 0648–BJ60

**48. Framework Adjustment 8 to the Atlantic Herring Fishery Management Plan**

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

*Abstract:* In response to action by the New England Fishery Management Council based on the most recent stock assessment, this rulemaking action would set 2021–2023 fishing year specifications and adjust current herring measures. Changes in herring specifications may impact the Atlantic mackerel fishery because the fisheries often operate concurrently. Accordingly, this action would adjust current measures by providing more flexibility to participants in the Atlantic herring fishery in order to facilitate increased participation in the Atlantic mackerel fishery. The objectives of this action are to meet the overall goal of the Atlantic Herring Fishery Management Plan of managing the Atlantic herring fishery at long-term sustainable levels consistent with the National Standards of the Magnuson-Stevens Fishery Conservation and Management Act.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule Effective.	03/29/21	
Interim Final Rule Final Action .....	04/01/21 06/00/21	86 FR 17081

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281–9283, *Fax:* 978 281–9207, *Email:* michael.pentony@noaa.gov. *RIN:* 0648–BK11

**49. • Framework Adjustment 33 to the Atlantic Sea Scallop Fishery Management Plan**

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

*Abstract:* At the January 2021 meeting of the New England Fishery Management Council, members voted to submit Framework 33 to NOAA’s National Marine Fisheries Service (NMFS). Pursuant to section 304(a) of the Magnuson-Stevens Fishery Conservation and Management Act, NMFS is drafting an interim final rule to approve and implement Framework 33. The purpose of Framework 33 is to set management measures for the scallop fishery for the 2021 fishing year, the annual catch limits for the limited access and limited access general category fleets, as well as days-at-sea allocations and sea scallop access area trip allocations. Framework 33 implements specifications that would result in a reduction in projected landings as compared to fishing year



2020 (40.0 million pounds for fishing year 2021 compared to 51.6 million pounds for fishing year 2020). This is due to a decrease in harvestable biomass and a lack of significant recruitment in recent years. Because of this, the economic impacts of the Framework 33 fishery specifications are expected to be negative for the scallop vessels and small business entities compared to fishing year 2020. Furthermore, Framework 33 would maintain the existing seasonal closure in Closed Area II to reduce bycatch of Georges Bank yellowtail flounder and northern windowpane flounder, and close areas to fishing to protect small scallops and reduce bycatch of flatfish.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281-9283, *Fax:* 978 281-9207, *Email:* michael.pentony@noaa.gov, *RIN:* 0648-BK51

**50. • Magnuson-Stevens Act Provisions; Fisheries off West Coast States; Emergency Action To Change Seasonal Processing Limitations in the At-Sea Whiting Fishery**

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

*Abstract:* On March 9, 2021 the Pacific Fishery Management Council (the Council) requested National Marine Fisheries Service (NMFS) initiate an emergency action to temporarily allow at-sea Pacific whiting processing platforms to operate as both a mothership (MS) and a catcher-processor (C/P) during the 2021 Pacific whiting fishery. The Pacific Coast Groundfish Fishery Management Plan prohibits vessels in the at-sea Pacific whiting sector from operating as both a MS and C/P during the same calendar year. At the March 2021 Council meeting, members of the Pacific whiting industry submitted a letter requesting the Council and NMFS take emergency action to lift this restriction in response to impacts to fishing operations from the ongoing COVID-19 pandemic. During the 2020 whiting season, several at-sea processing vessels were forced to cease operations due to COVID-19 outbreaks onboard resulting in delays and lost processing capacity. In response, NMFS issued an emergency rule in June of

2020 to allow whiting vessels to operate as both a MS and C/P in the same calendar year. However, it was unforeseen that whiting fishery participants would still be dealing with effects of a COVID-19 pandemic a year later. There is continued risk to whiting vessels and loss of processing capacity should a COVID-19 outbreak occur onboard a processing platform. Because of this risk and uncertainty, members of industry and the Council Groundfish Advisory Panel (GAP) recommended the Council take emergency action to allow available vessels to operate as either type of processing platform for the 2021 fishing year and avoid potential economic hardships. This emergency action would temporarily allow eligible MS and C/P vessels to operate as both a MS and C/P during the 2021 Pacific whiting fishing year, instead of opting into a single sector at the beginning of the season. However, vessels would continue to not be allowed to operate as both an MS and C/P on the same fishing trip. In the event of a COVID-19 outbreak onboard one platform, this flexibility could allow other processing platforms to process to harvest MS sector whiting allocations at-sea whiting catcher vessels would not otherwise be able to deliver to a MS vessel.

NMFS has considered this action under E.O. 12866. Based on that review, this action is not expected to have an annual effect on the economy of \$100 million or more, or have an adverse effect in a material way on the economy. Furthermore, this action would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

*Timetable:*

Action	Date	FR Cite
Final Action .....	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231-6266, *Email:* barry.thom@noaa.gov.

*RIN:* 0648-BK52

**51. Reducing Disturbances to Hawaiian Spinner Dolphins From Human Interactions**

*Legal Authority:* 16 U.S.C. 1361 *et seq.*

*Abstract:* This action implements regulatory measures under the Marine Mammal Protection Act to protect Hawaiian spinner dolphins that are resting in protected bays from take due to close approach interactions with humans.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	12/12/05	70 FR 73426
ANPRM Comment Period End.	01/11/06	
NPRM .....	08/24/16	81 FR 57854
NPRM Comment Period End.	10/23/16	
NPRM Comment Period Re-opened.	11/16/16	81 FR 80629
NPRM Comment Period Re-opened End.	12/01/16	
Final Action .....	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427-8400.

*RIN:* 0648-AU02

**52. Designation of Critical Habitat for the Arctic Ringed Seal**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*

*Abstract:* The National Marine Fisheries Service published a final rule to list the Arctic ringed seal as a threatened species under the Endangered Species Act (ESA) in December 2012. The ESA requires designation of critical habitat at the time a species is listed as threatened or endangered, or within one year of listing if critical habitat is not then determinable. This rulemaking would designate critical habitat for the Arctic ringed seal. The critical habitat designation would be in the northern Bering, Chukchi, and Beaufort seas within the current range of the species.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/03/14	79 FR 71714
Proposed Rule ....	12/09/14	79 FR 73010
Notice of Public Hearings.	01/13/15	80 FR 1618
Comment Period Extended.	02/02/15	80 FR 5498
Proposed Rule 2	01/08/21	86 FR 1452

Action	Date	FR Cite
Proposed Rule 2 Comment Period End.	03/09/21	
Public Hearing ..... Public Hearing Comment Period End.	02/01/21 03/09/21	86 FR 7686
Comment Period Extended 2.	03/09/21	86 FR 13517
Comment Period Extended 2 End.	04/08/21	
Final Action .....	03/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427-8400. *RIN:* 0648-BC56

**53. Amendment and Updates to the Pelagic Longline Take Reduction Plan**

*Legal Authority:* 16 U.S.C. 1361 *et seq.*  
*Abstract:* Serious injury and mortality of the Western North Atlantic short-finned pilot whale stock incidental to the Category I Atlantic pelagic longline fishery continues at levels exceeding their Potential Biological Removal. This proposed action would examine a number of management measures to amend the Pelagic Longline Take Reduction Plan to reduce the incidental mortality and serious injury of short-finned pilot whales taken in the Atlantic Pelagic Longline fishery to below Potential Biological Removal. Potential management measures may include changes to the current limitations on mainline length, new requirements to use weak hooks (hooks with reduced breaking strength), and non-regulatory measures related to determining the best procedures for safe handling and release of marine mammals. The need for the proposed action is to ensure the Pelagic Longline Take Reduction Plan meets its Marine Mammal Protection Act mandated short- and long-term goals.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/15/20	85 FR 81168
NPRM Comment Period End.	02/16/21	
Final Action .....	12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West

Highway, Silver Spring, MD 20910, *Phone:* 301 427-8400. *RIN:* 0648-BF90

**54. Designation of Critical Habitat for the Threatened Caribbean Corals**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*  
*Abstract:* NMFS listed 5 Caribbean corals as threatened under the Endangered Species Act on October 10, 2014. Critical habitat shall be designated to the maximum extent prudent and determinable at the time a species is proposed for listing (50 CFR 424.12). We concluded that critical habitat was not determinable for the 5 corals at the time of listing. However, we anticipated that critical habitat would be determinable in the future given on-going research. We, therefore, announced in the final listing rules that we would propose critical habitat in separate rulemakings. This rule proposes to designate critical habitat for the 5 Caribbean coral species listed in 2014. A separate proposed critical habitat rule is being prepared for the 15 Indo-Pacific corals listed as threatened in 2014. The proposed designation for the Caribbean corals may include marine waters in Florida, Puerto Rico, US Virgin Islands, Navassa Island, and Flower Garden Banks containing essential features that support all stages of life history of the corals. The proposed rule is not likely to have an annual effect on the economy of \$100 million or more or adversely affect the economy. NMFS has contacted the Departments of the Navy, Air Force, and Army as well as the U.S. Coast Guard requesting information related to potential national security impacts that may result from the critical habitat designation. Based on information provided, we concluded that there will be an impact on national security in only 1 area offshore Dania Beach, FL, and will propose to exclude it from the designations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/27/20	85 FR 76302
NPRM Comment Period End.	01/26/21	
Final Rule .....	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427-8400. *RIN:* 0648-BG26

**55. Revision to Critical Habitat Designation for Endangered Southern Resident Killer Whales**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*  
*Abstract:* The proposed action would revise the designation of critical habitat for the endangered Southern Resident killer whale distinct population segment, pursuant to section 4 of the Endangered Species Act. Critical habitat for this population is currently designated within inland waters of Washington. In response to a 2014 petition, NMFS is proposing to expand the designation to include areas occupied by Southern Resident killer whales in waters along the U.S. West Coast. Impacts from the designation would stem mainly from Federal agencies' requirement to consult with NMFS, under section 7 of the Endangered Species Act, to ensure that any action they carry out, permit (authorize), or fund will not result in the destruction or adverse modification of critical habitat of a listed species. Federal agencies are already required to consult on effects to the currently designated critical habitat in inland waters of Washington, but consultation would be newly required for actions affecting the expanded critical habitat areas. Federal agencies are also already required to consult within the Southern Resident killer whales' range (including along the U.S. West Coast) to ensure that any action they carry out, permit, or fund will not jeopardize the continued existence of the species; this requirement would not change with a revision to the critical habitat designation.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/19/19	84 FR 49214
NPRM Comment Period End.	12/18/19	
Final Rule .....	07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427-8400. *RIN:* 0648-BH95

**56. Atlantic Large Whale Take Reduction Plan Modifications To Reduce Serious Injury and Mortality of Large Whales in Commercial Trap/Pot Fisheries Along the U.S. East Coast**

*Legal Authority:* 16 U.S.C. 1387 *et seq.*

*Abstract:* In response to recent recommendations from the Atlantic Large Whale Take Reduction Team (TRT) to reduce the risk of North Atlantic right whale entanglement in commercial trap/pot fisheries along the U.S. East Coast, the National Marine Fisheries Service (NMFS) intends to propose regulations to amend the Atlantic Large Whale Take Reduction Plan (Plan).

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/31/20	85 FR 86878
NPRM Comment Period End.	03/01/21	
Final Action .....	07/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8400.

RIN: 0648-BJ09

**57. Designation of Critical Habitat for Threatened Indo-Pacific Reef-Building Corals**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*

*Abstract:* On September 10, 2014, NMFS listed 20 species of reef-building corals as threatened under the Endangered Species Act, 15 in the Indo-Pacific and five in the Caribbean. Of the 15 Indo-Pacific species, seven occur in U.S. waters of the Pacific Islands Region, including in American Samoa, Guam, the Commonwealth of the Mariana Islands, and the Pacific Remote Island Areas. This proposed rule would designate critical habitat for the seven species in U.S. waters (*Acropora globiceps*, *Acropora jacquelineae*, *Acropora retusa*, *Acropora speciosa*, *Euphyllia paradivisa*, *Isopora crateriformis*, and *Seriatopora aculeata*). A separate proposed rule will designate critical habitat for the listed Caribbean coral species. The proposed designation may cover coral reef habitat around 13 island or atoll units in the Pacific Islands Region, including three in American Samoa, one in Guam, seven in the Commonwealth of the Mariana Islands, and two in Pacific Remote Island Areas, containing essential features that support reproduction, growth, and survival of the listed coral species. NMFS has contacted the Departments of the Navy, Air Force, and Army as well as the U.S. Coast Guard requesting information related to potential national security impacts that

may result from the critical habitat designation. Based on information provided, we will determine whether to propose to exclude any areas based on national security impacts.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/27/20	85 FR 76262
NPRM Comment Period End.	01/26/21	
NPRM Comment Period Extended.	12/23/20	85 FR 83899
NPRM Comment Period Extended End.	02/25/21	
Second NPRM Comment Period Extended.	02/09/21	86 FR 8749
Second Extended Comment Period End.	03/27/21	
Final Rule .....	11/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8400.

RIN: 0648-BJ52

**58. Designation of Critical Habitat for the Beringia Distinct Population Segment of the Bearded Seal**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*

*Abstract:* NMFS published a final rule to list the Beringia Distinct Population Segment (DPS) of bearded seals as a threatened species under the Endangered Species Act (ESA) in December 2012, thereby triggering the requirement under section 4 of the ESA to designate critical habitat for the Beringia DPS to the maximum extent prudent and determinable. NMFS has already initiated rulemaking to establish critical habitat for Arctic ringed seals, which were also listed as threatened under the ESA in December 2012, and that action is proceeding separately. This rulemaking action proposes to designate critical habitat in areas occupied by bearded seals in U.S. waters over the continental shelf in the northern Bering, Chukchi, and Beaufort Seas. Impacts from the designation of critical habitat for Beringia DPS bearded seals would stem from the statutory requirement that Federal agencies consult with NMFS under section 7 of the ESA to ensure that any action they carry out, authorize, or fund is not likely to result in the destruction or adverse modification of bearded seal critical habitat. Federal agencies are already

required to consult with NMFS under section 7 of the ESA to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of the Beringia DPS of bearded seals.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/08/21	86 FR 1433
NPRM Comment Period End.	03/09/21	
Public Hearing .....	02/01/21	86 FR 7686
Public Hearing Comment Period End.	03/09/21	
Comment Period Extended.	03/09/21	86 FR 13518
Comment Period Extended End.	04/08/21	
Final Action .....	03/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8400.

RIN: 0648-BJ65

**NOS/ONMS**

**59. Wisconsin-Lake Michigan National Marine Sanctuary Designation**

*Legal Authority:* 16 U.S.C. 1431 *et seq.*

*Abstract:* On December 2, 2014, pursuant to section 304 of the National Marine Sanctuaries Act and the Sanctuary Nomination Process (79 FR 33851), a coalition of community groups submitted a nomination asking NOAA to designate an area of Wisconsin's Lake Michigan waters as a national marine sanctuary. The area is a region that includes 875 square miles of Lake Michigan waters and bottomlands adjacent to Manitowoc, Sheboygan, and Ozaukee counties and the cities of Port Washington, Sheboygan, Manitowoc, and Two Rivers. It includes 80 miles of shoreline and extends 9 to 14 miles from the shoreline. The area contains an extraordinary collection of submerged maritime heritage resources (shipwrecks) as demonstrated by the listing of 15 shipwrecks on the National Register of Historic Places. The area includes 39 known shipwrecks, 123 reported vessel losses, numerous other historic maritime-related features, and is adjacent to communities that have embraced their centuries-long relationship with Lake Michigan. NOAA completed its review of the nomination in accordance with the Sanctuary Nomination Process and on February 5, 2015, added the area to the inventory of

nominations that are eligible for designation. On October 7, 2015, NOAA issued a notice of intent to begin the designation process and asked for public comment on making this area a national marine sanctuary. Designation under the National Marine Sanctuaries Act would allow NOAA to supplement and complement work by the State of Wisconsin and other Federal agencies to protect this collection of nationally significant shipwrecks.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/09/17	82 FR 2269
NPRM Comment Period End.	03/31/17	
Final Action .....	06/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Russ Green, Department of Commerce, National Oceanic and Atmospheric Administration, 1401 Constitution Avenue, Washington, DC 20230, *Phone:* 989 766–3359, *Email:* russ.green@noaa.gov.

Jessica Kondel, Policy and Planning Division Division Chief, Department of Commerce, National Oceanic and Atmospheric Administration, 1305 East West Highway, Building SSMC4, Silver Spring, MD 20910, *Phone:* 240 533–0647.

*RIN:* 0648–BG01

**DEPARTMENT OF COMMERCE (DOC)**

*National Oceanic and Atmospheric Administration (NOAA)*

Long-Term Actions

**National Marine Fisheries Service**

**60. Implementation of a Program for Transshipments by Large Scale Fishing Vessels in the Eastern Pacific Ocean**

*Legal Authority:* 16 U.S.C. 951 *et seq.*; 16 U.S.C. 971 *et seq.*

*Abstract:* This rule would implement the Inter-American Tropical Tuna Commission program to monitor transshipments by large-scale tuna fishing vessels, and would govern transshipments by U.S. large-scale tuna fishing vessels and carrier, or receiving, vessels. The rule would establish: criteria for transshipping in port; criteria for transshipping at sea by longline vessels to an authorized carrier vessel with an Inter-American Tropical Tuna Commission observer onboard and an operational vessel monitoring system; and require the Pacific Transshipment Declaration Form, which must be used to report transshipments in the Inter-

American Tropical Tuna Commission Convention Area. This rule is necessary for the United States to satisfy its international obligations under the 1949 Convention for the Establishment of an Inter-American Tropical Tuna, to which it is a Contracting Party.

*Timetable:* Next Action Undetermined.

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Barry Thom, *Phone:* 503 231–6266, *Email:* barry.thom@noaa.gov.

*RIN:* 0648–BD59

**61. Amendment 111 to the Fishery Management Plan for Groundfish of the Gulf of Alaska To Reauthorize the Central Gulf of Alaska Rockfish Program**

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

*Abstract:* In response to a recommendation by the North Pacific Fishery Management Council, this action implements Amendment 111 to the Fishery Management Plan for the Gulf of Alaska. This action would reauthorize the Central Gulf of Alaska (CGOA) Rockfish Program (RP) fisheries and modify specific implementing regulations to improve program effectiveness and efficiency. This action includes the following revisions to the RP: Remove the RP sunset date; authorize NMFS to reallocate unharvested RP Pacific cod and unused rockfish incidental catch allowances; remove specific harvesting limits created under the Crab Rationalization Program prior to the implementation of the RP; and remove or modify equipment and reporting requirements to improve operational efficiency, clarify regulations and remove unnecessary requirements. This action allows for the continued existence of the successful CGOA RP and maintains the benefits realized under the program. This action also builds upon the existing benefits of the RP by implementing minor regulatory changes that improve clarity, consistency and removes unnecessary regulatory requirements.

*Timetable:*

Action	Date	FR Cite
Notice of Availability.	07/28/20	85 FR 45367
NPRM .....	09/04/20	85 FR 55243
NPRM Comment Period End.	10/05/20	
Final Rule .....	03/01/21	86 FR 11895
Final Rule Effective.	03/31/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* James Balsiger, *Phone:* 907 586–7221, *Fax:* 907 586–7465, *Email:* jim.balsiger@noaa.gov. *RIN:* 0648–BJ73

**DEPARTMENT OF COMMERCE (DOC)**

*National Oceanic and Atmospheric Administration (NOAA)*

Completed Actions

**62. Area of Overlap Between the Convention Areas of the Inter-American Tropical Tuna Commission and the Western and Central Pacific Fisheries Commission**

*Legal Authority:* 16 U.S.C. 6901 *et seq.*; 16 U.S.C. 951 *et seq.*

*Abstract:* Under authority of the Western and Central Pacific Fisheries Convention Implementation Act and the Tuna Conventions Act, an area of overlap (overlap area) exists between the respective areas of competence of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean and the Inter-American Tropical Tuna Commission. NMFS proposes to change the application of the two Commissions’ management decisions in the overlap area to specifically apply Inter-American Tropical Tuna Commission management measures in the overlap area rather than those of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean that currently apply there.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	06/12/18	83 FR 27305
ANPRM Comment Period End.	07/12/18	
NPRM .....	11/07/19	84 FR 60040
NPRM Comment Period End.	11/22/19	
Final Rule .....	06/22/20	85 FR 37376
Final Rule Effective.	07/22/20	
Final Action; Announcement of Effectiveness of Collection-of-Information Requirements.	03/23/21	86 FR 15428

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael Tosatto, Regional Administrator, Pacific Islands Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1845 Wasp Boulevard,

Building 176, Honolulu, HI 96818,  
 Phone: 808 725-5000, Email:  
 michael.tosatto@noaa.gov.  
 RIN: 0648-BH59

**63. Atlantic Highly Migratory Species; Regulatory Amendment for the Management of Atlantic Swordfish**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* Upon recommendation of the HMS Advisory Panel, this action would modify existing management measures for North Atlantic swordfish under the 2006 Consolidated FMP in U.S. Atlantic and Caribbean waters. This rulemaking would increase default retention limits for the Commercial Caribbean Small Boat (CCSB) and Swordfish General Commercial permits and adding inseason adjustment criteria for the CCSB permits. This proposed action is intended to provide additional opportunities to more fully harvest the U.S. North Atlantic swordfish quota, which has been significantly under harvested for many years.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/27/20	85 FR 23315
NPRM Comment Period End.	06/26/20	
Final Action .....	04/30/21	86 FR 22882
Final Action Effective.	06/01/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Kelly Denit, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 13362, Silver Spring, MD 20901, *Phone:* 301 427-8500, *Email:* kelly.denit@noaa.gov.  
 RIN: 0648-BI09

**64. Amendment 8 to the Atlantic Herring Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* In response to a recommendation by the New England Fishery Management Council, this action implements measures for a long-term acceptable biological catch (ABC) control rule to address the biological and ecological requirements of the Atlantic herring stock, including explicitly accounting for Atlantic herring's role in the ecosystem, and minimizing localized depletion and user group conflict when effort in the Atlantic herring fishery overlaps (spatially and temporally) with effort in fisheries targeting predators of Atlantic herring (e.g., tuna, groundfish) or ecotourism industries. Specifically, this action implements a control rule

generating an ABC intended to meet specific criteria identified by the New England Fishery Management Council, including low variability in yield, low probability of the stock becoming overfished, low probability of a fishery shutdown, and catch limits set at a relatively high proportion of maximum sustainable yield. This action would specify that ABC would be set for a 3-year period, but would allow ABC to vary year-to-year in response to projected changes in biomass.

*Timetable:*

Action	Date	FR Cite
Notice of Availability.	08/21/19	84 FR 43573
NPRM .....	10/09/19	84 FR 54094
NPRM Comment Period End.	11/25/19	
Final Action .....	01/11/21	86 FR 1810
Final Action Effective.	02/10/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281-9283, *Fax:* 978 281-9207, *Email:* michael.pentony@noaa.gov.  
 RIN: 0648-BI80

**65. Amendment 21 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* This rulemaking action implements measures recommended by the Mid-Atlantic Fishery Management Council and Atlantic States Marine Fisheries Commission that would adjust the current state-by-state commercial quota allocations in the summer flounder fishery and update the goals and objective for summer flounder fishery management in the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP). The revised quota allocation would maintain the current state-by-state allocation percentages when distributing the annual coastwide quota up to 9.55 million pounds. In years when the coastwide quota is above 9.55 million pounds, additional quota beyond this trigger would be distributed in equal shares to all states except Maine, Delaware, and New Hampshire (i.e., states with very little directed fishing effort), which would split one percent of the additional quota. The current state-by-state quota allocations have not been

adjusted since originally implemented in 1993. The intent of this amendment is to modify the allocations to respond to changes in summer flounder distribution while also recognizing the states' historical reliance on summer flounder. The Council and Board intend to review the adjusted quota allocations again in no more than 10 years.

*Timetable:*

Action	Date	FR Cite
Notice of Availability.	07/29/20	85 FR 45571
NPRM .....	08/12/20	85 FR 48660
NPRM Comment Period End.	09/11/20	
Final Action .....	12/14/20	85 FR 80661
Final Action Effective.	01/01/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Michael Pentony, Regional Administrator, Greater Atlantic Region, Department of Commerce, National Oceanic and Atmospheric Administration, 55 Great Republic Drive, Gloucester, MA 01930, *Phone:* 978 281-9283, *Fax:* 978 281-9207, *Email:* michael.pentony@noaa.gov.  
 RIN: 0648-BJ18

**66. Salmon Bycatch Minimization in the Pacific Coast Groundfish Fishery**

*Legal Authority:* 16 U.S.C. 1801 *et seq.*  
*Abstract:* The proposed action would implement salmon bycatch

minimization measures in the Pacific Coast groundfish fishery to comply with the terms and conditions of a December 2017 biological opinion on Endangered Species Act-listed salmon interactions in the groundfish fishery. The proposed action would establish additional management tools (e.g. area-based closures and gear restrictions) the Council and NMFS could use as needed to keep fishery sectors within Chinook and coho salmon bycatch guidelines as established in a prior rulemaking. The proposed action would establish the rules or circumstances under which the fishery sectors would be allowed to access an established salmon bycatch Reserve. Under the proposed action, NMFS is required to take an action before fishery participants can access the Reserve; such action may include implementation of a measure such as an area-based closure or gear restriction, or approval of a plan outlining how a whiting cooperative will minimize its salmon bycatch. Finally, the proposed action would change the bycatch levels at which the trawl fishery would be closed in order to preserve 500 Chinook salmon as bycatch so that the recreational and fixed gear fisheries

could continue operating in years of high trawl fishery bycatch.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/20/20	85 FR 66519
NPRM Comment Period End.	11/19/20	
Final Rule .....	02/23/21	86 FR 10857
Final Rule Effective.	03/25/21	
Final Rule; Collection of Information.	04/29/21	86 FR 22587
Final Rule; Collection of Information Effective Date.	04/29/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231-6266, *Email:* [barry.thom@noaa.gov](mailto:barry.thom@noaa.gov).

*RIN:* 0648-BJ50

**67. International Fisheries; Pacific Tuna Fisheries; Fishing Restrictions for Tropical Tuna in the Eastern Pacific Ocean for 2021**

*Legal Authority:* 16 U.S.C. 951 *et seq.*

*Abstract:* NMFS is issuing regulations under the Tuna Conventions Act to implement Resolution C-20-05 (Conservation of Tuna in the Eastern Pacific Ocean During 2021), which was adopted by the Inter-American Tropical Tuna Commission (IATTC or Commission) on December 22, 2020. All of the provisions of Resolution C-20-05 are identical in content to the previous resolution on tropical tuna management that expired at the end of 2020. This interim final rule implements the C-20-05 fishing management measures for tropical tuna (*i.e.*, bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*)) in the eastern Pacific Ocean (EPO). The fishing restrictions in this interim final rule are applicable in 2021 only and apply to purse seine vessels of class sizes 46 (carrying capacity of 182 metric tons (mt) or greater) and longline vessels greater than 24 meters (m) in overall length that fish for tropical tuna in the EPO. This interim final rule is necessary for the conservation of tropical tuna stocks in the EPO and for the United States to satisfy its obligations as a member of the IATTC.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	01/19/21	86 FR 5033
Interim Final Rule Effective.	01/19/21	
Interim Final Rule Comment Period End.	02/18/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Barry Thom, Regional Administrator, West Coast Region, Department of Commerce, National Oceanic and Atmospheric Administration, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232, *Phone:* 503 231-6266, *Email:* [barry.thom@noaa.gov](mailto:barry.thom@noaa.gov).

*RIN:* 0648-BK08

**68. Taking and Importing Marine Mammals: Taking Marine Mammals Incident to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico**

*Legal Authority:* 16 U.S.C. 1361 *et seq.*

*Abstract:* The National Marine Fisheries Service is taking this action in response to an October 17, 2016, petition from the U.S. Department of Interior (DOI), Bureau of Ocean Energy Management (BOEM), to promulgate regulations governing the authorization of take of marine mammals incidental to oil and gas industry geophysical surveys conducted in support of hydrocarbon exploration and development on the Outer Continental Shelf in the Gulf of Mexico from approximately 2021 through 2026.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/22/18	83 FR 29212
NPRM Comment Period End.	08/21/18	
Final Rule .....	01/19/21	86 FR 5322
Final Rule; Correction.	04/09/21	86 FR 18476
Final Rule; Correction Effective.	04/09/21	
Final Rule Effective.	04/19/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, *Phone:* 301 427-8400.

*RIN:* 0648-BB38

**69. Designation of Critical Habitat for the Mexico, Central American, and Western Pacific Distinct Population Segments of Humpback Whales Under the Endangered Species Act**

*Legal Authority:* 16 U.S.C. 1531 *et seq.*

*Abstract:* This action will propose the designation of critical habitat for three distinct population segments of humpback whales (*Megaptera novaeangliae*) pursuant to section 4 of the Endangered Species Act. The three distinct population segments of humpback whales concerned—the Mexico, Central American, and Western Pacific distinct population segments—were listed under the Endangered Species Act on September 8, 2016, thereby triggering the requirement under section 4 of the Endangered Species Act to designate critical habitat to the maximum extent prudent and determinable. Proposed critical habitat for these three distinct population segments of humpback whales will include marine habitats within the Pacific Ocean and Bering Sea and will likely overlap with several existing designations, including critical habitat for leatherback sea turtles, North Pacific right whales, Steller sea lions, southern resident killer whales, and the southern distinct population segment of green sturgeon. Impacts from the designations for humpback whales would stem from the statutory requirement for Federal agencies to consult with NMFS, under section 7 of the Endangered Species Act, to ensure that any action they carry out, authorize, or fund will not result in the destruction or adverse modification of humpback whale critical habitat. Within many of the areas we are evaluating for potential proposal as critical habitat for the humpback whales distinct population segments, Federal agencies are already required to consult on effects to currently designated critical habitat for other listed species. Federal agencies are also already required to consult with NMFS under section 7 of the Endangered Species Act to ensure that any action they authorize, fund or carry out will not jeopardize the continued existence of the listed distinct population segments of humpback whales.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/09/19	84 FR 54354
NPRM Comment Period End.	12/09/19	
NPRM Comment Period Extended.	11/27/19	84 FR 65346

Action	Date	FR Cite
NPRM Comment Period Extended End.	01/31/20	
Final Action .....	04/21/21	86 FR 21082
Final Action Effective.	05/21/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Catherine Marzin, Acting Director, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910, Phone: 301 427-8400.

*RIN:* 0648-B106

## DEPARTMENT OF COMMERCE (DOC)

*Patent and Trademark Office (PTO)*

Proposed Rule Stage

### 70. • Changes To Implement Provisions of the Trademark Modernization Act of 2020

*Legal Authority:* 15 U.S.C. 1066; 15 U.S.C. 1067; 15 U.S.C. 1113; 15 U.S.C. 1123; 35 U.S.C. 2; Pub. L. 112-29; Pub. L. 116-260

*Abstract:* The United States Patent and Trademark Office (USPTO) amends the rules of practice in trademark cases to implement provisions of the Trademark Modernization Act of 2020. The amended rules establish new ex parte expungement and reexamination proceedings; provide for flexible Office action response periods; and amend the

letter-of-protest rule. The USPTO also amends the rules to set fees for petitions requesting initiation of the new ex parte cancellation proceedings and for requests to extend Office action response deadlines and to amend the rules concerning the suspension of USPTO proceedings and the rules governing attorney recognition in trademark matters.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/21	
NPRM Comment Period End.	07/00/21	
Final Action .....	11/00/21	
Final Action Effective.	12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Catherine Cain, Trademark Manual of Examining Procedure Editor, Department of Commerce, Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313, Phone: 571 272-8946, Fax: 751 273-8946, Email: catherine.cain@uspto.gov.

*RIN:* 0651-AD55

## DEPARTMENT OF COMMERCE (DOC)

*Patent and Trademark Office (PTO)*

Completed Actions

### 71. Trademark Fee Adjustment

*Legal Authority:* 15 U.S.C. 1066; 15 U.S.C. 1067; 15 U.S.C. 1113; 15 U.S.C. 1123; 35 U.S.C. 2; Pub. L. 112-29

*Abstract:* The United States Patent and Trademark Office (Office) takes this action to set and adjust Trademark fee amounts to provide the Office with a sufficient amount of aggregate revenue to recover its aggregate cost of operations while helping the Office maintain a sustainable funding model, ensure integrity of the Trademark register, and promote efficiency of processes.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/19/20	85 FR 37040
NPRM Comment Period End.	08/03/20	
Final Rule .....	11/17/20	85 FR 73197
Final Rule; Delay of Effective Date.	12/15/20	85 FR 81123
Final Rule Effective.	02/18/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Catherine Cain, Trademark Manual of Examining Procedure Editor, Department of Commerce, Patent and Trademark Office, P.O. Box 1451, Alexandria, VA 22313, Phone: 571 272-8946, Fax: 751 273-8946, Email: catherine.cain@uspto.gov.

*RIN:* 0651-AD42

[FR Doc. 2021-14867 Filed 7-29-21; 8:45 am]

**BILLING CODE 3410-12-P**







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Part V

Department of Defense

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Semiannual Regulatory Agenda

**DEPARTMENT OF DEFENSE****32 CFR Chs. I, V, VI, and VII****33 CFR Ch. II****36 CFR Ch. III****48 CFR Ch. II****Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions****AGENCY:** Department of Defense (DoD).**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda announces the regulatory actions the Department of Defense (DoD) plans to take in the next 12 months and those regulatory actions completed since the publication of the fall 2020 Unified Agenda. It was developed under the guidelines of Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review." This Agenda includes regulatory actions that support the Secretary of Defense's priorities to defend the nation, innovate and modernize DoD, build resilience and readiness, enhance appropriately accountable leadership, and address the current worldwide pandemic. These include efforts to ensure TRICARE beneficiaries have access to the most up-to-date care required for the diagnosis and treatment of COVID-19. Members of the public may submit comments on individual proposed and interim final rulemakings at [www.regulations.gov](http://www.regulations.gov) during the comment period that follows publication in the **Federal Register**.

This agenda updates the report published on December 9, 2020, and includes regulations expected to be issued and under review over the next 12 months. The next agenda will publish in the fall of 2021.

The complete Unified Agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov).

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), the Department of Defense's printed agenda entries include only:

(1) Rules that are in the Agency's regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under

section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act's agenda requirements. Additional information on these entries is in the Unified Agenda available online.

**FOR FURTHER INFORMATION CONTACT:** For information concerning the overall DoD regulatory program and for general semiannual agenda information, contact Ms. Patricia Toppings, telephone 571-372-0485, or write to Office of the Director of Administration and Management, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 1950 Defense Pentagon, Washington, DC 20301-1950, or email:

[patricia.l.toppings.civ@mail.mil](mailto:patricia.l.toppings.civ@mail.mil).

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600, telephone 703-693-9958, or email: [gerald.j.dziecichowicz.civ@mail.mil](mailto:gerald.j.dziecichowicz.civ@mail.mil).

For general information on Office of the Secretary regulations, other than those which are procurement-related, contact Ms. Patricia Toppings, telephone 571-372-0485, or write to Office of the Director of Administration and Management, Directorate for Oversight and Compliance, Regulatory and Advisory Committee Division, 1950 Defense Pentagon, Washington, DC 20301-1950, or email:

[patricia.l.toppings.civ@mail.mil](mailto:patricia.l.toppings.civ@mail.mil).

For general information on Office of the Secretary regulations which are procurement-related, contact Ms. Jennifer Johnson, telephone 571-372-6100, or write to Office of the Under Secretary of Defense for Acquisition and Sustainment, Defense Pricing and Contracting, Defense Acquisition Regulations System, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060, or email:

[jennifer.d.johnson1.civ@mail.mil](mailto:jennifer.d.johnson1.civ@mail.mil).

For general information on Department of the Army regulations, contact Mr. James "Jay" Satterwhite, telephone 571-515-0304, or write to the U.S. Army Records Management and Declassification Agency, ATTN: AAHS-RDO, Building 1458, 9301 Chapek Road, Ft. Belvoir, VA 22060-5605, or email: [james.w.satterwhite.civ@mail.mil](mailto:james.w.satterwhite.civ@mail.mil).

For general information on the U.S. Army Corps of Engineers regulations, contact Ms. Stacey Jensen, telephone 703-695-6791, or write to Office of the

Assistant Secretary of the Army (Civil Works), 108 Army Pentagon, Room 3E441, Washington, DC 20310-0108, or email: [stacey.m.jensen.civ@mail.mil](mailto:stacey.m.jensen.civ@mail.mil).

For general information on Department of the Navy regulations, contact CDR Katherine Callan, telephone 703-614-7408, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374-5066, or email: [Katherine.callan@navy.mil](mailto:Katherine.callan@navy.mil).

For general information on Department of the Air Force regulations, contact Bao-Anh Trinh, telephone 703-614-8500, or write the Office of the Secretary of the Air Force, Chief, Information Dominance/Chief Information Officer (SAF CIO/A6), 1800 Air Force Pentagon, Washington, DC 20330-1800, or email: [usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil](mailto:usaf.pentagon.saf-cio-a6.mbx.af-foia@mail.mil).

For specific agenda items, contact the appropriate individual indicated for each regulatory action.

**SUPPLEMENTARY INFORMATION:** This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions reports on actions planned by the Office of the Secretary of Defense (OSD), the Military Departments, procurement-related actions, and actions planned by the U.S. Army Corps of Engineers.

This agenda also identifies rules impacted by the:

- a. Regulatory Flexibility Act.
- b. Paperwork Reduction Act of 1995.
- c. Unfunded Mandates Reform Act of 1995.

Generally, rules discussed in this agenda will contain five sections: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; (4) completed actions; and (5) long-term actions. Where certain regulatory actions indicate that small entities are affected, the effect on these entities may not necessarily have significant economic impact on a substantial number of these entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)).

The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866.

Dated: March 17, 2021.

**Patricia L. Toppings,**  
OSD Federal Register Liaison Officer,  
Department of Defense.

DEFENSE ACQUISITION REGULATIONS COUNCIL—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
1 .....	Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043) .....	0750–AK84
2 .....	Reauthorization and Improvement of Mentor-Protege Program (DFARS Case 2020–D009) .....	0750–AK96

DEFENSE ACQUISITION REGULATIONS COUNCIL—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
3 .....	Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041) .....	0750–AK81

DEFENSE ACQUISITION REGULATIONS COUNCIL—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
4 .....	Covered Telecommunications Equipment or Services (DFARS Case 2018–D022) .....	0750–AJ84
5 .....	Justification and Approval Thresholds for 8(a) Contracts (DFARS Case 2020–D006) .....	0750–AK93

OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
6 .....	TRICARE: Chiropractic and Acupuncture Treatment Under the TRICARE Program .....	0720–AB77

**DEPARTMENT OF DEFENSE (DOD)**

*Defense Acquisition Regulations Council (DARC)*

Proposed Rule Stage

**1. Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043) [0750–AK84]**

*Legal Authority:* 41 U.S.C. 1303  
*Abstract:* DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement changes related to data rights in the Small Business Administration’s Policy Directive for the Small Business Innovation Research (SBIR) Program, published in the **Federal Register** on April 2, 2019 (84 FR 12794). The final SBA Policy Directive includes several revisions to clarify data rights, which require corresponding revisions to the DFARS.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	08/31/20	85 FR 53758
Correction .....	09/21/20	85 FR 59258
ANPRM Comment Period End.	10/30/20	
Comment Period Extended.	12/04/20	85 FR 78300
ANPRM Comment Period End.	01/31/21	
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571–372–6100, *Email:* jennifer.d.johnson1.civ@mail.mil.  
*RIN:* 0750–AK84

**2. Reauthorization and Improvement of Mentor–Protege Program (DFARS CASE 2020–D009) [0750–AK96]**

*Legal Authority:* 41 U.S.C. 1303; Pub. L. 116–92, sec. 872

*Abstract:* DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement section 872 of the National Defense Authorization Act for Fiscal Year 2020, which reauthorizes and modifies the DoD Mentor-Protege Program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6100, *Email:* jennifer.d.johnson1.civ@mail.mil.

*RIN:* 0750–AK96

**DEPARTMENT OF DEFENSE (DOD)**

*Defense Acquisition Regulations Council (DARC)*

Final Rule Stage

**3. Assessing Contractor Implementation of Cybersecurity Requirements (DFARS CASE 2019–D041) [0750–AK81]**

*Legal Authority:* 41 U.S.C 1303; Pub. L. 116–92, sec. 1648

*Abstract:* DoD is issuing a final rule to finalize an interim rule that amended the Defense Federal Acquisition Regulation Supplement to implement the following methodology and framework in order to protect against the theft of intellectual property and sensitive information from the Defense Industrial Base (DIB) sector:

- *The National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 DoD Assessment Methodology.* A standard methodology to assess contractor implementation of the cybersecurity requirements in NIST SP 800–171, Protecting Controlled Unclassified Information (CUI) In Nonfederal Systems and Organizations.
- *The Cybersecurity Maturity Model Certification (CMMC) Framework.* A DoD certification process that measures a company’s institutionalization of

processes and implementation of cybersecurity practices.

This rule provides the Department with: (1) The ability to assess at a corporate level a contractor's implementation of NIST SP 800-171 security requirements, as required by DFARS clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting; and (2) assurances that a DIB contractor can adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

*Timetable*

Action	Date	FR Cite
Interim Final Rule	09/29/20	85 FR 48513
Interim Final Rule	11/30/20	
Interim Final Rule Effective.		
Final Action .....	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6100, *Email:* jennifer.d.johnson1.civ@mail.mil. *RIN:* 0750-AK81

**DEPARTMENT OF DEFENSE (DOD)**

*Defense Acquisition Regulations Council (DARC)*

Completed Actions

**4. Covered Telecommunications Equipment or Services (DFARS CASE 2018-D022) [0750-AJ84]**

*Legal Authority:* 41 U.S.C. 1303; Pub. L. 115-91, sec. 1656

*Abstract:* DoD issued a final rule to finalize an interim rule that amended the Defense Federal Acquisition Regulation Supplement to implement section 1656 of the National Defense Authorization Act for Fiscal Year 2018. Section 1656 provides that DoD may not procure or obtain or extend or renew a contract to provide or obtain any equipment, system, or service to carry out the DoD nuclear deterrence mission or the DoD homeland defense mission that uses covered telecommunications equipment or services as a substantial or essential component of any system or as

a critical technology as a part of any system. Covered telecommunications equipment or services means telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities; telecommunication services provided by such entities or using such equipment; or telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the governments of China or Russia.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	12/31/19	84 FR 72231
Interim Final Rule Effective.	12/31/19	
Interim Final Rule Comment Period End.	03/02/20	
Final Action .....	01/15/21	86 FR 3832
Final Action Effective.	01/15/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6100, *Email:* jennifer.d.johnson1.civ@mail.mil. *RIN:* 0750-AJ84.

**5. Justification and Approval Thresholds for 8(A) Contracts (DFARS CASE 2020-D006) [0750-AK93]**

*Legal Authority:* 41 U.S.C. 1303; Pub. L. 116-92, sec. 823

*Abstract:* DoD issued a final rule amending the Defense Federal Acquisition Regulation Supplement to implement section 823 of the National Defense Authorization Act for Fiscal Year 2020. Section 823, the increases the threshold for requiring a justification and approval to award a sole source contract under the 8(a) program to \$100 million and updates the associated approval authorities when a procurement exceeds the threshold.

*Timetable:*

Action	Date	FR Cite
Final Action .....	06/05/20	85 FR 34528
Final Action Effective.	06/05/20	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6100, *Email:* jennifer.d.johnson1.civ@mail.mil. *RIN:* 0750-AK93

**DEPARTMENT OF DEFENSE (DOD)**

*Office of Assistant Secretary for Health Affairs (DODOASHA)*

Proposed Rule Stage

**6. TRICARE: Chiropractic and Acupuncture Treatment Under the Tricare Program [0720-AB77]**

*Legal Authority:* 5 U.S.C. 301; 10 U.S.C. ch. 55

*Abstract:* Under the current regulations, TRICARE excludes chiropractors as TRICARE-authorized providers whether or not their services would be eligible as medically necessary care if furnished by any other authorized provider. In addition, the current regulation excludes acupuncture treatment whether used as a therapeutic agent or as an anesthetic. This proposed rule seeks to eliminate these exclusions and to add benefit coverage of chiropractic and acupuncture treatment when deemed medically necessary for specific conditions. This rule proposes to add licensed Doctors of Chiropractic (DCs) and Licensed Acupuncturists (LACs) who meet established qualifications as TRICARE-authorized providers and will establish reimbursement rates and cost-sharing provisions for covered chiropractic and acupuncture treatment.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Joy Mullane, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 E. Centretch Parkway, Aurora, CO 80011-9066, *Phone:* 303 676-3457, *Fax:* 303 676-3579, *Email:* joy.mullane.civ@mail.mil. *RIN:* 0720-AB77

BILLING CODE 5001-06-P

DEFENSE ACQUISITION REGULATIONS COUNCIL—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
72 .....	Small Business Innovation Research Program Data Rights (DFARS Case 2019–D043) .....	0750–AK84
73 .....	Reauthorization and Improvement of Mentor-Protege Program (DFARS Case 2020–D009) .....	0750–AK96

DEFENSE ACQUISITION REGULATIONS COUNCIL—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
74 .....	Assessing Contractor Implementation of Cybersecurity Requirements (DFARS Case 2019–D041) .....	0750–AK81

DEFENSE ACQUISITION REGULATIONS COUNCIL—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
75 .....	Covered Telecommunications Equipment or Services (DFARS Case 2018–D022) .....	0750–AJ84
76 .....	Justification and Approval Thresholds for 8(a) Contracts (DFARS Case 2020–D006) .....	0750–AK93

OFFICE OF ASSISTANT SECRETARY FOR HEALTH AFFAIRS—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
77 .....	TRICARE: Chiropractic and Acupuncture Treatment Under the TRICARE Program .....	0720–AB77

**DEPARTMENT OF DEFENSE (DOD)**

*Defense Acquisition Regulations Council (DARC)*

Proposed Rule Stage

**72. Small Business Innovation Research Program Data Rights (DFARS CASE 2019–D043)**

*Legal Authority:* 41 U.S.C. 1303  
*Abstract:* DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement changes related to data rights in the Small Business Administration’s Policy Directive for the Small Business Innovation Research (SBIR) Program, published in the **Federal Register** on April 2, 2019 (84 FR 12794). The final SBA Policy Directive includes several revisions to clarify data rights, which require corresponding revisions to the DFARS.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	08/31/20	85 FR 53758
Correction .....	09/21/20	85 FR 59258
ANPRM Comment Period End.	10/30/20	
Comment Period Extended.	12/04/20	85 FR 78300
ANPRM Comment Period End.	01/31/21	
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6100, *Email:* jennifer.d.johnson1.civ@mail.mil.  
*RIN:* 0750–AK84

**73. Reauthorization and Improvement of Mentor–Protege Program (DFARS CASE 2020–D009)**

*Legal Authority:* 41 U.S.C. 1303; Pub. L. 116–92, sec. 872  
*Abstract:* DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement to implement section 872 of the National Defense Authorization Act for Fiscal Year 2020, which reauthorizes and modifies the DoD Mentor-Protege Program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301–3060, *Phone:* 571 372–6100, *Email:* jennifer.d.johnson1.civ@mail.mil.

*RIN:* 0750–AK96

**DEPARTMENT OF DEFENSE (DOD)**

*Defense Acquisition Regulations Council (DARC)*

Final Rule Stage

**74. Assessing Contractor Implementation of Cybersecurity Requirements (DFARS CASE 2019–D041)**

*Legal Authority:* 41 U.S.C 1303; Pub. L. 116–92, sec. 1648

*Abstract:* DoD is issuing a final rule to finalize an interim rule that amended the Defense Federal Acquisition Regulation Supplement to implement the following methodology and framework in order to protect against the theft of intellectual property and sensitive information from the Defense Industrial Base (DIB) sector:

- *The National Institute of Standards and Technology (NIST) Special Publication (SP) 800–171 DoD Assessment Methodology.* A standard methodology to assess contractor implementation of the cybersecurity requirements in NIST SP 800–171, Protecting Controlled Unclassified Information (CUI) In Nonfederal Systems and Organizations.
- *The Cybersecurity Maturity Model Certification (CMMC) Framework.* A DoD certification process that measures

a company's institutionalization of processes and implementation of cybersecurity practices.

This rule provides the Department with: (1) The ability to assess at a corporate level a contractor's implementation of NIST SP 800-171 security requirements, as required by DFARS clause 252.204-7012, Safeguarding Covered Defense Information and Cyber Incident Reporting; and (2) assurances that a DIB contractor can adequately protect sensitive unclassified information at a level commensurate with the risk, accounting for information flow down to its subcontractors in a multi-tier supply chain.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	09/29/20	85 FR 48513
Interim Final Rule Effective.	11/30/20	
Final Action .....	09/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6100, *Email:* jennifer.d.johnson1.civ@mail.mil. *RIN:* 0750-AK81

**DEPARTMENT OF DEFENSE (DOD)**

*Defense Acquisition Regulations Council (DARC)*

Completed Actions

**75. Covered Telecommunications Equipment or Services (DFARS CASE 2018-D022)**

*Legal Authority:* 41 U.S.C. 1303; Pub. L. 115-91, sec. 1656

*Abstract:* DoD issued a final rule to finalize an interim rule that amended the Defense Federal Acquisition Regulation Supplement to implement section 1656 of the National Defense Authorization Act for Fiscal Year 2018. Section 1656 provides that DoD may not procure or obtain or extend or renew a contract to provide or obtain any equipment, system, or service to carry out the DoD nuclear deterrence mission or the DoD homeland defense mission that uses covered telecommunications equipment or services as a substantial or essential component of any system or as

a critical technology as a part of any system. Covered telecommunications equipment or services means telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities; telecommunication services provided by such entities or using such equipment; or telecommunications equipment or services produced or provided by an entity that the Secretary of Defense reasonably believes to be an entity owned or controlled by, or otherwise connected to, the governments of China or Russia.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	12/31/19	84 FR 72231
Interim Final Rule Effective.	12/31/19	
Interim Final Rule Comment Period End.	03/02/20	
Final Action .....	01/15/21	86 FR 3832
Final Action Effective.	01/15/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6100, *Email:* jennifer.d.johnson1.civ@mail.mil. *RIN:* 0750-AJ84

**76. Justification and Approval Thresholds for 8(A) Contracts (DFARS CASE 2020-D006)**

*Legal Authority:* 41 U.S.C. 1303; Pub. L. 116-92, sec. 823

*Abstract:* DoD issued a final rule amending the Defense Federal Acquisition Regulation Supplement to implement section 823 of the National Defense Authorization Act for Fiscal Year 2020. Section 823, the increases the threshold for requiring a justification and approval to award a sole source contract under the 8(a) program to \$100 million and updates the associated approval authorities when a procurement exceeds the threshold.

*Timetable:*

Action	Date	FR Cite
Final Action .....	06/05/20	85 FR 34528
Final Action Effective.	06/05/20	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Jennifer Johnson, Defense Acquisition Regulations System, Department of Defense, Defense Acquisition Regulations Council, 3060 Defense Pentagon, Room 3B941, Washington, DC 20301-3060, *Phone:* 571 372-6100, *Email:* jennifer.d.johnson1.civ@mail.mil. *RIN:* 0750-AK93

**DEPARTMENT OF DEFENSE (DOD)**

*Office of Assistant Secretary for Health Affairs (DODOASHA)*

Proposed Rule Stage

**77. TRICARE: Chiropractic and Acupuncture Treatment Under the Tricare Program**

*Legal Authority:* 5 U.S.C. 301; 10 U.S.C. ch. 55

*Abstract:* Under the current regulations, TRICARE excludes chiropractors as TRICARE-authorized providers whether or not their services would be eligible as medically necessary care if furnished by any other authorized provider. In addition, the current regulation excludes acupuncture treatment whether used as a therapeutic agent or as an anesthetic. This proposed rule seeks to eliminate these exclusions and to add benefit coverage of chiropractic and acupuncture treatment when deemed medically necessary for specific conditions. This rule proposes to add licensed Doctors of Chiropractic (DCs) and Licensed Acupuncturists (LACs) who meet established qualifications as TRICARE-authorized providers and will establish reimbursement rates and cost-sharing provisions for covered chiropractic and acupuncture treatment.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Joy Mullane, Department of Defense, Office of Assistant Secretary for Health Affairs, 16401 E. Centretch Parkway, Aurora, CO 80011-9066, *Phone:* 303 676-3457, *Fax:* 303 676-3579, *Email:* joy.mullane.civ@mail.mil. *RIN:* 0720-AB77

[FR Doc. 2021-15290 Filed 7-29-21; 8:45 am]

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# FEDERAL REGISTER

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Part VI

Department of Education

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Semiannual Regulatory Agenda

**DEPARTMENT OF EDUCATION**

**Office of the Secretary**

**34 CFR Subtitles A and B**

**Unified Agenda of Federal Regulatory and Deregulatory Actions**

**AGENCY:** Office of the Secretary, Department of Education.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Secretary of Education publishes a semiannual agenda of Federal regulatory and deregulatory actions. The agenda is issued under the authority of section 4(b) of Executive Order 12866, "Regulatory Planning and Review." The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about the regulatory actions we plan to take.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Other questions or comments on this agenda should be directed to Jackie Collins, Program Specialist, Danielle Bromfield, Program Specialist, Levon Schlichter, Attorney, or Hilary Malawer, Deputy General Counsel, Division of Regulatory Services, Department of Education, Room 6C128, 400 Maryland Avenue SW, Washington, DC 20202-2241; telephone: Jackie Collins (202) 453-6688, Danielle Bromfield (202) 401-8317, Levon Schlichter (202) 453-6387, or Hilary Malawer (202) 401-6148. Individuals who use a telecommunications device for the deaf

or a text telephone may call the Federal Relay Service at 1-800-877-8339.

**SUPPLEMENTARY INFORMATION:** Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in the Spring and Fall of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract that includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(6)).

A reference to where a reader can find the current regulations in the Code of Federal Regulations.

A citation of legal authority.  
 The name, address, and telephone number of the contact person at ED from whom a reader can obtain additional information regarding the planned action.

In accordance with ED's Principles for Regulating listed in its regulatory plan (78 FR 1361, published January 8, 2013), ED is committed to regulations that improve the quality and equality of services it provides to its customers. ED will regulate only if absolutely necessary and then in the most flexible, most equitable, and least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on any uncompleted actions in this agenda that ED plans to review under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) to determine their economic impact on small entities.

This publication does not impose any binding obligation on ED with regard to any specific item in the agenda. ED may elect not to pursue any of the regulatory actions listed here. Dates of future regulatory actions are subject to revision in subsequent agendas.

*Electronic Access to This Document:* The entire Unified Agenda is published electronically and is available online at [www.reginfo.gov](http://www.reginfo.gov).

**Phil Rosenfelt,**  
*Deputy General Counsel, Program Service.*

**OFFICE OF POSTSECONDARY EDUCATION—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
78 .....	Student Eligibility for Emergency Relief Funds .....	1840-AD62
79 .....	HBCU Funding Formula .....	1840-AD63

**DEPARTMENT OF EDUCATION (ED)**

*Office of Postsecondary Education (OPE)*

**Completed Actions**

**78. • Student Eligibility for Emergency Relief Funds**

*Legal Authority:* 20 U.S.C. 1221e-3; 20 U.S.C. 3474

*Abstract:* The Secretary plans to publish final regulations to amend the

regulations in 34 CFR part 668 so that an institution of higher education may appropriately determine which individuals attending its institution are eligible to receive emergency financial aid grants to students under the Coronavirus Aid, Relief, and Economic Security (CARES) Act.

*Timetable:*

Action	Date	FR Cite
Final Action .....	05/14/21	86 FR 26608

Action	Date	FR Cite
Final Action Effective.	05/14/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Karen Epps, Department of Education, Phone: 202 453-6337.

*RIN:* 1840-AD62

**79. • HBCU Funding Formula**

*Legal Authority:* 20 U.S.C. 1060–1063a; 20 U.S.C. 1063c; 20 U.S.C. 1068–1068h; 20 U.S.C. 1067q

*Abstract:* The Department of Education issued this final rule so that it may determine final allocations to Historically Black Colleges and Universities awarded under section 314(a)(2) of the Coronavirus Response

and Relief Supplemental Appropriations Act, 2021 (division M of 116 Pub. L. 260), or CRRSAA.

*Timetable:*

Action	Date	FR Cite
Final Action .....	04/22/21	86 FR 21190
Final Action Effective.	04/22/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Beatriz Ceja, Department of Education, *Phone:* 202 453–6239.

*RIN:* 1840–AD63

[FR Doc. 2021–14868 Filed 7–29–21; 8:45 am]

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Part VII

Department of Energy

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Semi-annual Regulatory Agenda

**DEPARTMENT OF ENERGY**

**10 CFR Chs. II, III, and X**

**48 CFR Ch. 9**

**Unified Agenda of Federal Regulatory and Deregulatory Actions**

**AGENCY:** Department of Energy.

**ACTION:** Semi-annual regulatory agenda.

**SUMMARY:** The Department of Energy (DOE) has prepared and is making available its portion of the semi-annual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda)

pursuant to Executive Order 12866, “Regulatory Planning and Review,” and the Regulatory Flexibility Act.

**SUPPLEMENTARY INFORMATION:** The Agenda is a government-wide compilation of upcoming and ongoing regulatory activity, including a brief description of each rulemaking and a timetable for action. The Agenda also includes a list of regulatory actions completed since publication of the last Agenda. The Department of Energy’s portion of the Agenda includes regulatory actions called for by the Energy Policy and Conservation Act of

1975, as amended, and programmatic needs of DOE offices.

The internet is the basic means for disseminating the Agenda and providing users the ability to obtain information from the Agenda database. DOE’s Spring 2021 Agenda can be accessed online by going to [www.reginfo.gov](http://www.reginfo.gov).

DOE’s regulatory flexibility agenda is made up of rulemakings setting energy efficiency standards and requirements applicable to DOE sites.

**John T. Lucas,**  
*Acting General Counsel.*

**ENERGY EFFICIENCY AND RENEWABLE ENERGY—PRERULE STAGE**

Sequence No.	Title	Regulation Identifier No.
80 .....	Energy Conservation Standards for Weatherized Gas, Oil, and Electric Furnaces .....	1904–AF19

**ENERGY EFFICIENCY AND RENEWABLE ENERGY—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
81 .....	Energy Conservation Standards for General Service Lamps .....	1904–AD09
82 .....	Energy Conservation Standards for Residential Conventional Cooking Products .....	1904–AD15
83 .....	Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces.	1904–AD20
84 .....	Energy Conservation Standards for Commercial Water Heating-Equipment .....	1904–AD34

**DEPARTMENT OF ENERGY (DOE)**

*Energy Efficiency and Renewable Energy (EE)*

Prerule Stage

**80. • Energy Conservation Standards for Weatherized Gas, Oil, and Electric Furnaces**

*Legal Authority:* 42 U.S.C. 6295(f)(4)(C); 42 U.S.C. 6295(m)(1); 42 U.S.C. 6295(gg)(3)

*Abstract:* The Energy Policy and Conservation Act, as amended, (EPCA) prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential furnaces. EPCA also requires the U.S. Department of Energy (DOE) to determine whether more-stringent amended standards would be technologically feasible and economically justified and would save a significant amount of energy. DOE is considering amendments to its energy conservation standards for weatherized gas, oil, and electric furnaces.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI); Early Assessment Review.	12/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John Cymbalsky, Building Technologies Office, EE–5B, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 202 287–1692, *Email:* [john.cymbalsky@ee.doe.gov](mailto:john.cymbalsky@ee.doe.gov).  
*RIN:* 1904–AF19

**DEPARTMENT OF ENERGY (DOE)**

*Energy Efficiency and Renewable Energy (EE)*

Proposed Rule Stage

**81. Energy Conservation Standards for General Service Lamps**

*Legal Authority:* 42 U.S.C. 6295(i)(6)(A)

*Abstract:* The U.S. Department of Energy (DOE) will issue a Supplemental Notice of Proposed Rulemaking that includes a proposed determination with

respect to whether to amend or adopt standards for general service light-emitting diode (LED) lamps and that may include a proposed determination with respect to whether to amend or adopt standards for compact fluorescent lamps.

*Timetable:*

Action	Date	FR Cite
Framework Document Availability; Notice of Public Meeting.	12/09/13	78 FR 73737
Framework Document Comment Period End.	01/23/14	
Framework Document Comment Period Extended.	01/23/14	79 FR 3742
Framework Document Comment Period Extended.	02/07/14	
Preliminary Analysis and Notice of Public Meeting.	12/11/14	79 FR 73503
Preliminary Analysis Comment Period Extended.	01/30/15	80 FR 5052

Action	Date	FR Cite
Preliminary Analysis Comment Period Extended End.	02/23/15	
Notice of Public Meeting; Webinar.	03/15/16	81 FR 13763
NPRM .....	03/17/16	81 FR 14528
NPRM Comment Period End.	05/16/16	
Notice of Public Meeting; Webinar.	10/05/16	81 FR 69009
Proposed Definition and Data Availability.	10/18/16	81 FR 71794
Proposed Definition and Data Availability Comment Period End.	11/08/16	
Final Rule Adopting a Definition for GSL.	01/19/17	82 FR 7276
Final Rule Adopting a Definition for GSL Effective.	01/01/20	
Final Rule Adopting a Definition for GSL Including IRL.	01/19/17	82 FR 7322
Final Rule Adopting a Definition for GSL Including IRL Effective.	01/01/20	
Final Rule; Withdrawal of Definition for GSL (Reported as 1904-AE26).	09/05/19	84 FR 46661
Final Rule; Withdrawal of Definition for GSL Effective.	10/07/19	
Supplemental NPRM.	01/00/22	

Secretary to determine whether updating the statutory energy conservation standards for residential conventional cooking products would yield a significant savings in energy use and is technologically feasible and economically justified. The U.S. Department of Energy (DOE) is reviewing the current standards to make such determination.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	02/12/14	79 FR 8337
RFI Comment Period End.	03/14/14	
RFI Comment Period Extended.	03/03/14	79 FR 11714
RFI Comment Period Extended End.	04/14/14	
NPRM and Public Meeting.	06/10/15	80 FR 33030
NPRM Comment Period Extended.	07/30/15	80 FR 45452
NPRM Comment Period Extended End.	09/09/15	
Supplemental NPRM.	09/02/16	81 FR 60784
SNPRM Comment Period Extended.	09/30/16	81 FR 67219
SNPRM Comment Period Extended End.	11/02/16	
Notice of Proposed Determination and Request for Comment.	12/14/20	85 FR 80982
Notice of Proposed Determination Comment Period End.	03/01/21	
Second SNPRM ..	01/00/22	

*Abstract:* The Energy Policy and Conservation Act, as amended, (EPCA) prescribes energy conservation standards for various consumer products and certain commercial and industrial equipment, including residential furnaces. EPCA also requires the U.S. Department of Energy (DOE) to determine whether more-stringent amended standards would be technologically feasible and economically justified and would save a significant amount of energy. DOE is considering amendments to its energy conservation standards for residential non-weatherized gas furnaces and mobile home gas furnaces in partial fulfillment of a court-ordered remand of DOE's 2011 rulemaking for these products.

*Timetable:*

Action	Date	FR Cite
Notice of Public Meeting.	10/30/14	79 FR 64517
NPRM and Notice of Public Meeting.	03/12/15	80 FR 13120
NPRM Comment Period Extended.	05/20/15	80 FR 28851
NPRM Comment Period Extended End.	07/10/15	
Notice of Data Availability (NODA).	09/14/15	80 FR 55038
NODA Comment Period End.	10/14/15	
NODA Comment Period Reopened.	10/23/15	80 FR 64370
NODA Comment Period Reopened End.	11/06/15	
Supplemental NPRM and Notice of Public Meeting.	09/23/16	81 FR 65720
Supplemental NPRM Comment Period End.	11/22/16	
SNPRM Comment Period Reopened.	12/05/16	81 FR 87493
SNPRM Comment Period End.	01/06/17	
Notice of NPRM Withdrawal.	01/15/21	86 FR 3873
NPRM .....	03/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* John Cymbalsky, Building Technologies Office, EE-5B, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 202 287-1692, *jEmail:* ohn.cymbalsky@ee.doe.gov. *RIN:* 1904-AD09

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Stephanie Johnson, General Engineer, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Building Technologies Office, EE5B, Washington, DC 20585, *Phone:* 202 287-1943, *Email:* stephanie.johnson@ee.doe.gov. *RIN:* 1904-AD15

**82. Energy Conservation Standards for Residential Conventional Cooking Products**

*Legal Authority:* 42 U.S.C. 6295(m)(1); 42 U.S.C. 6292 (a)(10); 42 U.S.C. 6295(h) *Abstract:* The Energy Policy and Conservation Act (EPCA), as amended by Energy Independence and Security Act of 2007 (EISA), requires the

**83. Energy Conservation Standards for Residential Non-Weatherized Gas Furnaces and Mobile Home Gas Furnaces**

*Legal Authority:* 42 U.S.C. 6295(f)(4)(C); 42 U.S.C. 6295(m)(1); 42 U.S.C. 6295(gg)(3)

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* John Cymbalsky, Building Technologies Office, EE-5B, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Washington, DC 20585, *Phone:* 202 287-1692, *Email:* john.cymbalsky@ee.doe.gov. *RIN:* 1904-AD20

**84. Energy Conservation Standards for Commercial Water Heating-Equipment**

*Legal Authority:* 42 U.S.C. 6313(a)(6)(C)(i) and (vi)

*Abstract:* Once completed, this rulemaking will fulfill the U.S. Department of Energy’s (DOE) statutory obligation under the Energy Policy and Conservation Act, as amended, (EPCA) to either propose amended energy conservation standards for commercial water heaters and hot water supply boilers, or determine that the existing standards do not need to be amended. (Unfired hot water storage tanks and commercial heat pump water heaters are being considered in a separate rulemaking.) DOE must determine whether national standards more stringent than those that are currently in place would result in a significant

additional amount of energy savings and whether such amended national standards would be technologically feasible and economically justified.  
*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	10/21/14	79 FR 62899
RFI Comment Period End.	11/20/14	
NPRM .....	05/31/16	81 FR 34440
NPRM Comment Period End.	08/01/16	
NPRM Comment Period Re-opened.	08/05/16	81 FR 51812
NPRM Comment Period Re-opened End.	08/30/16	
Notice of Data Availability (NODA).	12/23/16	81 FR 94234

Action	Date	FR Cite
NODA Comment Period End.	01/09/17	
Notice of NPRM Withdrawal.	01/15/21	86 FR 3873
NPRM .....	01/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Catherine Rivest, General Engineer, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW, Building Technologies Office, EE-5B, Washington, DC 20585, *Phone:* 202 586-7335, *Email:* catherine.rivest@ee.doe.gov.

*RIN:* 1904-AD34

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Part VIII

Department of Health and Human Services

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Semiannual Regulatory Agenda

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Office of the Secretary**

**21 CFR Ch. I**

**25 CFR Ch. V**

**42 CFR Chs. I–V**

**45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII**

**Regulatory Agenda**

**AGENCY:** Office of the Secretary, HHS.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The Regulatory Flexibility Act of 1980 and Executive Order (E.O.) 12866 require the semiannual issuance of an inventory of rulemaking actions under development throughout the Department, offering for public review summarized information about forthcoming regulatory actions.

**FOR FURTHER INFORMATION CONTACT:** Karuna Seshasai, Executive Secretary, Department of Health and Human Services, 200 Independence Avenue SW, Washington, DC 20201; (202) 690–5627.

**SUPPLEMENTARY INFORMATION:** The Department of Health and Human Services (HHS) is the Federal government’s lead agency for protecting the health of all Americans and providing essential human services. HHS enhances the health and well-being of Americans by promoting effective health and human services and by fostering sound, sustained advances in the sciences underlying medicine, public health, and social services.

This Agenda presents the regulatory activities that the Department expects to undertake in the foreseeable future to advance this mission. The purpose of the Agenda is to encourage more effective public participation in the regulatory process. The regulatory actions forecasted in this Agenda reflect the priorities of the Biden-Harris Administration and HHS Secretary Xavier Becerra. Accordingly, this Agenda contains rulemakings aimed at advancing equity and ensuring nondiscrimination in health; ending the COVID–19 public health emergency; enhancing access to quality, affordable health care; addressing child welfare and maternal health; safeguarding the quality of medical products; protecting the public health by reducing tobacco use; revising prior actions that are inconsistent with the policy of this

Administration; and supporting other priority areas.

Please note that because the Department’s most recent Statement of Regulatory Priorities was published in Fall 2020 and under a previous Administration, it no longer reflects the views of the Department or this Administration. The Department will have the opportunity to issue a new Statement of Regulatory Priorities reflecting its policy direction alongside the Fall 2021 Agenda. At present, more information about the policy priorities of the Biden-Harris Administration is available through Executive Orders, Presidential Memoranda, other Presidential Actions, regulatory actions, and sub-regulatory guidance issued by the Biden-Harris Administration since January 20, 2021.

The rulemaking abstracts included in this paper issue of the **Federal Register** cover, as required by the Regulatory Flexibility Act of 1980, those prospective HHS rulemakings likely to have a significant economic impact on a substantial number of small entities. The Department’s complete Regulatory Agenda is accessible online at <http://www.RegInfo.gov>.

**Karuna Seshasai,**  
*Executive Secretary to the Department.*

**OFFICE OF THE SECRETARY—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
85 .....	Limiting the Effect of Exclusions Implemented Under the Social Security Act ( <b>Rulemaking Resulting From a Section 610 Review</b> ).	0991–AC11

**OFFICE FOR CIVIL RIGHTS—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
86 .....	Rulemaking on Discrimination on the Basis of Disability in Critical Health and Human Services Programs or Activities ( <b>Rulemaking Resulting From a Section 610 Review</b> ).	0945–AA15

**OFFICE OF THE NATIONAL COORDINATOR FOR HEALTH INFORMATION TECHNOLOGY—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
87 .....	Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID–19 Public Health Emergency.	0955–AA02

**CENTERS FOR DISEASE CONTROL AND PREVENTION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
88 .....	Control of Communicable Diseases; Foreign Quarantine .....	0920–AA75

## FOOD AND DRUG ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
89 .....	National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers ..	0910-AH11
90 .....	Certain Requirements Regarding Prescription Drug Marketing (203 Amendment) .....	0910-AH56
91 .....	Medication Guide; Patient Medication Information .....	0910-AH68
92 .....	Requirements for Tobacco Product Manufacturing Practice .....	0910-AH91
93 .....	Administrative Detention of Tobacco Products .....	0910-AI05
94 .....	Nutrient Content Claims, Definition of Term: Healthy .....	0910-AI13
95 .....	Revocation of Uses of Partially Hydrogenated Oils in Foods .....	0910-AI15
96 .....	Tobacco Product Standard for Characterizing Flavors in Cigars .....	0910-AI28
97 .....	Conduct of Analytical and Clinical Pharmacology, Bioavailability and Bioequivalence Studies .....	0910-AI57

## FOOD AND DRUG ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
98 .....	Mammography Quality Standards Act .....	0910-AH04
99 .....	Amendments to the List of Bulk Drug Substances That Can Be Used To Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act.	0910-AH81

## FOOD AND DRUG ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
100 .....	Direct-to-Consumer Prescription Drug Advertisements: Presentation of the Major Statement in a Clear, Conspicuous, Neutral Manner in Advertisements in Television and Radio Format.	0910-AG27
101 .....	Sunlamp Products; Amendment to the Performance Standard .....	0910-AG30
102 .....	General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products .....	0910-AH14
103 .....	Nicotine Toxicity Warnings .....	0910-AH24
104 .....	Requirements For Additional Traceability Records for Certain Foods .....	0910-AI44

## FOOD AND DRUG ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
105 .....	Milk and Cream Product and Yogurt Products, Final Rule to Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and to Amend the Standard for Yogurt.	0910-AI40

## CENTERS FOR MEDICARE &amp; MEDICAID SERVICES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
106 .....	Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs (CMS-4192).	0938-AU30
107 .....	CY 2022 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1751) <b>(Section 610 Review)</b> .	0938-AU42
108 .....	CY 2022 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1753) <b>(Section 610 Review)</b> .	0938-AU43
109 .....	Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2022 Rates (CMS-1752) <b>(Section 610 Review)</b> .	0938-AU44
110 .....	Medicare Advantage and Medicare Prescription Drug Benefit Program Payment Policy (CMS-4198) .....	0938-AU59

## CENTERS FOR MEDICARE &amp; MEDICAID SERVICES—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
111 .....	Requirements Related to Surprise Billing; Part II (CMS-9908) .....	0938-AU62
112 .....	Requirements Related to Surprise Billing; Part I (CMS-9909) .....	0938-AU63

CENTERS FOR MEDICARE & MEDICAID SERVICES—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
113 .....	Durable Medical Equipment Fee Schedule, Adjustments to Resume the Transitional 50/50 Blended Rates to Provide Relief in Non-Competitive Bidding Areas (CMS-1687) <b>(Section 610 Review)</b> .	0938-AT21
114 .....	Requirements for Long-Term Care Facilities: Regulatory Provisions to Promote Increased Safety (CMS-3347) <b>(Section 610 Review)</b> .	0938-AT36

CENTERS FOR MEDICARE & MEDICAID SERVICES—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
115 .....	Most Favored Nation (MFN) Model (CMS-5528) <b>(Completion of a Section 610 Review)</b> .....	0938-AT91
116 .....	Medicaid; Reducing Provider and Patient Burden by Improving Prior Authorization Processes and Promoting Patients' Electronic Access to Health Information (CMS-9123).	0938-AT99
117 .....	CY 2021 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1734) <b>(Completion of a Section 610 Review)</b> .	0938-AU10
118 .....	CY 2021 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1736) <b>(Completion of a Section 610 Review)</b> .	0938-AU12
119 .....	Promoting Electronic Access to Health Information for Patients and for Medicare- and Medicaid-Participating Providers and Suppliers (CMS-0057).	0938-AU53

ADMINISTRATION FOR CHILDREN AND FAMILIES—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
120 .....	Updating Native Employment Works Requirements <b>(Rulemaking Resulting From a Section 610 Review)</b> .	0970-AC83

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

Office of the Secretary (OS)

Proposed Rule Stage

**85. Limiting the Effect of Exclusions Implemented Under the Social Security Act (Rulemaking Resulting From a Section 610 Review)**

Legal Authority: 5 U.S.C. 301; 31 U.S.C. 6101

Abstract: Exclusions implemented under the Social Security Act prevent individuals convicted of certain crimes or individuals whose health care licenses have been revoked from participating in Federal health care programs. Instead of only being barred from participating in all Federal healthcare programs, certain regulatory provisions have resulted in these type of exclusion actions being given an overly broad government-wide effect, and excluded parties have been barred from participating in all Federal procurement and non-procurement actions. However, because Social Security Act exclusions are not issued under an agency's suspension and debarment authority, they do not stop individuals from participating in all Federal procurement and non-procurement actions. For an agency to bar individuals from participating in all procurement and

non-procurement activities, it must exercise its suspension and debarment authority under the Federal Acquisition Regulation or the Nonprocurement Common Rule. This rulemaking would remove the regulatory provisions at issue, in order to align the regulation with the intent of the Social Security Act and current practice.

Timetable:

Action	Date	FR Cite
NPRM .....	08/00/21	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Tiffani Redding, Program Analyst, Department of Health and Human Services, Office of the Secretary, 200 Independence Avenue SW, Washington, DC 20201, Phone: 202 205-4321, Email: tiffani.redding@hhs.gov.

RIN: 0991-AC11

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

Office for Civil Rights (OCR)

Proposed Rule Stage

**86. Rulemaking on Discrimination on the Basis of Disability in Critical Health and Human Services Programs or Activities (Rulemaking Resulting From a Section 610 Review)**

Legal Authority: Sec. 504 of the Rehabilitation Act of 19

Abstract: This proposed rule would revise regulations under, among other statutes, section 504 of the Rehabilitation Act of 1973 to address unlawful discrimination on the basis of disability in certain vital HHS-funded health and human services programs. Covered topics include non-discrimination in life-sustaining care, organ transplantation, suicide prevention services, child welfare programs and services, health care value assessment methodologies, accessible medical equipment, auxiliary aids and services, Crisis Standards of Care and other relevant health and human services activities.

Timetable:

Action	Date	FR Cite
NPRM .....	09/00/21	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Carla Carter, Supervisory Civil Rights Analyst, Department of Health and Human Services, Office for Civil Rights, 200 Independence Avenue SW, Washington, DC 20201, *Phone:* 800 368–1019, *Email:* ocrmail@hhs.gov.

*RIN:* 0945–AA15

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Office of the National Coordinator for Health Information Technology (ONC)*

Completed Actions

**87. Information Blocking and the ONC Health IT Certification Program: Extension of Compliance Dates and Timeframes in Response to the COVID–19 Public Health Emergency**

*Legal Authority:* 42 U.S.C. 300jj–11; 42 U.S.C. 300jj–14; . . .

*Abstract:* In light of COVID–19, ONC issued an interim final rule with comment period (IFC) that gives health IT developers and health care providers flexibilities to effectively respond to the serious public health threats posed by the spread of COVID–19. The IFC extends certain applicability and compliance dates and timeframes in the 21st Century Cures Act: Interoperability, Information Blocking, and the ONC Health IT Certification Program Final Rule (ONC Cures Act Final Rule), including applicability and compliance dates for the information blocking provisions, certain 2015 Edition health IT certification criteria, and Conditions and Maintenance of Certification requirements under the ONC Health IT Certification Program. The IFC also updated certain standards and made technical corrections and clarifications to the ONC Cures Act Final Rule, which was published in the **Federal Register** on May 1, 2020.

*Completed:*

Reason	Date	FR Cite
Interim Final Rule	11/04/20	85 FR 70064
Interim Final Rule Comment Period End.	01/04/21	
Final Action—Agency Expects No Further Action.	05/25/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Lipinski, *Phone:* 202 690–7151.

*RIN:* 0955–AA02

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Centers for Disease Control and Prevention (CDC)*

Final Rule Stage

**88. Control of Communicable Diseases; Foreign Quarantine**

*Legal Authority:* 42 U.S.C. 264; 42 U.S.C. 265

*Abstract:* This rulemaking amends current regulation to enable CDC to require airlines to collect and provide to CDC certain data elements regarding passengers and crew arriving from foreign countries under certain circumstances.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule Effective.	02/07/20	85 FR 7874
Interim Final Rule Comment Period End.	02/12/20 03/13/20	
Final Action	04/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ashley C. Altenburger JD, Public Health Analyst, Department of Health and Human Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS: H 16–4, Atlanta, GA 30307, *Phone:* 800 232–4636, *Email:* dgmqpolicyoffice@cdc.gov.

*RIN:* 0920–AA75

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Food and Drug Administration (FDA)*

Proposed Rule Stage

**89. National Standards for the Licensure of Wholesale Drug Distributors and Third-Party Logistics Providers**

*Legal Authority:* Pub. L. 113–54

*Abstract:* The rulemaking, once finalized, will establish standards for State licensing of prescription drug wholesale distributors and third-party logistics providers. The rulemaking will also establish a Federal system for wholesale drug distributor and third-party logistics provider licensing for use in the absence of a State licensure program.

*Timetable:*

Action	Date	FR Cite
NPRM	09/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Aaron Weisbuch, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Building 51, Room 4261, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–9362, *Email:* aaron.weisbuch@fda.hhs.gov.

*RIN:* 0910–AH11

**90. Certain Requirements Regarding Prescription Drug Marketing (203 Amendment)**

*Legal Authority:* Pub. L. 113–54

*Abstract:* The Food and Drug Administration (FDA) is amending the regulations at 21 CFR 203 to remove provisions no longer in effect and incorporate conforming changes following enactment of the Drug Supply Chain Security Act (DSCSA). In this proposed rulemaking, the Agency is amending the regulations to clarify provisions and avoid causing confusion with the new standards for wholesale distribution established by DSCSA.

*Timetable:*

Action	Date	FR Cite
NPRM	09/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Aaron Weisbuch, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Drug Evaluation and Research, Building 51, Room 4261, 10903 New Hampshire Avenue, Silver Spring, MD 20993, *Phone:* 301 796–9362, *Email:* aaron.weisbuch@fda.hhs.gov.

*RIN:* 0910–AH56

**91. Medication Guide; Patient Medication Information**

*Legal Authority:* 21 U.S.C. 321 *et seq.*; 42 U.S.C. 262; 42 U.S.C. 264; 21 U.S.C. 371

*Abstract:* The proposed rule would amend FDA medication guide regulations to require a new form of patient labeling, Patient Medication Information, for submission to and review by the FDA for human prescription drug products and certain blood products used, dispensed, or administered on an outpatient basis. The proposed rule would include requirements for Patient Medication Information development and distribution. The proposed rule would require clear and concisely written prescription drug product information presented in a consistent and easily

understood format to help patients use their prescription drug products safely and effectively.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Chris Wheeler, Supervisory Project Manager, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 3330, Silver Spring, MD 20993, *Phone:* 301 796-0151, *Email:* [chris.wheeler@fda.hhs.gov](mailto:chris.wheeler@fda.hhs.gov). *RIN:* 0910-AH68

**92. Requirements for Tobacco Product Manufacturing Practice**

*Legal Authority:* 21 U.S.C. 371; 21 U.S.C. 387b; 21 U.S.C. 387f

*Abstract:* The rule is proposing to establish tobacco product manufacturing practice (TPMP) requirements for manufacturers of finished and bulk tobacco products. This proposed rule, if finalized, would set forth requirements for the manufacture, pre-production design validation, packing, and storage of a tobacco product. This proposal would help prevent the manufacture and distribution of contaminated and otherwise nonconforming tobacco products. This proposed rule provides manufacturers with flexibility in the manner in which they comply with the proposed requirements while giving FDA the ability to enforce regulatory requirements, thus helping to assure the protection of public health.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Matthew Brenner, Senior Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Center for Tobacco Products, 10903 New Hampshire Avenue, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287-1373, *Fax:* 240 276-3904, *Email:* [ctpregulations@fda.hhs.gov](mailto:ctpregulations@fda.hhs.gov). *RIN:* 0910-AH91

**93. Administrative Detention of Tobacco Products**

*Legal Authority:* 21 U.S.C. 334; 21 U.S.C. 371

*Abstract:* The FDA is proposing regulations to establish requirements for

the administrative detention of tobacco products. This action, if finalized, would allow FDA to administratively detain tobacco products encountered during inspections that an officer or employee conducting the inspection has reason to believe are adulterated or misbranded. The intent of administrative detention is to protect public health by preventing the distribution or use of tobacco products encountered during inspections that are believed to be adulterated or misbranded until FDA has had time to consider the appropriate action to take and, where appropriate, to initiate a regulatory legal action.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Nathan Mease, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287-1373, *Email:* [ctpregulations@fda.hhs.gov](mailto:ctpregulations@fda.hhs.gov).

Lauren Belcher, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287-1373, *Email:* [ctpregulations@fda.hhs.gov](mailto:ctpregulations@fda.hhs.gov).

*RIN:* 0910-AI05

**94. Nutrient Content Claims, Definition of Term: Healthy**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 343; 21 U.S.C. 371

*Abstract:* The proposed rule would update the definition for the implied nutrient content claim “healthy” to be consistent with current nutrition science and federal dietary guidelines. The proposed rule would revise the requirements for when the claim “healthy” can be voluntarily used in the labeling of human food products so that the claim reflects current science and dietary guidelines and helps consumers maintain healthy dietary practices.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Vincent De Jesus, Nutritionist, Department of Health and Human Services, Food and Drug

Administration, Center for Food Safety and Applied Nutrition, (HFS-830), Room 3D-031, 5100 Paint Branch Parkway, College Park, MD 20740, *Phone:* 240 402-1774, *Fax:* 301 436-1191, *Email:* [vincent.dejesus@fda.hhs.gov](mailto:vincent.dejesus@fda.hhs.gov).

*RIN:* 0910-AI13

**95. Revocation of Uses of Partially Hydrogenated Oils in Foods**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 341; 21 U.S.C. 342; 21 U.S.C. 343; 21 U.S.C. 348; 21 U.S.C. 371; 21 U.S.C. 379e

*Abstract:* In the **Federal Register** of June 17, 2015 (80 FR 34650), we published a declaratory order announcing our final determination that there is no longer a consensus among qualified experts that partially hydrogenated oils (PHOs) are generally recognized as safe (GRAS) for any use in human food. In the **Federal Register** of May 21, 2018 (83 FR 23382), we denied a food additive petition requesting that the food additive regulations be amended to provide for the safe use of PHOs in certain food applications. We are now proposing to update our regulations to remove all mention of partially hydrogenated oils from FDA’s GRAS regulations and as an optional ingredient in standards of identity. We are also proposing to revoke all prior sanctions for uses of PHOs in food.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Ellen Anderson, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS-265, 4300 River Road, College Park, MD 20740, *Phone:* 240 402-1309, *Email:* [ellen.anderson@fda.hhs.gov](mailto:ellen.anderson@fda.hhs.gov).

*RIN:* 0910-AI15

**96. Tobacco Product Standard for Characterizing Flavors in Cigars**

*Legal Authority:* 21 U.S.C. 387g

*Abstract:* Evidence shows that flavored tobacco products, especially those that are sweet, appeal to youth and also shows that youth may be more likely to initiate tobacco use with such products. Characterizing flavors in cigars, such as strawberry, grape, orange, and cocoa, enhance taste and make them easier to use. Nearly one million youth in the United States use flavored cigars, placing these youth at risk for cigar-related disease and death. This proposed rule is a tobacco product

standard that would ban characterizing flavors in all cigars. We are taking this action to reduce the tobacco-related death associated with cigars.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	03/21/18	83 FR 12294
ANPRM Comment Period End.	07/19/18	
NPRM .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Samantha LohCollado, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287-1373, *Fax:* 877 287-1426, *Email:* [ctpregulations@fda.hhs.gov](mailto:ctpregulations@fda.hhs.gov).  
*RIN:* 0910-A128

**97. Conduct of Analytical and Clinical Pharmacology, Bioavailability and Bioequivalence Studies**

*Legal Authority:* 21 U.S.C. 355; 21 U.S.C. 371; 21 U.S.C. 374; 42 U.S.C. 262

*Abstract:* FDA is proposing to amend 21 CFR 320, in certain parts, and establish a new 21 CFR 321 to clarify FDA's study conduct expectations for analytical and clinical pharmacology, bioavailability (BA) and bioequivalence (BE) studies that support human research and marketing applications for human drug and biological products. The proposed rule would specify needed basic study conduct requirements to enable FDA to ensure those studies are conducted appropriately and to verify the reliability of study data from those studies. This regulation would align with FDA's other good practice regulations, would also be consistent with current industry best practices, and would harmonize the regulations more closely with related international regulatory expectations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Brian Joseph Folian, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 5215, Silver Spring, MD 20993-0002, *Phone:* 240 402-4089, *Email:* [brian.folian@fda.hhs.gov](mailto:brian.folian@fda.hhs.gov).  
*RIN:* 0910-A157

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Food and Drug Administration (FDA)*

Final Rule Stage

**98. Mammography Quality Standards Act**

*Legal Authority:* 21 U.S.C. 360i; 21 U.S.C. 360nn; 21 U.S.C. 374(e); 42 U.S.C. 263b

*Abstract:* FDA is amending its regulations governing mammography. The amendments will update the regulations issued under the Mammography Quality Standards Act of 1992 (MQSA) and the Federal Food, Drug, and Cosmetic Act (FD&C Act). FDA is taking this action to address changes in mammography technology and mammography processes that have occurred since the regulations were published in 1997 and to address breast density reporting to patient and healthcare providers.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/28/19	84 FR 11669
NPRM Comment Period End.	06/26/19	
Final Rule .....	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jean M. Olson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 66, Room 5506, Silver Spring, MD 20993, *Phone:* 301 796-6579, *Email:* [jean.olson@fda.hhs.gov](mailto:jean.olson@fda.hhs.gov).  
*RIN:* 0910-AH04

**99. Amendments to the List of Bulk Drug Substances That Can Be Used to Compound Drug Products in Accordance With Section 503A of the Federal Food, Drug, and Cosmetic Act**

*Legal Authority:* 21 U.S.C. 351; 21 U.S.C. 352; 21 U.S.C. 353a; 21 U.S.C. 355; 21 U.S.C. 371; . . .

*Abstract:* FDA has issued a regulation creating a list of bulk drug substances (active pharmaceutical ingredients) that can be used to compound drug products in accordance with section 503A of the Federal Food, Drug, and Cosmetic Act (FD&C Act), although they are neither the subject of an applicable United States Pharmacopeia (USP) or National Formulary (NF) monograph nor components of FDA-approved drugs (the 503A Bulks List). FDA has proposed to amend the 503A Bulks List by placing five additional bulk drug substances on the list. FDA has also identified 26 bulk drug substances that

FDA has considered and proposed not to include on the 503A Bulks List. Additional substances nominated by the public for inclusion on this list are currently under consideration and will be the subject of a future rulemaking.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/05/19	84 FR 46688
NPRM Comment Period End.	12/04/19	
Final Rule .....	12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Rosilend Lawson, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 51, Room 5197, Silver Spring, MD 20993, *Phone:* 240 402-6223, *Email:* [rosilend.lawson@fda.hhs.gov](mailto:rosilend.lawson@fda.hhs.gov).  
*RIN:* 0910-AH81

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Food and Drug Administration (FDA)*

Long-Term Actions

**100. Direct-to-Consumer Prescription Drug Advertisements: Presentation of the Major Statement in a Clear, Conspicuous, Neutral Manner in Advertisements in Television and Radio Format**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 331; 21 U.S.C. 352; 21 U.S.C. 355; 21 U.S.C. 360b; 21 U.S.C. 371; . . .

*Abstract:* The Food and Drug Administration (FDA) is amending its regulations concerning direct-to-consumer (DTC) advertisements of prescription drugs. Prescription drug advertisements presented through media such as TV and radio must disclose the product's major risks in what is sometimes called the major statement. The rule would revise the regulation to reflect the statutory requirement require that in DTC advertisements for human drugs in television or radio format, the major statement relating to the side effects and contraindications of an advertised prescription drug be presented in a clear, conspicuous, and neutral manner. This rule also establishes standards for determining whether the major statement in these advertisements is presented in the manner required.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/29/10	75 FR 15376

Action	Date	FR Cite
NPRM Comment Period End.	06/28/10	
NPRM Comment Period Re-opened.	01/27/12	77 FR 4273
NPRM Comment Period End.	02/27/12	
NPRM Comment Period Re-opened.	03/29/12	77 FR 16973
NPRM Comment Period Re-opened End.	04/09/12	
Final Rule .....	05/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Suzanna Boyle, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 51, Room 3214, Silver Spring, MD 20993, *Phone:* 240 402-4723, *Email:* [suzanna.boyle@fda.hhs.gov](mailto:suzanna.boyle@fda.hhs.gov).

*RIN:* 0910-AG27

**101. Sunlamp Products; Amendment to the Performance Standard**

*Legal Authority:* 21 U.S.C. 360ii; 21 U.S.C. 360kk; 21 U.S.C. 393; 21 U.S.C. 371

*Abstract:* FDA is updating the performance standard for sunlamp products and ultraviolet lamps for use in these products to improve safety, reflect new scientific information, and work towards harmonization with international standards. By harmonizing with the International Electrotechnical Commission, this rule will decrease the regulatory burden on industry and allow the Agency to take advantage of the expertise of the international committees, thereby also saving resources.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/22/15	80 FR 79505
NPRM Comment Period End.	03/21/16	
Final Rule .....	05/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Ian Ostermiller, Regulatory Counsel, Center for Devices and Radiological Health, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 66, Room 5454, Silver Spring, MD 20993, *Phone:* 301 796-5678, *Email:* [ian.ostermiller@fda.hhs.gov](mailto:ian.ostermiller@fda.hhs.gov).

*RIN:* 0910-AG30

**102. General and Plastic Surgery Devices: Restricted Sale, Distribution, and Use of Sunlamp Products**

*Legal Authority:* 21 U.S.C. 360j(e)  
*Abstract:* This rule will apply device restrictions to sunlamp products. Sunlamp products include ultraviolet (UV) lamps and UV tanning beds and booths. The incidence of skin cancer, including melanoma, has been increasing, and a large number of skin cancer cases are attributable to the use of sunlamp products. The devices may cause about 400,000 cases of skin cancer per year, and 6,000 of which are melanoma. Beginning use of sunlamp products at young ages, as well as frequently using sunlamp products, both increases the risk of developing skin cancers and other illnesses, and sustaining other injuries. Even infrequent use, particularly at younger ages, can significantly increase these risks.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/22/15	80 FR 79493
NPRM Comment Period End.	03/21/16	
Final Rule .....	05/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Ian Ostermiller, Regulatory Counsel, Center for Devices and Radiological Health, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, WO 66, Room 5454, Silver Spring, MD 20993, *Phone:* 301 796-5678, *Email:* [ian.ostermiller@fda.hhs.gov](mailto:ian.ostermiller@fda.hhs.gov).

*RIN:* 0910-AH14

**103. Nicotine Toxicity Warnings**

*Legal Authority:* 21 U.S.C. 301 *et seq.*; 21 U.S.C. 331; 21 U.S.C. 371; 21 U.S.C. 387f; . . .

*Abstract:* This rule would establish acute nicotine toxicity warning requirements for liquid nicotine and nicotine-containing e-liquid(s) that are made or derived from tobacco and intended for human consumption, and potentially for other tobacco products including, but not limited to, novel tobacco products such as dissolvables, lotions, gels, and drinks. This action is intended to increase consumer awareness and knowledge of the risks of acute toxicity due to accidental nicotine exposure from nicotine-containing e-liquids in tobacco products.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Samantha LohCollado, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, 10903 New Hampshire Avenue, Building 71, Room G335, Silver Spring, MD 20993, *Phone:* 877 287-1373, *Fax:* 877 287-1426, *Email:* [ctpregulations@fda.hhs.gov](mailto:ctpregulations@fda.hhs.gov).

*RIN:* 0910-AH24

**104. Requirements for Additional Traceability Records for Certain Foods**

*Legal Authority:* sec. 204 of the FDA Food Safety Modernization Act (FSMA) (Pub. L. 111-353) (21 U.S.C. 2223(d)); sec. 701(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371(a)); sec. 361 of the Public Health Service Act (42 U.S.C. 264)

*Abstract:* This rule will establish additional recordkeeping requirements for facilities that manufacture, process, pack, or hold foods that are designated as high-risk foods.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/23/20	85 FR 59984
NPRM Comment Period End.	01/21/21	
NPRM Comment Period Extended.	12/18/20	85 FR 82393
NPRM Comment Period End.	02/22/21	
Final Rule .....	11/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Katherine Vierk, Director, Division of Public Health Informatics and Analytics, Department of Health and Human Services, Food and Drug Administration, 5001 Campus Drive, CPK1, Room 2B014, HFS-005, College Park, MD 20740, *Phone:* 240 402-2122, *Email:* [katherine.vierk@fda.hhs.gov](mailto:katherine.vierk@fda.hhs.gov).

*RIN:* 0910-AI44



**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Food and Drug Administration (FDA)*

Completed Actions

**105. Milk and Cream Product and Yogurt Products, Final Rule To Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and To Amend the Standard for Yogurt**

*Legal Authority:* 21 U.S.C. 321; 21 U.S.C. 336; 21 U.S.C. 341; 21 U.S.C. 343; 21 U.S.C. 348; 21 U.S.C. 371(e); 21 U.S.C. 379e

*Abstract:* This final rule amends the standard of identity for yogurt and revokes the standards of identity for lowfat yogurt and nonfat yogurt. It modernizes the standard for yogurt to allow for technological advances, to preserve the basic nature and essential characteristics of yogurt, and to promote honesty and fair dealing in the interest of consumers. Section 701(e)(1), of the Federal Food, Drug, and Cosmetic Act requires that the amendment or repeal of the definition and standard of identity for a dairy product proceed under a formal rulemaking process. Although, standard practice is not to include formal rulemaking in the Unified Agenda, this rule is included to highlight the de-regulatory work in this space.

*Completed:*

Reason	Date	FR Cite
Withdrawn From the Unified Agenda—This RIN is Being Pursued via Formal Rule-making Process.	06/01/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Terri Wenger, Phone: 240 402-2371, Email: [terri.wenger@fda.hhs.gov](mailto:terri.wenger@fda.hhs.gov)

RIN: 0910-AI40

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Centers for Medicare & Medicaid Services (CMS)*

Proposed Rule Stage

**106. Contract Year 2023 Policy and Technical Changes to the Medicare Advantage and Medicare Prescription Drug Benefit Programs (CMS-4192)**

*Legal Authority:* 42 U.S.C. 1395w  
*Abstract:* This proposed rule would strengthen and improve the Medicare

Advantage (MA or Part C) and Medicare Prescription Drug Benefit (Part D) programs, codify existing sub regulatory guidance, and implement any statutory changes (if necessary) for contract year 2023.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Christian Bauer, Director, Division of Part D Policy, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C1-26-16, 7500 Security Boulevard, Baltimore, MD 21244, Phone: 410 786-6043, Email: [christian.bauer@cms.hhs.gov](mailto:christian.bauer@cms.hhs.gov)  
RIN: 0938-AU30

**107. CY 2022 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS-1751) (Section 610 Review)**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh

*Abstract:* This annual proposed rule would revise payment polices under the Medicare physician fee schedule, and make other policy changes to payment under Medicare Part B. These changes would apply to services furnished beginning January 1, 2022. Additionally, this rule proposes updates to the Quality Payment Program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Gift Tee, Director, Division of Physician Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, 7500 Security Boulevard, MS: C1-09-07, Baltimore, MD 21244, Phone: 410 786-9316, Email: [gift.tee@cms.hhs.gov](mailto:gift.tee@cms.hhs.gov)  
RIN: 0938-AU42

**108. CY 2022 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS-1753) (Section 610 Review)**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh

*Abstract:* This annual proposed rule would revise the Medicare hospital outpatient prospective payment system to implement statutory requirements

and changes arising from our continuing experience with this system. The proposed rule describes changes to the amounts and factors used to determine payment rates for services. In addition, the rule proposes changes to the ambulatory surgical center payment system list of services and rates. This proposed rule would also update and refine the requirements for the Hospital Outpatient Quality Reporting (OQR) Program and the ASC Quality Reporting (ASCQR) Program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Elise Barringer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4-03-06, 7500 Security Boulevard, Baltimore, MD 21244, Phone: 410 786-9222, Email: [elise.barringer@cms.hhs.gov](mailto:elise.barringer@cms.hhs.gov)  
RIN: 0938-AU43

**109. Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals; the Long-Term Care Hospital Prospective Payment System; and FY 2022 Rates (CMS-1752) (Section 610 Review)**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh

*Abstract:* This annual final rule revises the Medicare hospital inpatient and long-term care hospital prospective payment systems for operating and capital-related costs. This rule implements changes arising from our continuing experience with these systems. In addition, the rule establishes new requirements or revises existing requirements for quality reporting by specific Medicare providers.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/10/21	86 FR 25070
NPRM Comment Period End.	06/28/21	
Final Action .....	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Donald Thompson, Director, Division of Acute Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4-03-18, 7500 Security Boulevard, Baltimore, MD 21244, Phone: 410 786-6504, Email: [donald.thompson@cms.hhs.gov](mailto:donald.thompson@cms.hhs.gov)

RIN: 0938-AU44

**110. • Medicare Advantage and Medicare Prescription Drug Benefit Program Payment Policy (CMS-4198)**

*Legal Authority:* 42 U.S.C. 1395w

*Abstract:* This proposed rule would codify long-established Medicare Advantage and Part D payment policies that are outside the scope of the annual Advance Notice/Rate Announcement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Shapiro, Director, Medicare Plan Payment Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C1-13-18, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786-7407, *Email:* [jennifer.shapiro@cms.hhs.gov](mailto:jennifer.shapiro@cms.hhs.gov)

RIN: 0938-AU59

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Centers for Medicare & Medicaid Services (CMS)*

Final Rule Stage

**111. • Requirements Related to Surprise Billing; Part II (CMS-9908)**

*Legal Authority:* Pub. L. 116-260, Division BB, title I and title II

*Abstract:* This interim final rule with comment would implement additional protections against surprise medical bills under the No Surprises Act, including provisions related to the independent dispute resolution processes.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	08/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Deborah Bryant, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, MS: W08-134, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 493-4293, *Email:* [deborah.bryant@cms.hhs.gov](mailto:deborah.bryant@cms.hhs.gov)

RIN: 0938-AU62

**112. • Requirements Related to Surprise Billing; Part I (CMS-9909)**

*Legal Authority:* Pub. L. 116-260, Division BB, title I and title II

*Abstract:* This interim final rule with comment would implement certain protections against surprise medical bills under the No Surprises Act.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule With Comment.	07/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Lindsey Murtagh, Director, Market-Wide Regulation Division, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Consumer Information and Insurance Oversight, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 301 492-4106, *Email:* [lindsey.murtagh@cms.hhs.gov](mailto:lindsey.murtagh@cms.hhs.gov)

RIN: 0938-AU63

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Centers for Medicare & Medicaid Services (CMS)*

Long-Term Actions

**113. Durable Medical Equipment Fee Schedule, Adjustments To Resume The Transitional 50/50 Blended Rates To Provide Relief in Non-Competitive Bidding Areas (CMS-1687) (Section 610 Review)**

*Legal Authority:* 42 U.S.C. 1302, 1395hh, and 1395rr(b)(1)); Pub. L. 114-255, sec. 5004(b), 16007(a) and 16008

*Abstract:* This final rule follows the interim final rule that published May 11, 2018, and extended the end of the transition period from June 30, 2016, to December 31, 2016 for phasing in adjustments to the fee schedule amounts for certain durable medical equipment (DME) and enteral nutrition paid in areas not subject to the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program (CBP). In addition, the interim rule amended the regulation to resume the transition period for items furnished from August 1, 2017, through December 31, 2018. The interim rule also made technical amendments to existing regulations for DMEPOS items and services to exclude infusion drugs used with DME from the DMEPOS CBP.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	05/11/18	83 FR 21912
Interim Final Rule Comment Period End.	07/09/18	
Continuation Notice.	04/26/21	86 FR 21949
Final Action to be Merged With 0938-AU17.	05/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alexander Ullman, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C5-07-26, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786-9671, *Email:* [alexander.ullman@cms.hhs.gov](mailto:alexander.ullman@cms.hhs.gov)

RIN: 0938-AT21

**114. Requirements for Long-Term Care Facilities: Regulatory Provisions To Promote Increased Safety (CMS-3347) (Section 610 Review)**

*Legal Authority:* Secs. 1819 and 1919 of the Social Security Act; sec. 1819(d)(4)(B) and 1919(d)(4)(B) of the Social Security Act; sec. 1819(b)(1)(A) and 1919 (b)(1)(A) of the Social Security Act

*Abstract:* This final rule reforms the requirements that long-term care facilities must meet to participate in the Medicare and Medicaid programs in order to support the provision of safe care and preserve access to care.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/18/19	84 FR 34737
NPRM Comment Period End.	09/16/19	
Final Action .....	07/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Diane Corning, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Clinical Standards and Quality, MS: S3-02-01, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786-8486, *Email:* [diane.corning@cms.hhs.gov](mailto:diane.corning@cms.hhs.gov)

RIN: 0938-AT36

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Centers for Medicare & Medicaid Services (CMS)*

**Completed Actions**

**115. Most Favored Nation (MFN) Model (CMS–5528) (Completion of a Section 610 Review)**

*Legal Authority:* Social Security Act, sec. 1115A

*Abstract:* This interim final rule with comment period (IFC) implements the Most Favored Nation (MFN) Model, a new Medicare payment model under section 1115A of the Social Security Act (the Act). The MFN Model tests whether more closely aligning payment for Medicare Part B drugs and biologicals (hereafter, referred to as drugs) with international prices and removing incentives to use higher-cost drugs can control unsustainable growth in Medicare Part B spending without adversely affecting quality of care for beneficiaries.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	10/30/18	83 FR 54546
ANPRM Comment Period End.	12/31/18	
Interim Final Rule	11/27/20	85 FR 76180
Interim Final Rule Effective.	11/27/20	
Interim Final Rule Comment Period End.	01/26/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Laura Strawbridge, Director, Division of Ambulatory Payment Models, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare and Medicaid Innovation, 7500 Security Boulevard, MS: WB–06–05, Baltimore, MD 21244, *Phone:* 410 786–7400, *Email:* mfn@cms.hhs.gov. *RIN:* 0938–AT91

**116. Medicaid; Reducing Provider and Patient Burden by Improving Prior Authorization Processes and Promoting Patients’ Electronic Access to Health Information (CMS–9123)**

*Legal Authority:* 42 U.S.C. 1302

*Abstract:* This final rule places new requirements on state Medicaid and CHIP fee-for-service (FFS) programs, Medicaid managed care plans, CHIP managed care entities, and Qualified Health Plan (QHP) issuers on the Federally-facilitated Exchanges (FFE) to improve the electronic exchange of health care data, and streamline processes related to prior authorization,

while continuing CMS’ drive toward interoperability, and reducing burden in the health care market. In addition, on behalf of the Department of Health and Human Service (HHS), the Office of the National Coordinator for Health Information Technology (ONC) is adopting certain specified implementation guides (IGs) needed to support the Application Programming Interface (API) policies included in this rule. Each of these elements plays a key role in reducing overall payer and provider burden and improving patient access to health information.

*Completed:*

Reason	Date	FR Cite
NPRM .....	12/18/20	85 FR 82586
Withdrawn .....	03/17/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alexandra Mugge, *Phone:* 410 786–4457, *Email:* alexandra.mugge@cms.hhs.gov.

*RIN:* 0938–AT99

**117. CY 2021 Revisions to Payment Policies Under the Physician Fee Schedule and Other Revisions to Medicare Part B (CMS–1734) (Completion of a Section 610 Review)**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh

*Abstract:* This annual final rule revises payment polices under the Medicare physician fee schedule, and makes other policy changes to payment under Medicare Part B. These changes apply to services furnished beginning January 1, 2021. Additionally, this rule updates the Quality Payment Program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/17/20	85 FR 50074
NPRM Comment Period End.	10/05/20	
Final Action .....	12/28/20	85 FR 84472
Final Action Effective.	01/01/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Marge Watchorn, Deputy Director, Division of Practitioner Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–01–15, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–4361, *Email:* marge.watchorn@cms.hhs.gov.

*RIN:* 0938–AU10

**118. CY 2021 Hospital Outpatient PPS Policy Changes and Payment Rates and Ambulatory Surgical Center Payment System Policy Changes and Payment Rates (CMS–1736) (Completion of a Section 610 Review)**

*Legal Authority:* 42 U.S.C. 1302; 42 U.S.C. 1395hh

*Abstract:* This annual final rule revises the Medicare hospital outpatient prospective payment system to implement statutory requirements and changes arising from our continuing experience with this system. The rule describes changes to the amounts and factors used to determine payment rates for services. In addition, the rule implements changes to the ambulatory surgical center payment system list of services and rates. This rule also updates and refines the requirements for the Hospital Outpatient Quality Reporting (OQR) Program and the ASC Quality Reporting (ASCQR) Program.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/12/20	85 FR 48772
NPRM Comment Period End.	10/05/20	
Final Action .....	12/29/20	85 FR 85866
Final Action Effective.	01/01/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Elise Barringer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare, MS: C4–03–06, 7500 Security Boulevard, Baltimore, MD 21244, *Phone:* 410 786–9222, *Email:* elise.barringer@cms.hhs.gov.

*RIN:* 0938–AU12

**119. Promoting Electronic Access to Health Information for Patients and for Medicare-and Medicaid-Participating Providers and Suppliers (CMS–0057)**

*Legal Authority:* 42 U.S.C. 1395hh

*Abstract:* The proposed rule would also revise requirements that select Medicare- and Medicaid-participating providers and suppliers must meet for continued participation in the Medicare and Medicaid programs by requiring increased patient electronic access to their health care information. This proposed rule would also improve the electronic exchange of health information among the identified providers and suppliers, and finally, this proposed rule would improve patient safety by establishing patient identity management requirements for the identified providers and suppliers.

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	03/17/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Alexandra Mugge, *Phone:* 410 786-4457, *Email:* alexandra.mugge@cms.hhs.gov  
*RIN:* 0938-AU53

**DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)**

*Administration for Children and Families (ACF)*

Proposed Rule Stage

**120. Updating Native Employment Works Requirements (Rulemaking Resulting From a Section 610 Review)**

*Legal Authority:* 42 U.S.C. 612

*Abstract:* The rule would update NEW regulations at 45 CFR part 287 to avoid inconsistencies and reflect the changes that have been made to the NEW statute and Administration for Children and Families (ACF) grant policy and procedures since the current regulation’s publication on February 18, 2000. In particular, the regulations need to address changes made in section 404(e) of the Social Security Act as amended in 1999, Uniform Administrative Requirements, Cost Principles, and Audit Requirement for HHS Awards (45 CFR part 75)—Part 75 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for HHS Awards, Public Law 106-107, the “Federal Financial Assistance Management, Improvement Act of 1999” (Nov. 20, 1999), and various minor technical changes. While some of these changes have been addressed and communicated to the

public and grantees via program instructions and information memoranda, the regulations themselves are now inconsistent with current law and policy.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/21	

*Regulatory Flexibility Analysis Required: No.*

*Agency Contact:* Tonya Ann Davis, Program Specialist, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW, Room 3020, Washington, DC 20201, *Phone:* 202 401-4851, *Email:* tonya.davis@acf.hhs.gov.

*RIN:* 0970-AC83

[FR Doc. 2021-14870 Filed 7-29-21; 8:45 am]

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Part IX

Department of Homeland Security

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Semiannual Regulatory Agenda

**DEPARTMENT OF HOMELAND SECURITY**

**Office of the Secretary**

**6 CFR Chs. I and II**

[DHS Docket No. OGC–RP–04–001]

**Unified Agenda of Federal Regulatory and Deregulatory Actions**

**AGENCY:** Office of the Secretary, DHS.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This regulatory agenda is a semiannual summary of projected regulations, existing regulations, and completed actions of the Department of Homeland Security (DHS) and its components. This agenda provides the public with information about DHS’s regulatory and deregulatory activity. DHS expects that this information will enable the public to be more aware of, and effectively participate in, the Department’s regulatory and deregulatory activity. DHS invites the public to submit comments on any aspect of this agenda.

**FOR FURTHER INFORMATION CONTACT:**

**General**

Please direct general comments and inquiries on the agenda to the

Regulatory Affairs Law Division, Office of the General Counsel, U.S. Department of Homeland Security, 2707 Martin Luther King Jr. Avenue SE, Mail Stop 0485, Washington, DC 20528–0485.

**Specific**

Please direct specific comments and inquiries on individual actions identified in this agenda to the individual listed in the summary portion as the point of contact for that action.

**SUPPLEMENTARY INFORMATION:** DHS provides this notice pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, Sept. 19, 1980) and Executive Order 12866 “Regulatory Planning and Review” (Sept. 30, 1993) as incorporated in Executive Order 13563 “Improving Regulation and Regulatory Review” (Jan. 18, 2011), which require the Department to publish a semiannual agenda of regulations. The regulatory agenda is a summary of existing and projected regulations as well as actions completed since the publication of the last regulatory agenda for the Department. DHS’s last semiannual regulatory agenda was published online on December 9, 2020, at <http://www.reginfo.gov/public/do/eAgendaMain>.

Beginning in fall 2007, the internet became the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at [www.reginfo.gov](http://www.reginfo.gov).

The Regulatory Flexibility Act (5 U.S.C. 602) requires Federal agencies to publish their regulatory flexibility agendas in the **Federal Register**. A regulatory flexibility agenda shall contain, among other things, a brief description of the subject area of any rule which is likely to have a significant economic impact on a substantial number of small entities. DHS’s printed agenda entries include regulatory actions that are in the Department’s regulatory flexibility agenda. Printing of these entries is limited to fields that contain information required by the agenda provisions of the Regulatory Flexibility Act. Additional information on these entries is available in the Unified Agenda published on the internet.

The semiannual agenda of the Department conforms to the Unified Agenda format developed by the Regulatory Information Service Center.

Dated: March 17, 2021.

**Christina E. McDonald,**  
*Associate General Counsel for Regulatory Affairs.*

**OFFICE OF THE SECRETARY—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
121 .....	Homeland Security Acquisition Regulation: Safeguarding of Controlled Unclassified Sensitive Information (HSAR Case 2015–001).	1601–AA76
122 .....	Homeland Security Acquisition Regulation: Information Technology Security Awareness Training (HSAR Case 2015–002).	1601–AA78

**OFFICE OF THE SECRETARY—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
123 .....	Homeland Security Acquisition Regulation, Enhancement of Whistleblower Protections for Contractor Employees.	1601–AA72

**U.S. CITIZENSHIP AND IMMIGRATION SERVICES—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
124 .....	U.S. Citizenship and Immigration Services Fee Schedule .....	1615–AC68

**U.S. CITIZENSHIP AND IMMIGRATION SERVICES—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
125 .....	Requirements for Filing Motions and Administrative Appeals .....	1615–AB98

## U.S. CITIZENSHIP AND IMMIGRATION SERVICES—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
126 .....	Removal of International Entrepreneur Parole Program .....	1615-AC04
127 .....	Collection and Use of Biometrics by U.S. Citizenship and Immigration Services .....	1615-AC14
128 .....	U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements.	1615-AC18
129 .....	Employment Authorization for Certain Classes of Noncitizens With Final Orders of Removal .....	1615-AC40
130 .....	Short-Term Extension for E-Verify Employers in the H-2A Program .....	1615-AC51

## U.S. COAST GUARD—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
131 .....	Lifejacket Approval Harmonization .....	1625-AC62

## U.S. COAST GUARD—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
132 .....	Financial Responsibility—Vessels; Superseded Pollution Funds (USCG-2017-0788) .....	1625-AC39

## U.S. COAST GUARD—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
133 .....	Claims Procedures Under the Oil Pollution Act of 1990 (USCG-2004-17697) .....	1625-AA03
134 .....	Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation .....	1625-AB85

## U.S. CUSTOMS AND BORDER PROTECTION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
135 .....	Importer Security Filing and Additional Carrier Requirements ( <b>Section 610 Review</b> ) .....	1651-AA70
136 .....	Implementation of the Guam-CNMI Visa Waiver Program ( <b>Section 610 Review</b> ) .....	1651-AA77

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
137 .....	Visa Security Program Fee .....	1653-AA77
138 .....	Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media.	1653-AA78

## U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
139 .....	Adjusting Program Fees for the Student and Exchange Visitor Program .....	1653-AA81

## CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
140 .....	Ammonium Nitrate Security Program .....	1670-AA00

CYBERSECURITY AND INFRASTRUCTURE SECURITY AGENCY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
141 .....	Chemical Facility Anti-Terrorism Standards (CFATS) .....	1670-AA01

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

Office of the Secretary (OS)

Final Rule Stage

**121. Homeland Security Acquisition Regulation: Safeguarding of Controlled Unclassified Sensitive Information (HSAR Case 2015-001)**

*Legal Authority:* 5 U.S.C. 301 to 302; 41 U.S.C. 1302, 1303 and 1707

*Abstract:* This Homeland Security Acquisition Regulation (HSAR) rule would implement security and privacy measures to ensure Controlled Unclassified Information (CUI), such as Personally Identifiable Information (PII), is adequately safeguarded by DHS contractors. Specifically, the rule would define key terms, outline security requirements and inspection provisions for contractor information technology (IT) systems that store, process or transmit CUI, institute incident notification and response procedures, and identify post-incident credit monitoring requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/19/17	82 FR 6429
NPRM Comment Period End.	03/20/17	
NPRM Comment Period Extended.	03/20/17	82 FR 14341
NPRM Comment Period Extended End.	04/19/17	
Final Rule .....	12/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Shaundra Ford, Procurement Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, 245 Murray Lane SW, Washington, DC 20528, Phone: 202 447-0056, Email: shaundra.ford@hq.dhs.gov.

Nancy Harvey, Policy Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3636-15, 301 7th Street SW, Washington, DC 20528, Phone: 202 447-0956, Email: nancy.harvey@hq.dhs.gov.

RIN: 1601-AA76

**122. Homeland Security Acquisition Regulation: Information Technology Security Awareness Training (HSAR Case 2015-002)**

*Legal Authority:* 5 U.S.C. 301 and 302; 41 U.S.C. 1707, 1302 and 1303

*Abstract:* This Homeland Security Acquisition Regulation (HSAR) rule would standardize information technology security awareness training and DHS Rules of Behavior requirements for contractor and subcontractor employees who access DHS information systems and information resources or contractor-owned and/or operated information systems and information resources capable of collecting, processing, storing, or transmitting controlled unclassified information (CUI).

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/19/17	82 FR 6446
NPRM Comment Period End.	03/20/17	
NPRM Comment Period Extended.	03/20/17	82 FR 14341
NPRM Comment Period Extended End.	04/19/17	
Final Rule .....	12/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Shaundra Ford, Procurement Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Acquisition Policy and Legislation, 245 Murray Lane SW, Washington, DC 20528, Phone: 202 447-0056, Email: shaundra.ford@hq.dhs.gov.

Nancy Harvey, Policy Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3636-15, 301 7th Street SW, Washington, DC 20528, Phone: 202 447-0956, Email: nancy.harvey@hq.dhs.gov.

RIN: 1601-AA78

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

Office of the Secretary (OS)

Long-Term Actions

**123. Homeland Security Acquisition Regulation, Enhancement of Whistleblower Protections for Contractor Employees**

*Legal Authority:* sec. 827 of the National Defense Authorization Act (NDAA) for Fiscal Year 2013, (Pub. L. 112-239, enacted January 2, 2013); 41 U.S.C. 1302(a)(2) and 1707

*Abstract:* The Department of Homeland Security (DHS) is proposing to amend its Homeland Security Acquisition Regulation (HSAR) parts 3003 and 3052 to implement section 827 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. 112-239, enacted January 2, 2013) for the United States Coast Guard (USCG). Section 827 of the NDAA for FY 2013 established enhancements to the Whistleblower Protections for Contractor Employees for all agencies subject to section 2409 of title 10, United States Code, which includes the USCG.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Nancy Harvey, Policy Analyst, Department of Homeland Security, Office of the Chief Procurement Officer, Room 3636-15, 301 7th Street SW, Washington, DC 20528, Phone: 202 447-0956, Email: nancy.harvey@hq.dhs.gov.

RIN: 1601-AA72

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

U.S. Citizenship and Immigration Services (USCIS)

Proposed Rule Stage

**124. • U.S. Citizenship and Immigration Services Fee Schedule**

*Legal Authority:* 8 U.S.C. 1356(m), (n)  
*Abstract:* DHS will propose to adjust the fees charged by U.S. Citizenship and



Immigration Services (USCIS) for immigration and naturalization benefit requests. On August 3, 2020, DHS adjusted the fees USCIS charges for immigration and naturalization benefit requests, imposed new fees, revised certain fee waiver and exemption policies, and changed certain application requirements via the rule “USCIS Fee Schedule & Changes to Certain Other Immigration Benefit Request Requirements.” DHS has been preliminarily enjoined from implementing that rule by court order. This rule would rescind and replace the changes made by the August 3, 2020, rule and establish new USCIS fees to recover USCIS operating costs.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kika M. Scott, Chief Financial Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 202 721–3000.

*RIN:* 1615–AC68

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

*U.S. Citizenship and Immigration Services (USCIS)*

Long-Term Actions

**125. Requirements for Filing Motions and Administrative Appeals**

*Legal Authority:* 5 U.S.C. 552 and 552a; 8 U.S.C. 1101, 1103 and 1304; 6 U.S.C. 112

*Abstract:* The Department of Homeland Security (DHS) is proposing this rule to improve the administration of U.S. Citizenship and Immigration Services (USCIS) appeals, motions, and certifications. The proposed changes would update and restructure the regulations in order to clarify and streamline the administrative review process, increase efficiency, and reflect the establishment of DHS and its components.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* William K. Renwick, Jr., Branch Chief, Department of Homeland Security, U.S. Citizenship and Immigration Services, Administrative Appeals Office, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 202 721–3000.

*RIN:* 1615–AB98

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

*U.S. Citizenship and Immigration Services (USCIS)*

Completed Actions

**126. Removal of International Entrepreneur Parole Program**

*Legal Authority:* 8 U.S.C. 1182(d)(5)(A)

*Abstract:* On January 17, 2017, DHS published the International Entrepreneur Final Rule (the IE final rule) in the **Federal Register** at 82 FR 5238, with an original effective date of July 17, 2017. On May 29, 2018, DHS published a notice of proposed rulemaking (NPRM) proposing to remove the international entrepreneur parole program from DHS regulations and solicited public comments on the proposal. DHS is withdrawing the May 29, 2018, proposed rule. The May 29, 2018, proposed rule relied on the direction from E.O. 13767. On February 2, 2021, President Biden issued Executive Order 14010 which revoked Executive Order 13767, and issued Executive Order 14012, which directed agencies to identify actions that fail to promote access to the legal immigration system.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/31/16	81 FR 60129
NPRM Comment Period End.	10/17/16	
Final Rule .....	01/17/17	82 FR 5238
Final Rule Delay of Effective Date.	07/11/17	82 FR 31887
Final Rule Effective.	07/17/17	
NPRM—Removal of International Entrepreneur Parole Program.	05/29/18	83 FR 24415
NPRM Comment Period End-Removal of International Entrepreneur Parole Program.	06/28/18	
Notice of Withdrawal.	05/11/21	86 FR 25809

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588–0009, *Phone:* 240 721–3000.

*RIN:* 1615–AC04

**127. Collection and Use of Biometrics by U.S. Citizenship and Immigration Services**

*Legal Authority:* 8 U.S.C. 1103(a); 8 U.S.C. 1444 to 1446; 8 U.S.C. 1365a and 1365b; 8 U.S.C. 1304(a); Pub. L. 107–56; Pub. L. 107–173; Pub. L. 109–248, sec. 402(a) and 402(b)

*Abstract:* On September 11, 2020, the Department of Homeland Security (DHS) proposed to update its regulations to eliminate multiple references to specific biometric types, and to allow for the expansion of the types of biometrics required to establish and verify an identity. DHS also proposed to modify age restrictions where they exist to detect, deter, or prevent human trafficking of children; establish consistent identity enrollment and verification policies and processes; and align U.S. Citizenship and Immigration Services (USCIS) biometric collection with other immigration operations. The DHS proposal also provided a definition to the public on the term biometric and how biometrics will be used in the immigration process. DHS is withdrawing the NPRM published on September 11, 2020. DHS remains committed to ensuring national security, fraud prevention and program integrity. DHS will look to pursue future rulemaking that balances those commitments while also ensuring sufficient privacy protections, civil liberty protections, and without hindering access to the immigration system.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/11/20	85 FR 56338
NPRM Comment Period End.	10/13/20	
Notice of Withdrawal.	05/10/21	86 FR 24750

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Steven P. Kvortek, Acting Division Chief, Security and Public Safety Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp

Springs, MD 20588-0009, *Phone:* 202 721-3000.  
*RIN:* 1615-AC14

**128. U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements**

*Legal Authority:* 8 U.S.C. 1356(m)  
*Abstract:* The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) conducted a FY 2019/2020 fee review for its Immigration Examinations Fee Account (IEFA), pursuant to the requirements of the Chief Financial Officers Act of 1990 (CFO Act), 31 U.S.C. 901-03 and the Immigration and Nationality Act, section 286(m), 8 U.S.C. 1356(m). The CFO Act requires each agency’s chief financial officer to “review, on a biennial basis, the fees, royalties, rents, and other charges imposed by the agency for services and things of value it provides, and make recommendations on revising those charges to reflect costs incurred by it in providing those services and things of value.” As a result of the FY 2019/2020 IEFA fee review, and following full consideration of public comments, DHS published its final rule (85 FR 46788) on August 3, 2020 with an effective date of October 2, 2020. DHS has been preliminarily enjoined from implementing that rule by court order. In Executive Order 14010 of February 2, 2021, the President directed DHS to identify any agency actions that fail to promote access to the legal immigration system including the 2020 final rule, in light of the Emergency Stopgap USCIS Stabilization Act (title I of division D of Pub. L. 116-159) and recommend steps, as appropriate and consistent with applicable law, to revise or rescind those agency actions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/14/19	84 FR 62280
NPRM Comment Period Extended.	12/09/19	84 FR 67243
NPRM Comment Period End.	12/16/19	
NPRM Comment Period Extended End.	12/30/19	
NPRM Comment Period Re-opened.	01/24/20	85 FR 4243
NPRM Comment Period Re-opened End.	02/10/20	
Final Action .....	08/03/20	85 FR 46788
Correction .....	08/17/20	85 FR 49941
Correction .....	08/31/20	85 FR 53645
Final Action Effective.	10/02/20	

Action	Date	FR Cite
Notice of Preliminary Injunction.	01/29/21	86 FR 7493

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kika M. Scott, Chief Financial Officer, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588-0009, *Phone:* 202 721-3000.

*RIN:* 1615-AC18

**129. Employment Authorization for Certain Classes of Noncitizens With Final Orders of Removal**

*Legal Authority:* 8 U.S.C. 1158; 8 U.S.C. 1231; 8 U.S.C. 1324a  
*Abstract:* On November 19, 2020, DHS proposed to amend its regulations to eliminate eligibility for employment authorization for certain noncitizens who have final orders of removal but are temporarily released from custody on an order of supervision (OSUP), with limited exceptions. DHS also proposed to include new eligibility requirements and expand the discretionary factors DHS will consider for noncitizens on OSUP who continue to qualify for employment authorization under the new regulatory framework. DHS is withdrawing the November 19, 2020, proposed rule because Executive Orders 13993 and 14005 have revoked the executive orders that were the basis for the proposed rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/19/20	85 FR 74196
NPRM Comment Period End (for rule only).	12/21/20	
Notice of Withdrawal.	05/10/21	86 FR 24751

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Steven Kvortek, Acting Division Chief, Security and Public Safety Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588-0009, *Phone:* 240 721-3000.

*RIN:* 1615-AC40

**130. Short-Term Extension for E-Verify Employers in the H-2A Program**

*Legal Authority:* Pub. L. 107-296, sec. 116; 6 U.S.C. 112; 8 U.S.C. 1103(a), 1184(a)(1), and 1324a(h)(3)(B)

*Abstract:* The Department of Homeland Security (DHS) proposed to amend its regulations regarding short-term extensions for U.S. employers seeking temporary or seasonal agricultural nonimmigrant workers in the H-2A program to provide a short-term extension of the H-2A petition validity period by up to 2 weeks (14 days) to petitioning employers who are participants in good standing in E-Verify. The E-Verify petitioner may request the short-term extension at the time of the initial H-2A petition, or the petitioner may file a new H-2A petition to request the short-term extension. This proposal would allow H-2A workers to continue their H-2A employment for the same petitioner and under the same terms and conditions as the valid temporary labor certification and the H-2A petition without the requirement to obtain a new temporary labor certification from the Department of Labor. DHS has determined that the proposed regulation should be withdrawn.

*Timetable:*

Action	Date	FR Cite
Withdrawn .....	02/26/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Charles Nimick, Chief, Business and Foreign Workers Division, Office of Policy and Strategy, Department of Homeland Security, U.S. Citizenship and Immigration Services, 5900 Capital Gateway Drive, Suite 4S190, Camp Springs, MD 20588-0009, *Phone:* 240 721-3000.

*RIN:* 1615-AC51

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

*U.S. Coast Guard (USCG)*

Proposed Rule Stage

**131. Lifejacket Approval Harmonization**

*Legal Authority:* 46 U.S.C. 3306(a); 46 U.S.C. 3306(b); 46 U.S.C. 4102(a); 46 U.S.C. 4102(b); 46 U.S.C. 4302(a); 46 U.S.C. 4502(a); 46 U.S.C. 4502(c)(2)(B)

*Abstract:* The Coast Guard proposes to amend the lifejacket approval requirements and follow-up program requirements by incorporating three new bi-national standards. At the same time, the Coast Guard proposes to amend lifejacket and personal flotation devices (PFD) carriage requirements to allow for the use of equipment approved to the new standards, and to remove obsolete equipment approval

requirements. The new standards are state-of-the-art and are intended to replace the legacy standards. The proposed amendments will streamline the process for approval of PFDs and allow manufacturers the opportunity to produce more innovative equipment that meets the approval requirements of both Canada and the United States, while reducing the burden for manufacturers in both the approval process and follow-up program. These proposed changes are expected to promote economic relief. The proposed rule is expected to promote economic relief by reducing the regulatory burden on PFD manufacturers by harmonizing our PFD approval standards with Canada, requiring less frequent inspections of manufacturing facilities, providing lower cost PFD user manuals, and by creating a new market in PFDs with a lower buoyancy rating.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jacqueline M. Yurkovich, Project Manager (CG-ENG-4), Department of Homeland Security, U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE, STOP 7509, Washington, DC 20593-7509, *Phone:* 202 372-1389, *Email:* [jacqueline.m.yurkovich@uscg.mil](mailto:jacqueline.m.yurkovich@uscg.mil). *RIN:* 1625-AC62

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

*U.S. Coast Guard (USCG)*

Final Rule Stage

**132. Financial Responsibility—Vessels; Superseded Pollution Funds (USCG-2017-0788)**

*Legal Authority:* 33 U.S.C. 2704; 33 U.S.C. 2716 and 2716a; 42 U.S.C. 9607 to 9609; 6 U.S.C. 552; E.O. 12580; sec. 7(b), 3 CFR, 1987; Comp., p. 193; E.O. 12777, secs. 4 and 5, 3 CFR, 1991 Comp., p. 351, as amended by E.O. 13286, sec. 89, 3; 3 CFR, 2004 Comp., p. 166, and by E.O. 13638, sec. 1, 3 CFR, 2014 Comp., p.227; Department of Homeland Security Delegation Nos. 0170.1 and 5110, Revision 01

*Abstract:* The Coast Guard has proposed to amend its rule on vessel financial responsibility to include tank vessels greater than 100 gross tons, to clarify and strengthen the rule's reporting requirements, to conform its rule to current practice, and to remove

two superseded regulations. This rulemaking will ensure the Coast Guard has current information when there are significant changes in a vessel's operation, ownership, or evidence of financial responsibility, and reflect current best practices in the Coast Guard's management of the Certificate of Financial Responsibility Program. This rulemaking will also promote the Coast Guard's missions of maritime stewardship, maritime security, and maritime safety.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/13/20	85 FR 28802
NPRM Comment Period End.	08/11/20	
Final Rule .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Benjamin White, Project Manager, National Pollution Funds Center, Department of Homeland Security, U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE, STOP 7605, Washington, DC 20593-7605, *Phone:* 202 795-6066, *Email:* [benjamin.h.white@uscg.mil](mailto:benjamin.h.white@uscg.mil). *RIN:* 1625-AC39

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

*U.S. Coast Guard (USCG)*

Long-Term Actions

**133. Claims Procedures Under the Oil Pollution Act of 1990 (USCG-2004-17697)**

*Legal Authority:* 33 U.S.C. 2713 and 2714

*Abstract:* The purpose of this project is to remove superseded regulations at 33 Code of Federal Regulations (CFR) part 135, and to finalize the Oil Pollution Act of 1990 (OPA'90) claims procedures at 33 CFR part 136. The OPA'90 claims procedures, implementing OPA'90 section 1013 (Claims Procedures) and section 1014 (Designation of Source and Advertisement), were established by an interim rule, titled "Claims under the Oil Pollution Act of 1990" (Interim Rule) that has not been substantively amended since it was published in 1992. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	08/12/92	57 FR 36314

Action	Date	FR Cite
Correction .....	09/09/92	57 FR 41104
Interim Final Rule Comment Period End.	12/10/92	
Notice of Inquiry ..	11/01/11	76 FR 67385
Notice of Inquiry Comment Period End.	01/30/12	
NPRM .....	To Be Determined	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Benjamin White, Project Manager, National Pollution Funds Center, Department of Homeland Security, U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE, STOP 7605, Washington, DC 20593-7605, *Phone:* 202 795-6066, *Email:* [benjamin.h.white@uscg.mil](mailto:benjamin.h.white@uscg.mil). *RIN:* 1625-AA03

**134. Commercial Fishing Vessels—Implementation of 2010 and 2012 Legislation**

*Legal Authority:* 46 U.S.C. 4502 and 5103; Pub. L. 111-281

*Abstract:* The Coast Guard proposes to implement those requirements of 2010 and 2012 legislation that pertain to uninspected commercial fishing industry vessels and that took effect upon enactment of the legislation but that, to be implemented, require amendments to Coast Guard regulations affecting those vessels. The applicability of the regulations is being changed, and new requirements are being added to safety training, equipment, vessel examinations, vessel safety standards, the documentation of maintenance, and the termination of unsafe operations. This rulemaking promotes the Coast Guard's maritime safety mission.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/21/16	81 FR 40437
NPRM Comment Period Extended.	08/15/16	81 FR 53986
NPRM Comment Period End.	10/19/16	
NPRM Comment Period Extended End.	12/18/16	
Final Rule .....	To Be Determined	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Joseph Myers, Project Manager, Department of Homeland Security, U.S. Coast Guard, 2703 Martin Luther King Jr. Avenue SE, STOP 7501, Washington, DC 20593-7501, *Phone:*

202 372–1249, Email: joseph.d.myers@uscg.mil.  
RIN: 1625–AB85

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

U.S. Customs and Border Protection (USCBP)

Long-Term Actions

**135. Importer Security Filing and Additional Carrier Requirements (Section 610 Review)**

Legal Authority: Pub. L. 109–347, sec. 203; 5 U.S.C. 301; 19 U.S.C. 66; 19 U.S.C. 1431; 19 U.S.C. 1433 and 1434; 19 U.S.C. 1624; 19 U.S.C. 2071 (note); 46 U.S.C. 60105

Abstract: This final rule implements the provisions of section 203 of the Security and Accountability for Every Port Act of 2006. On November 25, 2008, Customs and Border Protection (CBP) published an interim final rule (CBP Dec. 08–46) in the **Federal Register** (73 FR 71730), that finalized most of the provisions proposed in the Notice of Proposed Rulemaking. It requires carrier and importers to provide to CBP, via a CBP approved electronic data interchange system, certain advance information pertaining to cargo brought into the United States by vessel to enable CBP to identify high-risk shipments to prevent smuggling and ensure cargo safety and security. The interim final rule did not finalize six data elements that were identified as areas of potential concern for industry during the rulemaking process and, for which, CBP provided some type of flexibility for compliance with those data elements. CBP solicited public comment on these six data elements and also invited comments on the revised Regulatory Assessment and Final Regulatory Flexibility Analysis. (See 73 FR 71782–85 for regulatory text and 73 CFR 71733–34 for general discussion.)

Timetable:

Action	Date	FR Cite
NPRM .....	01/02/08	73 FR 90
NPRM Comment Period End.	03/03/08	
NPRM Comment Period Extended.	02/01/08	73 FR 6061
NPRM Comment Period Extended End.	03/18/08	
Interim Final Rule	11/25/08	73 FR 71730
Interim Final Rule Effective.	01/26/09	
Interim Final Rule Comment Period End.	06/01/09	

Action	Date	FR Cite
Correction .....	07/14/09	74 FR 33920
Correction .....	12/24/09	74 FR 68376
Next Action Undetermined.		

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Brian Sale, Branch Chief, Manifest & Conveyance Security Division, Cargo & Conveyance, Office of Field Operation, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Phone: 202 325–3338, Email: brian.a.sale@cbp.dhs.gov.  
RIN: 1651–AA70

**136. Implementation of the Guam–CNMI Visa Waiver Program (Section 610 Review)**

Legal Authority: Pub. L. 110–229, sec. 702

Abstract: The interim final rule amends Department of Homeland Security (DHS) regulations to implement section 702 of the Consolidated Natural Resources Act of 2008 (CNRA). This law extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a joint visa waiver program for travel to Guam and the CNMI. This rule implements section 702 of the CNRA by amending the regulations to replace the current Guam Visa Waiver Program with a new Guam–CNMI Visa Waiver Program. The amended regulations set forth the requirements for nonimmigrant visitors who seek admission for business or pleasure and solely for entry into and stay on Guam or the CNMI without a visa. This rule also establishes six ports of entry in the CNMI for purposes of administering and enforcing the Guam–CNMI Visa Waiver Program. Section 702 of the Consolidated Natural Resources Act of 2008 (CNRA), subject to a transition period, extends the immigration laws of the United States to the Commonwealth of the Northern Mariana Islands (CNMI) and provides for a visa waiver program for travel to Guam and/or the CNMI. On January 16, 2009, the Department of Homeland Security (DHS), Customs and Border Protection (CBP), issued an interim final rule in the **Federal Register** replacing the then-existing Guam Visa Waiver Program with the Guam–CNMI Visa Waiver Program and setting forth the requirements for nonimmigrant visitors seeking admission into Guam and/or the CNMI under the Guam–CNMI Visa Waiver Program. As of November 28, 2009, the Guam–CNMI Visa Waiver

Program is operational. This program allows nonimmigrant visitors from eligible countries to seek admission for business or pleasure for entry into Guam and/or the CNMI without a visa for a period of authorized stay not to exceed 45 days. This rulemaking would finalize the January 2009 interim final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/16/09	74 FR 2824
Interim Final Rule Effective.	01/16/09	
Interim Final Rule Comment Period End.	03/17/09	
Technical Amendment; Change of Implementation Date.	05/28/09	74 FR 25387
Final Action .....	To Be Determined	

Regulatory Flexibility Analysis Required: No.

Agency Contact: Neyda I. Yejo, Program Manager, Electronic System for Travel Authorization, Office of Field Operations, Department of Homeland Security, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Washington, DC 20229, Phone: 202 344–2373, Email: neyda.i.yejo@cbp.dhs.gov.  
RIN: 1651–AA77

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

U.S. Immigration and Customs Enforcement (USICE)

Proposed Rule Stage

**137. Visa Security Program Fee**

Legal Authority: 8 U.S.C. 1356

Abstract: ICE seeks to enable the expansion of the Visa Security Program (VSP) by proposing to move it to a user-fee funded model (as opposed to relying on appropriations). The VSP leverages resources in the National Capital Region (NCR) and at U.S. diplomatic posts overseas to vet and screen visa applicants; identifies and prevents the travel of those who constitute potential national security and/or public safety threats; and launches investigations into criminal and/or terrorist affiliated networks operating in the U.S. and abroad. The fees collected as a result of this rule would fund an expansion of the VSP, enabling ICE to extend visa security screening and vetting operations and investigative efforts to more visa-issuing posts overseas, and in turn, enhance the U.S. government’s

ability to prevent travel to the United States by illicit actors.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Sharon Hageman, Regulations Unit Chief, Department of Homeland Security, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Mail Stop 5006, Washington, DC 20536, *Phone:* 202 732-6960, *Email:* sharon.hageman@ice.dhs.gov.

*RIN:* 1653-AA77

**138. Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media**

*Legal Authority:* 8 U.S.C. 1101; 8 U.S.C. 1103; 8 U.S.C. 1182 and 1184

*Abstract:* DHS intends to withdraw this proposed rule. U.S. Immigration and Customs Enforcement (ICE) originally proposed modifying the period of authorized stay for certain categories of nonimmigrants traveling to the United States by eliminating the availability of “duration of status” and by providing a maximum period of authorized stay with options for extensions for each applicable visa category.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/25/20	85 FR 60256
NPRM Comment Period End.	10/26/20	
Notice of Withdrawal.	06/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Sharon Hageman, Regulations Unit Chief, Department of Homeland Security, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Mail Stop 5006, Washington, DC 20536, *Phone:* 202 732-6960, *Email:* sharon.hageman@ice.dhs.gov.

*RIN:* 1653-AA78

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

*U.S. Immigration and Customs Enforcement (USICE)*

Completed Actions

**139. Adjusting Program Fees for the Student and Exchange Visitor Program**

*Legal Authority:* 8 U.S.C. 1372(e); 8 U.S.C. 1372(g); 8 U.S.C. 1356(m); 8 U.S.C. 1356(n)

*Abstract:* DHS has determined that the proposed regulation entry should be withdrawn from the Unified Agenda. ICE intended to propose a regulation to adjust fees that the Student and Exchange Visitor Program (SEVP) charges individuals and organizations to improve compliance and enforcement related to nonimmigrant students. The SEVP fee schedule was last adjusted in a rule published on May 23, 2019.

*Timetable:*

Action	Date	FR Cite
Withdrawn .....	03/08/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Sharon Hageman, Regulations Unit Chief, Department of Homeland Security, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Mail Stop 5006, Washington, DC 20536, *Phone:* 202 732-6960, *Email:* sharon.hageman@ice.dhs.gov.

*RIN:* 1653-AA81

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

*Cybersecurity and Infrastructure Security Agency (CISA)*

Proposed Rule Stage

**140. Ammonium Nitrate Security Program**

*Legal Authority:* 6 U.S.C. 488 *et seq.*  
*Abstract:* The Cybersecurity and Infrastructure Security Agency (CISA) is proposing a rulemaking to implement the December 2007 amendment to the Homeland Security Act titled “Secure Handling of Ammonium Nitrate.” The amendment requires the Department of Homeland Security to “regulate the sale and transfer of ammonium nitrate by an ammonium nitrate facility . . . to prevent the misappropriation or use of ammonium nitrate in an act of terrorism.” CISA previously issued a Notice of Proposed Rulemaking (NPRM) on August 3, 2011. CISA is planning to issue a Supplemental Notice of Proposed Rulemaking (SNPRM).

*Timetable:*

Action	Date	FR Cite
ANPRM .....	10/29/08	73 FR 64280
ANPRM Correction.	11/05/08	73 FR 65783
ANPRM Comment Period End.	12/29/08	
NPRM .....	08/03/11	76 FR 46908
Notice of Public Meetings.	10/07/11	76 FR 62311
Notice of Public Meetings.	11/14/11	76 FR 70366
NPRM Comment Period End.	12/01/11	
Notice of Availability.	06/03/19	84 FR 25495
Notice of Availability Comment Period End.	09/03/19	
Supplemental NPRM.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Lona Saccomando, Chemical Facility of Interest (CFOI) Coordinator, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, 245 Murray Lane SW, Mail Stop 0610, Arlington, VA 20528-0610, *Phone:* 703 603-4898, *Email:* lona.saccomando@cisa.dhs.gov.

*RIN:* 1670-AA00

**DEPARTMENT OF HOMELAND SECURITY (DHS)**

*Cybersecurity and Infrastructure Security Agency (CISA)*

Long-Term Actions

**141. Chemical Facility Anti-Terrorism Standards (CFATS)**

*Legal Authority:* 6 U.S.C. 621 to 629  
*Abstract:* The Cybersecurity and Infrastructure Security Agency (CISA) previously invited public comment on an Advance Notice of Proposed Rulemaking (ANPRM) for potential revisions to the Chemical Facility Anti-Terrorism Standards (CFATS) regulations. The ANPRM provided an opportunity for the public to provide recommendations for possible program changes. Taking into consideration the comments received, the Cybersecurity and Infrastructure Security Agency (CISA) has determined to limit the scope of this rulemaking to improving Appendix A to the CFATS regulations and address concerns with release-flammable security issues. Additionally, in June 2020, CISA published a notice announcing the availability of a retrospective analysis of the data, assumptions, and methodology that were used to support the 2007 CFATS interim final rule and provided the

public an opportunity to provide comment. CISA is reviewing the comments received on the retrospective analysis and determining the next appropriate step for this rulemaking.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	08/18/14	79 FR 48693

Action	Date	FR Cite
ANPRM Comment Period End. Next Action Undetermined.	10/17/14	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Lona Saccomando, Chemical Facility of Interest (CFOI)

Coordinator, Department of Homeland Security, Cybersecurity and Infrastructure Security Agency, 245 Murray Lane SW, Mail Stop 0610, Arlington, VA 20528-0610, *Phone:* 703 603-4898, *Email:* lona.sacomando@cisa.dhs.gov.

*RIN:* 1670-AA01

[FR Doc. 2021-14871 Filed 7-29-21; 8:45 am]

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Part X

Department of the Interior

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Semiannual Regulatory Agenda

**DEPARTMENT OF THE INTERIOR**

**Office of the Secretary**

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30 CFR Chs. II and VII

36 CFR Ch. I

43 CFR Subtitle A, Chs. I and II

48 CFR Ch. 14

50 CFR Chs. I and IV

[167D0102DM; DS6CS00000; DLSN00000.00000; DX6CS25]

**Semiannual Regulatory Agenda**

**AGENCY:** Office of the Secretary, Interior.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This notice provides the semiannual agenda of Department of the Interior (Department) rules scheduled for review or development between Spring 2021 and Spring 2022. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

**ADDRESSES:** Unless otherwise indicated, all agency contacts are located at the Department of the Interior, 1849 C Street NW, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Please direct all comments and inquiries about these rules to the appropriate agency contact. Please direct general comments relating to the agenda to the Office of Executive Secretariat and Regulatory Affairs, Department of the Interior, at the address above or at (202) 208-5257.

**SUPPLEMENTARY INFORMATION:** With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have such effects. The complete Unified Agenda will be

published at [www.reginfo.gov](http://www.reginfo.gov), in a format that offers users enhanced ability to obtain information from the Agenda database. Agenda information is also available at [www.regulations.gov](http://www.regulations.gov), the government-wide website for submission of comments on proposed regulations.

In some cases, the Department has withdrawn rules that were placed on previous agendas for which there has been no publication activity or for which a proposed or interim rule was published. There is no legal significance to the omission of an item from this agenda. Withdrawal of a rule does not necessarily mean that the Department will not proceed with the rulemaking. Withdrawal allows the Department to assess the action further and determine whether rulemaking is appropriate. Following such an assessment, the Department may determine that certain rules listed as withdrawn under this agenda are appropriate for promulgation.

**Bivan Patnaik,**  
*Deputy Director, Executive Secretariat and Regulatory Affairs.*

**BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
142 .....	Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions.	1014-AA52

**BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
143 .....	Update of Regulations on Relief or Reduction in Royalty Rates .....	1014-AA50

**ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
144 .....	Risk Management, Financial Assurance and Loss Prevention .....	1082-AA02

**ASSISTANT SECRETARY FOR LAND AND MINERALS MANAGEMENT—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
145 .....	Revisions to the Requirements for Exploratory Drilling on the Arctic Outer Continental Shelf .....	1082-AA01

**UNITED STATES FISH AND WILDLIFE SERVICE—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
146 .....	Migratory Bird Hunting; 2021–22 Migratory Game Bird Hunting Regulations .....	1018-BE34
147 .....	Migratory Bird Hunting; 2022–23 Migratory Game Bird Hunting Regulations .....	1018-BF07
148 .....	Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations .....	1018-BF64



UNITED STATES FISH AND WILDLIFE SERVICE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
149 .....	Importation, Exportation and Transportation of Wildlife; Updates to the Regulations .....	1018–BF16

BUREAU OF OCEAN ENERGY MANAGEMENT—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
150 .....	Air Quality Rule (Section 610 Review) .....	1010–AE09

**DEPARTMENT OF THE INTERIOR (DOI)**

*Bureau of Safety and Environmental Enforcement (BSEE)*

Proposed Rule Stage

**142. • Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions**

*Legal Authority:* Not Yet Determined

*Abstract:* The Bureau of Safety and Environmental Enforcement (BSEE) is revising existing regulations for well control and blowout preventer systems.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	
NPRM Comment Period End.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1751, *Fax:* 703 787–1555, *Email:* [kirk.malstrom@bsee.gov](mailto:kirk.malstrom@bsee.gov).

*RIN:* 1014–AA52

**DEPARTMENT OF THE INTERIOR (DOI)**

*Bureau of Safety and Environmental Enforcement (BSEE)*

Completed Actions

**143. Update of Regulations on Relief or Reduction in Royalty Rates**

*Legal Authority:* 43 U.S.C. 1337(a)(3)(A); 43 U.S.C. 1337(a)(3)(B)

*Abstract:* BSEE reviewed its current regulations pertaining to royalty relief and is no longer considering the previously proposed modifications.

*Timetable:*

Action	Date	FR Cite
Withdrawn .....	03/19/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kirk Malstrom, Chief, Regulations and Standards Branch, Department of the Interior, Bureau of Safety and Environmental Enforcement, 45600 Woodland Road, Sterling, VA 20166, *Phone:* 703 787–1751 *Fax:* 703 787–1555, *Email:* [kirk.malstrom@bsee.gov](mailto:kirk.malstrom@bsee.gov).

*RIN:* 1014–AA50

**DEPARTMENT OF THE INTERIOR (DOI)**

*Assistant Secretary for Land and Minerals Management (ASLM)*

Final Rule Stage

**144. Risk Management, Financial Assurance and Loss Prevention**

*Legal Authority:* 43 U.S.C. 1334(a)  
*Abstract:* This joint rulemaking, between the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE), will revise policies for oil and gas operations on the Outer Continental Shelf (OCS) concerning operator compliance with financial and performance obligations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/16/20	85 FR 65904
NPRM Comment Period End.	12/15/20	
Final Action .....	10/00/21	
Final Action Effective.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Steven Mullen, Management Analyst, Department of the Interior, U.S. Department of the Interior, Office of the Secretary, 1849 C Street NW, Room 7321, Washington, DC 20240, *Phone:* 202 213–6400, *Email:* [steven\\_mullen@ios.doi.gov](mailto:steven_mullen@ios.doi.gov).

*RIN:* 1082–AA02

**DEPARTMENT OF THE INTERIOR (DOI)**

*Assistant Secretary for Land and Minerals Management (ASLM)*

Completed Actions

**145. Revisions to the Requirement for Exploratory Drilling on the Arctic Outer Continental Shelf**

*Legal Authority:* 43 U.S.C. 1334(a); 33 U.S.C. 2701 ch. 40

*Abstract:* This joint rulemaking, between the Bureau of Ocean Energy Management (BOEM) and Bureau of Safety and Environmental Enforcement (BSEE), is withdrawn. BSEE and BOEM reviewed the Arctic-specific regulations for exploratory drilling and are no longer considering the previously proposed modifications.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/09/20	85 FR 79266
NPRM Comment Period End.	02/08/21	
NPRM Comment Period Re-opened.	02/10/21	86 FR 8878
NPRM Comment Period Re-opened End.	04/09/21	
Withdrawn .....	04/13/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Steven Mullen, Management Analyst, Department of the Interior, U.S. Department of the Interior, Office of the Secretary, 1849 C Street NW, Room 7321, Washington, DC 20240, *Phone:* 202 213–6400, *Email:* [steven\\_mullen@ios.doi.gov](mailto:steven_mullen@ios.doi.gov).

*RIN:* 1082–AA01

**DEPARTMENT OF THE INTERIOR (DOI)**

*United States Fish and Wildlife Service (FWS)*

Proposed Rule Stage

**146. Migratory Bird Hunting; 2021–22 Migratory Game Bird Hunting Regulations**

*Legal Authority:* 16 U.S.C. 703 to 712; 16 U.S.C. 742a–j

*Abstract:* The U.S. Fish and Wildlife Service proposes to establish annual hunting regulations for certain migratory game birds for the 2021–22 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee and Flyway Council meetings, describes the proposed regulatory alternatives for the 2021–22 duck hunting seasons, and requests proposals from Indian Tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/09/20	85 FR 64097
NPRM Comment Period End.	11/09/20	
NPRM—Proposed Frameworks.	02/22/21	86 FR 10622
NPRM Comment Period End.	03/24/21	
NPRM—Proposed Tribal Regulations.	05/04/21	86 FR 23641
Final Action—Final Frameworks.	05/00/21	
NPRM Comment Period End.	06/03/21	
Final Action—Final Tribal Regulations.	06/00/21	
Final Action—Season Selections.	06/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jerome Ford, Assistant Director—Migratory Bird Program, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS–MB, Falls Church, VA 22041–3803, *Phone:* 703 358–1050, *Email:* jerome\_ford@fws.gov.

*RIN:* 1018–BE34

**147. Migratory Bird Hunting; 2022–23 Migratory Game Bird Hunting Regulations**

*Legal Authority:* 16 U.S.C. 703 to 712; 16 U.S.C. 742a–j

*Abstract:* The U.S. Fish and Wildlife Service proposes to establish annual hunting regulations for certain migratory game birds for the 2022–23 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. This proposed rule provides the regulatory schedule, announces the Service Migratory Bird Regulations Committee and Flyway Council meetings, describes the proposed regulatory alternatives for the 2022–23 duck hunting seasons, and requests proposals from Indian Tribes that wish to establish special migratory game bird hunting regulations on Federal Indian reservations and ceded lands.

*Timetable:*

Action	Date	FR Cite
Notice of Meeting	03/25/21	86 FR 15957
Meeting .....	04/06/21	
NPRM .....	06/00/21	
NPRM—Supplemental.	07/00/21	
NPRM—Proposed Frameworks.	12/00/21	
NPRM—Proposed Tribal Regulations.	01/00/22	
Final Action—Final Frameworks.	02/00/22	
Final Action—Final Tribal Regulations.	04/00/22	
Final Action—Season Selections.	06/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jerome Ford, Assistant Director—Migratory Bird Program, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS–MB, Falls Church, VA 22041–3803, *Phone:* 703 358–1050, *Email:* jerome\_ford@fws.gov. *RIN:* 1018–BF07

**148. • Migratory Bird Hunting; 2023–24 Migratory Game Bird Hunting Regulations**

*Legal Authority:* 16 U.S.C. 703 *et seq.*; 16 U.S.C. 742a–j

*Abstract:* This rule would establish annual hunting regulations for certain migratory game birds. The U.S. Fish and Wildlife Service annually prescribes the frameworks, or outside limits, for season lengths, bag limits, and areas for migratory game bird hunting. After these frameworks are established, States

may select season dates, bag limits, and other regulatory options for their hunting seasons.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Dr. Eric L. Kershner, Chief, Branch of Conservation, Permits, and Regulations, Department of the Interior, United States Fish and Wildlife Service, 5275 Leesburg Pike, MS: MB, Falls Church, VA 22041, *Phone:* 703 358–2376, *Fax:* 703 358–2217, *Email:* eric\_kershner@fws.gov. *RIN:* 1018–BF64

**DEPARTMENT OF THE INTERIOR (DOI)**

*United States Fish and Wildlife Service (FWS)*

Long-Term Actions

**149. Importation, Exportation and Transportation of Wildlife; Updates to the Regulations**

*Legal Authority:* 16 U.S.C. 668; 16 U.S.C. 704; 16 U.S.C. 712; 16 U.S.C. 1382; 16 U.S.C. 1538(d)–(f); 16 U.S.C. 1540(f); 16 U.S.C. 33 8(d)–(f); 16 U.S.C. 3371 to 3378; 16 U.S.C. 4223 to 4244; 16 U.S.C. 4901 to 4916; 18 U.S.C. 42; 31 U.S.C. 42; 31 U.S.C. 9701

*Abstract:* We propose to rewrite our regulations governing the importation and exportation of wildlife to make these regulations easier to understand. In addition, we propose to revise the inspection fees associated with the importation and exportation of wildlife and to update the list of species that qualify as domesticated species, for which U.S. Fish and Wildlife inspection and clearance is not required. The current inspection fees have been in effect since 2012. The establishment of these fees is consistent with the Independent Offices Appropriations Act of 1952 and OMB Circular No. A–25, which provide that services provided by Federal agencies are to be self-sustaining to the extent possible and that fees assessed should be sufficient to recover the full cost to the Federal Government of providing the service and are based on market prices.

*Timetable:*

Action	Date	FR Cite
NPRM .....	To Be Determined	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Edward Grace,  
Assistant Director, Office of Law  
Enforcement, Department of the Interior,  
United States Fish and Wildlife Service,  
5275 Leesburg Pike, MS: LEO, Falls  
Church, VA 22041–3803, *Phone:* 703  
358–1949, *Fax:* 703 358–1947, *Email:*  
*edward\_grace@fws.gov.*

*RIN:* 1018–BF16

**DEPARTMENT OF THE INTERIOR (DOI)**

*Bureau of Ocean Energy Management  
(BOEM)*

Long-Term Actions

**150. • Air Quality Rule (Section 610  
Review)**

*Legal Authority:* OCSLA sec. 5(a)(8)

*Abstract:* The Bureau of Ocean Energy  
Management (BOEM) identified  
opportunities for clarifying air quality  
regulations.

*Timetable:*

Action	Date	FR Cite
NPRM .....		To Be Determined

*Regulatory Flexibility Analysis  
Required:* Yes.

*Agency Contact:* Deanna Meyer–  
Pietruszka, Chief, OPRA, Department of  
the Interior, Bureau of Ocean Energy  
Management, 1849 C Street NW,  
Washington, DC 20240, *Phone:* 202 208–  
6352, *Email:* *deanna.meyer-pietruszka@  
boem.gov.*

*RIN:* 1010–AE09

[FR Doc. 2021–14872 Filed 7–29–21; 8:45 am]

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Part XI

Department of Labor

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Semiannual Regulatory Agenda

**DEPARTMENT OF LABOR**

**Office of the Secretary**

**20 CFR Chs. I, IV, V, VI, VII, and IX**

**29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV**

**30 CFR Ch. I**

**41 CFR Ch. 60**

**48 CFR Ch. 29**

**Semiannual Agenda of Regulations**

**AGENCY:** Office of the Secretary, Labor.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** The internet has become the means for disseminating the entirety of the Department of Labor’s semiannual regulatory agenda. However, the Regulatory Flexibility Act requires publication of a regulatory flexibility agenda in the **Federal Register**. This

**Federal Register** Notice contains the regulatory flexibility agenda.

**FOR FURTHER INFORMATION CONTACT:** Laura M. Dawkins, Director, Office of Regulatory and Programmatic Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW, Room S–2312, Washington, DC 20210; (202) 693–5959.

**Note:** Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

**SUPPLEMENTARY INFORMATION:** Executive Order 12866 requires the semiannual publication of an agenda of regulations that contains a listing of all the regulations the Department of Labor expects to have under active consideration for promulgation, proposal, or review during the coming one-year period. The entirety of the Department’s semiannual agenda is available online at [www.reginfo.gov](http://www.reginfo.gov).

The Regulatory Flexibility Act (5 U.S.C. 602) requires DOL to publish in the **Federal Register** a regulatory

flexibility agenda. The Department’s Regulatory Flexibility Agenda, published with this notice, includes only those rules on its semiannual agenda that are likely to have a significant economic impact on a substantial number of small entities; and those rules identified for periodic review in keeping with the requirements of section 610 of the Regulatory Flexibility Act. Thus, the regulatory flexibility agenda is a subset of the Department’s semiannual regulatory agenda. The Department’s Regulatory Flexibility Agenda does not include section 610 items at this time.

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved and are invited to participate in and comment on the review or development of the regulations listed on the Department’s agenda.

**Martin J. Walsh,**  
*Secretary of Labor.*

**WAGE AND HOUR DIVISION—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
151 .....	Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees.	1235-AA39

**WAGE AND HOUR DIVISION—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
152 .....	Independent Contractor Status Under the Fair Labor Standards Act .....	1235-AA34

**EMPLOYMENT AND TRAINING ADMINISTRATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
153 .....	Temporary Employment of H-2B Foreign Workers in Certain Itinerant Occupations in the United States ...	1205-AB93

**EMPLOYEE BENEFITS SECURITY ADMINISTRATION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
154 .....	Requirements Related to Surprise Billing, Part 1 .....	1210-AB99

**EMPLOYEE BENEFITS SECURITY ADMINISTRATION—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
155 .....	Fiduciary Duties Regarding Proxy Voting and Shareholder Rights .....	1210-AB91
156 .....	Financial Factors in Selecting Plan Investments .....	1210-AB95

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
157 .....	Process Safety Management and Prevention of Major Chemical Accidents .....	1218-AC82
158 .....	Emergency Response .....	1218-AC91
159 .....	Prevention of Workplace Violence in Health Care and Social Assistance .....	1218-AD08

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
160 .....	Infectious Diseases .....	1218-AC46
161 .....	Communication Tower Safety .....	1218-AC90
162 .....	Tree Care Standard .....	1218-AD04

**DEPARTMENT OF LABOR (DOL)**

Wage and Hour Division (WHD)

Long-Term Actions

**151. • Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees**

*Legal Authority:* 29 U.S.C. 201 *et seq.*; 29 U.S.C. 213

*Abstract:* WHD is reviewing the regulations at 29 CFR 541, which implement the exemption of bona fide executive, administrative, and professional employees from the Fair Labor Standards Act’s minimum wage and overtime requirements.

*Timetable:*

Action	Date	FR Cite
Next Action Undetermined.	To Be	Determined

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amy DeBisschop, Director of the Division of Regulations, Legislation and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S-3502, Washington, DC 20210, *Phone:* 202 693-0406.

*RIN:* 1235-AA39

**DEPARTMENT OF LABOR (DOL)**

Wage and Hour Division (WHD)

Completed Actions

**152. Independent Contractor Status Under the Fair Labor Standards Act**

*Legal Authority:* Fair Labor Standards Act, 29 U.S.C. 201 *et seq.*

*Abstract:* The Department of Labor issued a final rule, with an effective date of March 8, 2021, revising its

interpretation of is proposing a regulation for determining independent contractor status under the Fair Labor Standards Act. In accordance with the Presidential directive as expressed in the memorandum of January 20, 2021, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” the Department issued a Notice of Proposed Rulemaking to delay the effective date of the rule until May 7, 2021, to review and consider the questions of law, policy, and fact raised by the rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/25/20	85 FR 60600
NPRM Comment Period End.	10/26/20	
Final Rule .....	01/07/21	86 FR 1168
Proposed Delay of Final Rule Effective Date.	02/05/21	86 FR 8326
Proposed Delay of Final Rule Effective Date Comment Period End.	02/24/21	
Final Rule Delay of Effective Date.	03/04/21	86 FR 12535
Final Rule Delay of Effective Date Effective.	05/07/21	
NPRM; Proposal to Withdraw.	03/12/21	86 FR 14027
NPRM; Proposal to Withdraw Comment Period End.	04/12/21	
Final Rule; Withdrawal.	05/06/21	86 FR 24303

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amy DeBisschop, Director of the Division of Regulations, Legislation and Interpretation, Department of Labor, Wage and Hour Division, 200 Constitution Avenue NW, FP Building, Room S-3502,

Washington, DC 20210, *Phone:* 202 693-0406.

*RIN:* 1235-AA34

**DEPARTMENT OF LABOR (DOL)**

Employment and Training Administration (ETA)

Proposed Rule Stage

**153. Temporary Employment of H-2B Foreign Workers in Certain Itinerant Occupations in the United States**

*Legal Authority:* 8 U.S.C. 1184; 8 U.S.C. 1103

*Abstract:* The United States Department of Labor’s (DOL) Employment and Training Administration and Wage and Hour Division, and the United States Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services, are jointly proposing to amend H-2B non-immigrant visa program regulations at 20 CFR part 655, subpart A, and 8 CFR 214. The Notice of Proposed Rulemaking (NPRM) would establish standards and procedures for employers seeking to hire foreign temporary nonagricultural workers for certain itinerant job opportunities, including entertainers and carnivals and utility vegetation management.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Brian Pasternak, Administrator, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Office of Foreign Labor Certification; Room N-5311, FP Building, Washington, DC 20210,

Phone: 202 693-8200, Email: [pasternak.brian@dol.gov](mailto:pasternak.brian@dol.gov).  
RIN: 1205-AB93

**DEPARTMENT OF LABOR (DOL)**

Employee Benefits Security Administration (EBSA)

Final Rule Stage

**154. • Requirements Related to Surprise Billing, Part 1**

*Legal Authority:* Pub. L. 116-260, Division BB, Title I and Title II  
*Abstract:* This interim final rule with comment would implement certain protections against surprise medical bills under the No Surprises Act, including requirements on group health plans, issuers offering group or individual health insurance coverage, providers, facilities, and providers of air ambulance services.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Amber Rivers, Director, Office of Health Plan Standards and Compliance Assistance, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, Washington, DC 20210, *Phone:* 202 693-8335.  
*RIN:* 1210-AB99

**DEPARTMENT OF LABOR (DOL)**

Employee Benefits Security Administration (EBSA)

Completed Actions

**155. • Fiduciary Duties Regarding Proxy Voting and Shareholder Rights**

*Legal Authority:* 29 U.S.C. 1102 to 1104; 29 U.S.C. 1135  
*Abstract:* This regulatory action would address the application of the prudence and exclusive purpose duties under the Employee Retirement Income Security Act of 1974 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.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/04/20	85 FR 55219
NPRM Comment Period End.	10/05/20	

Action	Date	FR Cite
Final Rule .....	12/16/20	85 FR 81658
Final Rule Effective.	01/15/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jeffrey J. Turner, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N-5655, Washington, DC 20210, *Phone:* 202 693-8500.

*RIN:* 1210-AB91

**156. Financial Factors in Selecting Plan Investments**

*Legal Authority:* 29 U.S.C. 1102 to 1104; 29 U.S.C. 1135

*Abstract:* This regulatory action supersedes and replaces the Department of Labor’s prior Interpretive Bulletins on the application of the fiduciary rules in the Employee Retirement Income Security Act of 1974 (ERISA) to pension plan investments selected because they may further collateral economic or social benefits in addition to their investment returns. The rule protects participant and beneficiary interests by requiring that plan fiduciaries select investments and investment courses of action based solely on financial considerations relevant to the risk-adjusted economic value of a particular investment or investment course of action.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/30/20	85 FR 39113
NPRM Comment Period End.	07/30/20	
Final Rule .....	11/13/20	85 FR 72846
Final Rule Effective.	01/12/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jeffrey J. Turner, Deputy Director, Office of Regulations and Interpretations, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW, FP Building, Room N-5655, Washington, DC 20210, *Phone:* 202 693-8500.

*RIN:* 1210-AB95

**DEPARTMENT OF LABOR (DOL)**

Occupational Safety and Health Administration (OSHA)

Prerule Stage

**157. Process Safety Management and Prevention of Major Chemical Accidents**

*Legal Authority:* 29 U.S.C. 655; 29 U.S.C. 657

*Abstract:* The Occupational Safety and Health Administration (OSHA) issued a Request for Information (RFI) on December 9, 2013 (78 FR 73756). The RFI identified issues related to modernization of the Process Safety Management standard and related standards necessary to meet the goal of preventing major chemical accidents.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	12/09/13	78 FR 73756
RFI Comment Period Extended.	03/07/14	79 FR 13006
RFI Comment Period Extended End.	03/31/14	
Initiate SBREFA ..	06/08/15	
SBREFA Report Completed.	08/01/16	
Stakeholder Meeting.	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Andrew Levinson, Deputy Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-3718, Washington, DC 20210, *Phone:* 202 693-1950, *Email:* [levinson.andrew@dol.gov](mailto:levinson.andrew@dol.gov).

*RIN:* 1218-AC82

**158. Emergency Response**

*Legal Authority:* 29 U.S.C. 655(b); 29 U.S.C. 657; 5 U.S.C. 609

*Abstract:* OSHA currently regulates aspects of emergency response and preparedness; some of these standards were promulgated decades ago, and none were designed as comprehensive emergency response standards. Consequently, they do not address the full range of hazards or concerns currently facing emergency responders, and other workers providing skilled support, nor do they reflect major changes in performance specifications for protective clothing and equipment. The agency acknowledged that current OSHA standards also do not reflect all the major developments in safety and health practices that have already been



accepted by the emergency response community and incorporated into industry consensus standards. OSHA is considering updating these standards with information gathered through an RFI and public meetings.

*Timetable:*

Action	Date	FR Cite
Stakeholder Meetings.	07/30/14	
Convene NACOSH Workgroup.	09/09/15	
NACOSH Review of Workgroup Report.	12/14/16	
Initiate SBREFA ..	05/00/21	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Andrew Levinson, Deputy Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-3718, Washington, DC 20210, *Phone:* 202 693-1950, *Email:* levinson.andrew@dol.gov.

*RIN:* 1218-AC91

**159. Prevention of Workplace Violence in Health Care and Social Assistance**

*Legal Authority:* 29 U.S.C. 655(b); 5 U.S.C. 609

*Abstract:* The Request for Information (RFI) (published on December 7, 2016 81 FR 88147)) provides OSHA's history with the issue of workplace violence in health care and social assistance, including a discussion of the Guidelines that were initially published in 1996, a 2014 update to the Guidelines, the agency's use of 5(a)(1) in enforcement cases in health care. The RFI solicited information primarily from health care employers, workers and other subject matter experts on impacts of violence, prevention strategies, and other information that will be useful to the agency. OSHA was petitioned for a standard preventing workplace violence in health care by a broad coalition of labor unions, and in a separate petition by the National Nurses United. On January 10, 2017, OSHA granted the petitions.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	12/07/16	81 FR 88147
RFI Comment Period End.	04/06/17	
Initiate SBREFA ..	12/00/21	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Andrew Levinson, Deputy Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-3718, Washington, DC 20210, *Phone:* 202 693-1950, *Email:* levinson.andrew@dol.gov.

*RIN:* 1218-AD08

**DEPARTMENT OF LABOR (DOL)**

*Occupational Safety and Health Administration (OSHA)*

Proposed Rule Stage

**160. Infectious Diseases**

*Legal Authority:* 5 U.S.C. 533; 29 U.S.C. 657 and 658; 29 U.S.C. 660; 29 U.S.C. 666; 29 U.S.C. 669; 29 U.S.C. 673

*Abstract:* Employees in health care and other high-risk environments face long-standing infectious disease hazards such as tuberculosis (TB), varicella disease (chickenpox, shingles), and measles, as well as new and emerging infectious disease threats, such as Severe Acute Respiratory Syndrome (SARS), the 2019 Novel Coronavirus (COVID-19), and pandemic influenza. Health care workers and workers in related occupations, or who are exposed in other high-risk environments, are at increased risk of contracting TB, SARS, Methicillin-Resistant Staphylococcus Aureus (MRSA), COVID-19, and other infectious diseases that can be transmitted through a variety of exposure routes. OSHA is examining regulatory alternatives for control measures to protect employees from infectious disease exposures to pathogens that can cause significant disease. Workplaces where such control measures might be necessary include: health care, emergency response, correctional facilities, homeless shelters, drug treatment programs, and other occupational settings where employees can be at increased risk of exposure to potentially infectious people. A standard could also apply to laboratories, which handle materials that may be a source of pathogens, and to pathologists, coroners' offices, medical examiners, and mortuaries.

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	05/06/10	75 FR 24835
RFI Comment Period End.	08/04/10	
Analyze Comments.	12/30/10	

Action	Date	FR Cite
Stakeholder Meetings.	07/05/11	76 FR 39041
Initiate SBREFA ..	06/04/14	
Complete SBREFA.	12/22/14	
NPRM .....	12/00/21	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Andrew Levinson, Deputy Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-3718, Washington, DC 20210, *Phone:* 202 693-1950, *Email:* levinson.andrew@dol.gov.

*RIN:* 1218-AC46

**161. Communication Tower Safety**

*Legal Authority:* 29 U.S.C. 655(b); 5 U.S.C. 609

*Abstract:* While the number of employees engaged in the communication tower industry remains small, the fatality rate is very high. Over the past 20 years, this industry has experienced an average fatality rate that greatly exceeds that of the construction industry. Due to recent FCC spectrum auctions and innovations in cellular technology, there will be a very high level of construction activity taking place on communication towers over the next few years. A similar increase in the number of construction projects needed to support cellular phone coverage triggered a spike in fatality and injury rates years ago. Based on information collected from an April 2016 Request for Information (RFI), OSHA concluded that current OSHA requirements such as those for fall protection and personnel hoisting, may not adequately cover all hazards of communication tower construction and maintenance activities. OSHA will use information collected from a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel to identify effective work practices and advances in engineering technology that would best address industry safety and health concerns. The Panel carefully considered the issue of the expansion of the rule beyond just communication towers. OSHA will continue to consider also covering structures that have telecommunications equipment on or attached to them (e.g., buildings, rooftops, water towers, billboards).

*Timetable:*

Action	Date	FR Cite
Request for Information (RFI).	04/15/15	80 FR 20185

Action	Date	FR Cite
RFI Comment Period End.	06/15/15	
Initiate SBREFA ..	01/04/17	
Initiate SBREFA ..	05/31/18	
Complete SBREFA.	10/11/18	
NPRM .....	03/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Scott Ketcham, Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, Room N-3468, FP Building, Washington, DC 20210, *Phone:* 202 693-2020, *Fax:* 202 693-1689, *Email:* ketcham.scott@dol.gov.

*RIN:* 1218-AC90

**162. Tree Care Standard**

*Legal Authority:* Not Yet Determined  
*Abstract:* There is no OSHA standard for tree care operations; the agency currently applies a patchwork of standards to address the serious hazards in this industry. The tree care industry previously petitioned the agency for rulemaking and OSHA issued an ANPRM (September 2008). OSHA completed a Small Business Regulatory Enforcement Fairness Act (SBREFA) panel in May 2020, collecting information from affected small entities on a potential standard, including the scope of the standard, effective work practices, and arboricultural specific uses of equipment to guide OSHA in developing a rule that would best address industry safety and health concerns. Tree care continues to be a high-hazard industry.

*Timetable:*

Action	Date	FR Cite
Stakeholder Meeting.	07/13/16	
Initiate SBREFA ..	01/10/20	
Complete SBREFA.	05/22/20	
NPRM .....	04/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Andrew Levinson, Deputy Director, Directorate of Standards and Guidance, Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue NW, FP Building, Room N-3718, Washington, DC 20210, *Phone:* 202 693-1950, *Email:* levinson.andrew@dol.gov.

*RIN:* 1218-AD04

[FR Doc. 2021-14873 Filed 7-29-21; 8:45 am]

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Part XII

Department of Transportation

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Semiannual Regulatory Agenda

**DEPARTMENT OF TRANSPORTATION****Office of the Secretary**

14 CFR Chs. I–III

23 CFR Chs. I–III

33 CFR Chs. I and IV

46 CFR Chs. I–III

48 CFR Ch. 12

49 CFR Subtitle A, Chs. I–VI, and Chs. X–XII

[DOT–OST–1999–5129]

**Department Regulatory and Deregulatory Agenda; Semiannual Summary****AGENCY:** Office of the Secretary, DOT.**ACTION:** Unified Agenda of Federal Regulatory and Deregulatory Actions (Regulatory Agenda).

**SUMMARY:** The Regulatory and Deregulatory Agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. The intent of the Agenda is to provide the public with information about the Department of Transportation's regulatory activity planned for the next 12 months. It is expected that this information will enable the public to participate more effectively in the Department's regulatory process. The public is also invited to submit comments on any aspect of this Agenda.

**FOR FURTHER INFORMATION CONTACT:****General**

You should direct all comments and inquiries on the Agenda in general to Daniel Cohen, Assistant General Counsel for Regulation, Office of General Counsel, Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (202) 366–4702.

**Specific**

You should direct all comments and inquiries on items in the Agenda to the individual listed for the regulation or the general rulemaking contact person for the operating administration in appendix B.

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Appendix C—Public Rulemaking Dockets  
Appendix D—Review Plans for Section 610 and Other Requirements

**SUPPLEMENTARY INFORMATION:****Background**

The U.S. Department of Transportation (Department or DOT) issues regulations for the primary purpose of ensuring the United States transportation system is the safest and most efficient in the world. In designing these regulations, the Department seeks to address the urgent challenges facing the Nation. These challenges include the coronavirus disease 2019 (COVID–19) pandemic, economic recovery, racial justice, and climate change.

To help the Department achieve its goals and in accordance with Executive Order (E.O.) 12866, “Regulatory Planning and Review,” (58 FR 51735; Oct. 4, 1993), the Department prepares a semiannual Agenda. The Agenda summarizes all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected to begin during the next 12 months or for which action has been completed since the publication of the last Agenda in December 2020.

In addition, this Agenda was prepared in accordance with two executive orders issued by the President, which direct agencies to utilize all available regulatory tools to address current national challenges. On January 20, 2021, the President signed Executive Order 13992, Revocation of Certain Executive Orders Concerning Federal Regulation. This Executive Order directs Federal agencies to promptly take steps to rescind any orders, rules, regulations, guidelines, or policies that would hamper the agencies' flexibility to use robust regulatory action to address national priorities. On January 20, the President also issued Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis. This Executive Order directs Federal agencies to review all regulatory actions issued in the previous Administration and revise or rescind any of those actions that do not adequately respond to climate change, protect the environment, advance environmental justice, or improve public health. Section 2(ii) of the Executive Order specifically requires the Department of Transportation to review by April 2021

“The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program,” 84 FR 51310 (September 27, 2019). This section of the Executive Order also requires the Department to review by July 2021 “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks,” 85 FR 24174 (April 30, 2020). The Secretary of Transportation has also directed NHTSA to review these fuel economy rules.

In response to these Executive Orders, the Department is currently revising regulations and orders governing its regulatory process to ensure that it has the maximum flexibility necessary to quickly respond to the urgent challenges facing our Nation. The Department is also in the process of reviewing the fuel economy rules identified in Executive Order 13990, and as directed by the Secretary, anticipates moving expeditiously to revise the rules to ensure that our vehicle emission standards fully respond to climate change, as well as protect the environment and public health. In addition to the fuel economy rules, the Department is also reviewing all rules to see whether they need to be revised or rescinded to address the issues identified in Executive Order 13990.

In addition to the pressing national concerns discussed above, the Department's regulatory activities are directed toward the fundamental principle of protecting public safety. Safety is our highest priority; the Department remains focused on managing safety risks and ensuring that the United States has the safest transportation system in the world. Our planned regulatory actions reflect a careful balance that emphasizes the Department's robust response to the challenges facing our Nation while at the same time maintaining a safe, reliable, and sustainable transportation system that boosts prosperity and enhances the quality of life of all Americans.

The Department is also providing rapid response and emergency review of legal and operational challenges presented by COVID–19 within the transportation network. Since the beginning of this Administration, our efforts have focused on ensuring compliance with the mask requirements issued by the Centers for Disease Control and Prevention and the Transportation Security Administration. These requirements will help reduce the spread of the COVID–19 disease within the transportation sector and among the traveling public. DOT is also addressing regulatory compliance made

impracticable by the COVID-19 public health emergency due to office closures, personnel shortages, and other restrictions.

### Explanation of Information in the Agenda

An Office of Management and Budget memorandum, dated February 17, 2021, establishes the format for this Agenda.

First, the Agenda is divided by initiating offices. Then the Agenda is divided into five categories: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; (4) long-term actions; and (5) completed actions. For each entry, the Agenda provides the following information: (1) Its “significance”; (2) a short, descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action (e.g., NPRM, final rule); (6) an abstract; (7) a timetable, including the earliest expected date for when a rulemaking document may publish; (8) whether the rulemaking will affect small entities and/or levels of Government and, if so, which categories; (9) whether a Regulatory Flexibility Act (RFA) analysis is required (for rules that would have a significant economic impact on a substantial number of small entities); (10) a listing of any analyses an office will prepare or has prepared for the action (with minor exceptions, DOT requires an economic analysis for all its rulemakings); (11) an agency contact office or official who can provide further information; (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the Agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and (15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act.

For nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration’s Airspace Rules), to keep those requirements operationally current, we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the “Timetable” column, we use abbreviations to indicate the documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and

NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have decided to issue a document; it is the earliest date on which a rulemaking document may publish. In addition, these dates are based on current schedules. Information received after the issuance of this Agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (•) preceding an entry indicates that the entry appears in the Agenda for the first time.

The internet is the basic means for disseminating the Unified Agenda. The complete Unified Agenda is available online at [www.reginfo.gov](http://www.reginfo.gov) in a format that offers users a greatly enhanced ability to obtain information from the Agenda database. However, a portion of the Agenda is published in the **Federal Register** because the Regulatory Flexibility Act (5 U.S.C. 602) mandates publication for the regulatory flexibility agenda. Accordingly, DOT’s printed Agenda entries include only:

1. The agency’s Agenda preamble;
2. Rules that are in the agency’s regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact on a substantial number of small entities; and
3. Any rules that the agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act’s Agenda requirements. These elements are: Sequence Number; Title; Section 610 Review, if applicable; Legal Authority; Abstract; Timetable; Regulatory Flexibility Analysis Required; Agency Contact; and Regulation Identifier Number (RIN). Additional information (for detailed list, see section heading “Explanation of Information on the Agenda”) on these entries is available in the Unified Agenda published on the internet.

### Request for Comments

#### General

DOT’s Agenda is intended primarily for the use of the public. Since its inception, the Department has made modifications and refinements that provide the public with more helpful information, as well as making the

Agenda easier to use. We would like you, the public, to make suggestions or comments on how the Agenda could be further improved.

#### Regulatory Flexibility Act

The Department is interested in obtaining information on requirements that have a “significant economic impact on a substantial number of small entities” and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to the Department, along with your explanation of why they should be reviewed.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (sec. 610 Review) appears at the end of the title for these reviews. Please see appendix D for the Department’s section 610 review plans.

#### Consultation With State, Local, and Tribal Governments

Executive Orders 13132 and 13175 require the Department to develop an account process to ensure “meaningful and timely input” by State, local, and tribal officials in the development of regulatory policies that have federalism or tribal implications. These policies are defined in the Executive orders to include regulations that have “substantial direct effects” on States or Indian tribes, on the relationship between the Federal Government and them, or on the distribution of power and responsibilities between the Federal Government and various levels of Government or Indian tribes. Therefore, we encourage State and local Governments or Indian tribes to provide us with information about how the Department’s rulemakings impact them.

#### Purpose

The Department is publishing this regulatory Agenda in the **Federal Register** to share with interested members of the public the Department’s preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department’s regulatory activity and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department about any specific item on the Agenda. Regulatory action, in addition to the items listed, is not precluded.

Dated: March 17, 2021.

**Peter Paul Montgomery Buttigieg,**  
*Secretary of Transportation.*

## Appendix A—Instructions for Obtaining Copies of Regulatory Documents

To obtain a copy of a specific regulatory document in the Agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most, if not all, such documents, including the Semiannual Regulatory Agenda, are available through the internet at <http://www.regulations.gov>. See appendix C for more information.

## Appendix B—General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

FAA—Brandon Roberts, Executive Director, Office of Rulemaking, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267-9677.

FHWA—Jennifer Outhouse, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-0761.

FMCSA—Steven J. LaFreniere, Regulatory Ombudsman, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-0596.

NHTSA—Dee Fujita, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-2992.

FRA—Amanda Maizel, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 493-8014.

FTA—Chaya Koffman, Office of Chief Counsel, 1200 New Jersey Avenue E, Washington, DC 20590; telephone (202) 366-3101.

GLS—Carrie Mann Lavigne, Chief Counsel, 180 Andrews Street, Massena, NY 13662; telephone (315) 764-3200.

PHMSA—Robert Ross, Office of Chief Counsel, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 768-1365.

MARAD—Gabriel Chavez, Office of Chief Counsel, Maritime Administration, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-2621.

OST—Daniel Cohen, Assistant General Counsel for Regulation, 1200 New Jersey Avenue SE, Washington, DC 20590; telephone (202) 366-4723.

## Appendix C—Public Rulemaking Dockets

All comments submitted via the internet are submitted through the Federal Docket Management System (FDMS) at the following address: <http://www.regulations.gov>. The FDMS allows the public to search, view, download, and comment on all Federal agency rulemaking documents in one central online system. The above referenced internet

address also allows the public to sign up to receive notification when certain documents are placed in the dockets.

The public also may review regulatory dockets at or deliver comments on proposed rulemakings to the Dockets Office at 1200 New Jersey Avenue SE, Room W12-140, Washington, DC 20590, 1-800-647-5527. Working Hours: 9:00 a.m. to 5:00 p.m.

## Appendix D—Review Plans for Section 610 and Other Requirements

### Part I—The Plan

#### General

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our Regulatory Policies and Procedures require such reviews. DOT also has responsibilities under Executive Order 12866, “Regulatory Planning and Review,” Executive Order 13563, “Improving Regulation and Regulatory Review,” 76 FR 3821 (January 18, 2011), and section 610 of the Regulatory Flexibility Act to conduct such reviews. We are committed to continuing our reviews of existing rules and, if it is needed, will initiate rulemaking actions based on these reviews. The Department began a new 10-year review cycle with the Fall 2018 Agenda.

#### Section 610 Review Plan

Section 610 requires that we conduct reviews of rules that: (1) Have been published within the last 10 years; and (2) have a “significant economic impact on a substantial number of small entities” (SEISNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. The Office of the Secretary and each of the Department’s Operating Administrations have a 10-year review plan. These reviews comply with section 610 of the Regulatory Flexibility Act.

#### Changes to the Review Plan

Some reviews may be conducted earlier than scheduled. For example, to the extent resources permit, the plain language reviews will be conducted more quickly. Other events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a presidentially mandated review. If there is any change to the review plan, we will note the change in the following Agenda. For any section 610 review, we will provide the required notice prior to the review.

### Part II—The Review Process

#### The Analysis

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the Agenda. Most agencies provide historical information about the reviews that have occurred over the past 10 years. Thus, Year

1 (2018) begins in the fall of 2018 and ends in the fall of 2019; Year 2 (2019) begins in the fall of 2019 and ends in the fall of 2020, and so on. The exception to this general rule is the FAA, which provides information about the reviews it completed for this year and prospective information about the reviews it intends to complete in the next 10 years. Thus, for FAA Year 1 (2017) begins in the fall of 2017 and ends in the fall of 2018; Year 2 (2018) begins in the fall of 2018 and ends in the fall of 2019, and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have? Any comments concerning the plan or analyses should be submitted to the regulatory contacts listed in appendix B, General Rulemaking Contact Persons.

#### Section 610 Review

The agency will analyze each of the rules in each year’s group to determine whether any rule has a SEISNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability. Publication of agencies’ section 610 analyses listed each fall in this Agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to the Department early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each Fall Agenda, the agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEISNOSE, we will give a short explanation (e.g., “these rules only establish petition processes that have no cost impact” or “these rules do not apply to any small entities”). For parts, subparts, or other discrete sections of rules that do have a SEISNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, DOT will add an entry to the Agenda in the pre-rulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

#### Other Reviews

The agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each Fall Agenda, the agency will also publish information on the results of the examinations completed during the previous year.

**Part III—List of Pending Section 610 Reviews**

The Agenda identifies the pending DOT section 610 Reviews by inserting “(Section 610 Review)” after the title for the specific entry. For further information on the pending

reviews, see the Agenda entries at [www.reginfo.gov](http://www.reginfo.gov). For example, to obtain a list of all entries that are in section 610 Reviews under the Regulatory Flexibility Act, a user would select the desired responses on the search screen (by selecting “advanced

search”) and, in effect, generate the desired “index” of reviews.

**Office of the Secretary**

*Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 91 through 99 14 CFR parts 200 through 212 48 CFR parts 1201 through 1224	2018	2019
2	48 CFR parts 1227 through 1253 and new parts and subparts	2019	2020
3	14 CFR parts 213 through 232	2020	2021
4	14 CFR parts 234 through 254	2021	2022
5	14 CFR parts 255 through 298 and 49 CFR part 40	2022	2023
6	14 CFR parts 300 through 373	2023	2024
7	14 CFR parts 374 through 398	2024	2025
8	14 CFR part 399 and 49 CFR parts 1 through 15	2025	2026
9	49 CFR parts 17 through 28	2026	2027
10	49 CFR parts 29 through 39 and parts 41 through 89	2027	2028

**Year 1 (Fall 2018) List of Rules That Are Under Ongoing Analysis**

- 49 CFR part 91—International Air Transportation Fair Competitive Practices
- 49 CFR part 92—Recovering Debts to the United States by Salary Offset
  - Section 610: OST conducted a Section 610 review of this part and found no SEISNOSE.
  - General: The agency is aware of several outdated references to operating administrations within the Department that need to be updated. OST’s plain language review of these rules indicates no need for substantial revision.
- 49 CFR part 93—Aircraft Allocation
- 49 CFR part 98—Enforcement of Restrictions on Post-Employment Activities
- 49 CFR part 99—Employee Responsibilities and Conduct
- 14 CFR part 200—Definitions and Instructions
- 14 CFR part 201—Air Carrier Authority under Subtitle VII of Title 49 of the United States Code [Amended]
- 14 CFR part 203—Waiver of Warsaw Convention Liability Limits and Defenses
- 14 CFR part 204—Data to Support Fitness Determinations
- 14 CFR part 205—Aircraft Accident Liability Insurance
- 14 CFR part 206—Certificates of Public Convenience and Necessity: Special Authorizations and Exemptions
- 14 CFR part 207—Charter Trips by U.S. Scheduled Air Carriers
- 14 CFR part 208—Charter Trips by U.S. Charter Air Carriers
- 14 CFR part 211—Applications for Permits to Foreign Air Carriers
- 14 CFR part 212—Charter Rules for U.S. and Foreign Direct Air Carriers
- 48 CFR part 1201—Federal Acquisition Regulations System

- 48 CFR part 1202—Definitions of Words and Terms
- 48 CFR part 1203—Improper Business Practices and Personal Conflicts of Interest
- 48 CFR part 1204—Administrative Matters
- 48 CFR part 1205—Publicizing Contract Actions
- 48 CFR part 1206—Competition Requirements
- 48 CFR part 1207—Acquisition Planning
- 48 CFR part 1208–1210—[Reserved]
- 48 CFR part 1211—Describing Agency Needs
- 48 CFR part 1212— [Reserved]
- 48 CFR part 1213—Simplified Acquisition Procedures
- 48 CFR part 1214—Sealed Bidding
- 48 CFR part 1215—Contracting by Negotiation
- 48 CFR part 1216—Types of Contracts
- 48 CFR part 1217—Special Contracting Methods
- 48 CFR part 1218—[Reserved]
- 48 CFR part 1219—Small Business Programs
- 48 CFR part 1220–1221—[Reserved]
- 48 CFR part 1222—Application of Labor Laws to Government Acquisitions
- 48 CFR part 1223—Environment, Energy and Water Efficiency, Renewable Energy Technologies, Occupational Safety, and Drug-Free Workplace
- 48 CFR part 1224—Protection of Privacy and Freedom of Information

**Year 2 (Fall 2019) List of Rules Analyzed and Summary of Results**

- 48 CFR parts 1227 through 1253 and new parts and subparts
- 48 CFR part 1227—Patents, Data, and Copyrights
- 48 CFR part 1228—Bonds and Insurance
- 48 CFR part 1231—Contract Costs Principles and Procedures

- 48 CFR part 1232—Contract Financing
  - 48 CFR part 1233—Protests, Disputes, and Appeals
  - 48 CFR part 1235—Research and Development Contracting
  - 48 CFR part 1236—Construction and Architect-Engineer Contracts
  - 48 CFR part 1237—Service Contracting
  - 48 CFR part 1239—Acquisition of Information Technology
  - 48 CFR part 1242—Contract Administration and Audit Services
  - 48 CFR part 1245—Government Contracting
  - 48 CFR part 1246—Quality Assurance
  - 48 CFR part 1247—Transportation
  - 48 CFR part 1252—Solicitation Provisions and Contract Clauses
  - 48 CFR part 1253—Forms
- DOT has determined that updates need to be made to the regulations identified under Year 2. The regulations will be updated as part of RIN 2105–AE26 (Revisions to the Transportation Acquisition Regulations).

**Federal Aviation Administration**

*Section 610 and Other Reviews*

The Federal Aviation Administration (FAA) has elected to use the two-step, two-year process used by most Department of Transportation (DOT) modes in past plans. As such, the FAA has divided its rules into 10 groups as displayed in the table below. During the first year (the “analysis year”), all rules published during the previous 10 years within a 10% block of the regulations will be analyzed to identify those with a significant economic impact on a substantial number of small entities (SEISNOSE). During the second year (the “review year”), each rule identified in the analysis year as having a SEISNOSE will be reviewed in accordance with section 610(b) to determine if it should be continued

without change or changed to minimize those reviews will be published in the impact on small entities. Results of DOT Semiannual Regulatory Agenda.

Year	Regulations to be reviewed	Analysis year	Review year
1	14 CFR parts 141 through 147 and parts 170 through 187	2020	2021
2	14 CFR parts 189 through 198 and parts 1 through 16	2021	2022
3	14 CFR parts 17 through 33	2022	2023
4	14 CFR parts 34 through 39 and parts 400 through 405	2023	2024
5	14 CFR parts 43 through 49 and parts 406 through 415	2024	2025
6	14 CFR parts 60 through 77	2025	2026
7	14 CFR parts 91 through 107	2026	2027
8	14 CFR parts 417 through 460	2027	2028
9	14 CFR parts 119 through 129 and parts 150 through 156	2028	2029
10	14 CFR parts 133 through 139 and parts 157 through 169	2029	2030

**Defining SEISNOSE for FAA Regulations**

The RFA does not define “significant economic impact.” Therefore, there is no clear rule or number to determine when a significant economic impact occurs. However, the Small Business Administration (SBA) states that significance should be determined by considering the size of the business, the size of the competitor’s business and the impact the same regulation has on larger competitors.

Likewise, the RFA does not define “substantial number.” However, the legislative history of the RFA suggests that a substantial number must be at least one but does not need to be an overwhelming percentage such as more than half. The SBA states that the substantiality of the number of small businesses affected should be determined on an industry-specific basis.

This analysis consisted of the following three steps:

1. Review of the number of small entities affected by the amendments to parts 141 through 147 and parts 170 through 187.
2. Identification and analysis of all amendments to parts 141 through 147 and parts 170 through 187 since July 2010 to determine whether any still have or now have a SEISNOSE.
3. Review of the FAA’s regulatory flexibility assessment of each amendment performed as required by the RFA.

**Year 2—List of Rules To Be Analyzed Next Year (2021)**

- 14 CFR part 1—Definitions and abbreviations
- 14 CFR part 3—General requirements
- 14 CFR part 11—General rulemaking procedures
- 14 CFR part 13—Investigative and enforcement procedures
- 14 CFR part 14 —Rules implementing the Equal Access to Justice Act of 1980

- 14 CFR part 15—Administrative claims under Federal Tort Claims Act
- 14 CFR part 16—Rules of practice for Federally-assisted airport enforcement proceedings
- 14 CFR part 189—Use of Federal Aviation Administration communications system
- 14 CFR part 193—Protection of voluntarily submitted information
- 14 CFR part 198—Aviation insurance
- Year 1—List of Rules To Be Analyzed This Year (2020)
  - 14 CFR part 141—Pilot Schools
  - 14 CFR part 142—Training Centers
  - 14 CFR part 143—Reserved
  - 14 CFR part 144—Does not exist
  - 14 CFR part 145—Repair Stations
  - 14 CFR part 146—Does not exist
  - 14 CFR part 147—Aviation Maintenance Technician Schools
  - 14 CFR part 170—Establishment and Discontinuance Criteria for Air Traffic Control Services and Navigational Facilities
  - 14 CFR part 171—Non-Federal Navigation Facilities
  - 14 CFR part 172—through 182 Does not exist
  - 14 CFR part 183—Representatives of the Administrator
  - 14 CFR part 184—Does not exist
- Year 1 (2020) List of Rules Analyzed and Summary of Results
  - 14 CFR Part 141—Pilot Schools
    - Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
    - General: No changes are needed.
  - 14 CFR Part 142—Training Centers
    - Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
    - General: No changes are needed.
  - 14 CFR Part 145—Repair Stations
    - Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.
    - General: No changes are needed.

**14 CFR Part 147—Aviation Maintenance Technician Schools**

Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed.

**14 CFR Part 170—Establishment and Discontinuance Criteria for Air Traffic Control Services and Navigational Facilities**

Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed.

**14 CFR Part 171: Non-Federal Navigational Facilities**

Section 610: The agency conducted a Section 610 review of this part and found no amendments to 14 CFR 185 since July 2010. Thus, no SEISNOSE exists in this part.

General: No changes are needed.

**14 CFR Part 183: Representatives of the Administrator**

Section 610: The agency conducted a Section 610 review of this part and found no SEISNOSE.

General: No changes are needed.

**14 CFR Part 185: Testimony by Employees and Production of Records in Legal Proceedings, and Service of Legal Process and Pleadings**

Section 610: The agency conducted a section 610 review of this part and found no amendments to 14 CFR 185 since July 2010. Thus, no SEISNOSE exists in this part.

General: No changes are needed.

**14 CFR Part 187: Fees**

Section 610: The agency conducted a section 610 review of this part and found no SEISNOSE.

General: No changes are needed.

**Federal Highway Administration**

*Section 610 and Other Reviews*



Year	Regulations to be reviewed	Analysis year	Review year
1	None	2018	2019
2	23 CFR parts 1 to 260	2019	2020
3	23 CFR parts 420 to 470	2020	2021
4	23 CFR part 500	2021	2022
5	23 CFR parts 620 to 637	2022	2023
6	23 CFR parts 645 to 669	2023	2024
7	23 CFR parts 710 to 924	2024	2025
8	23 CFR parts 940 to 973	2025	2026
9	23 CFR parts 1200 to 1252	2026	2027
10	New parts and subparts	2027	2028

**Federal-Aid Highway Program**

The Federal Highway Administration (FHWA) has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-Aid Highway Program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter I of title 23 of the U.S.C. 145, which expressly provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to the requirements that States must meet to receive Federal funds for construction and other work related to highways. Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

**Year 2 (Fall 2019) List of Rules That Will Be Analyzed During the Next Year and a Summary of Results**

**23 CFR Part 1—General**

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA’s plain language review of these rules indicates no need for substantial revision.

**23 CFR Part 140—Reimbursement**

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA’s plain

language review of these rules indicates no need for substantial revision.

**23 CFR Part 172—Procurement, Management, and Administration of Engineering and Design Related Services**

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA’s plain language review of these rules indicates no need for substantial revision.

**23 CFR Part 180—Credit Assistance for Surface Transportation Projects**

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA’s plain language review of these rules indicates no need for substantial revision.

**23 CFR Part 190—Incentive Payments for Controlling Outdoor Advertising on the Interstate System**

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA’s plain language review of these rules indicates no need for substantial revision.

**23 CFR Part 192—Drug Offender’s Driver’s License Suspension**

- Section 610: No SEISNOSE. No small entities are affected.
- General: FHWA is updating these regulations under RIN 2125–AF93 to increase are cost effectiveness and reduce burden. FHWA’s plain language review of these rules indicates no need for substantial revision.

**23 CFR Part 200—Title VI Program and Related Statutes—Implementation and Review Procedures**

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed for purposes of the Regulatory Flexibility Act. These regulations are cost effective and impose the least burden. FHWA’s plain language review of these rules indicates no need for substantial revision for purposes of the Regulatory Flexibility Act.

**23 CFR Part 230—External Programs**

- Section 610: No SEISNOSE. No small entities are affected.
- General: FHWA is updating these subpart C of these regulations under RIN 2125–AF87 to reduce duplicative burdens. FHWA’s plain language review of these rules indicates no need for substantial revision.

**23 CFR Part 260—Education and Training Programs**

- Section 610: No SEISNOSE. No small entities are affected.
- General: No changes are needed. These regulations are cost effective and impose the least burden. FHWA’s plain language review of these rules indicates no need for substantial revision.

**Year 3 (Fall 2020) List of Rules That Will Be Analyzed During the Next Year**

**23 CFR part 420—Planning and research program administration**

**23 CFR part 450—Planning assistance and standards**

**23 CFR part 460—Public road mileage for apportionment of highway safety funds**

**23 CFR part 470—Highway systems**

**Federal Motor Carrier Safety Administration**

*Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR part 386	2018	2019
2	49 CFR part 385	2019	2020
3	49 CFR parts 382 and 383	2020	2021
4	49 CFR part 380	2021	2022

Year	Regulations to be reviewed	Analysis year	Review year
5	49 CFR part 387	2022	2023
6	49 CFR part 398	2023	2024
7	49 CFR part 392	2024	2025
8	49 CFR part 375	2025	2026
9	49 CFR part 367	2026	2027
10	49 CFR part 395	2027	2028

Year 2 (2019) List of Rules With Ongoing Analysis

49 CFR Part 386—Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings

- Section 610: FMCSA analyzed 49 CFR part 386 and found no SEIOSNOSE. 49 CFR part 386 is a permissive set of rules that establish procedures for respondents, petitioners, and others seeking relief from a determination of non-compliance with Federal Motor Carrier Safety Regulations or Hazardous Materials Regulations. The rule also provides recourse for commercial drivers to report employer harassment or coercion to violate rules.

- General: There is no need for substantial revision. These regulations provide necessary/clear guidance to industry and drivers. The regulations are written consistent with plain language guidelines, are cost effective, and impose the least economic burden to industry.

49 CFR Part 385—Safety Fitness Procedures

- Section 610: FMCSA analyzed 49 CFR part 385 and found no SEIOSNOSE. 49 CFR part 385 provides guidance on safety fitness procedures including monitoring, new entrants, intermodal equipment, and hazardous materials safety permits. The rule addresses safety initiatives whose cost are required by 49 CFR parts 360, 367, 387, and 390. These rules do not result

in a SEIOSNOSE, because they do not introduce new costs to small carriers.

- General: There is no need for substantial revision as these regulations provide necessary guidance to the industry. The regulations are written consistent with plain language guidelines and impose the least economic burden to industry.

Year 3 (2020) List of Rules That Will Be Analyzed During the Next Year

49 CFR part 382—Controlled Substances and Alcohol Use and Testing  
 49 CFR part 383—Commercial Driver’s License Standards; Requirements and Penalties

**National Highway Traffic Safety Administration**

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 571.223 through 571.500, and parts 575 and 579	2018	2019
2	23 CFR parts 1200 and 1300	2019	2020
3	49 CFR parts 501 through 526 and 571.213	2020	2021
4	49 CFR parts 571.131, 571.217, 571.220, 571.221, and 571.222	2021	2022
5	49 CFR parts 571.101 through 571.110, and 571.135, 571.136, 571.138 and 571.139	2022	2023
6	49 CFR parts 571.141, 529 through 578, except parts 571 and 575	2023	2024
7	49 CFR parts 571.111 through 571.129 and 580 through 588	2024	2025
8	49 parts CFR 571.201 through 571.212	2025	2026
9	49 parts CFR 571.214 through 571.219, except 571.217	2026	2027

Years 1 and 2 (Fall 2019 and 2020) List of Rules With Ongoing Analysis

49 CFR part 571.223—Rear Impact Guards

49 CFR part 571.224—Rear Impact Protection

49 CFR part 571.225—Child Restraint Anchorage Systems

49 CFR part 571.226—Ejection Mitigation

49 CFR part 571.301—Fuel System Integrity

49 CFR part 571.302—Flammability of Interior Materials

49 CFR part 571.303—Fuel System Integrity of Compressed Natural Gas Vehicles

49 CFR part 571.304—Compressed Natural Gas Fuel Container Integrity  
 49 CFR part 571.305—Electric-Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection

49 CFR part 571.401—Interior Trunk Release

49 CFR part 571.403—Platform Lift Systems for Motor Vehicles

49 CFR part 571.404—Platform Lift Installations in Motor Vehicles

49 CFR part 571.500—Low-Speed Vehicles

49 CFR part 575—Consumer Information

49 CFR part 579—Reporting of Information and Communications About Potential Defects

23 CFR part 1200—Uniform Procedures for State Highway Safety Grant Programs

23 CFR part 1300—Uniform Procedures for State Highway Safety Grant Programs

**Federal Railroad Administration**

Section 610 and Other Reviews

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 200, 207, 209, and 210	2018	2019
2	49 CFR parts 211, 212, 213, 214, and 215	2019	2020
3	49 CFR parts 216, 217, 218, 219, and 220	2020	2021
4	49 CFR parts 221, 222, 223, 224, and 225	2021	2022
5	49 CFR parts 227, 228, 229, 230, and 231	2022	2023
6	49 CFR parts 232, 233, 234, 235, and 236	2023	2024
7	49 CFR parts 237, 238, 249, 240, and 241	2024	2025

Year	Regulations to be reviewed	Analysis year	Review year
8	49 CFR parts 242, 243, 244, 250, and 256	2025	2026
9	49 CFR parts 261, 262, 264, 266, and 268	2026	2027
10	49 CFR parts 269, 270, and 272	2027	2028

Year 2 (Fall 2019) List of Rules Analyzed and a Summary of Results

49 CFR part 211—Rules of Practice

Section 610: There is no SEIOSNOSE.  
 General: No changes are needed. These regulations are cost effective and impose the least burden. FRA’s plain language review of this rule indicates no need for substantial revision.

49 CFR Part 212—State Safety Participation Regulations

Section 610: There is no SEIOSNOSE.  
 General: No changes are needed. These regulations are cost effective and impose the least burden. FRA’s plain language review of this rule indicates no need for substantial revision.

49 CFR Part 213—Track Safety Standards

Section 610: This rule is expected to have a significant economic impact on a substantial number of small entities (SEIOSNOSE). These small entities are approximately 737 short line railroads. As part of the rulemaking process, FRA conducted a review of the impact that this rulemaking could have on small businesses and whether any opportunities may exist to reduce the burdens on small railroads without compromising safety.

General: The rule prescribes minimum safety requirements for railroad track that is part of the general railroad system of transportation. The objective of the rule is to enhance the safety of rail transportation, protecting both those traveling and working on the system and those off the system who might be adversely affected by a rail incident. FRA’s plain language review of this rule indicates no need for substantial revision.

49 CFR Part 214—Railroad Workplace Safety

Section 610: There is a SEIOSNOSE. As part of the rulemaking process, FRA conducted a review of the impact that this rulemaking could have on small businesses and whether any opportunities may exist to reduce the burdens on small railroads without compromising safety.

General: FRA’s plain language review of this rule indicates no need for substantial revision.

49 CFR Part 215—Railroad Freight Car Safety Standards

Section 610: There is a SEIOSNOSE.  
 General: No changes are needed. This rule already limits economic impact on small entities through Appendix D of the rule. FRA’s plain language review of this rule indicates no need for substantial revision.

Federal Transit Administration

Section 610 and Other Reviews

The Regulatory Flexibility Act of 1980 (RFA), as amended (sections 601 through 612 of title 5, United States Code), requires Federal regulatory agencies to analyze all proposed and final rules to determine their economic impact on small entities, which include small businesses, organizations, and governmental jurisdictions. Section 610 requires government agencies to periodically review all regulations that will have a significant economic impact on a substantial number of small entities (SEISNOSE).

In complying with this section, the Federal Transit Administration (FTA) has elected to use the two-step, two-year process used by most Department of Transportation (DOT) modes. As such, FTA has divided its rules into 10 groups as displayed in the table below. During the analysis year, the listed rules will be analyzed to identify those with a SEISNOSE. During the review year, each rule identified in the analysis year as having a SEISNOSE will be reviewed in accordance with section 610(b) to determine if it should be continued without change or changed to minimize the impact on small entities.

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR parts 604, 605, and 624	2018	2019
2	49 CFR parts 609 and 640	2019	2020
3	49 CFR part 633	2020	2021
4	49 CFR part 611	2021	2022
5	49 CFR part 655	2022	2023
6	49 CFR parts 602 and 614	2023	2024
7	49 CFR parts 661 and 663	2024	2025
8	49 CFR parts 625, 630, and 665	2025	2026
9	49 CFR parts 613, 622, 670 and 674	2026	2027
10	49 CFR parts 650, 672 and 673	2027	2028

Year 2 (2019) List of Rules Analyzed and Summary of Results

49 CFR Part 609—Transportation for Elderly and Handicapped Persons

Section 610: FTA conducted a section 610 review of 49 CFR part 609 and determined that it would not result in a SEISNOSE within the meaning of the RFA. The rule ensures that applicants for financial assistance under section 5307 of title 49, United States

Code, as a condition of receiving such assistance, provide half-fares for elderly and handicapped persons during non-peak hours for transportation utilizing or involving the facilities and equipment of the project financed with FTA assistance.

General: No changes are needed. FTA estimated the costs and projected benefits of the rule and believes it is cost-effective and imposes the least burden. FTA’s plain language review of

this rule indicates no need for substantial revision.

49 CFR Part 640—Credit Assistance for Surface Transportation Projects

Section 610: FTA conducted a section 610 review of 49 CFR part 640 and determined that it would not result in a SEISNOSE within the meaning of the RFA. The regulation is a cross-reference to the Department of Transportation’s Credit Assistance for

Surface Transportation Projects regulation at 49 CFR part 80. FTA does not own the cross-referenced regulation and, accordingly, cannot make changes or determine whether it is a SEISNOSE within the meaning of the RFA.

- General: No changes are needed. The regulation is a cross-reference to a DOT regulation.

Year 3 (2020) List of Rules To Be Analyzed the Next Year  
49 CFR Part 633—Project Management Oversight

**Maritime Administration**

*Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	46 CFR parts 201 through 205, 46 CFR parts 315 through 340, 46 CFR part 345 through 347, and 46 CFR parts 381 and 382.	2018	2019
2 .....	46 CFR parts 221 through 232 .....	2019	2020
3 .....	46 CFR parts 249 through 296 .....	2020	2021
4 .....	46 CFR parts 221, 298, 308, and 309 .....	2021	2022
5 .....	46 CFR parts 307 through 309 .....	2022	2023
6 .....	46 CFR part 310 .....	2023	2024
7 .....	46 CFR parts 315 through 340 .....	2024	2025
8 .....	46 CFR parts 345 through 381 .....	2025	2026
9 .....	46 CFR parts 382 through 389 .....	2026	2027
10 .....	46 CFR parts 390 through 393 .....	2027	2028

Year 1 (2018) List of Rules With Ongoing Analysis

- 46 CFR part 201—Rules of Practice and Procedure
- 46 CFR part 202—Procedures relating to review by Secretary of Transportation of actions by Maritime Subsidy Board
- 46 CFR part 203—Procedures relating to conduct of certain hearings under the Merchant Marine Act, 1936, as amended
- 46 CFR part 205—Audit Appeals; Policy and Procedure
- 46 CFR part 315—Agency Agreements and Appointment of Agents
- 46 CFR part 317—Bonding of Ship’s Personnel
- 46 CFR part 324—Procedural Rules for Financial Transactions Under Agency Agreements
- 46 CFR part 325—Procedure to Be Followed by General Agents in Preparation of Invoices and Payment of Compensation Pursuant to Provisions of NSA Order No. 47
- 46 CFR part 326—Marine Protection and Indemnity Insurance Under Agreements with Agents
- 46 CFR part 327—Seamen’s Claims; Administrative Action and Litigation
- 46 CFR part 328—Slop Chests
- 46 CFR part 329—Voyage Data
- 46 CFR part 330—Launch Services
- 46 CFR part 332—Repatriation of Seamen
- 46 CFR part 335—Authority and Responsibility of General Agents to Undertake Emergency Repairs in Foreign Ports
- 46 CFR part 336—Authority and Responsibility of General Agents to Undertake in Continental United States Ports Voyage Repairs and Service Equipment of Vessels

- Operated for the Account of The National Shipping Authority Under General Agency Agreement
- 46 CFR part 337—General Agent’s Responsibility in Connection with Foreign Repair Custom’s Entries
- 46 CFR part 338—Procedure for Accomplishment of Vessel Repairs Under National Shipping Authority Master Lump Sum Repair Contract—NSA-Lumpsumrep
- 46 CFR part 339—Procedure for Accomplishment of Ship Repairs Under National Shipping Authority Individual Contract for Minor Repairs—NSA-Workmanship
- 46 CFR part 340—Priority Use and Allocation of Shipping Services, Containers and Chassis, and Port Facilities and Services for National Security and National Defense Related Operations
- 46 CFR part 345—Restrictions Upon the Transfer or Change in Use or In Terms Governing Utilization of Port Facilities
- 46 CFR part 346—Federal Port Controllers
- 46 CFR part 347—Operating Contract
- 46 CFR part 381—Cargo Preference—U.S.-Flag Vessels
- 46 CFR part 382—Determination of Fair and Reasonable Rates for the Carriage of Bulk and Packaged Preference Cargoes on U.S.-Flag Commercial Vessels

Year 1 (2018) List of Rules Analyzed and a Summary of Results

- 46 CFR Part 204—Claims Against the Maritime Administration Under the Federal Tort Claims Act
- Section 610: There is no SEIOSNOSE.
- General: The purpose of this rule is to prescribe the requirements and

procedures for administrative claims against the United States involving the Maritime Administration under the Federal Tort Claims Act. The agency has determined that the rule is cost-effective and imposes the least possible burden on small entities. MARAD’s plain language review of this rule indicates no need of substantial revision.

Year 2 (2019) List of Rules Analyzed and a Summary of Results

46 CFR Part 221 Regulated Transactions Involving Documented Vessels and Other Maritime Interests

- Section 610: There is no SEIOSNOSE.
- General: The purpose of this rule is to govern practice and procedure in regulating interest in or control of Documented Vessels owned by Citizens of the United States to Noncitizens and transactions involving certain maritime interests in time of war or national emergency. The agency has determined that the rule is cost-effective and imposes the least possible burden on small entities. MARAD’s plain language review of this rule indicates no need of substantial revision.

46 CFR Part 232 Uniform Financial Reporting Requirements

- Section 610: There is no SEIOSNOSE.
- General: The purpose of this rule is to govern practice and procedure to all participants in financial assistance programs administered by the Maritime Administration. The agency has determined that the rule is cost-effective and imposes the least possible burden on small entities. MARAD’s plain language review of this rule indicates no need of substantial revision.

Year 3 (2020) List of Rules That Will Be Analyzed During This Year

- 46 CFR part 249—Approval of Underwriters for Marine Hull Insurance
- 46 CFR part 272—Requirements and Procedures for Conducting Condition Surveys and

- Administering Maintenance and Repair Subsidy
- 46 CFR part 277—Domestic and Foreign Trade; Interpretations
- 46 CFR part 287—Establishment of Construction Reserve Funds
- 46 CFR part 289—Insurance of Construction-Differential Subsidy Vessels, Operating-Differential Subsidy Vessels and of Vessels Sold

- or Adjusted Under the Merchant Ship Sales Act of 1946
- 46 CFR part 295—Maritime Security Program
- 46 CFR part 296—Maritime Security Program

**Pipeline and Hazardous Materials Safety Administration (PHMSA)**

*Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1	49 CFR part 178	2018	2019
2	49 CFR parts 178 through 180	2019	2020
3	49 CFR parts 172 and 175	2020	2021
4	49 CFR part 171, sections 171.15 and 171.16	2021	2022
5	49 CFR parts 106, 107, 171, 190, and 195	2022	2023
6	49 CFR parts 174, 177, and 199	2023	2024
7	49 CFR parts 176, 191 and 192	2024	2025
8	49 CFR parts 172 and 178	2025	2026
9	49 CFR parts 172, 173, 174, 176, 177, and 193	2026	2027
10	49 CFR parts 173 and 194	2027	2028

Year 2 (Fall 2020) List of Rules Analyzed and a Summary of Results

- 49 CFR part 178—Specifications for Packaging
- 49 CFR part 179—Specifications for Tank Cars
- 49 CFR part 180—Continuing Qualification and Maintenance of Packaging

Section 610: PHMSA Conducted a Review of These Parts and Found no SEISNOSE

• General: PHMSA has reviewed these parts and found that while these parts do not have SEISNOSE, they could be streamlined to reflect new technologies and potentially enhance safety. As such, PHMSA has continued developing multiple rulemakings to reduce possible compliance burdens of parts 178, 179, and 180. Further, PHMSA’s plain language review of these parts indicates no need for substantial revision. Where confusing or ambiguous language has been identified, PHMSA plans to propose or finalize revisions by way of rulemakings.

As an example, the “Hazardous Materials: Modal Regulatory Reforms Initiatives” (2137–AF41) rulemaking action is part of PHMSA’s response to clarify current regulatory requirements and address public comments. This rulemaking also proposes to address a variety of petitions for rulemaking, specific to modal stakeholders, and other issues identified by PHMSA during its regulatory review. The impact that the 2137–AF41 rulemaking will have on small entities is not expected to be significant. The rulemaking is based on PHMSA’s initiatives and correspondence with the regulated

community, as well as PHMSA’s consultation with its modal partners, including FMCSA, FRA, and the United States Coast Guard (USCG). The proposed amendments are expected to result in an overall net cost savings and ease the regulatory compliance burden for small entities, shippers, carriers, manufacturers, and requalifiers, specifically those modal-specific packaging and requalification requirements. This rulemaking is one example of PHMSA’s review of rulemakings which ensures that our rules do not have a significant economic impact on a substantial number of small entities.

For a second example, the “Hazardous Materials: Harmonization With International Standards” (2137–AF46) rulemaking action is part of PHMSA’s ongoing biennial process to harmonize the Hazardous Materials Regulations (HMR) with international regulations and standards. Federal law and policy strongly favor the harmonization of domestic and international standards for hazardous materials transportation. The Federal hazardous materials transportation law (Federal hazmat law; 49 U.S.C. 5101 *et seq.*) directs PHMSA to participate in relevant international standard-setting bodies and promotes consistency of the HMR with international transport standards to the extent practicable. Federal hazardous materials law permits PHMSA to depart from international standards where appropriate, including to promote safety or other overriding public interests. However, Federal hazardous materials law otherwise encourages domestic and international harmonization (see 49 U.S.C. 5120).

Harmonization facilitates international trade by minimizing the costs and other burdens of complying with multiple or inconsistent safety requirements for transportation of hazardous materials. Safety is enhanced by creating a uniform framework for compliance, and as the volume of hazardous materials transported in international commerce continues to grow, harmonization becomes increasingly important. The impact that the 2137–AF46 rulemaking will have on small entities is not expected to be significant. The rulemaking will clarify provisions based on PHMSA’s initiatives and correspondence with the regulated community and domestic and international stakeholders. The changes are generally intended to provide relief and, as a result, positive economic benefits to shippers, carriers, and packaging manufacturers and testers, including small entities. This rulemaking is expected to lead to both economic and safety benefits. The amendments are expected to result in net cost for shippers engaged in domestic and international commerce, including trans-border shipments within North America. Additionally, the effective changes of this rulemaking will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. This rulemaking is a second example of PHMSA’s review of rulemakings which helps ensure that the HMR do not have a significant economic impact on a substantial number of small entities.

Year 3 (Fall 2021) List of Rules That Will Be Analyzed During the Next Year  
49 CFR part 172—Hazardous Materials Table, Special Provisions,

Hazardous Materials Communications, Emergency Response Information, Training Requirements, and Security Plans  
49 CFR part 175—Carriage by Aircraft

**Great Lakes Saint Lawrence Seaway Development Corporation**  
*Section 610 and Other Reviews*

Year	Regulations to be reviewed	Analysis year	Review year
1 .....	*33 CFR parts 401 through 403 .....	2018	2019

\* The review for these regulations is recurring each year of the 10-year review cycle (currently 2018 through 2027).

Year 1 (Fall 2018) List of Rules That Will Be Analyzed During the Next Year  
33 CFR part 401—Seaway Regulations and Rules

33 CFR part 402—Tariff of Tolls  
33 CFR part 403—Rules of Procedure of the Joint Tolls Review Board

OFFICE OF THE SECRETARY—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
163 .....	+ Air Transportation Consumer Protection Requirements for Ticket Agents ( <b>Section 610 Review</b> ) .....	2105-AE57
+ DOT-designated significant regulation.		

OFFICE OF THE SECRETARY—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
164 .....	+ Defining Unfair or Deceptive Practices .....	2105-AE72
+ DOT-designated significant regulation.		

FEDERAL AVIATION ADMINISTRATION—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
165 .....	+ Applying the Flight, Duty, and Rest Requirements to Ferry Flights That Follow Commuter or On-Demand Operations (FAA Reauthorization).	2120-AK26
+ DOT-designated significant regulation.		

FEDERAL AVIATION ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
166 .....	+ Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States.	2120-AK09
167 .....	+ Requirements to File Notice of Construction of Meteorological Evaluation Towers and Other Renewable Energy Projects ( <b>Section 610 Review</b> ).	2120-AK77
+ DOT-designated significant regulation.		

FEDERAL AVIATION ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
168 .....	+ Airport Safety Management System .....	2120-AJ38
169 .....	+ Pilot Records Database (HR 5900) .....	2120-AK31
170 .....	+ Registration and Marking Requirements for Small Unmanned Aircraft .....	2120-AK82
+ DOT-designated significant regulation.		

FEDERAL AVIATION ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
171 .....	+ Regulation Of Flight Operations Conducted By Alaska Guide Pilots .....	2120-AJ78

## FEDERAL AVIATION ADMINISTRATION—LONG-TERM ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
172 .....	+ Aircraft Registration and Airmen Certification Fees .....	2120-AK37
173 .....	+ Helicopter Air Ambulance Pilot Training and Operational Requirements (HAA II) (FAA Reauthorization) ..	2120-AK57

+ DOT-designated significant regulation.

## FEDERAL AVIATION ADMINISTRATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
174 .....	+ Operations of Small Unmanned Aircraft Systems Over People .....	2120-AK85
175 .....	+ Remote Identification of Unmanned Aircraft .....	2120-AL31

+ DOT-designated significant regulation.

## FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
176 .....	Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Downgrade of Commercial Driver's License ( <b>Section 610 Review</b> ).	2126-AC11

## FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
177 .....	+ Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States.	2126-AA35

+ DOT-designated significant regulation.

## FEDERAL RAILROAD ADMINISTRATION—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
178 .....	+ Train Crew Staffing .....	2130-AC88

+ DOT-designated significant regulation.

## SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
179 .....	Seaway Regulations and Rules: Periodic Update, Various Categories ( <b>Rulemaking Resulting From a Section 610 Review</b> ).	2135-AA49
180 .....	+ Tariff of Tolls ( <b>Rulemaking Resulting From a Section 610 Review</b> ) .....	2135-AA50

+ DOT-designated significant regulation.

## PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
181 .....	+ Pipeline Safety: Amendments to Parts 192 and 195 to Require Valve Installation and Minimum Rupture Detection Standards.	2137-AF06
182 .....	+ Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft (FAA Reauthorization Act of 2018).	2137-AF20

+ DOT-designated significant regulation.

## PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
183 .....	+ Pipeline Safety: Gas Pipeline Leak Detection and Repair .....	2137-AF51

PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION—LONG-TERM ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
184 .....	+ Pipeline Safety: Pipeline Operational Status .....	2137-AF52
185 .....	+ Pipeline Safety: Safety of Gas Distribution Pipelines .....	2137-AF53

+ DOT-designated significant regulation.

**DEPARTMENT OF TRANSPORTATION (DOT)**

Office of the Secretary (OST)

Long-Term Actions

**163. +Air Transportation Consumer Protection Requirements for Ticket Agents (Section 610 Review)**

Legal Authority: 49 U.S.C. 41712; FAA Reauthorization Act of 2018, Sec. 427

Abstract: This rulemaking would address a number of proposals to enhance protections for air travelers and to improve the air travel environment. Specifically, this rulemaking would enhance airline passenger protections by addressing whether to codify in regulation a definition of the term “ticket agent.” The rulemaking would also consider whether to require large travel agents to adopt minimum customer service standards and prohibit the unfair and deceptive practice of post-purchase price increases. These issues, previously part of a rulemaking known as Airline Pricing Transparency and Other Consumer Protection Issues, (2105-AE11) have been separated into this proceeding.

Timetable: Next Action Undetermined.

Regulatory Flexibility Analysis Required: No.

Agency Contact: Blane A. Workie, Assistant General Counsel, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE, Washington, DC 20590, Phone: 202-366-9342, Fax: 202-366-7153, Email: blane.workie@ost.dot.gov.

RIN: 2105-AE57

similar statute granting the Federal Trade Commission (FTC) the authority to regulate unfair or deceptive practices. Using the FTC’s policy statements as a guide, the Department has found a practice to be unfair if it causes or is likely to cause substantial harm, the harm cannot reasonably be avoided, and the harm is not outweighed by any countervailing benefits to consumers or to competition. Likewise, the Department has found a practice to be deceptive if it misleads or is likely to mislead a consumer acting reasonably under the circumstances with respect to a material issue (one that is likely to affect the consumer’s decision with regard to a product or service). This rulemaking would codify the Department’s existing interpretation of “unfair or deceptive practice,” and seek comment on any whether changes are needed. The rulemaking also requires the Department to articulate in future enforcement orders the basis for concluding that a practice is unfair or deceptive where no existing regulation governs the practice in question, state the basis for its conclusion that a practice is unfair or deceptive when it issues discretionary aviation consumer protection regulations, and apply formal hearing procedures for discretionary aviation consumer protection rulemakings. In addition, this rulemaking codifies the longstanding practice of the Department to offer airlines and ticket agents the opportunity to be heard and present relevant evidence before any determination is made on how to resolve a matter involving a potential unfair or deceptive practice.

Timetable:

Action	Date	FR Cite
Final Action/2 .....	12/07/20	85 FR 78707
Final Action Effective.	01/06/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Blane A. Workie, Assistant General Counsel, Department of Transportation, Office of the Secretary, 1200 New Jersey Avenue SE, Washington, DC 20590, Phone: 202-

366-9342, Fax: 202-366-7153, Email: blane.workie@ost.dot.gov.

RIN: 2105-AE72

**DEPARTMENT OF TRANSPORTATION (DOT)**

Federal Aviation Administration (FAA)

Prerule Stage

**165. +Applying the Flight, Duty, and Rest Requirements to Ferry Flights That Follow Commuter or On-Demand Operations (FAA Reauthorization)**

Legal Authority: 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 1153; 49 U.S.C. 40101; 49 U.S.C. 40102; 49 U.S.C. 40103; 49 U.S.C. 40113; 49 U.S.C. 41706; 49 U.S.C. 44105; 49 U.S.C. 44106; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903; 49 U.S.C. 44904; 49 U.S.C. 44906; 49 U.S.C. 44912; 49 U.S.C. 44914; 49 U.S.C. 44936; 49 U.S.C. 44938; 49 U.S.C. 45101 to 45105; 49 U.S.C. 46103

Abstract: This rulemaking would require a flightcrew member who is employed by an air carrier conducting operations under part 135, and who accepts an additional assignment for flying under part 91 from the air carrier or from any other air carrier conducting operations under part 121 or 135, to apply the period of the additional assignment toward any limitation applicable to the flightcrew member relating to duty periods or flight times under part 135.

Timetable:

Action	Date	FR Cite
ANPRM .....	12/00/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Chester Piolunek, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, Phone: 202 267-3711, Email: chester.piolunek@faa.gov.

RIN: 2120-AK26

**DEPARTMENT OF TRANSPORTATION (DOT)**

Office of the Secretary (OST)

Completed Actions

**164. +Defining Unfair or Deceptive Practices**

Legal Authority: 49 U.S.C. 41712  
 Abstract: This rulemaking defines the phrase “unfair or deceptive practice” found in the Department’s aviation consumer protection statute. The Department’s statute is modeled after a



**DEPARTMENT OF TRANSPORTATION (DOT)**

*Federal Aviation Administration (FAA)*

Proposed Rule Stage

**166. +Drug and Alcohol Testing of Certain Maintenance Provider Employees Located Outside of the United States**

*Legal Authority:* 14 CFR; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44707; 49 U.S.C. 44709; 49 U.S.C. 44717

*Abstract:* This rulemaking would require controlled substance testing of some employees working in repair stations located outside the United States. The intended effect is to increase participation by companies outside of the United States in testing of employees who perform safety critical functions and testing standards similar to those used in the repair stations located in the United States. This action is necessary to increase the level of safety of the flying public. This rulemaking is a statutory mandate under section 308(d) of the FAA Modernization and Reform Act of 2012 (Public Law 112–95).

*Timetable:*

Action	Date	FR Cite
ANPRM .....	03/17/14	79 FR 14621
ANPRM Comment Period Extended.	05/01/14	79 FR 24631
ANPRM Comment Period End.	05/16/14	
ANPRM Comment Period Extended End.	07/17/14	
NPRM .....	12/00/21	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Julia Brady, Program Analyst, Program Policy Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Ave. SW, Washington, DC 20591, *Phone:* 202–267–8083, *Email:* julia.brady@faa.gov.

*RIN:* 2120–AK09

**167. Requirements To File Notice of Construction of Meteorological Evaluation Towers and Other Renewable Energy Projects (Section 610 Review)**

*Legal Authority:* 49 U.S.C. 40103  
*Abstract:* This rulemaking would add specific requirements for proponents who wish to construct meteorological evaluation towers at a height of 50 feet above ground level (AGL) up to 200 feet AGL to file notice of construction with the FAA. This rule also requires

sponsors of wind turbines to provide certain specific data when filing notice of construction with the FAA. This rulemaking is a statutory mandate under section 2110 of the FAA Extension, Safety, and Security Act of 2016 (Pub. L. 114–190).

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/22	

*Regulatory Flexibility Analysis*

*Required: No.*

*Agency Contact:* Sheri Edgett–Baron, Air Traffic Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–9354, *Email:* sheri.edgett-baron@faa.gov.  
*RIN:* 2120–AK77

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Federal Aviation Administration (FAA)*

Final Rule Stage

**168. +Airport Safety Management System**

*Legal Authority:* 49 U.S.C. 44706; 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 44701 to 44706; 49 U.S.C. 44709; 49 U.S.C. 44719

*Abstract:* This rulemaking would require certain airport certificate holders to develop, implement, maintain, and adhere to a safety management system (SMS) for its aviation related activities. An SMS is a formalized approach to managing safety by developing an organization-wide safety policy, developing formal methods of identifying hazards, analyzing and mitigating risk, developing methods for ensuring continuous safety improvement, and creating organization-wide safety promotion strategies.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/07/10	75 FR 62008
NPRM Comment Period Extended.	12/10/10	75 FR 76928
NPRM Comment Period End.	01/05/11	
End of Extended Comment Period.	03/07/11	
Second Extension of Comment Period.	03/07/11	76 FR 12300
End of Second Extended Comment Period.	07/05/11	

Action	Date	FR Cite
Second NPRM ....	07/14/16	81 FR 45871
Second NPRM Comment Period End.	09/12/16	
Final Rule .....	10/00/21	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* James Schroeder, Office of Airport Safety and Standards, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–4974, *Email:* james.schroeder@faa.gov.

*RIN:* 2120–AJ38

**169. +Pilot Records Database (HR 5900)**

*Legal Authority:* 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 1155; 49 U.S.C. 40103; 49 U.S.C. 40113; 49 U.S.C. 40119; 49 U.S.C. 40120; 49 U.S.C. 41706; 49 U.S.C. 44101; 49 U.S.C. 44111; 49 U.S.C. 44701 to 44705; 49 U.S.C. 44709 to 44713; 49 U.S.C. 44715 to 44717; 49 U.S.C. 44722; 49 U.S.C. 45101 to 45105; 49 U.S.C. 46105; 49 U.S.C. 46306; 49 U.S.C. 46315; 49 U.S.C. 46316; 49 U.S.C. 46504; 49 U.S.C. 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49 U.S.C. 47528 to 47531

*Abstract:* This rulemaking would implement a Pilot Records Database as required by Public Law 111–216 (Aug. 1, 2010). Section 203 amends the Pilot Records Improvement Act by requiring the FAA to create a pilot records database that contains various types of pilot records. These records would be provided by the FAA, air carriers, and other persons who employ pilots, and used by potential employers prior to making hiring decisions. The FAA must maintain these records until it receives notice that a pilot is deceased.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/30/20	85 FR 17660
NPRM Comment Period End.	06/29/20	
Final Rule .....	05/00/21	

*Regulatory Flexibility Analysis*

*Required: Yes.*

*Agency Contact:* Christopher Morris, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur Boulevard, Oklahoma City, OK 73169, *Phone:* 405 954–4646, *Email:* christopher.morris@faa.gov.

*RIN:* 2120–AK31

**170. +Registration and Marking Requirements for Small Unmanned Aircraft**

*Legal Authority:* 49 U.S.C. 106(f), 49 U.S.C. 41703, 44101–44106, 44110–44113, and 44701

*Abstract:* This rulemaking would provide an alternative, streamlined and simple, web-based aircraft registration process for the registration of small unmanned aircraft, including small unmanned aircraft operated exclusively for limited recreational operations, to facilitate compliance with the statutory requirement that all aircraft register prior to operation. It would also provide a simpler method for marking small unmanned aircraft that is more appropriate for these aircraft. This action responds to public comments received regarding the proposed registration process in the Operation and Certification of Small Unmanned Aircraft notice of proposed rulemaking, the request for information regarding unmanned aircraft system registration, and the recommendations from the Unmanned Aircraft System Registration Task Force.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	12/16/15	80 FR 78593
Interim Final Rule Effective.	12/21/15	
OMB approval of information collection.	12/21/15	80 FR 79255
Interim Final Rule Comment Period End.	01/15/16	
Final Rule .....	12/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Bonnie Lefko, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur Boulevard, Registry Building 26, Room 118, Oklahoma City, OK 73169, *Phone:* 405 954–7461, *Email:* [bonnie.lefko@faa.gov](mailto:bonnie.lefko@faa.gov), *RIN:* 2120–AK82

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Federal Aviation Administration (FAA)*  
Long-Term Actions

**171. +Regulation of Flight Operations Conducted by Alaska Guide Pilots**

*Legal Authority:* 49 U.S.C. 106(g) ; 49 U.S.C. 1153; 49 U.S.C. 1155; 49 U.S.C. 40101 to 40103; 49 U.S.C. 40113; 49 U.S.C. 40120; 49 U.S.C. 44101; 49 U.S.C. 44105 to 44016; 49 U.S.C. 44111; 49

U.S.C. 44701 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44901; 49 U.S.C. 44903 to 44904; 49 U.S.C. 44906; 49 U.S.C. 44912; 49 U.S.C. 44914; 49 U.S.C. 44936; 49 U.S.C. 44938; 49 U.S.C. 46103; 49 U.S.C. 46105; 49 U.S.C. 46306; 49 U.S.C. 46315 to 46316; 49 U.S.C. 46504; 49 U.S.C. 46506 to 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49 U.S.C. 47528 to 47531; Articles 12 and 29 of 61 Statute 1180; P.L. 106–181, Sec. 732

*Abstract:* The rulemaking would establish regulations concerning Alaska guide pilot operations. The rulemaking would implement Congressional legislation and establish additional safety requirements for the conduct of these operations. The intended effect of this rulemaking is to enhance the level of safety for persons and property transported in Alaska guide pilot operations. In addition, the rulemaking would add a general provision applicable to pilots operating under the general operating and flight rules concerning falsification, reproduction, and alteration of applications, logbooks, reports, or records. This rulemaking is a statutory mandate under section 732 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, (Pub. L. 106–181).

*Timetable:* Next Action Undetermined.  
*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jeff Smith, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20785, *Phone:* 202 365–3617, *Email:* [jeffrey.smith@faa.gov](mailto:jeffrey.smith@faa.gov), *RIN:* 2120–AJ78

**172. +Aircraft Registration and Airmen Certification Fees**

*Legal Authority:* 31 U.S.C. 9701; 4 U.S.C. 1830; 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 106(l)(6); 49 U.S.C. 40104; 49 U.S.C. 40105; 49 U.S.C. 40109; 49 U.S.C. 40113; 49 U.S.C. 40114; 49 U.S.C. 44101 to 44108; 49 U.S.C. 44110 to 44113; 49 U.S.C. 44701 to 44704; 49 U.S.C. 44707; 49 U.S.C. 44709 to 44711; 49 U.S.C. 44713; 49 U.S.C. 45102; 49 U.S.C. 45103; 49 U.S.C. 45301; 49 U.S.C. 45302; 49 U.S.C. 45305; 49 U.S.C. 46104; 49 U.S.C. 46301; P.L. 108–297, 118 Stat. 1095

*Abstract:* This rulemaking would establish fees for airman certificates, medical certificates, and provision of legal opinions pertaining to aircraft registration or recordation. This rulemaking also would revise existing fees for aircraft registration, recording of security interests in aircraft or aircraft parts, and replacement of an airman

certificate. This rulemaking addresses provisions of the FAA Modernization and Reform Act of 2012. This rulemaking is intended to recover the estimated costs of the various services and activities for which fees would be established or revised.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Isra Raza, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, *Phone:* 202 267–8994, *Email:* [isra.raza@faa.gov](mailto:isra.raza@faa.gov).

*RIN:* 2120–AK37

**173. +Helicopter Air Ambulance Pilot Training and Operational Requirements (HAA II) (FAA Reauthorization)**

*Legal Authority:* 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 40113; 49 U.S.C. 41706; 49 U.S.C. 44701; 49 U.S.C. 44702; 49 U.S.C. 44705; 49 U.S.C. 44709; 49 U.S.C. 44711 to 44713; 49 U.S.C. 44715 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44730; 49 U.S.C. 45101 to 45105

*Abstract:* This rulemaking would develop training requirements for crew resource management, flight risk evaluation, and operational control of the pilot in command, as well as to develop standards for the use of flight simulation training devices and line-oriented flight training. Additionally, it would establish requirements for the use of safety equipment for flight crewmembers and flight nurses. These changes will aide in the increase in aviation safety and increase survivability in the event of an accident. Without these changes, the Helicopter Air Ambulance industry may continue to see the unacceptable high rate of aircraft accidents. This rulemaking is a statutory mandate under section 306(e) of the FAA Modernization and Reform Act of 2012 (Pub. L. 112–95).

*Timetable:* Next Action Undetermined.

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Chris Holliday, Department of Transportation, Federal Aviation Administration, 801 Pennsylvania Avenue NW, Washington, DC 20024, *Phone:* 202 267–4552, *Email:* [chris.holliday@faa.gov](mailto:chris.holliday@faa.gov).

*RIN:* 2120–AK57

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Federal Aviation Administration (FAA)*  
Completed Actions

**174. +Operations of Small Unmanned Aircraft Systems Over People**

*Legal Authority:* 49 U.S.C. 106(f); 49 U.S.C. 40101; 49 U.S.C. 40103(b); 49 U.S.C. 44701(a)(5); Pub. L. 112–95, sec. 333

*Abstract:* This rulemaking would address the performance-based standards and means-of-compliance for operation of small unmanned aircraft systems (UAS) over people not directly participating in the operation or not under a covered structure or inside a stationary vehicle that can provide reasonable protection from a falling small unmanned aircraft. This rule would provide relief from certain operational restrictions implemented in the Operation and Certification of Small Unmanned Aircraft Systems final rule (RIN 2120–AJ60).

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/13/19	84 FR 3856
NPRM Comment Period End.	04/15/19	
Final Action .....	01/15/21	86 FR 4314
Delay of Effective and Compliance Dates; Withdrawal; Correction.	03/10/21	86 13636
Final Action .....	03/10/21	86 FR 13630
Final Rule Effective.	03/16/21	
Delayed the Effective Date.	04/06/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael Machnik, Department of Transportation, Federal Aviation Administration, 2300 E Devon, Suite 261, Des Plaines, IL 60018, *Phone:* 630 488–0090, *Email:* michael.machnik@faa.gov.  
*RIN:* 2120–AK85

**175. +Remote Identification of Unmanned Aircraft**

*Legal Authority:* 118 Stat. 1095; 126 Stat. 11; 126 Stat. 75; 130 Stat. 615; 4 U.S.T. 1830; 49 U.S.C. 106(f); 49 U.S.C. 106(g); 49 U.S.C. 40101; 49 U.S.C. 40103; 49 U.S.C. 40103(b); 49 U.S.C. 40113; 49 U.S.C. 40114; 49 U.S.C. 40120; 49 U.S.C. 41703; 49 U.S.C. 44101 to 44108; 49 U.S.C. 44110 to 44113; 49 U.S.C. 44701; 49 U.S.C. 44701(a)(5); 49 U.S.C. 44703; 49 U.S.C. 44704; 49 U.S.C. 44709; 49 U.S.C. 44711 to 44713; 49 U.S.C. 44715 to 44717; 49 U.S.C. 44722; 49 U.S.C. 44805; 49 U.S.C. 44809(f); 49

U.S.C. 45302; 49 U.S.C. 45305; 49 U.S.C. 46104; 49 U.S.C. 46301; 49 U.S.C. 46306; 49 U.S.C. 46315; 49 U.S.C. 46316; 49 U.S.C. 46504; 49 U.S.C. 46506; 49 U.S.C. 46507; 49 U.S.C. 47122; 49 U.S.C. 47508; 49 U.S.C. 47528 to 47531; 49 U.S.C. 47534; 61 Stat. 1180; Pub. L. 108–297; Pub. L. 112–95; Pub. L. 114–190

*Abstract:* This action would require the remote identification of unmanned aircraft systems. The remote identification of unmanned aircraft systems in the airspace of the United States would address safety, national security, and law enforcement concerns regarding the further integration of these aircraft into the airspace of the United States while also enabling greater operational capabilities.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/31/19	84 FR 72438
NPRM Comment Period End.	03/02/20	
Final Rule .....	01/15/21	86 4390
Delay of Effective and Compliance Dates.	03/10/21	86 13529
Effective Date .....	03/16/21	
Delayed Effective Date.	04/21/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Ben Walsh, Department of Transportation, Federal Aviation Administration, 470 L'Enfant Plaza, Office 3200, Washington, DC 20024, *Phone:* 202–267–8233, *Email:* ben.walsh@faa.gov.  
*RIN:* 2120–AL31

**BILLING CODE 4910–13–P**

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Federal Motor Carrier Safety Administration (FMCSA)*

Final Rule Stage

**176. Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Downgrade of Commercial Driver's License (Section 610 Review)**

*Legal Authority:* 49 U.S.C. 31136(a); 49 U.S.C. 31305(a)

*Abstract:* FMCSA proposes to prohibit State Driver's Licensing Agencies (SDLAs) from issuing, renewing, upgrading, or transferring a commercial driver's license (CDL), or commercial learner's permit (CLP), for individuals prohibited under current regulations from driving a commercial motor vehicle (CMV) due to controlled

substance (drug) and alcohol program violations. The CMV driving ban is intended to keep these drivers off the road until they comply with return-to-duty (RTD) requirements. FMCSA also seeks comment on alternate proposals establishing additional ways that SDLAs would use information, obtained through the Drug and Alcohol Clearinghouse (Clearinghouse), to increase compliance with the CMV driving prohibition. Further, the Agency proposes to revise how reports of actual knowledge violations, based on a citation for Driving Under the Influence (DUI) in a CMV, would be maintained in the Clearinghouse. These proposed changes would improve highway safety by increasing compliance with existing drug and alcohol program requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/28/20	85 FR 23670
NPRM Comment Period End.	06/29/20	
Final Rule .....	06/00/21	

*Regulatory Flexibility Analysis Required: No.*

*Agency Contact:* Juan Moya, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–4844, *Email:* juan.moya@dot.gov.  
*RIN:* 2126–AC11

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Federal Motor Carrier Safety Administration (FMCSA)*

Long-Term Actions

**177. +Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States**

*Legal Authority:* Pub. L. 107–87, sec. 350; 49 U.S.C. 113; 49 U.S.C. 31136; 49 U.S.C. 31144; 49 U.S.C. 31502; 49 U.S.C. 504; 49 U.S.C. 5113; 49 U.S.C. 521(b)(5)(A)

*Abstract:* This rule would implement a safety monitoring system and compliance initiative designed to evaluate the continuing safety fitness of all Mexico-domiciled carriers within 18 months after receiving a provisional Certificate of Registration or provisional authority to operate in the United States. It also would establish suspension and revocation procedures for provisional Certificates of Registration and operating authority, and incorporate criteria to be used by

FMCSA in evaluating whether Mexico-domiciled carriers exercise basic safety management controls. The interim rule included requirements that were not proposed in the NPRM but which are necessary to comply with the FY-2002 DOT Appropriations Act. On January 16, 2003, the Ninth Circuit Court of Appeals remanded this rule, along with two other NAFTA-related rules, to the agency, requiring a full environmental impact statement and an analysis required by the Clean Air Act. On June 7, 2004, the Supreme Court reversed the Ninth Circuit and remanded the case, holding that FMCSA is not required to prepare the environmental documents. FMCSA originally planned to publish a final rule by November 28, 2003.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/03/01	66 FR 22415
NPRM Comment Period End.	07/02/01	
Interim Final Rule	03/19/02	67 FR 12758
Interim Final Rule Comment Period End.	04/18/02	
Interim Final Rule Effective.	05/03/02	
Notice of Intent to Prepare an EIS.	08/26/03	68 FR 51322
EIS Public Scoping Meetings.	10/08/03	68 FR 58162
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dolores Macias, Acting Division Chief, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366-2995, *Email:* [dolores.macias@dot.gov](mailto:dolores.macias@dot.gov).

*RIN:* 2126-AA35

**BILLING CODE 4910-EX-P**

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Federal Railroad Administration (FRA)*

Proposed Rule Stage

**178. • +Train Crew Staffing**

*Legal Authority:* 49 CFR 1.89(a); 49 U.S.C. 20103

*Abstract:* This rulemaking would address the potential safety impact of one-person train operations, including appropriate measures to mitigate an accident's impact and severity, and the patchwork of State laws concerning minimum crew staffing requirements. This rulemaking would address the

issue of minimum requirements for the size of different train crew staffs, depending on the type of operations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Amanda Maizel, Attorney Adviser, Department of Transportation, Federal Railroad Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 493-8014, *Email:* [amanda.maizel@dot.gov](mailto:amanda.maizel@dot.gov).

*RIN:* 2130-AC88

**BILLING CODE 4910-06-P**

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Saint Lawrence Seaway Development Corporation (SLSDC)*

Completed Actions

**179. Seaway Regulations and Rules: Periodic Update, Various Categories (Rulemaking Resulting From a Section 610 Review)**

*Legal Authority:* 33 U.S.C. 981 *et seq*  
*Abstract:* The Great Lakes St.

Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Regulations and Rules (Practices and Procedures in Canada) in their respective jurisdictions. Under agreement with the SLSMC, the GLS is amending the joint regulations by updating the Regulations and Rules in various categories. The changes update the following sections of the Regulations and Rules: Interpretations; Condition of Vessels; Seaway Navigation; Dangerous Cargo; and Schedule II. These changes are to clarify existing requirements in the regulations. In addition, Congress renamed the Saint Lawrence Seaway Development Corporation (SLSDC) as Great Lakes St. Lawrence Seaway Development Corporation (GLS) as part of the 2021 Consolidated Appropriations Act (section 512 of Division AA of Pub. L. 116-260), signed into law on December 27, 2020. The joint regulations are being amended to reflect the name change.

*Timetable:*

Action	Date	FR Cite
Final Action .....	03/23/21	86 FR 15411

Action	Date	FR Cite
Final Action Effective.	03/24/21	

*Regulatory Flexibility Analysis Required: No.*

*Agency Contact:* Carrie Lavigne, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 315 764-3231, *Email:* [carrie.mann@dot.gov](mailto:carrie.mann@dot.gov).  
*RIN:* 2135-AA49

**180. +Tariff of Tolls (Rulemaking Resulting From a Section 610 review)**

*Legal Authority:* 33 U.S.C. 981 *et seq*.  
*Abstract:* The Great Lakes St.

Lawrence Seaway Development Corporation (GLS) and the St. Lawrence Seaway Management Corporation (SLSMC) of Canada, under international agreement, jointly publish and presently administer the St. Lawrence Seaway Tariff of Tolls in their respective jurisdictions. The Tariff sets forth the level of tolls assessed on all commodities and vessels transiting the facilities operated by the GLS and the SLSMC. The GLS is revising its regulations to reflect the fees and charges levied by the SLSMC in Canada starting in the 2021 navigation season, which are effective only in Canada. An amendment to increase the minimum charge per lock for those vessels that are not pleasure craft or subject in Canada to tolls under items 1 and 2 of the Tariff will apply in the U.S. In addition, Congress renamed the Saint Lawrence Seaway Development Corporation (SLSDC) as Great Lakes St. Lawrence Seaway Development Corporation (GLS) as part of the 2021 Consolidated Appropriations Act (section 512 of Division AA of Pub. L. 116-260), signed into law on December 27, 2020. The joint regulations are being amended to reflect the name change.

*Timetable:*

Action	Date	FR Cite
Final Action .....	03/24/21	86 FR 15585
Final Action Effective.	03/24/21	

*Regulatory Flexibility Analysis Required: No.*

*Agency Contact:* Carrie Lavigne, Department of Transportation, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 315 764-3231, *Email:* [carrie.mann@dot.gov](mailto:carrie.mann@dot.gov).  
*RIN:* 2135-AA50

**BILLING CODE 4910-61-P**

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Pipeline and Hazardous Materials Safety Administration (PHMSA)*

Final Rule Stage

**181. +Pipeline Safety: Amendments to Parts 192 and 195 To Require Valve Installation and Minimum Rupture Detection Standards**

*Legal Authority:* 49 U.S.C. 60101 et seq.

*Abstract:* This rulemaking action would revise the Pipeline Safety Regulations applicable to most newly constructed and entirely replaced onshore natural gas transmission and hazardous liquid pipelines to improve rupture mitigation and shorten pipeline segment isolation times. The rulemaking action would define “notification of potential rupture” and outline certain performance standards related to rupture identification and pipeline segment isolation. This rulemaking action also would require specific valve maintenance and inspection requirements, and 9–1–1 notification requirements to help operators achieve better rupture response and mitigation.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/06/20	85 FR 7162
NPRM Comment Period End.	04/06/20	
Final Rule .....	10/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Robert Jagger, Technical Writer, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–4595, *Email:* robert.jagger@dot.gov.  
*RIN:* 2137–AF06

**182. +Hazardous Materials: Enhanced Safety Provisions for Lithium Batteries Transported by Aircraft (FAA Reauthorization Act of 2018)**

*Legal Authority:* 49 U.S.C. 44701; 49 U.S.C. 5103(b); 49 U.S.C. 5120(b)

*Abstract:* This rulemaking amends the Hazardous Materials Regulations (HMR) to (1) prohibit the transport of lithium ion cells and batteries as cargo on passenger aircraft; (2) require all lithium ion cells and batteries to be shipped at not more than a 30 percent state of charge on cargo-only aircraft; and (3) limit the use of alternative provisions for small lithium cell or battery to one

package per consignment. The amendments do not restrict passengers or crew members from bringing personal items or electronic devices containing lithium cells or batteries aboard aircraft, or restrict the air transport of lithium ion cells or batteries when packed with or contained in equipment. To accommodate persons in areas potentially not serviced daily by cargo aircraft, PHMSA provides a limited exception for not more than two replacement lithium cells or batteries specifically used for medical devices to be transported by passenger aircraft and at a state of charge greater than 30 percent, under certain conditions and as approved by the Associate Administrator. This rulemaking is necessary to meet the FAA Reauthorization Act of 2018, address a safety hazard, and harmonize the HMR with emergency amendments to the 2015–2016 edition of the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/06/19	84 FR 8006
Interim Final Rule	03/06/19	84 FR 8006
Interim Final Rule Effective.	03/06/19	
Interim Final Rule Comment Period End.	05/06/19	
Final Rule .....	11/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Shelby Geller, Transportation Regulations Specialist, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590, *Phone:* 202 366–8553, *Email:* shelby.geller@dot.gov.  
*RIN:* 2137–AF20

**DEPARTMENT OF TRANSPORTATION (DOT)**

*Pipeline and Hazardous Materials Safety Administration (PHMSA)*

Long-Term Actions

**183. • +Pipeline Safety: Gas Pipeline Leak Detection and Repair**

*Legal Authority:* 49 U.S.C. 60101 et seq.

*Abstract:* This rulemaking would amend the pipeline safety regulations to

enhance requirements for detecting and repairing leaks on new and existing natural gas distribution, gas transmission, and gas gathering pipelines. The proposed rule is necessary to respond to a mandate from section 113 of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Sayler Palabrica, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, District of Columbia, DC 20590, *Phone:* 202–366–0559, *Email:* sayler.palabrica@dot.gov.

*RIN:* 2137–AF51

**184. • +Pipeline Safety: Pipeline Operational Status**

*Legal Authority:* 49 U.S.C. 60101 et seq.

*Abstract:* This rulemaking would amend the pipeline safety regulations to define an idled operational status for natural gas and hazardous liquid pipelines that are temporarily removed from service, set operations and maintenance requirements for idled pipelines, and establish inspection requirements for idled pipelines that are returned to service. The proposed rule is necessary to respond to a mandate from the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/23	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ashlin Bollacker, Technical Writer, Department of Transportation, Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, District of Columbia, DC 20590, *Phone:* 202–366–4203, *Email:* ashlin.bollacker@dot.gov.

*RIN:* 2137–AF52

**185. • +Pipeline Safety: Safety of Gas Distribution Pipelines**

*Legal Authority:* 49 U.S.C. 60101 et seq.

*Abstract:* This rulemaking would amend the pipeline safety regulations to enhance the safety requirements for gas distribution pipelines. The proposed rule is necessary to respond to several mandates from Title II of the Protecting our Infrastructure of Pipelines and Enhancing Safety Act of 2020 (PIPES Act of 2020).

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/22	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Sayler Palabrica, Department of Transportation, Pipeline

and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, District of Columbia, DC 20590, *Phone:* 202-366-0559, *Email:* sayler.palabrica@dot.gov.

*RIN:* 2137-AF53  
[FR Doc. 2021-14874 Filed 7-29-21; 8:45 am]  
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Part XIII

Department of the Treasury

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Semiannual Regulatory Agenda

**DEPARTMENT OF THE TREASURY**

**31 CFR Subtitles A and B**

**Semiannual Agenda**

**AGENCY:** Department of the Treasury.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This notice is given pursuant to the requirements of the Regulatory Flexibility Act and Executive Order 12866 (“Regulatory Planning and Review”), which require the publication by the Department of a semiannual agenda of regulations.

**FOR FURTHER INFORMATION CONTACT:** The Agency contact identified in the item relating to that regulation.

**SUPPLEMENTARY INFORMATION:** The semiannual regulatory agenda includes regulations that the Department has

issued or expects to issue and rules currently in effect that are under departmental or bureau review.

Beginning with the fall 2007 edition, the internet has been the primary medium for disseminating the Unified Agenda. The complete Unified Agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov) and [www.regulations.gov](http://www.regulations.gov), in a format that offers users an enhanced ability to obtain information from the Agenda database. Because publication in the **Federal Register** is mandated for the regulatory flexibility agenda required by the Regulatory Flexibility Act (5 U.S.C. 602), Treasury’s printed agenda entries include only:

(1) Rules that are in the regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because

they are likely to have a significant economic impact on a substantial number of small entities; and

(2) Rules that have been identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act’s Agenda requirements. Additional information on these entries is available in the Unified Agenda available on the internet.

The semiannual agenda of the Department of the Treasury conforms to the Unified Agenda format developed by the Regulatory Information Service Center (RISC).

**Michael Briskin,**  
*Deputy Assistant General Counsel for General Law and Regulation.*

**FINANCIAL CRIMES ENFORCEMENT NETWORK—PRERULE STAGE**

Sequence No.	Title	Regulation Identifier No.
186 .....	Section 6403. Corporate Transparency Act .....	1506–AB49
187 .....	Section 6110. Bank Secrecy Act Application to Dealers in Antiquities and Assessment of Bank Secrecy Act Application to Dealers in Arts.	1506–AB50

**FINANCIAL CRIMES ENFORCEMENT NETWORK—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
188 .....	Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States.	1506–AB48
189 .....	Section 6101. Establishment of National Exam and Supervisions Priorities .....	1506–AB52

**FINANCIAL CRIMES ENFORCEMENT NETWORK—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
190 .....	Clarification of the Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status.	1506–AB41
191 .....	Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets .....	1506–AB47

**FINANCIAL CRIMES ENFORCEMENT NETWORK—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
192 .....	Amendments of the Definition of Broker or Dealer in Securities (Crowd Funding) .....	1506–AB36

**CUSTOMS REVENUE FUNCTION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
193 .....	Enforcement of Copyrights and the Digital Millennium Copyright Act .....	1515–AE26

**INTERNAL REVENUE SERVICE—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
194 .....	MEPs and the Unified Plan Rule .....	1545–BO97



INTERNAL REVENUE SERVICE—PROPOSED RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
195 .....	Requirements Related to Surprise Billing, Part 1 .....	1545-BQ01
196 .....	Requirements Related to Surprise Billing, Part 2 .....	1545-BQ02

INTERNAL REVENUE SERVICE—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
197 .....	Guidance on the Elimination of Interbank Offered Rates .....	1545-BO91
198 .....	Section 42 Low-Income Housing Credit Average Income Test Regulations .....	1545-BO92
199 .....	Requirements Related to Surprise Billing, Part 1 (Temporary Regulation) .....	1545-BQ04
200 .....	Requirements Related to Surprise Billing, Part 2 (Temporary Regulation) .....	1545-BQ05

**DEPARTMENT OF THE TREASURY (TREAS)**

*Financial Crimes Enforcement Network (FINCEN)*

Prerule Stage

**186. • Section 6403. Corporate Transparency Act**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* FinCEN issued an Advance Notice of Proposed Rulemaking relating to Section 6403 of the Corporate Transparency Act (CTA). This section amends the Bank Secrecy Act by adding new Section 5336 to title 31 of the United States Code. New Section 5336 requires FinCEN to issue rules requiring reporting companies to submit certain information about the individuals who are beneficial owners of those entities and the individuals who formed or registered those entities, and establishing a mechanism for issuing FinCEN identifiers to entities and individuals that request them; requires FinCEN to maintain the information in a confidential, secure non-public database; and authorizes FinCEN to disclose the information to certain government agencies and financial institutions for purposes specified in the legislation and subject to protocols to protect the confidentiality of the information. The first of these requirements the reporting regulation for legal entities must be published in final form by January 1, 2022. The ANPRM solicited comments on a wide range of questions having to do with the possible shape of the reporting regulation, as well as questions that concern the interaction of the requirements of this regulation and the shape and functionality of the database that will be populated with the information reported under section 5336.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	04/05/21	86 FR 17557
ANPRM Comment Period End.	05/05/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* FinCEN Resource Center, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, *Phone:* 800 767-2825, *Email:* [frc@fincen.gov](mailto:frc@fincen.gov). *RIN:* 1506-AB49

**187. • Section 6110. Bank Secrecy Act Application to Dealers in Antiquities and Assessment of Bank Secrecy Act Application to Dealers in Arts**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* FinCEN intends to issue an Advance Notice of Proposed Rulemaking in order to implement Section 6110 of the Anti-Money Laundering Act of 2020 (the AML Act). This section amends the Bank Secrecy Act (31 U.S.C. 5312(a)(2)) to include as a financial institution a person engaged in the trade of antiquities, including an advisor, consultant, or any other person who engages as a business in the solicitation or the sale of antiquities, subject to regulations prescribed by the Secretary of the Treasury. The section further requires the Secretary of the Treasury to issue proposed rules to implement the amendment within 360 days of enactment of the AML Act.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	07/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* FinCEN Resource Center, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, *Phone:* 800 767-2825, *Email:* [frc@fincen.gov](mailto:frc@fincen.gov).

*RIN:* 1506-AB50

**DEPARTMENT OF THE TREASURY (TREAS)**

*Financial Crimes Enforcement Network (FINCEN)*

Proposed Rule Stage

**188. • Threshold for the Requirement To Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds That Begin or End Outside the United States**

*Legal Authority:* 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

*Abstract:* In October 2020, the Board of Governors of the Federal Reserve System and FinCEN (collectively, the “Agencies”) issued a proposed rule to modify the threshold in the rules implementing the Bank Secrecy Act requiring financial institutions to collect and retain information on certain funds transfers and transmittals of funds. The modification would reduce this threshold from \$3,000 for certain funds transfers and transmittals of funds. At the same time, FinCEN likewise issued a proposal to reduce from \$3,000 the threshold in the rule requiring financial institutions to transmit to other financial institutions in the payment chain information on certain funds transfers and transmittals of funds. The public comment period for the proposed rulemaking expired on November 27, 2020. The Agencies are working to develop a rule in light of the comments received from the public.

*Timetable:*

Action	Date	FR Cite
NPRM Public Comment Period Extended (Related to RIN 1506-AB41).	09/00/21	

*Regulatory Flexibility Analysis*

Required: Yes.

Agency Contact: FinCEN Resource Center, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Phone: 800 767-2825, Email: frc@fincen.gov. RIN: 1506-AB48

**189. • Section 6101. Establishment of National Exam and Supervisions Priorities**

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN intends to issue a Notice of Proposed Rulemaking to implement Section 6101 of the Anti-Money Laundering Act of 2020 (the AML Act). This section requires the Secretary of the Treasury to promulgate regulations to carry out the provisions of Section 6101, concerning the development of public priorities for anti-money laundering (AML) and countering the financing of terrorism (CFT) policy, and the supervision and examination of financial institutions regarding the incorporation of those priorities, as appropriate, into their risk-based AML/CFT programs.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/21	

*Regulatory Flexibility Analysis*

Required: Yes.

Agency Contact: FinCEN Resource Center, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Phone: 800 767-2825, Email: frc@fincen.gov. RIN: 1506-AB52

**DEPARTMENT OF THE TREASURY (TREAS)**

Financial Crimes Enforcement Network (FINCEN)

Final Rule Stage

**190. Clarification of the Requirement To Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets With Legal Tender Status**

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: The Board of Governors of the Federal Reserve System and FinCEN (collectively, the “Agencies”) intend to finalize a proposed rule to clarify the meaning of “money” as used in the rules implementing the Bank Secrecy Act requiring financial institutions to collect, retain, and transmit information on certain funds transfers and transmittals of funds to ensure that the rules apply to domestic and cross-border transactions involving convertible virtual currency, which is a medium of exchange (such as cryptocurrency) that either has an equivalent value as currency, or acts as a substitute for currency, but lacks legal tender status. The Agencies further intend to finalize the proposal to clarify that these rules apply to domestic and cross-border transactions involving digital assets that have legal tender status.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/27/20	85 FR 68005
NPRM Comment Period End.	11/27/20	
Final Action .....	09/00/21	

*Regulatory Flexibility Analysis*

Required: Yes.

Agency Contact: FinCEN Resource Center, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Phone: 800 767-2825, Email: frc@fincen.gov. RIN: 1506-AB41

**191. • Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets**

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5336

Abstract: FinCEN is proposing to amend the regulations implementing the Bank Secrecy Act (BSA) to require banks and money service businesses (MSBs) to submit reports, keep records, and verify the identity of customers in relation to transactions involving convertible virtual currency (CVC) or digital assets with legal tender status (“legal tender digital assets” or “LTDA”) held in unhosted wallets, or held in wallets hosted in a jurisdiction identified by FinCEN.

*Timetable:*

Action	Date	FR Cite
Final Action .....	11/00/21	

*Regulatory Flexibility Analysis*

Required: Yes.

Agency Contact: FinCEN Resource Center, Department of the Treasury,

Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, Phone: 800 767-2825, Email: frc@fincen.gov RIN: 1506-AB47

**DEPARTMENT OF THE TREASURY (TREAS)**

Financial Crimes Enforcement Network (FINCEN)

Long-Term Actions

**192. Amendments of the Definition of Broker or Dealer in Securities (Crowd Funding)**

Legal Authority: 12 U.S.C. 1829b; 12 U.S.C. 1951 to 1959; 31 U.S.C. 5311 to 5314; 31 U.S.C. 5316 to 5332

Abstract: FinCEN is finalizing amendments to the regulatory definitions of “broker or dealer in securities” under the regulations implementing the Bank Secrecy Act. The changes are intended to expand the current scope of the definitions to include funding portals. In addition, these amendments would require funding portals to implement policies and procedures reasonably designed to achieve compliance with all of the Bank Secrecy Act requirements that are currently applicable to brokers or dealers in securities. The rule to require these organizations to comply with the Bank Secrecy Act regulations is intended to help prevent money laundering, terrorist financing, and other financial crimes.

Note: This is not a new requirement; it replaces RINs 1506-AB24 and 1506-AB29.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/04/16	81 FR 19086
NPRM Comment Period End.	06/03/16	
Final Action .....	05/00/22	

*Regulatory Flexibility Analysis*

Required: Yes.

Agency Contact: FinCEN Resource Center, Phone: 800 767-2825, Email: frc@fincen.gov. RIN: 1506-AB36

**DEPARTMENT OF THE TREASURY (TREAS)**

Customs Revenue Function (CUSTOMS)

Final Rule Stage

**193. Enforcement of Copyrights and the Digital Millennium Copyright Act**

Legal Authority: Title III of the Trade Facilitation and Trade Enforcement Act

of 2015 (Pub. L. 114–125); 19 U.S.C. 1595a(c)(2)(G); 19 U.S.C. 1624

*Abstract:* This rule amends the U.S. Customs and Border Protection (CBP) regulations pertaining to importations of merchandise that violate or are suspected of violating the copyright laws in accordance with title III of the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA) and certain provisions of the Digital Millennium Copyright Act (DMCA).

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/16/19	84 FR 55251
NPRM Comment Period End.	12/16/19	
Final Rule .....	12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Charles Steuart, Chief, Intellectual Property Rights Branch, Department of the Treasury, Customs Revenue Function, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, *Phone:* 202 325–0093, *Fax:* 202 325–0120, *Email:* charles.r.steuart@cbp.dhs.gov. *RIN:* 1515–AE26

**DEPARTMENT OF THE TREASURY (TREAS)**

*Internal Revenue Service (IRS)*

Proposed Rule Stage

**194. MEPs and the Unified Plan Rule**

*Legal Authority:* 26 U.S.C. 7805; 26 U.S.C. 413

*Abstract:* These proposed regulations provide guidance relating to the tax qualification of multiple employer plans (MEPs) described in section 413(e) of the Internal Revenue Code (Code). The proposed regulations would provide an exception, if certain requirements are met, to the application of the “unified plan rule” for section 413(e) MEPs in the event of a failure by one or more participating employers to take actions required of them to satisfy the requirements of section 401(a) or 408 of the Code. The regulations affect participants in MEPs, MEP sponsors and administrators, and employers maintaining MEPs.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/03/19	84 FR 31777
NPRM Comment Period End.	10/01/19	

Action	Date	FR Cite
Second NPRM ....	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jamie Dvoretzky, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224, *Phone:* 202 317–4102, *Fax:* 855 604–6087, *Email:* jamie.l.dvoretzky@irs.counsel.treas.gov. *RIN:* 1545–BO97

**195. • Requirements Related to Surprise Billing, Part 1**

*Legal Authority:* 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II

*Abstract:* This notice of proposed rulemaking would implement the protections against surprise medical bills under the No Surprises Act, by cross-reference to temporary regulations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kari L. DiCecco, General Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5712, Washington, DC 20224, *Phone:* 202 317–5500, *Email:* kari.l.dicecco@irs.counsel.treas.gov. *RIN:* 1545–BQ01

**196. • Requirements Related to Surprise Billing, Part 2**

*Legal Authority:* 26 U.S.C. 7805; Pub. L. 116–260, Division BB, Title I and Title II

*Abstract:* This notice of proposed rulemaking would implement additional protections against surprise medical bills under the No Surprises Act and certain provisions related to Title II of Division BB of the Consolidated Appropriations Act, by cross-reference to temporary regulations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kari L. DiCecco, General Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5712, Washington, DC 20224, *Phone:*

202 317–5500, *Email:* kari.l.dicecco@irs.counsel.treas.gov.

*RIN:* 1545–BQ02

**DEPARTMENT OF THE TREASURY (TREAS)**

*Internal Revenue Service (IRS)*

Final Rule Stage

**197. Guidance on the Elimination of Interbank Offered Rates**

*Legal Authority:* 26 U.S.C. 1001b and 7805; 26 U.S.C. 7805

*Abstract:* The final regulations will provide guidance on the tax consequences of the phased elimination of interbank offered rates (IBORs) that is underway in the United States and many foreign countries. Taxpayers have requested guidance that addresses whether a modification to a debt instrument or other financial contract to accommodate the elimination of the relevant IBOR will be treated as a realization event for federal income tax purposes.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/09/19	84 FR 54068
NPRM Comment Period End.	11/25/19	
Final Action .....	06/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Caitlin Holzem, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 3547, Washington, DC 20224, *Phone:* 202 317–7036, *Fax:* 855 574–9023, *Email:* caitlin.i.holzem@irs.counsel.treas.gov. *RIN:* 1545–BO91

**198. Section 42 Low-Income Housing Credit Average Income Test Regulations**

*Legal Authority:* 26 U.S.C. 7805; 26 U.S.C. 42

*Abstract:* The Consolidated Appropriations Act of 2018 added a new applicable minimum set-aside test under section 42(g) of the Internal Revenue Code known as the average income test. This proposed regulation will implement requirements related to the average income test.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/30/20	85 FR 68816
NPRM Comment Period End.	12/29/20	

Action	Date	FR Cite
Proposed rule; notice of hearing..	02/03/21	86 FR 7986
Final Action .....	07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Dillon J. Taylor, Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5107, Washington, DC 20224, *Phone:* 202 317-4137, *Fax:* 855 591-7867, *Email:* dillon.j.taylor@irsounsel.treas.gov. *RIN:* 1545-BO92

**199. • Requirements Related to Surprise Billing, Part 1 (Temporary Regulation)**

*Legal Authority:* 26 U.S.C. 7805; Pub. L. 116-260, Division BB, Title I and Title II  
*Abstract:* This temporary regulation would implement the protections

against surprise medical bills under the No Surprises Act.

*Timetable:*

Action	Date	FR Cite
Temporary Regulation.	07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Kari L. DiCecco, General Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5712, Washington, DC 20224, *Phone:* 202 317-5500, *Email:* kari.l.dicecco@irsounsel.treas.gov. *RIN:* 1545-BQ04

**200. • Requirements Related to Surprise Billing, Part 2 (Temporary Regulation)**

*Legal Authority:* 26 U.S.C. 7805; Pub. L. 116-260, Division BB, Title I and Title II

*Abstract:* This temporary regulation would implement additional protections against surprise medical bills under the No Surprises Act and certain provisions related to Title II of Division BB of the Consolidated Appropriations Act.

*Timetable:*

Action	Date	FR Cite
Temporary Regulations.	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Kari L. DiCecco, General Attorney (Tax), Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Room 5712, Washington, DC 20224, *Phone:* 202 317-5500, *Email:* kari.l.dicecco@irsounsel.treas.gov. *RIN:* 1545-BQ05



# FEDERAL REGISTER

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Vol. 86

Friday,

No. 144

July 30, 2021

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Part XIV

Committee for Purchase From People Who  
Are Blind or Severely Disabled

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Semiannual Regulatory Agenda

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED**

**41 CFR Chapter 51**

**Unified Agenda of Federal Regulatory and Deregulatory Actions**

**AGENCY:** Committee for Purchase From People Who Are Blind or Severely Disabled.

**ACTION:** Semiannual Regulatory Agenda.

**SUMMARY:** This agenda announces the proposed regulatory actions that the Committee for Purchase From People Who Are Blind or Severely Disabled (Committee) plans for the next 12 months. This agenda is issued in accordance with Executive Order 12866, “Regulatory Planning and Review”, and E.O. 13563, “Improving Regulation and Regulatory Review”. The Committee’s purpose for publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process.

**FOR FURTHER INFORMATION CONTACT:** For further information on the agenda in general, contact Shelly Hammond, Director, Contracting and Policy, Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, VA 22202; (703) 603–2127.

Dated: March 17, 2021.

**Shelly Hammond,**  
*Director of Contracting & Policy.*

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED—PRERULE STAGE

Sequence No.	Title	Regulation Identifier No.
201 .....	AbilityOne Program, Department of Defense Section 898, Contracting Oversight, Accountability and Integrity Panel ( <b>Rulemaking Resulting From a Section 610 Review</b> ).	3037-AA14

**COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED (CPBSD)**

Prerule Stage

**201. AbilityOne Program, Department of Defense Section 898, Contracting Oversight, Accountability and Integrity Panel (Rulemaking Resulting From a Section 610 Review)**

*Legal Authority:* 41 U.S.C. 85

*Abstract:* The Committee for Purchase from People Who Are Blind or Severely Disabled (Committee) are proposing revisions to 41 CFR, to incorporate specific recommendations from the Department of Defense (DoD) section 898 panel 1 review mandated by the

National Defense Authorization Act for Fiscal Year 2017 (Pub. L. 114–328). The mission of the Panel is to assess the overall effectiveness and internal controls of the AbilityOne Program related to Department of Defense contracts and provide recommendations for changes in business practices. The proposed revisions to the Committee’s regulation address: Responsibilities and procedures associated with authorization/de-authorization; transfer of work within the AbilityOne Program; undesignation and unauthorization of nonperforming nonprofit agencies; and incorporation of an Alternate Dispute Resolution process in matters regarding contract disputes.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	05/00/21	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Shelly Hammond, Director, Policy and Programs, Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S Clark Street, Suite 715, Arlington, VA 22202, *Phone:* 703 603–2127, *Email:* shammond@abilityone.gov.  
*RIN:* 3037-AA14

[FR Doc. 2021–14881 Filed 7–29–21; 8:45 am]

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# FEDERAL REGISTER

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Part XV

Environmental Protection Agency

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Semiannual Regulatory Agenda

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Ch. I

[FRL10021-99-OP; EPA-HQ-OAR-2019-0168; EPA-HQ-OAR-2020-0099; EPA-HQ-OAR-2020-0106; EPA-HQ-OAR-2021-0152]

### Spring 2021 Unified Agenda of Regulatory and Deregulatory Actions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Environmental Protection Agency (EPA) publishes the Semiannual Agenda of Regulatory and Deregulatory Actions online at <https://www.reginfo.gov> to periodically update the public. This document contains information about:

- Regulations in the Semiannual Agenda that are under development, completed, or canceled since the last agenda; and
- Reviews of regulations with small business impacts under Section 610 of the Regulatory Flexibility Act.

**FOR FURTHER INFORMATION CONTACT:** If you have questions or comments about a particular action, please get in touch with the agency contact listed in each agenda entry. If you have general questions about the Semiannual Agenda, please contact: Caryn Muellerleile ([muellerleile.caryn@epa.gov](mailto:muellerleile.caryn@epa.gov); 202-564-2855).

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### SUPPLEMENTARY INFORMATION:

### I. Introduction

EPA is committed to a regulatory strategy that effectively achieves the Agency's mission of protecting the environment and the health, welfare, and safety of Americans while also supporting economic growth, job creation, competitiveness, and innovation. EPA publishes the Semiannual Agenda of Regulatory and Deregulatory Actions to update the public about regulatory activity undertaken in support of this mission. In the Semiannual Agenda, EPA provides notice of our plans to review, propose, and issue regulations.

Additionally, EPA's Semiannual Agenda includes information about rules that may have a significant economic impact on a substantial number of small entities, and review of those regulations under the Regulatory Flexibility Act, as amended.

In this document, EPA explains in greater detail the types of actions and information available in the Semiannual Agenda and actions that are currently undergoing review specifically for impacts on small entities.

#### A. EPA's Regulatory Information

"E-Agenda," "online regulatory agenda," and "semiannual regulatory agenda" all refer to the same comprehensive collection of information that, until 2007, was published in the **Federal Register**. Currently, this information is only available through an online database at <https://www.reginfo.gov/>.

"Regulatory Flexibility Agenda" refers to a document that contains information about regulations that may have a significant impact on a substantial number of small entities. We continue to publish this document in the **Federal Register** pursuant to the Regulatory Flexibility Act of 1980. This document is available at <https://www.govinfo.gov/app/collection/fr>.

"Unified Regulatory Agenda" refers to the collection of all agencies' agendas with an introduction prepared by the Regulatory Information Service Center facilitated by the U.S. General Services Administration.

"Regulatory Agenda Preamble" refers to the document you are reading now. It appears as part of the Regulatory Flexibility Agenda and introduces both EPA's Regulatory Flexibility Agenda and the e-Agenda.

"610 Review" as required by the Regulatory Flexibility Act means a periodic review within ten years of promulgating a final rule that has or may have a significant economic impact on a substantial number of small

entities. EPA maintains a list of these actions at <https://www.epa.gov/reg-flex/section-610-reviews>. EPA has one 610 review initiating in spring 2021, one review ongoing and two reviews completed.

#### B. What key statutes and Executive Orders guide EPA's rule and policymaking process?

Several environmental laws authorize EPA's actions, including but not limited to:

- Clean Air Act (CAA),
- Clean Water Act (CWA),
- Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, or Superfund),
- Emergency Planning and Community Right-to-Know Act (EPCRA),
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA),
- Resource Conservation and Recovery Act (RCRA),
- Safe Drinking Water Act (SDWA), and
- Toxic Substances Control Act (TSCA).

Not only must EPA comply with environmental laws, but also administrative legal requirements that apply to the issuance of regulations, such as the Administrative Procedure Act (APA), the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), the Unfunded Mandates Reform Act (UMRA), the Paperwork Reduction Act (PRA), the National Technology Transfer and Advancement Act (NTTAA), and the Congressional Review Act (CRA).

EPA also meets a number of requirements contained in numerous Executive Orders: 12866, "Regulatory Planning and Review" (58 FR 51735, Oct. 4, 1993), as supplemented by Executive Order 13563, "Improving Regulation and Regulatory Review" (76 FR 3821, Jan. 21, 2011); 12898, "Environmental Justice" (59 FR 7629, Feb. 16, 1994); 13045, "Children's Health Protection" (62 FR 19885, Apr. 23, 1997); 13132, "Federalism" (64 FR 43255, Aug. 10, 1999); 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, Nov. 9, 2000); 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001).

#### C. How can you be involved in EPA's rule and policymaking process?

You can make your voice heard by getting in touch with the contact person provided in each agenda entry. EPA



encourages you to participate as early in the process as possible. You may also participate by commenting on proposed rules published in the **Federal Register** (FR).

Instructions on how to submit your comments through <https://www.regulations.gov> are provided in each Notice of Proposed Rulemaking (NPRM). To be most effective, comments should contain information and data that support your position and you also should explain why EPA should incorporate your suggestion in the rule or other type of action. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternative(s) to that proposed by EPA.

EPA believes its actions will be more cost effective and protective if the development process includes stakeholders working with us to help identify the most practical and effective solutions to environmental problems. EPA encourages you to become involved in its rule and policymaking process. For more information about EPA's efforts to increase transparency, participation and collaboration in EPA activities, please visit <https://www.epa.gov/laws-regulations/get-involved-epa-regulations>.

## II. Semiannual Agenda of Regulatory and Deregulatory Actions

### A. What actions are included in the e-Agenda and the Regulatory Flexibility Agenda?

EPA includes regulations in the e-Agenda. However, there is no legal significance to the omission of an item from the agenda, and EPA generally does not include the following categories of actions:

- Administrative actions such as delegations of authority, changes of address, or phone numbers.
- *Under the CAA*: Revisions to state implementation plans; equivalent methods for ambient air quality monitoring; deletions from the new source performance standards source categories list; delegations of authority to states; area designations for air quality planning purposes.
- *Under FIFRA*: Registration-related decisions, actions affecting the status of currently registered pesticides, and data call-ins.
- *Under the Federal Food, Drug, and Cosmetic Act*: Actions regarding pesticide tolerances and food additive regulations.
- *Under TSCA*: Licensing actions and new chemical actions.
- *Under RCRA*: Authorization of State solid waste management plans; hazardous waste delisting petitions.

- *Under the CWA*: State Water Quality Standards; deletions from the section 307(a) list of toxic pollutants; suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES); delegations of NPDES authority to States.

- *Under SDWA*: Actions on State underground injection control programs.

Meanwhile, the Regulatory Flexibility Agenda includes:

- Actions likely to have a significant economic impact on a substantial number of small entities.
- Rules the Agency has identified for periodic review under section 610 of the RFA.

EPA has one 610 review initiating, one review ongoing and two reviews completed in this Agenda.

### B. How is the e-Agenda organized?

Online, you can choose how to sort the agenda entries by specifying the characteristics of the entries of interest in the desired individual data fields of the e-Agenda at <https://www.reginfo.gov>. You can sort based on the following characteristics: EPA subagency (such as Office of Water); stage of rulemaking as described in the following paragraphs; alphabetically by title; or the Regulation Identifier Number (RIN), which is assigned sequentially when an action is added to the agenda.

Each entry in the Agenda is associated with one of five rulemaking stages. The rulemaking stages are:

1. Prerule Stage—EPA's prerule actions generally are intended to determine whether the agency should initiate rulemaking. Prerule actions may include anything that influences or leads to rulemaking; this would include Advance Notices of Proposed Rulemaking (ANPRMs), studies or analyses of the possible need for regulatory action.
2. Proposed Rule Stage—Proposed rulemaking actions include EPA's Notice of Proposed Rulemakings (NPRMs); these proposals are scheduled to publish in the **Federal Register** within the next year.
3. Final Rule Stage—Final rulemaking actions are those actions that EPA is scheduled to finalize and publish in the **Federal Register** within the next year.
4. Long-Term Actions—This section includes rulemakings for which the next scheduled regulatory action (such as publication of a NPRM or final rule) is twelve or more months into the future. We urge you to explore becoming involved even if an action is listed in the Long-Term category.

5. Completed Actions—EPA's completed actions are those that have been promulgated and published in the **Federal Register** since publication of the fall 2020 Agenda. This category also includes actions that EPA is no longer considering and has elected to "withdraw" and the results of any RFA section 610 reviews.

### C. What information is in the Regulatory Flexibility Agenda and the e-Agenda?

The Regulatory Flexibility Agenda entries include only the nine categories of information that are required by the Regulatory Flexibility Act of 1980 and by **Federal Register** Agenda printing requirements: Sequence Number, RIN, Title, Description, Statutory Authority, Section 610 Review, if applicable, Regulatory Flexibility Analysis Required, Schedule and Contact Person. Note that the electronic version of the Agenda (E-Agenda) replicates each of these actions with more extensive information, described below.

E-Agenda entries include:

*Title*: A brief description of the subject of the regulation. The notation "Section 610 Review" follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the RFA (5 U.S.C. 610).

*Priority*: Each entry is placed into one of the five following categories:

- a. *Economically Significant*: Under Executive Order 12866, a rulemaking that may have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.
- b. *Other Significant*: A rulemaking that is not economically significant but is considered significant for other reasons. This category includes rules that may:
  1. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.
  2. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients; or
  3. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

1. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

2. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients; or

3. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

c. *Substantive, Nonsignificant*: A rulemaking that has substantive impacts but is not Significant, Routine and Frequent, or Informational/Administrative/Other.

d. *Routine and Frequent*: A rulemaking that is a specific case of a

recurring application of a regulatory program in the Code of Federal Regulations. If an action that would normally be classified Routine and Frequent is reviewed by the Office of Management and Budget (OMB) under Executive Order 12866, then we would classify the action as either “Economically Significant” or “Other Significant.”

*e. Informational/Administrative/Other:* An action that is primarily informational or pertains to an action outside the scope of Executive Order 12866.

*Major:* A rule is “major” under 5 U.S.C. 801 (Pub. L. 104–121) if it has resulted or is likely to result in an annual effect on the economy of \$100 million or more or meets other criteria specified in the Congressional Review Act.

*Unfunded Mandates:* Whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than \$100 million in 1 year, the agency prepare a written statement on federal mandates addressing costs, benefits, and intergovernmental consultation.

*Legal Authority:* The sections of the United States Code (U.S.C.), Public Law (Pub. L.), Executive Order (E.O.), or common name of the law that authorizes the regulatory action.

*CFR Citation:* The sections of the Code of Federal Regulations that would be affected by the action.

*Legal Deadline:* An indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a NPRM, a Final Action, or some other action.

*Abstract:* A brief description of the problem the action will address.

*Timetable:* The dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date displayed in the form 05/00/22 means the agency is predicting the month and year the action will take place but not the day it will occur. For some entries, the timetable indicates that the date of the next action is “to be determined.”

*Regulatory Flexibility Analysis Required:* Indicates whether EPA has prepared or anticipates preparing a regulatory flexibility analysis under section 603 or 604 of the RFA.

Generally, such an analysis is required for proposed or final rules subject to the RFA that EPA believes may have a significant economic impact on a substantial number of small entities.

*Small Entities Affected:* Indicates whether the rule is anticipated to have any effect on small businesses, small governments or small nonprofit organizations.

*Government Levels Affected:* Indicates whether the rule may have any effect on levels of government and, if so, whether the affected governments are State, local, tribal, or Federal.

*Federalism Implications:* Indicates whether the action is expected to have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

*Energy Impacts:* Indicates whether the action is a significant energy action under Executive Order 13211.

*Sectors Affected:* Indicates the main economic sectors regulated by the action. The regulated parties are identified by their North American Industry Classification System (NAICS) codes. These codes were created by the Census Bureau for collecting, analyzing, and publishing statistical data on the U.S. economy. There are more than 1,000 NAICS codes for sectors in agriculture, mining, manufacturing, services, and public administration.

*International Trade Impacts:* Indicates whether the action is likely to have international trade or investment effects, or otherwise be of international interest.

*Agency Contact:* The name, address, phone number, and email address, if available, of a person who is knowledgeable about the regulation.

*Additional Information:* Other information about the action including docket information.

*URLs:* For some actions, the internet addresses are included for reading copies of rulemaking documents, submitting comments on proposals, and getting more information about the rulemaking and the program of which it is a part.

*RIN:* The Regulation Identifier Number is used by OMB to identify and track rulemakings. The first four digits of the RIN correspond to the EPA office with lead responsibility for developing the action.

*D. What tools are available for mining Regulatory Agenda data and for finding more about EPA rules and policies?*

#### 1. Federal Regulatory Dashboard

The <https://www.reginfo.gov> searchable database maintained by the Regulatory Information Service Center and OMB’s Office of Information and Regulatory Affairs (OIRA), allows users to view the Regulatory Agenda database (<https://www.reginfo.gov/public/do/eAgendaMain>), with options for searching, displaying, and data transmission.

#### 2. Subject Matter EPA Websites

Some actions listed in the Agenda include a URL for an EPA-maintained website that provides additional information about the action.

#### 3. Public Dockets

When EPA publishes either an Advance Notice of Proposed Rulemaking (ANPRM) or a Notice of Proposed Rulemaking (NPRM) in the **Federal Register**, the Agency typically establishes a docket to accumulate materials developed throughout the development process for that rulemaking. The docket serves as the repository for the collection of documents or information related to that Agency’s action or activity. EPA uses dockets primarily for rulemaking actions, but dockets may also be used for section 610 reviews and for various non-rulemaking activities, such as **Federal Register** documents seeking public comments on draft guidance, policy statements, information collection requests under the PRA, and other non-rule activities. Docket information should be in that action’s agenda entry. All of EPA’s public dockets can be located at <https://www.regulations.gov>. EPA particularly welcomes feedback on rulemakings from communities likely to be affected by these actions.

### III. Review of Regulations Under 610 of the Regulatory Flexibility Act

#### A. Reviews of Rules With Significant Impacts on a Substantial Number of Small Entities

Section 610 of the RFA requires that an agency review, within 10 years of promulgation, each rule that has or will have a significant economic impact on a substantial number of small entities. At this time, EPA has one 610 review initiating, one review ongoing and two reviews completed.

Review title	RIN	Docket ID No.	Status
Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Coal-and Oil-Fired Electric Utility Steam Generating Units.	2060-AV08	EPA-HQ-OAR-2021-0152.	Initiated.
Section 610 Review of Renewable Fuels Standard Program .....	2060-AU44	EPA-HQ-OAR-2019-0168.	Ongoing.
Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers.	2060-AU76	EPA-HQ-OAR-2020-0099.	Completed.
Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters.	2060-AU77	EPA-HQ-OAR-2020-0106.	Completed.

EPA has established public dockets for these 610 reviews. Please see docket EPA-HQ-OAR-2021-0152 at <https://www.regulations.gov/> to comment on EPA’s newly initiated review, “Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Coal-and Oil-Fired Electric Utility Steam Generating Units.” While comments for the ongoing and completed reviews are no longer accepted, submitted comments can be viewed at <https://www.regulations.gov/>, dockets EPA-HQ-OAR-2019-0168, EPA-HQ-OAR-2020-0099, and EPA-HQ-OAR-2020-0106.

*B. What other special attention does EPA give to the impacts of rules on small businesses, small governments, and small nonprofit organizations?*

For each of EPA’s rulemakings, consideration is given to whether there will be any adverse impact on any small entity. EPA attempts to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation.

Under the RFA as amended by SBREFA, the Agency must prepare a formal analysis of the potential negative impacts on small entities, convene a Small Business Advocacy Review Panel (proposed rule stage), and prepare a Small Entity Compliance Guide (final rule stage) unless the Agency certifies a rule will not have a significant economic impact on a substantial

number of small entities. For more detailed information about the Agency’s policy and practice with respect to implementing the RFA/SBREFA, please visit EPA’s RFA/SBREFA website at <https://www.epa.gov/reg-flex>.

**IV. Thank You for Collaborating With Us**

Finally, we would like to thank those of you who choose to join with us in making progress on the complex issues involved in protecting human health and the environment. Collaborative efforts such as EPA’s open rulemaking process are a valuable tool for addressing the problems we face, and the regulatory agenda is an important part of that process.

Dated: March 23, 2021.

**Victoria Arroyo,**  
Associate Administrator, Office of Policy.

**10—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
202 .....	National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations.	2060-AU37

**10—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
203 .....	Section 610 Review of Renewable Fuels Standard Program ( <b>Section 610 Review</b> ) .....	2060-AU44

**10—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
204 .....	Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers ( <b>Section 610 Review</b> ).	2060-AU76
205 .....	Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters ( <b>Section 610 Review</b> ).	2060-AU77

**35—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
206 .....	1-Bromopropane; Rulemaking Under TSCA Section 6(a) .....	2070-AK73

35—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
207 .....	Trichloroethylene (TCE); Rulemaking Under TSCA Section 6(a); Vapor Degreasing .....	2070-AK11
208 .....	N-Methylpyrrolidone; Regulation of Certain Uses Under TSCA Section 6(a) .....	2070-AK46

72—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
209 .....	National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions .....	2040-AF15

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

10

Proposed Rule Stage

**202. National Emission Standards for Hazardous Air Pollutants: Ethylene Oxide Commercial Sterilization and Fumigation Operations**

*Legal Authority:* 42 U.S.C. 7412 Clean Air Act

*Abstract:* The National Emission Standards for Hazardous Air Pollutants (NESHAP) for Ethylene Oxide Commercial Sterilization and Fumigation Operations were finalized in December 1994 (59 FR 62585). The standards require existing and new major sources to control emissions to the level achievable by the maximum achievable control technology (MACT) and require existing and new area sources to control emissions using generally available control technology (GACT). EPA completed a residual risk and technology review for the NESHAP in 2006 and, at that time, concluded that no revisions to the standards were necessary. In this action, EPA will conduct the second technology review for the NESHAP and also assess potential updates to the rule. To aid in this effort, EPA issued an advance notice of proposed rulemaking (ANPRM) that solicited comment from stakeholders and undertook a Small Business Advocacy Review (SBAR) panel which is needed when there is the potential for significant economic impacts to small businesses from any regulatory actions being considered.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	12/12/19	84 FR 67889
NPRM .....	11/00/21	
Final Rule .....	To Be Determined	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jonathan Witt, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code E143-05, Research Triangle Park, NC 27709, *Phone:* 919 541-5645, *Email:* witt.jon@epa.gov.

Steve Fruh, Environmental Protection Agency, Office of Air and Radiation, E143-01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711, *Phone:* 919 541-2837, *Email:* fruh.steve@epa.gov.

*RIN:* 2060-AU37

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

10

Long-Term Actions

**203. Section 610 Review of Renewable Fuels Standard Program (Section 610 Review)**

*Legal Authority:* 5 U.S.C. 610

*Abstract:* The rulemaking “Regulation of Fuels and Fuel Additives: Changes to Renewable Fuel Standard Program” was finalized by EPA in March 2010 (75 FR 14669, March 26, 2010). The final regulations made a number of changes to the existing Renewable Fuel Standard program while retaining many elements of the compliance and trading system already in place. The final rule also implemented the revised statutory definitions and criteria, most notably the greenhouse gas emission thresholds for renewable fuels and new limits on renewable biomass feedstocks. This entry in the regulatory agenda describes EPA’s review of this action pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). As part of this review, EPA is considering comments on the following factors: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates, or

conflicts with other Federal, State, or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule.

*Timetable:*

Action	Date	FR Cite
Final Rule .....	03/26/10	75 FR 14669
Begin Review .....	06/24/19	84 FR 29689
Comment Period Extended.	08/27/19	84 FR 44804
End Review .....	To Be Determined	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Jessica Mroz, Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564-1094, *Email:* mroz.jessica@epa.gov.

Julia Burch, Environmental Protection Agency, Office of Air and Radiation, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564-0961, *Email:* burch.julia@epa.gov.

*RIN:* 2060-AU44

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

10

Completed Actions

**204. Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (Section 610 Review)**

*Legal Authority:* 42 U.S.C. 7412 Clean Air Act

*Abstract:* On March 21, 2011, EPA promulgated National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (76 FR 15554). The rule (40 CFR part 63, subpart JJJJJ) includes standards to

control hazardous air pollutant emissions from new and existing industrial, commercial and institutional boilers fired with coal, oil, biomass or other solid and liquid non-waste materials located at area source facilities. Rule amendments that did not impose any additional regulatory requirements beyond those imposed by the March 2011 final rule and, in certain instances, would result in a decrease in burden, were promulgated on February 1, 2013 (78 FR 7488) and September 14, 2016 (81 FR 63112). This entry in the regulatory agenda announces that EPA has reviewed this action pursuant to section 610 of the Regulatory Flexibility Act, "Periodic Review of Rules" (5 U.S.C. 610) to determine if the provisions that could affect small entities should be continued without change or should be rescinded or amended to minimize adverse economic impacts on small entities. As part of this review, EPA solicited comments on the following factors as specified in section 610: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other federal, state or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. No comments were received. EPA has concluded that the rule does not need to be amended at this time and has addressed the review factors in a report. The report is available in Docket EPA-HQ-OAR-2020-0099, which can be accessed at [www.regulations.gov](http://www.regulations.gov).

*Timetable:*

Action	Date	FR Cite
Final Rule .....	03/21/11	76 FR 15553
Begin Review .....	08/26/20	85 FR 52763
End Review .....	03/01/21	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Mary Johnson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243-01, Research Triangle Park, NC 27711, *Phone:* 919 541-5025, *Email:* [johnson.mary@epa.gov](mailto:johnson.mary@epa.gov).

Nick Hutson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243-01, Research Triangle Park, NC 27711, *Phone:* 919 541-2968, *Fax:* 919 541-4991, *Email:* [hutson.nick@epa.gov](mailto:hutson.nick@epa.gov).

*RIN:* 2060-AU76

**205. Section 610 Review of National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters (Section 610 Review)**

*Legal Authority:* 42 U.S.C. 7412 Clean Air Act

*Abstract:* On March 21, 2011, the EPA promulgated National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters (76 FR 15608). The rule (40 CFR part 63, subpart DDDDD) includes standards to control hazardous air pollutant emissions from new and existing industrial, commercial, and institutional boilers and process heaters fired with coal, oil, biomass, natural gas or other solid, liquid or gaseous non-waste materials located at major source facilities. Rule amendments that did impose additional regulatory requirements beyond those imposed by the March 2011 final rule were estimated to result in an increase in burden were promulgated on January 31, 2013 (78 FR 7138). This entry in the regulatory agenda announces the EPA has reviewed this action pursuant to section 610 of the Regulatory Flexibility Act, "Periodic Review of Rules" (5 U.S.C. 610) to determine if the provisions that could affect small entities should be continued without change or should be rescinded or amended to minimize adverse economic impacts on small entities. As part of this review, EPA solicited comments on the following factors as specified in section 610: (1) The continued need for the rule; (2) the nature of complaints or comments received concerning the rule; (3) the complexity of the rule; (4) the extent to which the rule overlaps, duplicates or conflicts with other federal, state or local government rules; and (5) the degree to which the technology, economic conditions or other factors have changed in the area affected by the rule. No comments were received. EPA has concluded that the rule does not need to be amended at this time and has addressed the review factors in a report. The report is available in Docket ID number is EPA-HQ-OAR-2020-0106, which can be accessed at [www.regulations.gov](http://www.regulations.gov).

*Timetable:*

Action	Date	FR Cite
Final Rule .....	03/21/11	76 FR 15607
Begin Review .....	08/26/20	85 FR 52763
End Review .....	03/01/21	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Jim Eddinger, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243-01, Research Triangle Park, NC 27711, *Phone:* 919 541-5426, *Email:* [edding.jim@epa.gov](mailto:edding.jim@epa.gov).

Nick Hutson, Environmental Protection Agency, Office of Air and Radiation, 109 T.W. Alexander Drive, Mail Code D243-01, Research Triangle Park, NC 27711, *Phone:* 919 541-2968, *Fax:* 919 541-4991, *Email:* [hutson.nick@epa.gov](mailto:hutson.nick@epa.gov).

*RIN:* 2060-AU77

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

35

Proposed Rule Stage

**206. 1-Bromopropane; Rulemaking Under TSCA Section 6(a)**

*Legal Authority:* 15 U.S.C. 2605 Toxic Substances Control Act

*Abstract:* Section 6 of the Toxic Substances Control Act (TSCA) requires EPA to address unreasonable risks of injury to health or the environment that the Administrator has determined are presented by a chemical substance under the conditions of use. Following a risk evaluation for cyclic aliphatic bromide cluster (HBCD) carried out under the authority of the TSCA section 6, EPA initiated rulemaking to address unreasonable risks of injury to health and the environment identified in the final risk evaluation. EPA's risk evaluation for HBCD, describing the conditions of use and presenting EPA's determinations of unreasonable risk, is in docket EPA-HQ-OPPT-2019-0237, with additional information in docket EPA-HQ-OPPT-2016-0735.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/21	
Final Rule .....	08/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Ana Corado, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, Mail Code 7408M, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *Phone:* 202 564-0140, *Email:* [corado.ana@epa.gov](mailto:corado.ana@epa.gov).

Joel Wolf, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7405M, Washington, DC 20460, Phone: 202 564-0432, Email: wolf.joel@epa.gov.  
RIN: 2070-AK73

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

35

Completed Actions

**207. Trichloroethylene (TCE); Rulemaking Under TSCA Section 6(a); Vapor Degreasing**

*Legal Authority:* 15 U.S.C. 2605 Toxic Substances Control Act

*Abstract:* Section 6(a) of the Toxic Substances Control Act (TSCA) provides authority for EPA to ban or restrict the manufacture (including import), processing, distribution in commerce, and use of chemical substances, as well as any manner or method of disposal. Section 26(l)(4) of TSCA authorizes EPA to issue rules under TSCA section 6 for chemicals listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which EPA published completed risk assessments prior to June 22, 2016, consistent with the scope of the completed risk assessment. In the June 2014 TSCA Work Plan Chemical Risk Assessment for trichloroethylene (TCE), EPA characterized risks from the use of TCE in commercial degreasing and in some consumer uses. EPA preliminarily determined that these risks are unreasonable risks. On January 19, 2017, EPA proposed to prohibit the manufacture, processing, distribution in commerce, or commercial use of TCE in vapor degreasing. A separate action (RIN 2070-AK03), published on December 16, 2016, proposed to address the unreasonable risks from TCE when used as a spotting agent in dry cleaning and in commercial and consumer aerosol spray degreasers. The uses identified in the proposed rules were subsequently considered as part of the TSCA section 6(b) final risk evaluation for TCE, and EPA initiated a new action (RIN 2070-AK83) under TSCA section 6(a) to address the unreasonable risks of TCE. EPA announced the withdrawal of this proposed rule in the **Federal Register** of January 15, 2021.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/19/17	82 FR 7432
Withdrawal Notice	01/15/21	86 FR 3932

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Toni Krasnic, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7405M, Washington, DC 20460, Phone: 202 564-0984, Email: krasnic.toni@epa.gov.

Joel Wolf, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7405M, Washington, DC 20460, Phone: 202 564-0432, Email: wolf.joel@epa.gov.  
RIN: 2070-AK11

**208. N-Methylpyrrolidone; Regulation of Certain Uses Under TSCA Section 6(a)**

*Legal Authority:* 15 U.S.C. 2605 Toxic Substances Control Act

*Abstract:* Section 6(a) of the Toxic Substances Control Act (TSCA) provides authority for EPA to ban or restrict the manufacture (including import), processing, distribution in commerce, and use of chemical substances, as well as any manner or method of disposal. Section 26(l)(4) of TSCA authorizes EPA to issue rules under TSCA section 6 for chemicals listed in the 2014 update to the TSCA Work Plan for Chemical Assessments for which EPA published completed risk assessments prior to June 22, 2016, consistent with the scope of the completed risk assessment. In the March 2015 TSCA Work Plan Chemical Risk Assessment for NMP, EPA characterized risks from use of this chemical in paint and coating removal. On January 19, 2017, EPA preliminarily determined that the use of NMP in paint and coating removal poses an unreasonable risk of injury to health. In the final rule for methylene chloride in consumer paint and coating removal (RIN 2070-AK07), EPA explained that the Agency was not finalizing the proposed regulation for NMP as part of that action, and EPA took steps to continue considering regulation of the use of NPRM in paint and coating removal in a separate action (RIN 2007-AK46). The use of NMP in paint and coating removal was subsequently considered as part of the TSCA section 6(b) final risk evaluation for NMP, and EPA initiated a new action (RIN 2070-AK85) under TSCA section 6(a) to address the unreasonable risks of NMP. EPA announced the withdrawal of this proposed rule in the **Federal Register** of January 15, 2021.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/19/17	82 FR 7464

Action	Date	FR Cite
Withdrawal Notice	01/15/21	86 FR 3932

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Eileen Sheehan, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, USEPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Phone: 415 972-3287, Email: sheehan.eileen@epa.gov.

Joel Wolf, Environmental Protection Agency, Office of Chemical Safety and Pollution Prevention, 1200 Pennsylvania Avenue NW, Mail Code 7405M, Washington, DC 20460, Phone: 202 564-0432, Email: wolf.joel@epa.gov.  
RIN: 2070-AK46

**ENVIRONMENTAL PROTECTION AGENCY (EPA)**

72

Completed Actions

**209. National Primary Drinking Water Regulations for Lead and Copper: Regulatory Revisions**

*Legal Authority:* 42 U.S.C. 300f *et seq.* Safe Drinking Water Act

*Abstract:* EPA published revisions to the Lead and Copper Rule (LCR) to include a suite of actions to reduce lead exposure in drinking water where it is needed the most. The final rule identifies the most at-risk communities to ensure systems have plans in place to rapidly respond by taking actions to reduce elevated levels of lead in drinking water. The rule requires a more comprehensive response at the action level and introduces a trigger level of 10 ppb that requires more proactive planning in communities with lead service lines. The revisions also include requirements for water systems to prepare an inventory of lead service lines and to make the inventory publicly available. The final LCR takes a proactive and holistic approach to improving the current rule—from testing to treatment to telling the public about the levels and risks of lead in drinking water. This approach focuses on the following six key areas: (1) Identifying areas most impacted; (2) strengthening treatment requirements; (3) replacing lead service lines; (4) increasing sampling; (5) improving risk communication; and (6) protecting children in schools. On March 12, 2021, EPA issued an interim postponement of the LCRR's effective date and proposed a delay of the LCRR's effective and compliance dates to enable the Agency

to consult with stakeholders and review the LCRR in accordance with Executive Order 13990 and Executive Order 13985.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/13/19	84 FR 61684
Final Rule .....	01/15/21	86 FR 4198
Notice .....	03/12/21	86 FR 14003

Action	Date	FR Cite
Final Rule Effective.	06/17/21	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Jeffrey Kempic, Environmental Protection Agency, Office of Water, 4607M, 1200 Pennsylvania Avenue NW, Washington,

DC 20460, *Phone:* 202 564-4880, *Email:* [kempic.jeffrey@epa.gov](mailto:kempic.jeffrey@epa.gov).

Erik Helm, Environmental Protection Agency, Office of Water, 4607M, 1200 Pennsylvania Avenue, Washington, DC 20460, *Phone:* 202 566-1049, *Email:* [helm.erik@epa.gov](mailto:helm.erik@epa.gov).

*RIN:* 2040-AF15

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Part XVI

General Services Administration

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Semiannual Regulatory Agenda

**GENERAL SERVICES ADMINISTRATION**

**41 CFR Chapters 101, 102, 105, 300, 301, 302, and 304**

**48 CFR Chapter 5**

**Unified Agenda of Federal Regulatory and Deregulatory Actions**

**AGENCY:** General Services Administration (GSA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the fall 2020 edition. This agenda was developed under the guidelines of Executive Orders 12866 “Regulatory Planning and Review,” and Executive Order 13563 “Improving Regulation and Regulatory Review.” GSA’s purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. GSA also

invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated. Published proposed rules may be reviewed in their entirety at the Government’s rulemaking website at <http://www.regulations.gov>.

Since the fall 2007 edition, the internet has been the basic means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov), in a format that offers users a greatly enhanced ability to obtain information from the Agenda database.

Because publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (5 U.S.C. 602), GSA’s printed agenda entries include only:

(1) Rules that are in the Agency’s regulatory flexibility agenda, in accordance with the Regulatory Flexibility Act, because they are likely to have a significant economic impact

on a substantial number of small entities; and

(2) Any rules that the Agency has identified for periodic review under section 610 of the Regulatory Flexibility Act.

Printing of these entries is limited to fields that contain information required by the Regulatory Flexibility Act’s Agenda requirements. Additional information on these entries is available in the Unified Agenda published on the internet. In addition, for fall editions of the Agenda, the entire Regulatory Plan will continue to be printed in the **Federal Register**, as in past years, including GSA’s regulatory plan.

**FOR FURTHER INFORMATION CONTACT:** Lois Mandell, Division Director, Regulatory Secretariat Division, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001, 202–501–2735.

Dated: March 11, 2021.

**Krystal J. Brumfield,**  
*Associate Administrator, Office of Government-Wide Policy.*

**GENERAL SERVICES ADMINISTRATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
210 .....	General Services Acquisition Regulation (GSAR); GSAR Case 2016–G511, Contract Requirements for GSA Information Systems.	3090–AJ84
211 .....	General Services Acquisition Regulation (GSAR); GSAR Case 2019–G503, Streamlining GSA Commercial Contract Clause Requirements.	3090–AK09
212 .....	General Services Acquisition Regulation (GSAR); GSAR Case 2020–G502, Increasing Order Level Competition for Federal Supply Schedules.	3090–AK15
213 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G503, Increasing Order Level Competition for Indefinite-Delivery, Indefinite-Quantity Contracts.	3090–AK16
214 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G504, Federal Supply Schedule Catalog Management.	3090–AK17
215 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G505, Clarify Commercial Products and Services Contract Terms and Conditions.	3090–AK18
216 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G509, Extending Federal Supply Schedule Orders Beyond the Contract Term.	3090–AK19
217 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G510, Federal Supply Schedule Economic Price Adjustment.	3090–AK20
218 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules.	3090–AK21
219 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G512, System for Award Management Representation for Leases.	3090–AK22
220 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G513, Lease Payment Procedures ....	3090–AK23
221 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G534, Extension of Certain Telecommunication Prohibitions to Lease Acquisitions.	3090–AK29
222 .....	General Services Acquisition Regulation (GSAR); GSAR Case 2021–G505, Amending Prescriptions for Including FAR Provisions and Clauses in Lease Procurements.	3090–AK36
223 .....	General Services Acquisition Regulation (GSAR); GSAR Case 2021–G522, Contract Requirements for High-Security Leased Space.	3090–AK39

**GENERAL SERVICES ADMINISTRATION—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
224 .....	General Service Acquisition Regulation (GSAR); GSAR Case 2020–G517, Contracting Exemption for Regulated Utilities.	3090–AK24

**GENERAL SERVICES ADMINISTRATION (GSA)**

Proposed Rule Stage

**Office of Acquisition Policy**

**210. General Services Acquisition Regulation (GSAR); GSAR Case 2016–G511, Contract Requirements for GSA Information Systems**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to streamline and update requirements for contracts that involve GSA information systems. GSA’s policies on cybersecurity and other information technology requirements have been previously issued and communicated by the Office of the Chief Information Officer through the GSA public website. By incorporating these requirements into the GSAR, the GSAR will provide centralized guidance to ensure consistent application across the organization. Integrating these requirements into the GSAR will also allow industry to provide public comments through the rulemaking process.

This rule will require contracting officers to incorporate applicable GSA cybersecurity requirements within the statement of work to ensure compliance with Federal cybersecurity requirements and implement best practices for preventing cyber incidents. Contract requirements for internal information systems, external contractor systems, cloud systems, and mobile systems will be covered by this rule. This rule will also update existing GSAR provision 552.239–70, Information Technology Security Plan and Security Authorization, and GSAR clause 552.239–71, Security Requirements for Unclassified Information Technology Resources, to only require the provision and clause when the contract will involve information or information systems connected to a GSA network.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/21	
NPRM Comment Period End.	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Johnnie McDowell, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 718–6112, *Email:* johnnie.mcdowell@gsa.gov.

RIN: 3090–AJ84

**211. General Services Acquisition Regulation (GSAR); GSAR Case 2019–G503, Streamlining GSA Commercial Contract Clause Requirements**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to streamline requirements for GSA commercial contracts. This rule will update GSAR Clauses 552.212–71 and 552.212–72 to remove any requirements that are not necessary by law or Executive Order.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	
NPRM Comment Period End.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Johnnie McDowell, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 718–6112, *Email:* johnnie.mcdowell@gsa.gov. RIN: 3090–AK09

**212. General Services Acquisition Regulation (GSAR); GSAR Case 2020–G502, Increasing Order Level Competition for Federal Supply Schedules**

*Legal Authority:* 40 U.S.C. 121(c); Pub. L. 115–232 sec. 876

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement section 876 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) as it relates to Federal Supply Schedule contracts. Section 876 amended 41 U.S.C. 3306(c) by providing an exception to the requirement to consider price as an evaluation factor for the award of certain indefinite-delivery, indefinite-quantity contracts and Federal Supply Schedule contracts. A separate case, GSAR Case 2020–G503, will address the implementation of Section 876 in relation to other indefinite-delivery, indefinite-quantity contracts.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	08/19/20	85 FR 50989
ANPRM Comment Period End.	09/18/20	
NPRM .....	09/00/21	

Action	Date	FR Cite
NPRM Comment Period End.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Thomas O’Linn, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445–0390, *Email:* thomas.olinn@gsa.gov. RIN: 3090–AK15

**213. General Service Acquisition Regulation (GSAR); GSAR Case 2020–G503, Increasing Order Level Competition for Indefinite-Delivery, Indefinite-Quantity Contracts**

*Legal Authority:* 40 U.S.C. 121(c); Pub. L. 115–232, sec. 876

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to implement Section 876 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232) as it relates to certain indefinite-delivery, indefinite-quantity contracts. Section 876 amended 41 U.S.C. 3306(c) by providing an exception to the requirement to consider price as an evaluation factor for the award of certain indefinite-delivery, indefinite-quantity contracts and Federal Supply Schedule contracts. A separate case, GSAR Case 2020–G502, will address the implementation of Section 876 in relation to Federal Supply Schedule contracts.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	
NPRM Comment Period End.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Thomas O’Linn, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445–0390, *Email:* thomas.olinn@gsa.gov. RIN: 3090–AK16

**214. General Service Acquisition Regulation (GSAR); GSAR Case 2020–G504, Federal Supply Schedule Catalog Management**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to consolidate all terms related

to Federal Supply Schedule catalog management, which are currently spread across multiple clauses, into one consolidated clause.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	
NPRM Comment Period End.	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Thomas O'Linn, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445-0390, *Email:* thomas.olinn@gsa.gov. *RIN:* 3090-AK17

**215. General Service Acquisition Regulation (GSAR); GSAR Case 2020-G505, Clarify Commercial Products and Services Contract Terms and Conditions**

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Acquisition Regulation (GSAR) to clarify commercial products and services contract terms and conditions. This rule will update GSAR Clause 552.212-4 to clarify the prescription and language applicable for the different clause alternates.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/21	
NPRM Comment Period End.	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Johnnie McDowell, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 718-6112, *Email:* johnnie.mcdowell@gsa.gov. *RIN:* 3090-AK18

**216. General Service Acquisition Regulation (GSAR); GSAR Case 2020-G509, Extending Federal Supply Schedule Orders Beyond the Contract Term**

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to clarify, update, and incorporate existing Federal Supply Schedule (FSS) program policies and procedures regarding performance of

orders beyond the term of the base FSS contract. Specifically, the local FSS program policy titled I-FSS-163 Option to Extend the Term of the Contract (Evergreen) will be incorporated.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	
NPRM Comment Period End.	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Thomas O'Linn, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445-0390, *Email:* thomas.olinn@gsa.gov. *RIN:* 3090-AK19

**217. General Service Acquisition Regulation (GSAR); GSAR Case 2020-G510, Federal Supply Schedule Economic Price Adjustment**

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to clarify, update, and incorporate Federal Supply Schedule (FSS) program policies and procedures regarding economic price adjustment. This rule will update GSAR Clause 552.216-70 to incorporate the clause alternates in GSA's existing class deviation CD-2019-14.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	
NPRM Comment Period End.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Thomas O'Linn, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445-0390, *Email:* thomas.olinn@gsa.gov. *RIN:* 3090-AK20

**218. General Service Acquisition Regulation (GSAR); GSAR Case 2020-G511, Updated Guidance for Non-Federal Entities Access to Federal Supply Schedules**

*Legal Authority:* 40 U.S.C. 121(c); 40 U.S.C. 502  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to streamline and clarify the

requirements for use of Federal Supply Schedules by eligible Non-Federal Entities, such as state and local governments. Eligible Non-Federal Entities are able to use Federal Supply Schedules based on authority from various laws, including 40 U.S.C. 502(c).

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	
NPRM Comment Period End.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Thomas O'Linn, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 445-0390, *Email:* thomas.olinn@gsa.gov. *RIN:* 3090-AK21

**219. General Service Acquisition Regulation (GSAR); GSAR Case 2020-G512, System for Award Management Representation for Leases**

*Legal Authority:* 40 U.S.C. 121(c)  
*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to remove the requirement for lease offerors for non-high-security space to have an active System for Award Management (SAM) registration when submitting offers and instead allow offers up until the time of award to obtain an active SAM registration. Entities seeking Federal leases differ from the typical entities seeking Federal contracts in that common practice is to form a new entity for every new lease offer. Requiring representations from these entities prior to offer submission restricts competition.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/00/21	
NPRM Comment Period End.	01/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Marten Wallace, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7736, *Email:* marten.wallace@gsa.gov. *RIN:* 3090-AK22

**220. General Service Acquisition Regulation (GSAR); GSAR Case 2020-G513, Lease Payment Procedures**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to establish a new clause to allow for a pass-through of taxes under payments for lease construction. The real estate tax base for a newly built or renovated building is uncertain until a tax assessment is completed, which can be a year or more after occupancy in some jurisdictions. Removing the tax base from the shell rent of a lease and providing a pass-through of the real estate taxes in lieu of a real estate tax adjustment over a base during the term of the lease will remove an element of risk from the pricing of rent, will result in greater competition, and will lower rental rates.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	12/00/21 02/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Marten Wallace, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7736, *Email:* marten.wallace@gsa.gov. *RIN:* 3090-AK23

**221. General Service Acquisition Regulation (GSAR); GSAR Case 2020-G534, Extension of Certain Telecommunication Prohibitions to Lease Acquisitions**

*Legal Authority:* 40 U.S.C. 121(c); 5 U.S.C. 801; Pub. L. 115-232 sec. 889

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to extend the requirements of section 889 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115-232) to lease acquisitions by requiring inclusion of the related Federal Acquisition Regulation (FAR) provisions and clause. Generally, the FAR does not apply to leasehold acquisitions of real property. However, several FAR provisions have been adopted based on statutory requirements through GSAR part 570. Section 889 applies to Government lease acquisitions and extension of the FAR requirements will ensure compliance.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	07/00/21 09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Stephen Carroll, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 817 253-7858, *Email:* stephen.carroll@gsa.gov. *RIN:* 3090-AK29

**222. • General Services Acquisition Regulation (GSAR); GSAR Case 2021-G505, Amending Prescriptions for Including Far Provisions and Clauses in Lease Procurements**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise the prescriptions for FAR provisions and clauses that apply to lease solicitations and contracts. Additionally, GSA is proposing to make conforming changes to some provision and clause titles and numbers listed to align with the FAR, along with other editorial changes.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	08/00/21 10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Christina Mullins, Director, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-4066, *Email:* christina.mullins@gsa.gov. *RIN:* 3090-AK36

**223. • General Services Acquisition Regulation (GSAR); GSAR Case 2021-G522, Contract Requirements for High-Security Leased Space**

*Legal Authority:* 40 U.S.C. 121(c); Pub. L. 116-276

*Abstract:* The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation

(GSAR) to incorporate contractor disclosure requirements and access limitations for high-security leased space pursuant to the Secure Federal Leases Act (Pub. L. 116-276). Covered entities are required to identify whether the immediate, highest-level, or beneficial owner of a high-security leased space, including an entity involved in the financing thereof, is a foreign person or entity when first submitting a proposal and annually thereafter.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	09/00/21 11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Marten Wallace, Procurement Analyst, GSA Acquisition Policy Division, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7736, *Email:* marten.wallace@gsa.gov. *RIN:* 3090-AK39

**GENERAL SERVICES ADMINISTRATION (GSA)**

Completed Actions

**224. General Service Acquisition Regulation (GSAR); GSAR Case 2020-G517, Contracting Exemption for Regulated Utilities**

*Legal Authority:* 40 U.S.C. 121(c)

*Abstract:* The General Services Administration (GSA) is withdrawing this case because it has been determined the changes required are non-regulatory, internally focused guidance.

*Completed:*

Action	Date	FR Cite
Withdrawn .....	02/24/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Clarence Harrison, *Phone:* 202 227-7051, *Email:* clarence.harrison@gsa.gov.

*RIN:* 3090-AK24

[FR Doc. 2021-14883 Filed 7-29-21; 8:45 am]

**BILLING CODE 6820-34-P**





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Part XVII

Office of Management and Budget

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Semiannual Regulatory Agenda

**OFFICE OF MANAGEMENT AND BUDGET**

48 CFR Ch. 99

2 CFR Chapters 1 and 2

**Federal Regulations, Guidance, OFPP Policy Letters, and CASB Cost Accounting Standards Included in the Semiannual Agenda of Federal Activities**

**AGENCY:** Office of Management and Budget.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Office of Management and Budget (OMB) is publishing its semiannual agenda of upcoming activities for Federal regulations, OMB Guidance, Office of Federal Procurement Policy (OFPP) Policy Letters, and Cost Accounting Standards (CAS) Board Cost Accounting Standards.

OMB Guidance and OFPP Policy Letters are published in accordance with OMB’s internal procedures for implementing Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)). OMB policy guidelines are issued under authority derived from several sources, including: Subtitles I, II, and V of title 31, U.S. Code; Executive Order 11541; and other specific authority as cited. OMB Guidance and OFPP Policy Letters communicate guidance and instructions of a continuing nature to executive branch agencies. As such, most OMB Guidance and OFPP Policy Letters are not regulations. Nonetheless, because these issuances are typically of interest to the public, they are generally published in the **Federal Register** at both the proposed (for public comment) and final stages. For this reason, they are presented below in the standard format of “pre-rule,” “proposed rule,” and “final rule” stages.

CASB Cost Accounting Standards are issued under authority derived from 41 U.S.C. 1501 *et seq.* Cost Accounting Standards are rules governing the measurement, assignment, and allocation of costs to contracts entered into with the United States Government.

For purposes of this agenda, we have excluded directives that outline procedures to be followed in connection with the President’s budget and legislative programs, as well as directives that affect only the internal functions, management, or personnel of Federal agencies.

**FOR FURTHER INFORMATION CONTACT:** See the agency contact person listed for each entry in the agenda, c/o Office of Management and Budget, Washington, DC 20503.

**Shalanda Young,**  
*Acting Director, Office of Management and Budget.*

OFFICE OF MANAGEMENT AND BUDGET—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
225 .....	Federal Acquisition Security Council Implementing Regulation .....	0348-AB83

**OFFICE OF MANAGEMENT AND BUDGET (OMB)**

Final Rule Stage

**225. Federal Acquisition Security Council Implementing Regulation**

*Legal Authority:* Pub. L. 115–390 sec. 202(c)

*Abstract:* This interim final rule will implement subchapter III of chapter 13 of title 41, United States Code. Subchapter III creates the Federal Acquisition Security Council, and identifies a number of functions to be

performed by the Council. The FASC is chaired by a designated OMB Senior-Level official, and Public Law 115–390 requires that the FASC publish an interim final rule to implement these functions.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	09/01/20	85 FR 54263
Interim Final Rule Effective.	09/01/20	
Interim Final Rule Comment Period End.	11/02/20	

Action	Date	FR Cite
Final Rule .....	09/00/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Alegra Woodard, Office of Management and Budget, Phone: 202 881–8774, Email: [alegra.e.woodard@omb.eop.gov](mailto:alegra.e.woodard@omb.eop.gov).

RIN: 0348–AB83

[FR Doc. 2021–15180 Filed 7–29–21; 8:45 am]

**BILLING CODE 3110-01-P**





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Part XVIII

Railroad Retirement Board

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Semiannual Regulatory Agenda

**RAILROAD RETIREMENT BOARD**

**20 CFR Ch. II**

**Semiannual Agenda of Regulations Under Development or Review**

**AGENCY:** Railroad Retirement Board.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda contains a list of regulations that the Board is developing

or proposes to develop in the next 12 months and regulations that are scheduled to be reviewed in that period.

**ADDRESSES:** 844 North Rush Street, Chicago, IL 60611-1275.

**FOR FURTHER INFORMATION CONTACT:** Marguerite P. Dadabo, Assistant General Counsel, Office of General Counsel, Railroad Retirement Board, (312) 751-4945, Fax (312) 751-7102, TDD (312) 751-4701.

**SUPPLEMENTARY INFORMATION:**

Regulations that are routine in nature or which pertain solely to internal Agency management have not been included in the agenda.

Dated: March 17, 2021.

By Authority of the Board.

**Stephanie Hillyard,**

*Secretary to the Board.*

**RAILROAD RETIREMENT BOARD—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
226 .....	Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Railroad Retirement Board ( <b>Section 610 Review</b> ).	3220-AB73

**RAILROAD RETIREMENT BOARD (RRB)**

Final Rule Stage

**226. Enforcement of Nondiscrimination on the Basis of Handicap in Programs or Activities Conducted by the Railroad Retirement Board (Section 610 Review)**

*Legal Authority:* 29 U.S.C. 794

*Abstract:* We propose to amend our regulations at 20 CFR 365 to update terminology to refer to individuals with

a disability. This amendment replaces the term “handicap” with the term “disability” to match the statutory language in the Rehabilitation Act Amendment of 1992, Public Law 102-569, 106 Stat. 4344.

*Timetable:*

Action	Date	FR Cite
Direct Final Rule	10/00/21	

*Regulatory Flexibility Analysis Required:* No.

*Agency Contact:* Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, Office of General Counsel, 844 North Rush Street, Room 811, Chicago, IL 60611, *Phone:* 312 751-4945, *TDD Phone:* 312 751-4701, *Fax:* 312 751-7102.

*RIN:* 3220-AB73

[FR Doc. 2021-14884 Filed 7-29-21; 8:45 am]

**BILLING CODE 7905-01-P**



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Part XIX

Small Business Administration

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Semiannual Regulatory Agenda

**SMALL BUSINESS ADMINISTRATION**

**13 CFR Ch. I**

**Semiannual Regulatory Agenda**

**AGENCY:** U.S. Small Business Administration (SBA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This semiannual Regulatory Agenda (Agenda) is a summary of current and projected rulemakings and completed actions of the Small Business Administration (SBA). This summary information is intended to enable the public to be more aware of, and effectively participate in, SBA’s regulatory activities. Accordingly, SBA

invites the public to submit comments on any aspect of this Agenda.

**FOR FURTHER INFORMATION CONTACT:**

**General**

Please direct general comments or inquiries to K. Bundy, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; (202) 205-6585; *kabundy@sba.gov*.

**Specific**

Please direct specific comments and inquiries on individual regulatory activities identified in this Agenda to the individual listed in the summary of the regulation as the point of contact for that regulation.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA)

requires SBA to publish in the **Federal Register** a semiannual regulatory flexibility agenda describing those Agency rules that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). The summary information published in the **Federal Register** is limited to those rules. Additional information regarding all the rulemaking’s SBA expects to consider in the next 12 months is included in the Federal Government’s unified Regulatory Agenda, which will be available online at *www.reginfo.gov* in a format that offers users enhanced ability to obtain information about SBA’s rules.

**Isabella Casillas Guzman,**  
*Administrator.*

**SMALL BUSINESS ADMINISTRATION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
227 .....	Small Business Size Standards; Alternative Size Standard for 7(a), 504, and Disaster Loan Programs .....	3245-AG16
228 .....	Small Business Size Standards: Manufacturing and Industries With Employee Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade.	3245-AH09
229 .....	Small Business Size Standards: Wholesale Trade and Retail Trade .....	3245-AH10
230 .....	Small Business Size Standards: Calculation of Number of Employees for All Programs and of Average Annual Receipts in Business Loan, Disaster Loan, and Small Business Investment Company Programs.	3245-AH26
231 .....	National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments	3245-AH28

**SMALL BUSINESS ADMINISTRATION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
232 .....	Small Business Timber Set-Aside Program .....	3245-AG69
233 .....	Small Business Size Standards: Educational Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services.	3245-AG88
234 .....	Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction.	3245-AG89
235 .....	Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing.	3245-AG90
236 .....	Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services.	3245-AG91
237 .....	Small Business Size Standards: Adjustment of Monetary Based Size Standards for Inflation .....	3245-AH17

**SMALL BUSINESS ADMINISTRATION—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
238 .....	Small Business Development Center Program Revisions .....	3245-AE05

**SMALL BUSINESS ADMINISTRATION—COMPLETED ACTIONS**

Sequence Number	Title	Regulation Identifier Number
239 .....	SBA Supervised Lenders Application Process .....	3245-AH04

**SMALL BUSINESS ADMINISTRATION (SBA)**

Proposed Rule Stage

**227. Small Business Size Standards; Alternative Size Standard for 7(A), 504, and Disaster Loan Programs**

*Legal Authority:* Pub. L. 111–240, sec. 1116

*Abstract:* SBA will propose amendments its size eligibility criteria for Business Loans, certified development company (CDC) loans under title V of the Small Business Investment Act (504) and economic injury disaster loans (EIDL). For the SBA 7(a) Business Loan Program and the 504 program, the amendments will provide an alternative size standard for loan applicants that do not meet the small business size standards for their industries. The Small Business Jobs Act of 2010 (Jobs Act) established alternative size standards that apply to both of these programs until SBA’s Administrator establishes other alternative size standards. For the disaster loan program, the amendments will provide an alternative size standard for loan applicants that do not meet the Small Business Size Standard for their industries. SBA loan program alternative size standards do not affect other Federal Government programs, including Federal procurement.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	03/22/18	83 FR 12506
ANPRM Comment Period End.	05/21/18	
NPRM .....	03/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email:* khem.sharma@sba.gov.

*RIN:* 3245–AG16

**228. Small Business Size Standards: Manufacturing and Industries With Employee Based Size Standards in Other Sectors Except Wholesale Trade and Retail Trade**

*Legal Authority:* 15 U.S.C. 632(a)  
*Abstract:* The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second 5-year review of size standards under the Jobs Act, in this proposed rule, SBA

will evaluate all industries in North American Industry Classification System (NAICS) Sector 31–33 (Manufacturing) and industries with employee-based size standards in other sectors except Wholesale Trade and Retail Trade and make necessary adjustments to their size standards. This is one of a series of proposed rules that will examine groups of NAICS sectors. SBA will apply its revised Size Standards Methodology, which is available on its website at <http://www.sba.gov/size>, to this proposed rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email:* khem.sharma@sba.gov.

*RIN:* 3245–AH09

**229. Small Business Size Standards: Wholesale Trade and Retail Trade**

*Legal Authority:* 15 U.S.C. 632(a)  
*Abstract:* The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second 5-year review of size standards under the Jobs Act, in this proposed rule, SBA will evaluate all industries in North American Industry Classification System (NAICS) Sector 42 (Wholesale Trade) and Sector 44–45 (Retail Trade) and make necessary adjustments to their size standards. This is one of a series of proposed rules that will examine groups of NAICS sectors. SBA will apply its revised Size Standards Methodology, which is available on its website at <http://www.sba.gov/size>, to this proposed rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email:* khem.sharma@sba.gov

*RIN:* 3245–AH10

**230. Small Business Size Standards: Calculation of Number of Employees for all Programs and of Average Annual Receipts in Business Loan, Disaster Loan, and Small Business Investment Company Programs**

*Legal Authority:* 15 U.S.C. 632(a)(2); Pub. L. 115–324; Pub. L. 116–238

*Abstract:* In accordance with section 863 of the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–238, in this rulemaking SBA proposes to change the averaging period for employee-based size standards from 12 months to 24 months. In addition, the Small Business Runway Extension Act of 2018, Public Law 115–324, amended the Small Business Act to provide for calculation of average annual receipts using a 5-year average, rather than the prior 3-year average, in defined circumstances. In RIN 3245–AH16, SBA implemented the Small Business Runway Extension Act in programs other than SBA’s loan programs—including SBA’s procurement programs—and SBA issued its final rule in that first rulemaking on December 5, 2019 (84 FR 66561). This second rulemaking would consider how to address the Small Business Runway Extension Act in SBA’s business loan, disaster loan, and SBIC programs. Specifically, SBA also proposes to permit businesses in its Business Loan, Disaster Loan, and Small Business Investment Company (SBIC) Programs to use a 5-year averaging period, in addition to the existing 3-year averaging period, for the purposes of calculating annual average receipts. These proposed changes will allow larger small businesses to retain their small business size status for longer, and some mid-sized businesses to regain small business status.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205–7189, *Fax:* 202 205–6390, *Email:* khem.sharma@sba.gov.

*RIN:* 3245–AH26

**231. National Defense Authorization Act of 2020, Credit for Lower Tier Subcontracting and Other Amendments**

*Legal Authority:* Pub. L. 116–92  
*Abstract:* Section 870 of the National Defense Authorization Act of 2020

(NDAA 2020) made a change that will require SBA to amend its regulations. Specifically, the language of NDAA 2020 requires SBA to alter the method and means of accounting for lower tier small business subcontracting. This proposed rule may also contain several smaller changes that might be necessary to implement this provision and other provisions in NDAA 2020.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Brenda J. Fernandez, Analyst, Office of Policy, Planning and Liaison, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205-7337, *Email:* [brenda.fernandez@sba.gov](mailto:brenda.fernandez@sba.gov). *RIN:* 3245-AH28

**SMALL BUSINESS ADMINISTRATION (SBA)**

Final Rule Stage

**232. Small Business Timber Set-Aside Program**

*Legal Authority:* 15 U.S.C. 631; 15 U.S.C. 644(a)

*Abstract:* The U.S. Small Business Administration (SBA or Agency) is amending its Small Business Timber Set-Aside Program (the Program) regulations. The Small Business Timber Set-Aside Program is rooted in the Small Business Act, which tasked SBA with ensuring that small businesses receive a fair proportion of the total sales of government property. Accordingly, the Program requires Timber sales to be set aside for small business when small business participation falls below a certain amount. SBA considered comments received during the Advance Notice of Proposed Rulemaking and Notice of Proposed Rulemaking processes, including on issues such as, but not limited to, whether the saw timber volume purchased through stewardship timber contracts should be included in calculations, and whether the appraisal point used in set-aside sales should be the nearest small business mill. In addition, SBA is considering data from the timber industry to help evaluate the current program and economic impact of potential changes.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	03/25/15	80 FR 15697

Action	Date	FR Cite
ANPRM Comment Period End.	05/26/15	81 FR 66199
NPRM .....	09/27/16	
NPRM Comment Period End.	11/28/16	
Final Rule .....	03/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* David W. Loines, Director, Office of Government Contracting, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 431-0472, *Email:* [david.loines@sba.gov](mailto:david.loines@sba.gov)

*RIN:* 3245-AG69

**233. Small Business Size Standards: Educational Services; Health Care and Social Assistance; Arts, Entertainment and Recreation; Accommodation and Food Services; Other Services**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second five-year review of size standards under the Jobs Act, in this rule, SBA has evaluated size standards for all industries in North American Industry Classification System (NAICS) Sector 61 (Educational Services), Sector 62 (Health Care and Social Assistance), Sector 71 (Arts, Entertainment and Recreation), Sector 72 (Accommodation and Food Services), and Sector 81 (Other Services) and made necessary adjustments to size standards in these sectors. This is one of a series of rules that examines groups of NAICS sectors. SBA has applied its Size Standards Methodology to this rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/27/20	85 FR 76390
NPRM Comment Period End.	01/26/21	
Final Rule .....	12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205-7189, *Fax:* 202 205-6390, *Email:* [khem.sharma@sba.gov](mailto:khem.sharma@sba.gov)

*RIN:* 3245-AG88

**234. Small Business Size Standards: Agriculture, Forestry, Fishing and Hunting; Mining, Quarrying, and Oil and Gas Extraction; Utilities; Construction**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second five-year review of size standards under the Jobs Act, in this rule, SBA has evaluated each industry that has a receipts-based standard in North American Industry Classification System (NAICS) Sector 11 (Agriculture, Forestry, Fishing and Hunting), Sector 21 (Mining, Quarrying, and Oil and Gas Extraction), Sector 22 (Utilities), and Sector 23 (Construction), and made necessary adjustments to size standards in these sectors. This is one of a series of rules that examines groups of NAICS sectors. SBA has applied its Size Standards Methodology to this rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/02/20	85 FR 62239
NPRM Comment Period End.	12/01/20	
Final Rule .....	12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205-7189, *Fax:* 202 205-6390, *Email:* [khem.sharma@sba.gov](mailto:khem.sharma@sba.gov)

*RIN:* 3245-AG89

**235. Small Business Size Standards: Transportation and Warehousing; Information; Finance and Insurance; Real Estate and Rental and Leasing**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second five-year review of size standards under the Jobs Act, in this rule, SBA has evaluated each industry that has a receipts-based standard in North American Industry Classification System (NAICS) Sector 48-49 (Transportation and Warehousing), Sector 51 (Information), Sector 52 (Finance and Insurance), and Sector 53 (Real Estate and Rental and Leasing) and made necessary adjustments to size

standards in these sectors. This is one of a series of rules that examines groups of NAICS sectors. SBA has applied its Size Standards Methodology to this rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/02/20	85 FR 62372
NPRM Comment Period End.	12/01/20	
Final Rule .....	12/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205-7189, *Fax:* 202 205-6390, *Email:* khem.sharma@sba.gov.

*RIN:* 3245-AG90

**236. Small Business Size Standards: Professional, Scientific and Technical Services; Management of Companies and Enterprises; Administrative and Support and Waste Management and Remediation Services**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* The Small Business Jobs Act of 2010 (Jobs Act) requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. As part of the second five-year review of size standards under the Jobs Act, in this rule, SBA has evaluated each industry that has a receipts-based standard in North American Industry Classification System (NAICS) Sector 54 (Professional, Scientific and Technical Services), Sector 55 (Management of Companies and Enterprises), and Sector 56 (Administrative and Support, Waste Management and Remediation Services) and made necessary adjustments to size standards in these sectors. This is one of a series of rules that examines groups of NAICS sectors. SBA has applied its Size Standards Methodology to this rule.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/13/20	85 FR 72584
NPRM Comment Period End.	01/12/21	
Final Rule .....	12/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205-7189, *Fax:* 202 205-6390, *Email:* khem.sharma@sba.gov.  
*RIN:* 3245-AG91

**237. Small Business Size Standards: Adjustment of Monetary Based Size Standards for Inflation**

*Legal Authority:* 15 U.S.C. 632(a)

*Abstract:* In this final rule, the U.S. Small Business Administration (SBA or Agency) adjusts all monetary based industry size standards (*i.e.*, receipts, assets, net worth, and net income) for inflation since the last adjustment in 2014. In accordance with its regulations in 13 CFR 121.102(c), SBA is required to review the effects of inflation on its monetary standards at least once every five years and adjust them, if necessary. In addition, the Small Business Jobs Act of 2010 (Jobs Act) also requires SBA to conduct every five years a detailed review of all size standards and to make appropriate adjustments to reflect market conditions. This action will restore the small business eligibility of businesses that have lost that status due to inflation.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	07/18/19	84 FR 34261
Interim Final Rule Effective.	08/19/19	
Interim Final Rule Comment Period End.	09/16/19	
Final Action .....	09/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Dr. Khem Raj Sharma, Chief, Office of Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416, *Phone:* 202 205-7189, *Fax:* 202 205-6390, *Email:* khem.sharma@sba.gov  
*RIN:* 3245-AH17

**SMALL BUSINESS ADMINISTRATION (SBA)**

Long-Term Actions

**238. Small Business Development Center Program Revisions**

*Legal Authority:* 15 U.S.C. 634(b)(6); 15 U.S.C. 648

*Abstract:* This rule proposes to update the Small Business Development Center (SBDC) program regulations by proposing to amend: (1) Procedures for approving applications when a new Lead SBDC center is selected; (2) procedures and requirements regarding findings and disputes resulting from financial exams, programmatic reviews, accreditation reviews, and other SBA oversight activities; (3) requirements for new or renewal applications for SBDC grants, including electronic submission through the approved electronic Government submission facility; (4) procedures regarding the determination to affect suspension, termination or non-renewal of an SBDC's cooperative agreement; and (5) provisions regarding the collection and use of the individual SBDC client data.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	04/02/15	80 FR 17708
ANPRM Comment Period End.	06/01/15	
NPRM .....	11/00/22	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Rachel Newman-Karton, *Phone:* 202 619-1816, *Email:* rachel.newman-karton@sba.gov  
*RIN:* 3245-AE05

**SMALL BUSINESS ADMINISTRATION (SBA)**

Completed Actions

**239. SBA Supervised Lenders Application Process**

*Legal Authority:* 15 U.S.C. 632(r)

*Abstract:* This rule amended the regulations applicable to Small Business Lending Companies (SBLCs) and state-regulated lenders (Non-Federally Regulated Lenders (NFRLs) (collectively referred to as SBA Supervised Lenders). The key amendments to the regulations include a new application and review process for SBA Supervised Lenders, including for transactions involving a change of ownership or control. Other amendments to the regulations include updating the minimum capital

maintenance requirements, clarifying the factors SBA will consider in its evaluation of an SBA Supervised Lender application and limiting the 7(a) lending area for NFRLs.

Completed:

Reason	Date	FR Cite
Final Rule .....	12/04/20	85 FR 78205

Reason	Date	FR Cite
Final Rule Effective.	01/04/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Susan Streich, Phone: 202 205-6641, Email: susan.streich@sba.gov

RIN: 3245-AH04 [FR Doc. 2021-14885 Filed 7-29-21; 8:45 am] BILLING CODE 8026-03-P





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Part XX

Department of Defense

General Services Administration

National Aeronautics and Space Administration

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Semiannual Regulatory Agenda

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES  
ADMINISTRATION**

**NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION**

**48 CFR Ch. 1**

**Semiannual Regulatory Agenda**

**AGENCY:** Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in

compliance with Executive Order 12866 “Regulatory Planning and Review.” This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process. The Regulatory Secretariat Division has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

Published proposed rules may be reviewed in their entirety at the Government’s rulemaking website at <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Lois Mandell, Division Director, Regulatory Secretariat Division, 1800 F Street NW, 2nd Floor, Washington, DC 20405–0001, 202–501–4755.

**SUPPLEMENTARY INFORMATION:** DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs).

The electronic version of the FAR, including changes, can be accessed on the FAR website at <http://www.acquisition.gov/far>.

Dated: March 12, 2021.

**William F. Clark,**

*Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.*

**DOD/GSA/NASA (FAR)—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
240 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–013, Breaches of Personally Identifiable Information.	9000–AN44
241 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–016, Controlled Unclassified Information (CUI) .....	9000–AN56
242 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–006; Definition of Subcontract .....	9000–AN66
243 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–012, Rights to Federally Funded Inventions and Licensing of Government-Owned Inventions.	9000–AN71
244 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–013, Exemption of Commercial and COTS Item Contracts From Certain Laws and Regulations.	9000–AN72
245 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–014, Increasing Task-Order Level Competition .....	9000–AN73
246 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–007, Update of Historically Underutilized Business Zone Program.	9000–AN90
247 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–008, Small Business Program Amendments .....	9000–AN91
248 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–015, Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment.	9000–AN98
249 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–005, Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts.	9000–AO08
250 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–007, Accelerated Payments Applicable to Contracts With Certain Small Business Concerns.	9000–AO10
251 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–008, Prohibition on Criminal History Inquiries by Contractors Prior to Conditional Offer.	9000–AO11
252 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–010, Small Business Innovation Research and Technology Transfer Programs.	9000–AO12
253 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–013, Certification of Women-Owned Small Businesses.	9000–AO17
254 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–016, Rerepresentation of Size and Socioeconomic Status.	9000–AO18
255 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–001, Increased Efficiencies With Regard to Certified Mail, In-Person Business, Mail, Notarization, Original Documents, Seals, and Signatures.	9000–AO19
256 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–008, Amendments to the FAR Buy American Act Requirements.	9000–AO22
257 .....	FAR Acquisition Regulation (FAR); FAR Case 2021–005; Disclosure of Beneficial Owner in Federal Contracting.	9000–AO23
258 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–006, Prohibition on Requiring Disclosure of Political Contributions.	9000–AO24
259 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–007, Maximum Award Price for Certain Sole Source Manufacturing Contracts.	9000–AO25

**DOD/GSA/NASA (FAR)—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
260 .....	Federal Acquisition Regulation: FAR Case 2016–005; Effective Communication Between Government and Industry.	9000–AN29
261 .....	FAR Acquisition Regulation (FAR); FAR Case 2015–038, Reverse Auction Guidance .....	9000–AN31

## DOD/GSA/NASA (FAR)—FINAL RULE STAGE—Continued

Sequence No.	Title	Regulation Identifier No.
262 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–005, Whistleblower Protection for Contractor Employees.	9000–AN32
263 .....	Federal Acquisition Regulation; FAR Case 2016–002, Applicability of Small Business Regulations Outside the United States.	9000–AN34
264 .....	Federal Acquisition Regulation (FAR); FAR Case 2016–011, Revision of Limitations on Subcontracting ....	9000–AN35
265 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–014, Use of Acquisition 360 to Encourage Vendor Feedback.	9000–AN43
266 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–011, Section 508-Based Standards in Information and Communication Technology.	9000–AN46
267 .....	Federal Regulation Acquisition (FAR); FAR Case 2017–019, Policy on Joint Ventures .....	9000–AN59
268 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–020, Construction Contract Administration .....	9000–AN78
269 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.	9000–AN83
270 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–001, Analysis for Equipment Acquisitions .....	9000–AN84
271 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–003, Substantial Bundling and Consolidation .....	9000–AN86
272 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–004, Good Faith in Small Business Subcontracting.	9000–AN87
273 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–009, Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment.	9000–AN92
274 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–004, Application of the MPT to Certain Task and Delivery Orders.	9000–AO04
275 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–011, Implementation of FASC Exclusion Orders ...	9000–AO13
276 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–012, Scope of Review by Procurement Center Representatives.	9000–AO16
277 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–003, Update to Certain Online References in the FAR.	9000–AO21

## DOD/GSA/NASA (FAR)—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
278 .....	Federal Acquisition Regulation (FAR); FAR Case 2011–001; Organizational Conflicts of Interest and Unequal Access to Information.	9000–AL82
279 .....	Federal Acquisition Regulation (FAR); FAR Case 2012–001; Performance of Inherently Governmental Functions and Critical Functions.	9000–AM41
280 .....	Federal Acquisition Regulation (FAR); FAR Case 2013–022; Extension of Limitations on Contractor Employee Personal Conflicts of Interest.	9000–AM69
281 .....	Federal Acquisition Regulation (FAR); FAR Case 2015–023; Federal Supply Schedule Order Level Material.	9000–AM95
282 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–003; Individual Sureties .....	9000–AN39
283 .....	Federal Acquisition Regulation (FAR); FAR Case 2015–037, Definition of “Information Technology” .....	9000–AN48
284 .....	Federal Acquisition Regulation (FAR); FAR Case 2017–018, Violation of Arms Control Treaties or Agreements With the United States.	9000–AN57
285 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–002, Protecting Life in Global Health Assistance ..	9000–AN62
286 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–016, Lowest Price Technically Acceptable Source Selection Process.	9000–AN75
287 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–021, Reserve Officer Training Corps and Military Recruiting on Campus.	9000–AN79
288 .....	Federal Acquisition Regulation (FAR); FAR Case 2018–023, Taxes-Foreign Contracts in Afghanistan .....	9000–AN81
289 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–002, Recreational Services on Federal Lands .....	9000–AN85
290 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–010, Efficient Federal Operations .....	9000–AN94
291 .....	Federal Acquisition Regulation (FAR); FAR Case 2019–016, Maximizing Use of American-Made Goods, Products and Materials.	9000–AN99
292 .....	Federal Acquisition Regulation (FAR); FAR Case 2020–006, Documentation of Market Research .....	9000–AO09
293 .....	Federal Acquisition Regulation (FAR); FAR Case 2021–002, Increased Efficiencies With Regard to In-Person Business, Mail, and Signatures.	9000–AO20

**DEPARTMENT OF DEFENSE/  
GENERAL SERVICES  
ADMINISTRATION/NATIONAL  
AERONAUTICS AND SPACE  
ADMINISTRATION (FAR)**

*Proposed Rule Stage*

**240. Federal Acquisition Regulation (FAR); FAR Case 2017-013, Breaches of Personally Identifiable Information**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to create and implement appropriate contract clauses and regulatory coverage to address contractor requirements for a breach response consistent with the requirements. This FAR change will implement the requirements outlined in the Office of Management and Budget (OMB) Memorandum, M-17-12, "Preparing for and Responding to a Breach of Personally Identifiable Information," section V part B.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	05/00/21 07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202-550-0935, *Email:* camara.francis@gsa.gov.

*RIN:* 9000-AN44

**241. Federal Acquisition Regulation (FAR); Far Case 2017-016, Controlled Unclassified Information (CUI)**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement the National Archives and Records Administration (NARA) Controlled Unclassified Information (CUI) program of Executive Order 13556 of November 4, 2010. As the executive agent designated to oversee the Governmentwide CUI program, NARA issued implementing regulations in late 2016 designed to address Federal agency policies for designating, safeguarding, disseminating, marking, decontrolling, and disposing of CUI. The NARA rule, which is codified at 32 CFR 2002, affects contractors that handle, possess, use, share, or receive CUI. This FAR rule helps to ensure uniform implementation of the

requirements of the CUI program in contracts across Government agencies.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	11/00/21 01/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202-550-0935, *Email:* camara.francis@gsa.gov.

*RIN:* 9000-AN56

**242. Federal Acquisition Regulation (FAR); Far Case 2018-006; Definition of Subcontract**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 820 of the National Defense Authorization Act (NDAA) for FY 2018. Section 820 amends 41 U.S.C. 1906(c)(1) to change the definition of "subcontract" for the procurement of commercial items to exclude agreements entered into by a contractor for the supply of commodities that are intended for use in the performance of multiple contracts with the Federal Government and other parties and are not identifiable to any particular contract.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	10/00/21 12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202-208-4949, *Email:* michaelo.jackson@gsa.gov.

*RIN:* 9000-AN66

**243. Federal Acquisition Regulation (FAR); Far Case 2018-012, Rights to Federally Funded Inventions and Licensing of Government-Owned Inventions**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the FAR to implement the changes to 37 CFR parts 401 and 404, "Rights to Federally Funded Inventions and Licensing of Government-Owned Inventions," dated May 14, 2018. The changes reduce

regulatory burdens on the public, but increase burdens on the Government, provide greater clarity to large businesses by codifying the applicability of Bayh-Dole as directed in Executive Order 12591, and provide greater clarity to all Federal funding recipients by updating regulatory provisions to align with provisions of the Leahy-Smith America Invents Act in terms of definitions and timeframes.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	08/00/21 10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202-208-4949, *Email:* michaelo.jackson@gsa.gov.

*RIN:* 9000-AN71

**244. Federal Acquisition Regulation (FAR); Far Case 2018-013, Exemption of Commercial and Cots Item Contracts From Certain Laws and Regulations**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch.137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 839 of the John S. McCain National Defense Authorization Act for fiscal year 2019. Paragraph (a) requires the FAR Council to review each past determination made not to exempt contracts and subcontracts for commercial products, commercial services, and commercially available off-the-shelf (COTS) items from certain laws when these contracts would otherwise have been exempt under 41 U.S.C. 1906(d) or 41 U.S.C. 1907(b). The FAR Council or the Administrator for Federal Procurement Policy has to determine whether there still exists specific reason not to provide exemptions from certain laws. If no determination is made to continue to exempt commercial contracts and subcontracts from certain laws, paragraph (a) requires that revisions to the FAR be proposed to reflect exemptions from those laws.

Paragraph (b) requires the FAR Council to review the FAR to assess every regulation that requires a specific clause in contracts for commercial products or commercial services, unless the regulation is required by law or Executive Order. Paragraph (b) also requires that revisions to the FAR be proposed to eliminate those regulations

unless the FAR Council makes a determination not to eliminate a regulation.

Paragraph (c) requires the FAR Council to review the FAR to assess every regulation that requires a prime contractor to include a specific clause in subcontracts for commercially available off-the-shelf items, unless the clause is required by law or Executive Order. Paragraph (c) also requires that revisions to the FAR be proposed to eliminate those regulations unless the FAR Council makes a determination not to eliminate a regulation.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	10/00/21 12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703-605-2868, *Email:* mahruba.uddowla@gsa.gov.

*RIN:* 9000-AN72

**245. Federal Acquisition Regulation (FAR); Far Case 2018-014, Increasing Task-Order Level Competition**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 876 of the John S. McCain National Defense Authorization Act for fiscal year 2019, which would provide civilian agencies with an exception to the existing statutory requirement to include price to the Federal Government as an evaluation factor that must be considered in the evaluation of proposals for all contracts. The exception would only apply to IDIQ contracts and to Federal Supply Schedule contracts for services that are priced at an hourly rate. Furthermore, the exception would only apply in those instances where the Government intends to make a contract award to all qualifying offerors, thus affording maximum opportunity for effective competition at the task order level. An offeror would be qualified only if it is a responsible source and submits a proposal that conforms to the requirements of the solicitation, meets any technical requirements, and is otherwise eligible for award.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	12/00/21	

Action	Date	FR Cite
NPRM Comment Period End.	02/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202-501-1448, *Email:* curtis.glover@gsa.gov.

*RIN:* 9000-AN73

**246. Federal Acquisition Regulation (FAR); FAR Case 2019-007, Update of Historically Underutilized Business Zone Program**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes issued in a final rule on November 26, 2019 by the Small Business Administration regarding the Historically Underutilized Business Zone (HUBZone) Program. The regulatory changes are intended to reduce the regulatory burden associated with the HUBZone Program.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	05/00/21 07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2815, *Email:* malissa.jones@gsa.gov.

*RIN:* 9000-AN90

**247. Federal Acquisition Regulation (FAR); FAR Case 2019-008, Small Business Program Amendments**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes proposed by the Small Business Administration regarding small business programs. The proposed regulatory changes include the timing of the determination of size status for multiple-award contracts for which price is not evaluated at the contract level; the grounds for size-status protests; and the grounds for socioeconomic status protests.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	07/00/21 09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2815, *Email:* malissa.jones@gsa.gov.

*RIN:* 9000-AN91

**248. Federal Acquisition Regulation (FAR); FAR Case 2019-015, Improving Consistency Between Procurement & Non-Procurement Procedures on Suspension and Debarment**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to bring the FAR and the Non-procurement Common Rule (NCR) procedures on suspension and debarment into closer alignment. The FAR covers procurement matters and the NCR covers other transactions, such as grants, cooperative agreements, contracts of assistance, loans and loan guarantees.

The Government uses suspension and debarment procedures to exercise business judgment. These procedures give Federal officials a discretionary means to exclude parties from participation in certain transactions, while affording those parties due process.

*Timetable:*

Action	Date	FR Cite
NPRM ..... NPRM Comment Period End.	07/00/21 09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501-1448, *Email:* curtis.glover@gsa.gov.

*RIN:* 9000-AN98

**249. Federal Acquisition Regulation (FAR); FAR Case 2020-005, Explanations to Unsuccessful Offerors on Certain Orders Under Task and Delivery Order Contracts**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 874 of the NDAA for FY 2020, which requires, when

awarding a task or delivery order in an amount greater than the simplified acquisition threshold, but not greater than \$5.5 million, contracting officers, upon written request from an unsuccessful offeror, to provide a brief explanation as to why the offeror was unsuccessful, including the rationale for award and an evaluation of the significant weak or deficient factors in the offeror's offer.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/00/21	
NPRM Comment Period End.	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208-4949, *Email:* michaelo.jackson@gsa.gov. *RIN:* 9000-AO08

**250. Federal Acquisition Regulation (FAR); FAR Case 2020-007, Accelerated Payments Applicable to Contracts With Certain Small Business Concerns**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to establish an accelerated payment date for small business contractors, to the fullest extent permitted by law, with a goal of 15 days after receipt of a proper invoice, if a specific payment date is not established by contract. For contractors that subcontract with small businesses, the proposed rule, to the fullest extent permitted by law, establishes an accelerated payment date, with a goal of 15 days after receipt of a proper invoice, if: (1) A specific payment date is not established by contract, and (2) the contractor agrees to make accelerated payments to the subcontractor without any further consideration from, or fees charged to, the subcontractor. This change implements section 873 of the National Defense Authorization Act for Fiscal Year 2020 (Pub. L. 116-92). Section 873 amends 31 U.S.C. 3903(a).

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	
NPRM Comment Period End.	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA

(FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7207, *Email:* zenaida.delgado@gsa.gov.

*RIN:* 9000-AO10

**251. Federal Acquisition Regulation (FAR); FAR Case 2020-008, Prohibition on Criminal History Inquiries by Contractors Prior to Conditional Offer**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 1123 of the NDAA for FY 2020 (Pub. L. 116-92), which added at 41 U.S.C. 4714 and 10 U.S.C. 2339 prohibitions related to criminal history inquiries on individuals competing for or applying to work on Federal contracts. Per the statute, a contractor may not request criminal history record information on an applicant for a position related to work under a contract before the contractor has extended a conditional offer to the applicant for that position. In addition, the Federal Government may not request criminal history record information on an individual or sole proprietor who is competing on a Federal Government contract, unless that individual is the apparently successful offeror. This proposed rule implements the statutory prohibition and the associated procedures and exceptions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/21	
NPRM Comment Period End.	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jennifer Hawes, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-7386, *Email:* jennifer.hawes@gsa.gov. *RIN:* 9000-AO11

**252. Federal Acquisition Regulation (FAR); FAR Case 2020-010, Small Business Innovation Research and Technology Transfer Programs**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement changes to the U.S. Small Business Administration (SBA) Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Policy Directive issued (May 2, 2019). The proposed changes

include updating FAR 27 to add reference to the STTR program, revise: definitions, allocation of rights, protection period, SBIR/STTR rights notice, data rights marking provisions, and add language to FAR 6.302-5(b) to acknowledge the unique competition requirements for SBIR/STTR Phase III contracts permitted by the Small Business Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	
NPRM Comment Period End.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2868, *Email:* mahruba.uddowla@gsa.gov. *RIN:* 9000-AO12

**253. Federal Acquisition Regulation (FAR); FAR Case 2020-013, Certification of Women-Owned Small Businesses**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* The purpose of this FAR case is to implement the statutory requirement for certification of women-owned and economically disadvantaged women-owned small businesses participating in the Women-Owned Small Business Program (section 825 of the National Defense Authorization Act for Fiscal Year 2015), as implemented by the Small Business Administration in its final rule published May 11, 2020.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/00/21	
NPRM Comment Period End.	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703-605-2815, *Email:* malissa.jones@gsa.gov. *RIN:* 9000-AO17

**254. • Federal Acquisition Regulation (FAR); FAR Case 2020-016, Rerepresentation of Size and Socioeconomic Status**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the FAR to implement statutory requirements as

implemented by the Small Business Administration's final rule published October 16, 2020 (85 FR 66146), requiring contractors to rerepresent its size and economic status for all set-aside orders placed against full and open multiple award contracts, except those set-aside orders placed under FAR 8.4.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/21	
NPRM Comment Period End.	02/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR), DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 803-3188, Email: [dana.bowman@gsa.gov](mailto:dana.bowman@gsa.gov). RIN: 9000-AO18

**255. • Federal Acquisition Regulation (FAR); FAR Case 2021-001, Increased Efficiencies With Regard to Certified Mail, In-Person Business, Mail, Notarization, Original Documents, Seals, and Signatures**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation to increase flexibilities and efficiencies regarding certified mail, in-person business, mail, notarization, original documents, seals, and signatures using digital and virtual technology. This would streamline certain essential contracting procedures.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/21	
NPRM Comment Period End.	12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 -969-7207, Email: [zenaida.delgado@gsa.gov](mailto:zenaida.delgado@gsa.gov). RIN: 9000-AO19

**256. • Federal Acquisition Regulation (FAR); FAR Case 2021-008, Amendments to the FAR Buy American Act Requirements**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are considering amending the Federal Acquisition Regulation (FAR) to

implement section 8 of Executive Order 14005, Ensuring the Future Is Made in All of America by All of America's Workers. Section 8 requires the Federal Acquisition Regulatory Council to consider amending the FAR to (1) replace the component test used to identify domestic end products and domestic construction materials with a test under which domestic content is measured by the value that is added to the product through U.S.-based production or U.S. job-supporting economic activity, (2) increase the threshold for the domestic content requirement, and (3) increase the price preferences for domestic end products and domestic construction materials. DoD, GSA, and NASA are seeking information that will assist in drafting a proposed rule that will meet the objectives of section 8.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/00/21	
NPRM Comment Period End.	09/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 703 605-2868, Email: [mahruba.uddowla@gsa.gov](mailto:mahruba.uddowla@gsa.gov). RIN: 9000-AO22

**257. • FAR Acquisition Regulation (FAR); FAR Case 2021-005; Disclosure of Beneficial Owner in Federal Contracting**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement sections 885 and 6403 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. Section 885 requires that the Federal Awardee Performance and Integrity Information System include identifying information on the beneficial owner of a Federal contractor that is a corporation. Paragraph (c) of section 6403 directs the FAR to be changed to require certain offerors to disclose beneficial ownership information in their offers for contracts over the simplified acquisition threshold.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/21	
NPRM Comment Period End.	02/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 703 605-2868, Email: [mahruba.uddowla@gsa.gov](mailto:mahruba.uddowla@gsa.gov).

RIN: 9000-AO23

**258. • Federal Acquisition Regulation (FAR); FAR Case 2021-006, Prohibition on Requiring Disclosure of Political Contributions**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 735 of Division E of title VII of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) and similar sections in prior appropriations acts, which prohibit the Government from recommending or requiring an offeror on a Federal contract to disclose as a condition of its offer any payments the offeror has made to a candidate for election for Federal office or to a political committee.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/00/21	
NPRM Comment Period End.	02/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jennifer Hawes, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 969-7386, Email: [jennifer.hawes@gsa.gov](mailto:jennifer.hawes@gsa.gov).

RIN: 9000-AO24

**259. • Federal Acquisition Regulation (FAR); FAR Case 2021-007, Maximum Award Price for Certain Sole Source Manufacturing Contracts**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement section 864 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021. Section 864 amends the Small Business Act by modifying the maximum award price for sole source manufacturing contracts to \$7 million for the 8(a), Women-Owned Small Business (WOSB), Historically Underutilized Business Zone (HUBZone), and Service-Disabled Veteran-Owned Small Business (SDVOSB) programs. This rule will change the current FAR thresholds for the 8(a) and HUBZone programs

from \$7.5 million to the statutory threshold of \$7 million. The thresholds for the WOSB and SDVOSB programs will remain unchanged at the current FAR \$7 million threshold.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/00/21	
NPRM Comment Period End.	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208–4949, *Email:* [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov).

*RIN:* 9000–AO25

**DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)**

Final Rule Stage

**260. Federal Acquisition Regulation; FAR Case 2016–005; Effective Communication Between Government and Industry**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement section 887 of the NDAA for FY 2016 (Pub. L. 114–92). This law provides that Government acquisition personnel are permitted and encouraged to engage in responsible and constructive exchanges with industry. This change will permit and encourage Government acquisition personnel to engage in responsible and constructive exchanges with industry as part of market research as long as those exchanges are consistent with existing laws and regulations and promote a fair competitive environment.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/29/16	81 FR 85914
NPRM Comment Period End.	03/02/17	
Final Rule .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208–4949, *Email:* [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov).

*RIN:* 9000–AN29

**261. Federal Acquisition Regulation (FAR); FAR Case 2015–038, Reverse Auction Guidance**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement policies addressing the effective use of reverse auctions. Reverse auctions involve offerors lowering their pricing over multiple rounds of bidding in order to win Federal contracts. This change incorporates guidance from the Office of Federal Procurement Policy (OFPP) memorandum, “Effective Use of Reverse Auctions,” which was issued in response to recommendations from the GAO report, *Reverse Auctions: Guidance is Needed to Maximize Competition and Achieve Cost Savings* (GAO–14–108). Reverse auctions are one tool used by Federal agencies to increase competition and reduce the cost of certain items. Reverse auctions differ from traditional auctions in that sellers compete against one another to provide the lowest price or highest-value offer to a buyer. This change to the FAR will include guidance that will standardize agencies’ use of reverse auctions to help agencies maximize competition and savings when using reverse auctions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/07/20	85 FR 78815
NPRM Comment Period End.	02/05/21	
Final Rule .....	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email:* [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov).

*RIN:* 9000–AN31

**262. Federal Acquisition Regulation (FAR); FAR Case 2017–005, Whistleblower Protection for Contractor Employees**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement 41 U.S.C. 4712, “Enhancement of Contractor Protection From Reprisal for Disclosure of Certain Information,” and makes the pilot program permanent. The pilot was enacted on January 2, 2013, by section

828 of the National Defense Authorization Act (NDAA) for fiscal year (FY) 2013. The rule clarifies that contractors and subcontractors are prohibited from discharging, demoting, or otherwise discriminating against an employee as a reprisal for disclosing to any of the entities such as agency Inspector Generals and Congress information that the employee reasonably believes is evidence of gross mismanagement of a Federal contract; a gross waste of Federal funds; an abuse of authority relating to a Federal contract; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a Federal contract (including the competition for or negotiation of a contract.) This rule enhances whistleblower protections for contractor employees by making permanent the protection for disclosure of the aforementioned information, and ensuring that the prohibition on reimbursement for legal fees accrued in defense against reprisal claims applies to both contractors and subcontractors.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/26/18	83 FR 66223
NPRM Comment Period End.	02/25/19	
Final Rule .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501–1448, *Email:* [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov).

*RIN:* 9000–AN32

**263. Federal Acquisition Regulation; FAR Case 2016–002, Applicability of Small Business Regulations Outside the United States**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to support SBA’s policy of including overseas contracts in agency small business contracting goals. SBA revised its regulation at 13 CFR 125.2, as finalized in its rule “Acquisition Process: Task and Delivery Order Contracts, Bundling, Consolidation” issued on October 2, 2013, to clarify that overseas contracting is not excluded from agency responsibilities to foster small business participation.

In its final rule, SBA has clarified that, as a general matter, its small business contracting regulations apply



regardless of the place of performance. In light of these changes, there is a need to amend the FAR, both to support the changes to SBA's regulation, and to give agencies the tools they need, especially the ability to use set-asides to maximize opportunities for small businesses overseas.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/12/19	84 FR 39793
NPRM Comment Period End.	10/11/19	
Final Rule .....	07/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2868, *Email:* mahruba.uddowla@gsa.gov. *RIN:* 9000-AN34

**264. Federal Acquisition Regulation (FAR); FAR Case 2016-011, Revision of Limitations on Subcontracting**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to revise and standardize the limitations on subcontracting, including the nonmanufacturer rule, that apply to small business concerns under FAR part 19 procurements. This rule incorporates the Small Business Administration's (SBA) final rule that implemented the statutory requirements of section 1651 of the National Defense Authorization Act (NDAA) for fiscal year 2013. This action is necessary to meet the Congressional intent of clarifying the limitations on subcontracting with which small businesses must comply, as well as the ways in which they can comply. The rule will benefit both small businesses and Federal agencies. The rule will allow small businesses to take advantage of subcontracts with similarly situated entities. As a result, these small businesses will be able to compete for larger contracts, which would positively affect their potential for growth as well as that of their potential subcontractors.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/04/18	83 FR 62540
NPRM Comment Period End.	02/04/19	
Final Rule .....	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Mahruba Uddowla, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2868, *Email:* mahruba.uddowla@gsa.gov. *RIN:* 9000-AN35

**265. Federal Acquisition Regulation (FAR); FAR Case 2017-014, Use of Acquisition 360 to Encourage Vendor Feedback**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to address the solicitation of contractor feedback on both contract formation and contract administration activities. Agencies would consider this feedback, as appropriate, to improve the efficiency and effectiveness of their acquisition activities. The rule will create FAR policy to encourage regular feedback in accordance with agency practice (both for contract formation and administration activities) and a standard FAR solicitation provision to support a sustainable model for broadened use of the Acquisition 360 survey to elicit feedback on the pre-award and debriefing processes in a consistent and standardized manner. Agencies will be able to use the solicitation provision to notify interested sources that a procurement is part of the Acquisition 360 survey and encourage stakeholders to voluntarily provide feedback on their experiences of the pre-award process.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	07/23/18	83 FR 34820
ANPRM Comment Period End.	09/21/18	
NPRM .....	09/15/20	85 FR 57177
NPRM Comment Period End.	11/16/20	
Final Rule .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501-1448, *Email:* curtis.glover@gsa.gov. *RIN:* 9000-AN43

**266. Federal Acquisition Regulation (FAR); FAR Case 2017-011, Section 508-Based Standards in Information and Communication Technology**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to incorporate recent revisions and

updates to accessibility standards issued by the U.S. Access Board pursuant to section 508 of the Rehabilitation Act of 1973. This FAR change incorporates the U.S. Access Board's final rule, "Information and Communication Technology (ICT) Standards and Guidelines," which published on January 18, 2017. This rule updates the FAR to ensure that the updated accessibility standards are appropriately considered in Federal ICT acquisitions.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/31/20	85 FR 17831
Correction .....	04/16/20	85 FR 21139
NPRM Comment Period End.	06/01/20	
Final Rule .....	06/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 550-0935, *Email:* camara.francis@gsa.gov. *RIN:* 9000-AN46

**267. Federal Regulation Acquisition (FAR); FAR Case 2017-019, Policy on Joint Ventures**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA), Small Business Mentor Protégé Programs, published on July 25, 2016 (81 FR 48557), regarding joint ventures and to clarify policy on 8(a) joint ventures. The regulatory changes provide industry with a new way to compete for small business or socioeconomic set-asides using a joint venture made up of a mentor and a protégé. The 8(a) joint venture clarification prevents confusion on an 8(a) joint venture's eligibility to compete for an 8(a) competitive procurement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/05/20	85 FR 34561
NPRM Comment Period End.	08/04/20	
Final Rule .....	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2815, *Email:* malissa.jones@gsa.gov.

RIN: 9000-AN59

**268. Federal Acquisition Regulation (FAR); FAR Case 2018-020, Construction Contract Administration**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113  
*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement section 855 of the NDAA for FY 2019 (Pub. L. 115-232). Section 855 requires, for solicitations for construction contracts anticipated to be awarded to a small business, notification to prospective offerors regarding agency policies or practices in complying with FAR requirements relating to the timely definitization of requests for equitable adjustment and agency past performance in definitizing such requests.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/01/20	85 FR 18181
NPRM Comment Period End.	06/01/20	
Final Rule .....	07/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Dana L. Bowman, Procurement Analyst, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803-3188, *Email:* [dana.bowman@gsa.gov](mailto:dana.bowman@gsa.gov).  
 RIN: 9000-AN78

**269. Federal Acquisition Regulation (FAR); FAR Case 2018-017, Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113  
*Abstract:* DoD, GSA, and NASA amended the Federal Acquisition Regulation (FAR) to implement section 889 (a)(1)(A) of the National Defense Authorization Act (NDAA) for FY 19 (Pub. L. 115-232). Section 889(a)(1)(A) prohibits the Government from procuring covered telecommunications equipment and services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Technology Company, or Dahua Technology Company, to include any subsidiaries or affiliates. Provisions have been added to the FAR which require that an offeror represent at an entity level in SAM, and if applicable on an offer-by-offer basis, if the offeror will or will not provide any covered telecommunications equipment or services to the Government. If an offeror responds in an offer that it will provide covered

telecommunications, the offeror will need to provide additional disclosures. This FAR rule is needed to protect U.S. networks against cyber activities conducted through Chinese Government-supported telecommunications equipment and services.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	08/13/19	84 FR 40216
Interim Final Rule Comment Period End.	10/15/19	
Interim Final Rule Effective.	12/13/19	84 FR 68314
Interim Final Rule Comment Period End.	12/13/19	
Final Rule .....	02/11/20	
Final Rule .....	08/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Camara Francis, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 550-0935, *Email:* [camara.francis@gsa.gov](mailto:camara.francis@gsa.gov).  
 RIN: 9000-AN83

**270. Federal Acquisition Regulation (FAR); FAR Case 2019-001, Analysis for Equipment Acquisitions**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113  
*Abstract:* DoD, GSA, and NASA are amending the FAR by implementing section 555 of the Federal Aviation Administration (FAA) Reauthorization Act for FY 2018 (Pub. L. 115-254), which requires equipment to be acquired using the method of acquisition most advantageous to the Government based on a case-by-case analysis of costs and other factors. Section 555 requires the methods of acquisition to be compared in the analysis to include, at a minimum: (1) Purchase; (2) long-term lease or rental; (3) short-term lease or rental; (4) interagency acquisition; or, (5) acquisition agreements with a State or local government. Section 555 exempts certain acquisitions from this required analysis.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/24/20	85 FR 52081
NPRM Comment Period End.	10/23/20	
Final Rule .....	06/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA

(FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208-4949, *Email:* [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov).  
 RIN: 9000-AN84

**271. Federal Acquisition Regulation (FAR); FAR Case 2019-003, Substantial Bundling and Consolidation**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113  
*Abstract:* DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement section 863 of the National Defense Authorization Acts (NDAA) for FY 2016 and the Small Business Administration (SBA) implementing regulations requiring public notification of an agency's determination to substantially bundle or consolidate contract requirements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/27/20	85 FR 23299
NPRM Comment Period End.	06/26/20	
Final Rule .....	05/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Dana Bowman, Procurement Analyst, DoD/GSA/NASA (FAR), DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803-3188, *Email:* [dana.bowman@gsa.gov](mailto:dana.bowman@gsa.gov).  
 RIN: 9000-AN86

**272. Federal Acquisition Regulation (FAR); FAR Case 2019-004, Good Faith in Small Business Subcontracting**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113  
*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement section 1821 of the National Defense Authorization Act (NDAA) for FY 2017 and the Small Business Administration regulatory changes relating to small business subcontracting plans. Per section 1821, the final rule provides examples of activities that would be considered a failure to make a good faith effort to comply with a small business subcontracting plan. The rule also requires prime contractors with commercial subcontracting plans to include indirect costs, with some exceptions, in their subcontracting plan goals.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/03/20	85 FR 34155
NPRM Comment Period End.	08/03/20	

Action	Date	FR Cite
Final Rule .....	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Dana L. Bowman, Procurement Analyst, General Services Administration, 1800 F Street NW, Washington, DC 20405, *Phone:* 202 803-3188, *Email:* dana.bowman@gsa.gov.

*RIN:* 9000-AN87

**273. Federal Acquisition Regulation (FAR); FAR Case 2019-009, Prohibition on Contracting With Entities Using Certain Telecommunications and Video Surveillance Services or Equipment**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are amending the Federal Acquisition Regulation (FAR) to implement paragraph (a)(1)(B) of section 889 of the National Defense Authorization Act (NDAA) for FY 19 (Pub. L. 115-232). Beginning two years from the enacted date, paragraph (a)(1)(B) of section 889 prohibits the Government from entering into a contract or extending or renewing a contract with an entity that uses any equipment, system, or service that uses covered telecommunications equipment and services from Huawei Technologies Company, ZTE Corporation, Hytera Communications Corporation, Hangzhou Technology Company, or Dahua Technology Company, to include any subsidiaries or affiliates. This FAR rule is needed to protect U.S. networks against cyber activities conducted through Chinese Government-supported telecommunications equipment and services. Paragraph (a)(1)(A) of section 889 is being implemented separately through FAR Case 2018-017.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	07/14/20	85 FR 42665
Interim Final Rule Effective.	08/13/20	
Interim Final Rule	08/27/20	85 FR 53126
Interim Final Rule Comment Period End.	09/14/20	
Interim Final Rule Comment Period End.	10/26/20	
Interim Final Rule Effective.	10/26/20	
Final Rule .....	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* FAR Policy, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 969-4075, *Email:* farpolicy@gsa.gov.

*RIN:* 9000-AN92

**274. Federal Acquisition Regulation (FAR); FAR Case 2020-004, Application of the MPT to Certain Task and Delivery Orders**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are amending the FAR by implementing section 826 of the NDAA for FY 2020 (Pub. L. 116-92) which increases the threshold for requiring fair opportunity on orders under multiple-award contracts from \$3,500 to the micro-purchase threshold, unless an exception applies. This change applies the word-based threshold to ensure continued alignment with any future changes to the thresholds.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/22/20	85 FR 67327
NPRM Comment Period End.	12/21/20	
Final Rule .....	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael O. Jackson, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 208-4949, *Email:* michaelo.jackson@gsa.gov.

*RIN:* 9000-AO04

**275. Federal Acquisition Regulation (FAR); FAR Case 2020-011, Implementation of FASC Exclusion Orders**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* This rule will amend the Federal Acquisition Regulation (FAR) to address implementation of issued exclusion orders authorized by section 202 of the SECURE Technology Act (115 Pub. L. 390), which amends 41 U.S.C. 1323 by creating the Federal Acquisition Security Council (FASC) and authorizing the Secretary of Homeland Security, the Secretary of Defense, and the Director of National Intelligence to issue exclusion orders, upon the recommendation of the FASC. These orders are issued to protect national security by excluding certain covered products, services, or sources from the Federal supply chain.

*Timetable:*

Action	Date	FR Cite
Interim Final Rule	08/00/21	
Interim Final Rule Comment Period End.	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kevin Funk, Supply Chain Risk Management Expert, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 357-5805, *Email:* kevin.funk@gsa.gov.

*RIN:* 9000-AO13

**276. Federal Acquisition Regulation (FAR); FAR Case 2020-012, Scope of Review by Procurement Center Representatives**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* The purpose of this FAR case is to implement section 1811 of the National Defense Authorization Act for Fiscal Year 2017 (15 U.S.C. 644(l)(9)(A)), as implemented by the Small Business Administration's final rule published November 29, 2019 (84 FR 65647). 15 U.S.C. 644(l)(9)(A) allows procurement center representatives to review solicitations without regard to whether the contract or order is set aside for small business, or reserved in the case of a multiple-award contract, or whether the solicitation would result in a bundled or consolidated contract or order.

*Timetable:*

Action	Date	FR Cite
Direct Final Rule	06/00/21	
Direct Final Rule Comment Period End.	08/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Malissa Jones, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 703 605-2815, *Email:* malissa.jones@gsa.gov.

*RIN:* 9000-AO16

**277. Federal Acquisition Regulation (FAR); FAR Case 2021-003, Update to Certain Online References in the Far**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to replace FAR references to Federal Business Opportunities (FBO.gov) and Wage Determinations Online (WDOL.gov) with the System for Award Management (SAM.gov), because of their integration with and increased functionality of SAM.gov.

*Timetable:*

Action	Date	FR Cite
Final Rule .....	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Curtis E. Glover Sr., Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, *Phone:* 202 501-1448, *Email:* [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov).

*RIN:* 9000-AO21

**DEPARTMENT OF DEFENSE/ GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)**

Completed Actions

**278. Federal Acquisition Regulation (FAR); FAR Case 2011-001; Organizational Conflicts of Interest and Unequal Access to Information**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are withdrawing the proposed rule to amend the Federal Acquisition Regulation (FAR) titled: Organizational Conflicts of Interest. The decision not to proceed with a final rule has been made given the amount of time that has passed since publication of the proposed rule. Accordingly, this proposed rule is withdrawn and the FAR case is closed. Consideration of any future amendments to the FAR related to organizational conflicts of interest or unequal access to nonpublic information will be accomplished under a new FAR case.

DoD, GSA and NASA issued a proposed rule on April 26, 2011 to amend the FAR to include guidance that will help the Government identify and address circumstances in which a Government contractor has an organizational conflict of interest. This rule will also provide safeguards to protect against unequal access to information, which harms the competitive acquisition process.

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	03/19/21	86 FR 14863

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Mahruba Uddowla, *Phone:* 703 605-2868, *Email:* [mahruba.uddowla@gsa.gov](mailto:mahruba.uddowla@gsa.gov).

*RIN:* 9000-AL82

**279. Federal Acquisition Regulation (FAR); FAR Case 2012-001; Performance of Inherently Governmental Functions and Critical Functions**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA were proposing to revise the Federal Acquisition Regulation (FAR) to implement acquisition-related requirements of the Office of Federal Procurement Policy (OFPP) Policy Letter 11-01, entitled “Performance of Inherently Governmental and Critical Functions,” published September 12, 2011 (65 FR 56227), with a correction published February 13, 2012 (77 FR 7609). This rule is withdrawn, and the FAR case closed because further research and deliberation is required. Any future amendments to the FAR related to implementing performance of inherently governmental and critical functions will be accomplished under a new FAR case and RIN.

*Completed:*

Action	Date	FR Cite
Withdrawn .....	03/03/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael O. Jackson, *Phone:* 202 208-4949, *Email:* [michaelo.jackson@gsa.gov](mailto:michaelo.jackson@gsa.gov).

*RIN:* 9000-AM41

**280. Federal Acquisition Regulation (FAR); FAR Case 2013-022; Extension of Limitations on Contractor Employee Personal Conflicts of Interest**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are withdrawing the proposed rule to amend the Federal Acquisition Regulation (FAR) titled: Extension of Limitations on Contractor Employee Personal Conflicts of Interest. The decision not to proceed with a final rule was made on the basis that the requirements of the underlying statute that directed consideration of a FAR change have been met. Accordingly, this proposed rule is withdrawn and the FAR case is closed.

DoD, GSA, and NASA issued a proposed rule on April 2, 2014 to amend the FAR to implement a section of the National Defense Authorization Act for Fiscal Year 2013 to extend the limitations on contractor employee personal conflicts of interest to apply to the performance of all functions that are closely associated with inherently governmental functions and contracts for personal services. This case is

included in the FAR retrospective review of existing regulations under Executive Order 13563. Additional information is located in the FAR final plan (2016), available at: <https://www.acquisition.gov/>.

*Completed:*

Action	Date	FR Cite
Withdrawn .....	03/19/21	86 FR 14862

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Mahruba Uddowla, *Phone:* 703 605-2868, *Email:* [mahruba.uddowla@gsa.gov](mailto:mahruba.uddowla@gsa.gov).

*RIN:* 9000-AM69

**281. Federal Acquisition Regulation (FAR); FAR Case 2015-023; Federal Supply Schedule Order Level Material**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 50113

*Abstract:* DoD, GSA, and NASA were proposing to amend the Federal Acquisition Regulation (FAR) to clarify the authority to acquire order-level materials (OLMs) when placing a task order or establishing a blanket purchase agreement (BPAs) against a Federal Supply Schedule (FSS) contract. However, the FAR Council agreed that a better course was for GSA to issue a rule to provide clarity in the General Services Administration Acquisition Regulation. GSA issued a final rule (83 FR 3275) to clarify the authority to acquire OLMs when placing task or delivery orders placed against an FSS BPA or contract at 48 CFR 515, 538 and 552. In light of the GSA regulatory action, the FAR rule is now being withdrawn.

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	03/03/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Curtis E. Glover, *Phone:* 202 501-1448, *Email:* [curtis.glover@gsa.gov](mailto:curtis.glover@gsa.gov).

*RIN:* 9000-AM95

**282. Federal Acquisition Regulation (FAR); FAR Case 2017-003; Individual Sureties**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to change the kinds of assets that individual sureties must use as security for their individual surety bonds. This change implements section 874 of the National Defense Authorization Act (NDAA) for

FY 2016 (Pub. L. 114–92), codified at 31 U.S.C. 9310, Individual Sureties. Individual sureties will no longer be able to pledge real property, corporate stocks, corporate bonds, or irrevocable letters of credit. The requirements of 31 U.S.C. 9310 are intended to strengthen the assets pledged by individual sureties, thereby mitigating risk to the Government.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	01/14/21	86 FR 3682
Final Rule Effective.	02/16/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Zenaida Delgado, *Phone:* 202 969–7207, *Email:* zenaida.delgado@gsa.gov. *RIN:* 9000–AN39

**283. Federal Acquisition Regulation (FAR); FAR Case 2015–037, Definition of “Information Technology”**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA were proposing to revise the Federal Acquisition Regulation (FAR) to update the definition of “information technology,” to harmonize the definition with that in the Office of Management and Budget Memo, M–15–14, entitled Management Oversight of Federal Information Technology.” This rule is withdrawn, and the FAR case closed to allow for discussions to work through differences between the current FAR definition and the definition in the OMB memo M–15–14. Any future amendments to the FAR related to the definition of “information technology” will be accomplished under a new FAR case and RIN.

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	03/03/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Camara Francis, *Phone:* 202 550–0935, *Email:* camara.francis@gsa.gov. *RIN:* 9000–AN48

**284. Federal Acquisition Regulation (FAR); FAR Case 2017–018, Violation of Arms Control Treaties or Agreements With the United States**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to

implement section 1290(c)(3) of the National Defense Authorization Act (NDAA) for FY 2017, which requires an offeror or any of its subsidiaries to certify that it does not engage in any activity that contributed to or is a significant factor in the determination that a country is not in full compliance with its obligations undertaken in all arms control, nonproliferation, and disarmament agreements or commitments in which the United States is a participating state.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	01/14/21	86 FR 3677
Final Rule Effective.	02/16/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael O. Jackson, *Phone:* 202 208–4949, *Email:* michaelo.jackson@gsa.gov. *RIN:* 9000–AN57

**285. Federal Acquisition Regulation (FAR); FAR Case 2018–002, Protecting Life in Global Health Assistance**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are withdrawing the proposed rule to amend the Federal Acquisition Regulation (FAR) titled: Protecting Life in Global Health Assistance. The decision not to proceed with a final rule has been made because the Presidential Memorandum regarding The Mexico City Policy,” dated January 23, 2017, has been revoked by the Memorandum on Protecting Women’s Health at Home and Abroad issued by President Biden on January 28, 2021. Accordingly, this proposed rule is withdrawn and the FAR case is closed.

DoD, GSA, and NASA issued a proposed rule on September 14, 2020 to amend the FAR to implement Presidential Memorandum, “The Mexico City Policy,” issued on January 13, 2017, in accordance with the Department of State’s implementation plan dated May 9, 2017. This rule would extend requirements of the memorandum and plans to new funding agreements for global health assistance furnished by all Federal departments or agencies. This expanded policy would cover global health assistance to include funding for international health programs, such as those for HIV/AIDS, maternal and child health, malaria, global health security, and certain family planning and reproductive health.

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	03/19/21	86 FR 14863

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* FAR Policy, *Phone:* 202 969–4075, *Email:* farpolicy@gsa.gov. *RIN:* 9000–AN62

**286. Federal Acquisition Regulation (FAR); FAR Case 2018–016, Lowest Price Technically Acceptable Source Selection Process**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement section 880 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 to avoid using lowest price technically acceptable source selection criteria in circumstances that would deny the Government the benefits of cost and technical tradeoffs in the source selection process.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	01/14/21	86 FR 3679
Final Rule Effective.	02/16/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael O. Jackson, *Phone:* 202 208–4949, *Email:* michaelo.jackson@gsa.gov. *RIN:* 9000–AN75

**287. Federal Acquisition Regulation (FAR); FAR Case 2018–021, Reserve Officer Training Corps and Military Recruiting on Campus**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement the requirements at 10 U.S.C. 983, which prohibits the award of certain Federal contracts or grants to institutions of higher education that prohibit Senior Reserve Officer Training Corps units or military recruiting on campus.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	10/23/20	85 FR 67619
Final Rule Effective.	11/23/20	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Zenaida Delgado, *Phone:* 202 969-7207, *Email:* zenaida.delgado@gsa.gov.  
*RIN:* 9000-AN79

**288. Federal Acquisition Regulation (FAR); FAR Case 2018-023, Taxes- Foreign Contracts in Afghanistan**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to implement the provisions on taxes, duties, and fees contained in the Security and Defense Cooperation Agreement (dated 2014) and the North Atlantic Treaty Organization Status of Forces Agreement (dated 2014) with the Islamic Republic of Afghanistan. Both Agreements exempt the United States Government, and its contractors and subcontractors (other than those who are Afghan legal entities or residents), from paying any tax or similar charge assessed on activities associated with contracts performed within Afghanistan. The Agreements also exempt the acquisition, importation, exportation, reexportation, transportation, and use of supplies and services in Afghanistan, by or on behalf of the United States Government, from any taxes, customs, duties, fees, or similar charges in Afghanistan.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	10/23/20	85 FR 67623
Final Rule Effective.	11/23/20	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kevin Funk, *Phone:* 202 357-5805, *Email:* kevin.funk@gsa.gov.

*RIN:* 9000-AN81

**289. Federal Acquisition Regulation (FAR); FAR Case 2019-002, Recreational Services on Federal Lands**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule to amend the Federal Acquisition Regulation (FAR) to exempt contracts for seasonal recreational services and seasonal recreational equipment rental on Federal lands from the Executive Order 13658 minimum wage requirements. This rule implements Executive Order 13838 that was issued on May 25, 2018, and associated Department of Labor final rule published on September 26, 2018. In accordance with Executive Order 13838, this rule will not limit Executive

Order 13658's coverage of lodging and food services associated with seasonal recreational services, even when seasonal recreational services or seasonal recreational equipment rental are also provided under the same contract.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	10/23/20	85 FR 67626
Final Rule Effective.	11/23/20	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Kevin Funk, *Phone:* 202 357-5805, *Email:* kevin.funk@gsa.gov.

*RIN:* 9000-AN85

**290. Federal Acquisition Regulation (FAR); FAR Case 2019-010, Efficient Federal Operations**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA were proposing to revise the Federal Acquisition Regulation (FAR) to implement Executive Order 13834, "Efficient Federal Operations," which directed Federal agencies to comply with statutory requirements related to energy and environmental performance in a manner that increases efficiency, maximizes performance, eliminates unnecessary use of resources, and protects the environment.

However, Executive Order 13834 was partially revoked by Executive Order 13990, Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis. The sections of Executive Order 13834 that remain in effect have no impact on the FAR; therefore, this rule is withdrawn and the FAR case is closed. Any future amendments to the FAR related to environmental issues or sustainable acquisition will be accomplished under a new FAR case and RIN.

*Completed:*

Reason	Date	FR Cite
Withdrawn .....	03/03/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Jennifer Hawes, *Phone:* 202 969-7386, *Email:* jennifer.hawes@gsa.gov.

*RIN:* 9000-AN94

**291. Federal Acquisition Regulation (FAR); FAR Case 2019-016, Maximizing Use of American-Made Goods, Products and Materials**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement Executive Order (E.O.) 13881, Maximizing Use of American-Made Goods, Products, and Materials, which would provide that materials shall be considered to be of foreign origin if: (A) For iron and steel end products, the cost of foreign iron and steel used in such iron and steel end products constitutes 5 percent or more of the cost of all the products used in such iron and steel end products; or (B) for all other end products, the cost of the foreign products used in such end products constitutes 45 percent or more of the cost of all the components. In addition, the Executive order provides that in determining price reasonableness or public interest, the evaluation factors of 20 percent (for other than small businesses), or 30 percent (for small businesses) shall be applied to offers of materials of foreign origin.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	01/19/21	86 FR 6180
Final Rule Effective.	01/19/21	
Final Rule Correction.	02/05/21	86 FR 8308
Final Rule Effective.	02/05/21	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Zenaida Delgado, *Phone:* 202 969-7207, *Email:* zenaida.delgado@gsa.gov.

*RIN:* 9000-AN99

**292. Federal Acquisition Regulation (FAR); FAR Case 2020-006, Documentation of Market Research**

*Legal Authority:* 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113

*Abstract:* DoD, GSA, and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the National Defense Authorization Act for Fiscal Year 2020 that requires the head of the agency to document the results of market research in a manner appropriate to the size and complexity of the acquisition.

*Completed:*

Reason	Date	FR Cite
Final Rule .....	10/23/20	85 FR 67623

Reason	Date	FR Cite
Final Rule Effective.	11/23/20	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact: Camara Francis, Phone: 202 550-0935, Email: camara.francis@gsa.gov.*

*RIN: 9000-AO09*

**293. • Federal Acquisition Regulation (FAR); FAR Case 2021-002, Increased Efficiencies With Regard to In-Person Business, Mail, and Signatures**

*Legal Authority: 40 U.S.C. 121(c); 10 U.S.C. ch. 137; 51 U.S.C. 20113*

*Abstract: FAR case 2021-002, Increased Efficiencies with Regard to In-Person Business, Mail, and Signatures, will be addressed in FAR case 2021-001, Increased Efficiencies with Regard to Certified Mail, In-person Business, Mail, Notarization, Original Documents, Seals, and Signatures.*

*Timetable:*

Action	Date	FR Cite
Merged With FAR Case 2021-001, Rin 9000-AO19.	03/10/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact: Zenaida Delgado, Procurement Analyst, DOD/GSA/NASA (FAR), 1800 F Street NW, Washington, DC 20405, Phone: 202 969-7207, Email: zenaida.delgado@gsa.gov.*

*RIN: 9000-AO20*

[FR Doc. 2021-15101 Filed 7-29-21; 8:45 am]

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# FEDERAL REGISTER

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Part XXI

Bureau of Consumer Financial Protection

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Semiannual Regulatory Agenda

## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Ch. X

#### Semiannual Regulatory Agenda

**AGENCY:** Bureau of Consumer Financial Protection

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is publishing this agenda as part of the Spring 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Bureau reasonably anticipates having the regulatory matters identified below under consideration during the period from May 1, 2021 to April 30, 2022. The next agenda will be published in Fall 2021 and will update this agenda through Fall 2022. Publication of this agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

**DATES:** This information is current as of April 26, 2021.

**ADDRESSES:** Bureau of Consumer Financial Protection, 1700 G Street NW, Washington, DC 20552.

**FOR FURTHER INFORMATION CONTACT:** A staff contact is included for each regulatory item listed herein. If you require this document in an alternative electronic format, please contact [CFPB\\_Accessibility@cfpb.gov](mailto:CFPB_Accessibility@cfpb.gov).

**SUPPLEMENTARY INFORMATION:** The Bureau is publishing its spring 2021 Agenda as part of the Spring 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda lists the regulatory matters that the Bureau reasonably anticipates having under consideration during the period from May 1, 2021 to April 30, 2022, as described further below.<sup>1</sup> The complete Unified Agenda is available to the public at the following website: <http://www.reginfo.gov>.

Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (Dodd-Frank Act), the Bureau has rulemaking, supervisory, enforcement, consumer education, and other authorities relating to consumer financial products and services. These authorities include the authority to issue regulations under more than a dozen Federal consumer financial laws,

which transferred to the Bureau from seven Federal agencies on July 21, 2011. The Bureau's general purpose, as specified in section 1021(a) of the Dodd-Frank Act, is to implement and enforce Federal consumer financial law consistently for the purpose of ensuring that all consumers have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive.

In addition, section 1021 of the Dodd-Frank Act specifies the objectives of the Bureau, including ensuring that, with respect to consumer financial products and services, consumers are provided with timely and understandable information to make responsible decisions about financial transactions; consumers are protected from unfair, deceptive, or abusive acts and practices and from discrimination; outdated, unnecessary, or unduly burdensome regulations are regularly identified and addressed in order to reduce unwarranted regulatory burdens; that Federal consumer financial law is enforced consistently, without regard to the status of a person as a depository institution, in order to promote fair competition; and markets for consumer financial products and services operate transparently and efficiently to facilitate access and innovation.

The Bureau is under interim leadership pending the appointment and confirmation of a permanent Director. In light of this status, Bureau leadership is prioritizing during coming months the continuation of certain ongoing rulemakings and a new rulemaking on mortgage servicing to provide relief for consumers facing hardship due to COVID–19 and the related economic crisis. Those projects are described further below. The Bureau expects that its new Director, when confirmed, will assess further what regulatory actions the Bureau should prioritize to best further our consumer protection mission and mandate, particularly in light of the ongoing pandemic and resulting economic crisis and the Bureau's commitment to promoting racial equity. Accordingly, the Bureau anticipates that the Fall 2021 Agenda will reflect the permanent Bureau Director's priorities. In the meantime, the Bureau's Acting Director has decided to reclassify as "inactive" or "withdrawn" certain rulemakings that had been listed in previous editions of the Bureau's Unified Agenda in the expectation that final decisions on whether and when to proceed with such projects will be made in the coming months. This change in designation is

not intended to signal a substantive decision on the merits of the projects but may reflect a change in priority.

#### Continuation of Bureau Regulatory Efforts in Various Consumer Markets

The Bureau is continuing to work on a number of rulemakings to address important consumer protection issues in a wide variety of markets for consumer financial products and services, including mortgages, debt collection, and small business lending, among others. The Bureau is mindful of how critically important these rulemakings are in light of the dire financial circumstances so many Americans find themselves in and of the impact of the pandemic and the resulting financial crisis on millions of consumers and small businesses. The Bureau is also mindful that the data show that these hardships fall disproportionately on families and small businesses in communities of color.

For example, section 1071 of the Dodd-Frank Act amended the Equal Credit Opportunity Act to require, subject to rules prescribed by the Bureau, financial institutions to collect, report, and make public certain information concerning credit applications made by women-owned, minority-owned, and small businesses. Congress enacted section 1071 for the purpose of (1) Facilitating enforcement of fair lending laws and (2) enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

Bureau research shows that small businesses play a key role in fostering community development and fueling economic growth, and that women-owned and minority-owned small businesses in particular play an important role in supporting their local communities. To contribute meaningfully to the U.S. economy and to their local community, small businesses—and especially women-owned and minority-owned small businesses—need access to credit to smooth business cash flows from current operations and to allow entrepreneurs to take advantage of opportunities for growth. This access to credit will be especially important as the nation works to rebuild the economy. The Bureau's section 1071 rule, when final, will be critical to enabling the Bureau to protect small business owners, including from unlawful discrimination, in their access to and use of credit.

In September 2020, the Bureau released an outline of proposals under

<sup>1</sup> The listing does not include certain routine, frequent, or administrative matters. The Bureau is reporting information for this Unified Agenda in a manner consistent with past practice.

consideration and alternatives considered in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy. The SBREFA panel was convened in October 2020 and received feedback from representatives of small entities on the impacts possible approaches to the section 1071 rulemaking would have on small entities likely to be directly affected by it. The panel's report was completed and released in December 2020. The Bureau's next action for section 1071 is to release a Notice of Proposed Rulemaking.

The Bureau is also working on a rulemaking to address the availability of consumer financial account data in electronic form, which has helped consumers understand their finances and make better-informed financial decisions in a variety of ways. Research has indicated that the availability of certain consumer financial account data may improve underwriting and expand access to credit. At the same time, the means by which these data are accessed, transmitted, stored, and used by financial institutions of all kinds can implicate significant privacy, security, racial equity, and other consumer financial protection concerns. Furthermore, consumer access to their own financial data can foster improved transparency in credit decisions that affect consumers, including small and very small businesses relying on consumer credit access, and provide some protection against poor credit ratings based on serious errors in credit reports. This ability of consumers to access this information is particularly important at a time when financial institutions are increasingly using "alternative data" in making credit decisions. The Bureau supports innovation and believes that appropriate implementation of section 1033 can lead to competitive, consumer-friendly markets, while recognizing the importance of ensuring the safety and security of consumer account data. Section 1033 of the Dodd-Frank Act provides that, subject to rules prescribed by the Bureau, covered persons shall make available to consumers, upon request, transaction data and other information concerning a consumer financial product or service that the consumer obtains from a covered person. Section 1033 also states that the Bureau shall prescribe by rule standards to promote the development and use of standardized formats for information

made available to consumers. In November 2016, the Bureau released a Request for Information seeking comment from the public to better understand the consumer benefits and risks associated with market developments that rely on access to consumer financial account and account-related information. In October 2017, the Bureau released Consumer Protection Principles for Consumer-Authorized Financial Data Sharing and Aggregation to express the Bureau's vision for the data aggregation market. The Bureau hosted a symposium on consumer authorized financial data sharing in February 2020. In November 2020, the Bureau released an Advance Notice of Proposed Rulemaking (ANPRM) concerning consumer data access to implement section 1033, accepting comments until early February 2021. The Bureau is reviewing comments received in response to the ANPRM and is considering those comments as it assesses potential next steps.

Next, the Bureau is working to implement section 307 of the Economic Growth, Regulatory Relief, and Consumer Protection Act of 2018 (EGRRCPA), Public Law 115-174, 132 Stat. 1297, which amends the Truth in Lending Act (TILA) to mandate that the Bureau prescribe certain regulations relating to "Property Assessed Clean Energy" (PACE) financing. PACE financing is a tool for consumers to finance certain improvements to residential real property. It is authorized by State and local governments and is typically available for projects promoting energy and water conservation, among other public policy goals identified in state statute. PACE is a hybrid product, with characteristics of both home equity lending and real property taxes. Like home equity loans, PACE obligations arise through voluntary contract and are secured by real property. But, under State law, they are billed and repaid as special property tax assessments and typically secured by a lien with equal priority to real property taxes. As defined by EGRRCPA section 307, PACE financing results in a tax assessment on a consumer's real property and covers the costs of home improvements. EGRRCPA section 307 states that the Bureau's PACE regulations shall carry out the purposes of TILA's ability-to-repay (ATR) requirements for residential mortgage loans and apply TILA's general civil liability provision for violations of the ATR requirements. The regulations must "account for the unique nature" of PACE financing. Section 307 of the

EGRRCPA also specifically authorizes the collection of data and information necessary to support a PACE rulemaking. In March 2019, the Bureau released an ANPRM and is continuing to engage with stakeholders and collect information for the rulemaking, including by collecting quantitative data on the effect of PACE on consumers' financial outcomes.

The Bureau is also participating in interagency rulemaking processes with the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency to develop regulations to implement the amendments made by the Dodd-Frank Act to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) concerning appraisals. The FIRREA amendments require implementing regulations for quality control standards for automated valuation models (AVMs). These standards are designed to ensure a high level of confidence in the estimates produced by the valuation models, protect against the manipulation of data, seek to avoid conflicts of interest, require random sample testing and reviews, and account for any other such factor that the Agencies determine to be appropriate. The Agencies will continue to work to develop a proposed rule to implement the Dodd-Frank Act's AVM amendments to FIRREA.

The Bureau is also continuing a rulemaking to address the anticipated expiration of the LIBOR index, which the UK Financial Conduct Authority has stated that it cannot guarantee the publication of beyond June 2023. This rulemaking is important for millions of consumers who have adjustable-rate mortgages, credit cards, student loans, reverse mortgages, home equity lines of credit (HELOCs), or other consumer products that are tied to the LIBOR index. The rulemaking would help to ensure that any changes to an index underlying these loans as a result of the transition to a different index due to the discontinuation of LIBOR are done by industry in an orderly, transparent, and fair manner. The Bureau's work is designed to facilitate compliance by open-end and closed-end creditors and to lessen the financial impact to consumers by providing examples of replacement indices that meet Regulation Z requirements. For creditors for HELOCs (including reverse mortgages) and card issuers for credit card accounts, the rule would facilitate the transition of existing accounts to an

alternative index, beginning around April 2022, well in advance of LIBOR's anticipated expiration. The rule also would address change-in-terms notice provisions for HELOCs and credit card accounts and how they apply to the transition away from LIBOR, to ensure that consumers are informed of the replacement index and any adjusted margin. To facilitate compliance by card issuers, the rule would address how the rate re-evaluation provisions applicable to credit card accounts apply to the transition from LIBOR to a replacement index. This rulemaking will enable the Bureau to facilitate compliance by creditors with Regulation Z as they transition away from LIBOR. The Bureau issued a Notice of Proposed Rulemaking (NPRM) in June 2020 and expects to issue a final rule in January 2022.

### Rulemakings To Extend Compliance or Effective Dates

The Bureau has proposed to extend the mandatory compliance date or effective date of certain final rules issued in 2020. First, the Bureau proposed on March 5, 2021, to extend the mandatory compliance date for a final rule issued in late 2020 amending the "qualified mortgages" (QM) provisions of Regulation Z, which implements TILA, to ensure homeowners struggling with the financial impacts of the COVID-19 pandemic, as well as lenders, have the options they need to help people stay in their homes and to ensure the availability of responsible, affordable mortgages.

The General QM final rule is part of the CFPB's work to protect homeowners from debt traps and unaffordable, irresponsible mortgage loans. With certain exceptions, Regulation Z requires creditors to make a reasonable, good-faith determination of a consumer's ability to repay any residential mortgage loan, and loans that meet Regulation Z's requirements for a QM obtain certain protections from liability. One category of QMs covers certain loans that are eligible for purchase or guarantee by either the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac). Under Regulation Z, this category of QMs (Temporary GSE QM or "Patch" loans) was scheduled to expire no later than January 10, 2021. The Bureau issued a final rule in October 2020, to extend the Patch so that it would expire on the mandatory compliance date of final amendments to the General QM loan definition in Regulation Z, or when the GSEs cease to operate under the

conservatorship of the FHFA, if that happens earlier. This would help ensure a smooth and orderly transition away from the Patch by (among other things) allowing the Bureau to complete this rulemaking and to avoid any gap between the expiration of the Patch and the effective date of the proposed alternative. In December 2020, the Bureau finalized a new "seasoning" definition of QM which created an alternative pathway to QM safe-harbor status for certain mortgages when the borrower has consistently made timely payments for a period. Also in December 2020, the Bureau finalized amendments to the definition of General QM that removed the 43 percent debt-to-income (DTI) requirement and instead established a pricing threshold (*i.e.*, the difference between the loan's annual percentage rate (APR) and the average prime offer rate for a comparable transaction) for loans to qualify as QMs. General QM loans still have to meet the statutory criteria for QM status, including restrictions related to loan features, up-front costs, and underwriting. The mandatory compliance date of the General QM final rule was July 1, 2021. However, in March 2021, the Bureau issued a proposed rule that would extend the mandatory compliance date until October 1, 2022, which would also have the effect of extending the availability of both the GSE Patch and the old, DTI-based General QM definition until that date. The purpose of the proposed extension is to help ensure flexibility and access to responsible, affordable mortgage credit for consumers affected by the COVID-19 pandemic by continuing until that date the availability of all three QM definitions. The Bureau expects to issue a final rule as to the extension of the mandatory compliance date this spring.

Second, the Bureau issued on April 19 a proposed rule to extend the effective date of two final rules issued in late 2020 to implement the Fair Debt Collection Practices Act (FDCPA). In October 2020, the Bureau issued a final rule prescribing rules under Regulation F to govern the activities of debt collectors, as that term is defined under the FDCPA. That final rule focused primarily on debt collection communications and addressed a number of other topics, including imposing record retention requirements and prohibiting the sale or transfer of certain types of debt. In December 2020, the Bureau issued a second final rule under Regulation F addressing disclosures related to the validation notice, requiring certain outreach by

debt collectors before consumer reporting, and barring suits or threats of suit on time-barred debt. Both final rules are scheduled to take effect on November 30, 2021. The Bureau recently proposed to extend by 60 days the effective date of those final rules in light of the continuation well into 2021 of the widespread societal disruption caused by the COVID-19 pandemic. In light of that disruption, the Bureau believes that providing additional time for stakeholders to review and, if applicable, to implement the final rules may be warranted. The Bureau's next action is a final rule on whether and for how long to extend the effective date of these final rules after reviewing the comments submitted to the docket.

### New Projects and Planning for Future Rulemakings

On April 5, 2021, the Bureau published an NPRM to propose amendments to the mortgage servicing early intervention and loss mitigation-related provisions in Regulation X, which implements the Real Estate Settlement Procedures Act. The NPRM aims to help ensure that mortgage borrowers are evaluated for loss mitigation before servicers initiate the foreclosure process and to avert, to the extent possible, a foreclosure crisis when the COVID-19 forbearances end. Taking these measures to protect homeowners is especially important in the context of a pandemic that makes housing security not just a financial but also a public health priority, particularly for communities of color and lower income communities that have been hardest hit both by COVID-19 and by the related economic crisis.

The Bureau is also actively reviewing existing regulations. Section 1022(d) of the Dodd-Frank Act requires the Bureau to conduct an assessment of each significant rule or order adopted by the Bureau under Federal consumer financial law and publish a report of each assessment not later than five years after the effective date of the subject matter or order. The Bureau is currently considering whether its rule implementing the Home Mortgage Disclosure Act, most of which became effective in January 2018, will require such an assessment and report.

The Regulatory Flexibility Act (RFA) also requires the Bureau to consider the effect on small entities of certain rules it promulgates. The Bureau published in May 2019, its plan for conducting reviews, consistent with section 610 of the RFA, of certain regulations which are believed to have a significant impact on a substantial number of small entities. Congress specified that the

purpose of these reviews is to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of the applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. In August 2020, the Bureau commenced its RFA section 610 review of Regulation Z rules that implement the Credit Card Accountability Responsibility and Disclosure Act of 2009. Specifically, the Bureau will review an interim final rule and three final rules published by

the Board from July 2009 to April 2011. This review will be completed in the spring of 2021, and the Bureau will publish its determination concerning any resulting changes to the rule, in the Fall 2021 Unified Agenda.

Finally, as required by the Dodd-Frank Act, the Bureau is continuing to monitor markets for consumer financial products and services to identify risks to consumers and the proper functioning of such markets. As discussed in a recent report by the Government Accountability Office, the Bureau's Division of Research, Markets, and

Regulations and specifically its Markets Offices continuously monitor market developments and risks to consumers. The Bureau also has created a number of cross-Bureau working groups focused around specific markets which advance the Bureau's market monitoring work. The Bureau's market monitoring work assists in identifying issues for potential future rulemaking work.

Dated: March 17, 2021.

**Susan M. Bernard,**

*Assistant Director for Regulations, Bureau of Consumer Financial Protection.*

**CONSUMER FINANCIAL PROTECTION BUREAU—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
294 .....	Business Lending Data (Regulation B) .....	3170-AA09

**CONSUMER FINANCIAL PROTECTION BUREAU—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
295 .....	Debt Collection Rule .....	3170-AA41

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

*Proposed Rule Stage*

**294. Business Lending Data (Regulation B)**

Legal Authority: 15 U.S.C. 1691c–2  
*Abstract:* Section 1071 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) amended the Equal Credit Opportunity Act (ECOA) to require, subject to rules prescribed by the Bureau, financial institutions to report information concerning credit applications made by women-owned, minority-owned, and small businesses. ECOA is a critical law that protects small business owners, including from unlawful discrimination, in their access to and use of credit. Section 1071 requires that certain data be collected, maintained, and reported to the Bureau, including whether the applicant is a women-owned, minority-owned, or small business; the number of the application and date the application was received; the type and purpose of the loan or credit applied for; the amount of credit applied for and approved; the type of action taken with respect to the application and the date of such action; the census tract of the applicant's principal place of business; the gross annual revenue of the business; and the race, sex, and ethnicity of the principal owners of the business. Section 1071 also provides

authority for the Bureau to require any additional data that the Bureau determines would aid in fulfilling its statutory purposes. The Bureau may adopt exceptions to any requirement of section 1071 and may exempt any financial institution from its requirements, as the Bureau deems necessary or appropriate to carry out section 1071's purposes. The Bureau issued a Request for Information in 2017 seeking public comment on, among other things, the types of credit products offered and the types of data currently collected by lenders in this market, and the potential complexity, cost of, and privacy issues related to, small business data collection. In November 2019, the Bureau hosted a symposium on small business data collection to facilitate its decision-making. In addition, in July 2020, the Bureau released a survey of lenders to obtain estimates of one-time costs lenders of varying sizes would incur to collect and report data pursuant to section 1071. In September 2020, the Bureau released an outline of proposals under consideration and alternatives considered in advance of convening a panel under the Small Business Regulatory Enforcement Fairness Act (SBREFA), in conjunction with the Office of Management and Budget and the Small Business Administration's Chief Counsel for Advocacy. The SBREFA panel was convened in October 2020 and received feedback from representatives of small entities on the

impacts the rules the Bureau is considering to implement section 1071 would have on small entities likely to be directly affected by the rulemaking. The panel's report was completed and released in December 2020. The Bureau's next step for section 1071 is to release a Notice of Proposed Rulemaking. Consistent with its statutory purposes, an eventual section 1071 rule will facilitate enforcement of fair lending laws as well as enable communities, governmental entities, and creditors to identify business and community development needs and opportunities of women-owned, minority-owned, and small businesses.

*Timetable:*

Action	Date	FR Cite
Request for Information.	05/15/17	82 FR 22318
Request for Information Comment Period End.	09/14/17	
SBREFA Outline	09/15/20	
Pre-rule Activity—SBREFA Report.	12/14/20	
NPRM .....	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kristine Andreassen, Office of Regulations, Consumer Financial Protection Bureau,

Washington, DC 20552, Phone: 202 435-7700.

RIN: 3170-AA09

**CONSUMER FINANCIAL PROTECTION BUREAU (CFPB)**

Final Rule Stage

**295. Debt Collection Rule**

*Legal Authority:* 15 U.S.C. 1692l(d)

*Abstract:* In May 2019, the Bureau issued a Notice of Proposed Rulemaking (NPRM), which would prescribe rules under Regulation F to govern the activities of debt collectors, as that term is defined under the Fair Debt Collection Practices Act (FDCPA). The Bureau proposed, among other things, to address communications in connection with debt collection; interpret and apply prohibitions on harassment or abuse, false or misleading representations, and unfair practices in debt collection; and clarify requirements for certain consumer-facing debt collection disclosures. The proposal built on the Bureau’s research and pre-rulemaking activities regarding the debt collection market, including convening a panel in August 2016 under the Small Business Regulatory Enforcement Fairness Act (SBREFA) in conjunction with the Office of Management and Budget and the Small Business Administration’s Chief Counsel for Advocacy. The Bureau also engaged in testing of time-barred debt disclosures that were not addressed in the May 2019 proposed

rule. In early 2020, after completing the testing, the Bureau issued a supplemental NPRM related to time-barred debt disclosures. In October 2020, the Bureau issued a final rule that focused primarily on debt collection communications and addressed a number of other topics, including imposing record retention requirements and prohibiting the sale or transfer of certain types of debt. In December 2020, the Bureau issued a final rule addressing disclosures related to the validation notice, requiring certain outreach by debt collectors before consumer reporting, and barring suits or threats of suit on time-barred debt. Both final rules are scheduled to take effect on November 30, 2021. In April 2021, in light of the continuation well into 2021 of the widespread societal disruption caused by the COVID-19 pandemic, the Bureau issued a NPRM to extend the effective date of both rules by 60 days and anticipates that its next action will be a final rule as to the effective date.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	11/12/13	78 FR 67847
ANPRM Comment Period Extended.	01/14/14	79 FR 2384
ANPRM Comment Period End.	02/10/14	
ANPRM Comment Period Extended End.	02/28/14	
Pre-Rule Activity—SBREFA Outline.	07/28/16	

Action	Date	FR Cite
NPRM .....	05/21/19	84 FR 23274
NPRM Comment Period Extended.	08/02/19	84 FR 37806
NPRM Comment Period End.	08/19/19	
NPRM Comment Period Extended End.	09/18/19	
Supplemental NPRM.	03/03/20	85 FR 12672
Supplemental NPRM Comment Period Extended.	03/27/20	85 FR 17299
Supplemental NPRM Comment Period Extended End.	08/04/20	
Final Rule 1 .....	11/30/20	85 FR 76734
Final Rule 2—Disclosures.	01/19/21	86 FR 5766
NPRM—Effective Date Extension.	04/19/21	86 FR 20334
Final Rule—Effective Date Extension.	06/00/21	

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Kristin McPartland, Office of Regulations, Consumer Financial Protection Bureau, Washington, DC 20552, Phone: 202 435-7700.

RIN: 3170-AA41

[FR Doc. 2021-14877 Filed 7-29-21; 8:45 am]

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Part XXII

Consumer Product Safety Commission

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Semiannual Regulatory Agenda

**CONSUMER PRODUCT SAFETY COMMISSION**

**16 CFR Ch. II**

**Semiannual Regulatory Agenda**

**AGENCY:** U.S. Consumer Product Safety Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** In this document, the Commission publishes its semiannual regulatory flexibility agenda. In addition, this document includes an agenda of regulations that the Commission expects to develop or review during the next year. This document meets the requirements of the Regulatory Flexibility Act and Executive Order 12866.

**DATES:** The Commission welcomes comments on the agenda and on the individual agenda entries. Submit comments to the Division of the Secretariat on or before August 30, 2021.

**ADDRESSES:** Caption comments on the regulatory agenda, "Regulatory Flexibility Agenda." You can submit comments by email to: *cpsc-os@cpsc.gov*. You can also submit comments by mail or delivery to the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814-4408.

**FOR FURTHER INFORMATION CONTACT:** For further information on the agenda, in general, contact Meridith L. Kelsch, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814-4408, *mkelsch@cpsc.gov*. For further information regarding a particular item on the agenda, contact the person listed in the column titled, "Contact," for that item.

**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA; 5 U.S.C. 601-612) contains several provisions intended to reduce unnecessary and disproportionate

regulatory requirements on small businesses, small governmental organizations, and other small entities. Section 602 of the RFA requires each agency to publish, twice a year, a regulatory flexibility agenda containing "a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities." 5 U.S.C. 602. The agency must provide a summary of the nature of the rule, the objectives and legal basis for the rule, and an approximate schedule for acting on each rule for which the agency has issued a notice of proposed rulemaking. In addition, the regulatory flexibility agenda must contain the name and telephone number of an agency official who is knowledgeable about the listed items. Agencies must attempt to provide notice of their agendas to small entities and solicit their comments, by directly notifying them, or by including the agenda in publications that small entities are likely to obtain.

In addition, Executive Order 12866, *Regulatory Planning and Review* (Sep. 30, 1993), requires each agency to publish, twice a year, a regulatory agenda of regulations under development or review during the next year. 58 FR 51735 (Oct. 4, 1993). The Executive Order states that agencies may combine this agenda with the regulatory flexibility agenda required under the RFA. The agenda required by Executive Order 12866 must include all the regulations the agency expects to develop or review during the next 12 months, regardless of whether they may have a significant economic impact on a substantial number of small entities. This agenda also includes regulatory activities that the Commission listed in the fall 2020 agenda and completed before publishing this agenda.

The agenda contains a brief description and summary of each regulatory activity, including the

objectives and legal basis for each; an approximate schedule of target dates, subject to revision, for developing or completing each activity; and the name and telephone number of an agency official who is knowledgeable about items in the agenda.

The internet is the primary means for disseminating the Unified Agenda. The complete Unified Agenda will be available online at: *www.reginfo.gov*, in a format that allows users to obtain information from the agenda database.

Because agencies must publish in the **Federal Register** the regulatory flexibility agenda required by the RFA (5 U.S.C. 602), the Commission's printed agenda entries include only:

- (1) Rules that are in the agency's regulatory flexibility agenda, in accordance with the RFA, because they are likely to have a significant economic impact on a substantial number of small entities; and
- (2) rules that the agency has identified for periodic review under section 610 of the RFA.

The entries in the Commission's printed agenda are limited to fields that contain information that the RFA requires in an agenda. Additional information on these entries is available in the Unified Agenda published on the internet.

The agenda reflects the Commission's assessment of the likelihood that the specified event will occur during the next year; the precise dates for each rulemaking are uncertain. New information, changes of circumstances, or changes in the law, may alter anticipated timing. In addition, you should not infer from this agenda a final determination by the Commission or its staff regarding the need for, or the substance of, any rule or regulation.

Dated: March 17, 2021.

**Alberta E. Mills,**  
*Secretary, Consumer Product Safety Commission.*

**CONSUMER PRODUCT SAFETY COMMISSION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
296 .....	Flammability Standard for Upholstered Furniture .....	3041-AB35
297 .....	Regulatory Options for Table Saws .....	3041-AC31

**CONSUMER PRODUCT SAFETY COMMISSION—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
298 .....	Portable Generators .....	3041-AC36
299 .....	Recreational Off-Road Vehicles .....	3041-AC78



**CONSUMER PRODUCT SAFETY COMMISSION (CPSC)**

Final Rule Stage

**296. Flammability Standard for Upholstered Furniture**

*Legal Authority:* 15 U.S.C. 1193; 5 U.S.C. 801

*Abstract:* The Commission published a notice of proposed rulemaking (NPRM) to prescribe flammability standards for upholstered furniture under the Flammable Fabrics Act (FFA) to address the risk of fire associated with cigarette and small open-flame ignitions of upholstered furniture. The Commission’s proposed rule would require that upholstered furniture have cigarette-resistant fabrics or cigarette and open flame-resistant barriers. The proposed rule would not require flame-resistant chemicals in fabrics or fillings. Since the Commission published the NPRM, Congress signed into law, “COVID–19 Regulatory Relief and Work From Home Safety Act,” Public Law 116–260 (COVID–19 Act). Section 2101 of the COVID–19 Act mandates that, 180 days after the date of enactment of the COVID–19 Act, the standard for upholstered furniture set forth by the Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal Insulation of the Department of Consumer Affairs of the State of California in Technical Bulletin 117–2013, entitled “Requirements, Test Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered Furniture,” originally published June 2013, “shall be considered to be a flammability standard promulgated by the Consumer Product Safety Commission under section 4 of the Flammable Fabrics Act (15 U.S.C. 1193).” In light of the enactment of the COVID–19 Act, in FY 2021, staff intends to submit a briefing package to the Commission that recommends that the NPRM be withdrawn.

*Timetable:*

Action	Date	FR Cite
ANPRM ..... Commission Hearing May 5 & 6, 1998 on Possible Toxicity of Flame-Retardant Chemicals.	06/15/94 03/17/98	59 FR 30735 63 FR 13017
Meeting Notice .... Notice of Public Meeting.	03/20/02 08/27/03	67 FR 12916 68 FR 51564
Public Meeting .... ANPRM ..... ANPRM Comment Period End.	09/24/03 10/23/03 12/22/03	68 FR 60629

Action	Date	FR Cite
Staff Held Public Meeting.	10/28/04	
Staff Held Public Meeting.	05/18/05	
Staff Sent Status Report to Commission.	01/31/06	
Staff Sent Status Report to Commission.	11/03/06	
Staff Sent Status Report to Commission.	12/28/06	
Staff Sent Options Package to Commission.	12/22/07	
Commission Decision to Direct Staff to Prepare Draft NPRM.	12/27/07	
Staff Sent Draft NPRM to Commission.	01/22/08	
Commission Decision to Publish NPRM.	02/01/08	
NPRM .....	03/04/08	73 FR 11702
NPRM Comment Period End.	05/19/08	
Staff Published NIST Report on Standard Test Cigarettes.	05/19/09	
Staff Publishes NIST Report on Standard Research Foam.	09/14/12	
Notice of April 25 Public Meeting and Request for Comments.	03/20/13	78 FR 17140
Staff Holds Upholstered Furniture Fire Safety Technology Meeting.	04/25/13	
Comment Period End.	07/01/13	
Staff Sends Briefing Package to Commission on California’s TB 117–2013.	09/08/16	
Staff Sends Options Package to the Commission.	09/25/19	
Commission Decision.	10/04/19	
Staff Submits Final Rule Briefing Package Withdrawing the NPRM.	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Andrew Lock, Project Manager, Directorate for Laboratory Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850,

*Phone:* 301 987–2099, *Email:* alock@cpsc.gov.

*RIN:* 3041–AB35

**297. Regulatory Options for Table Saws**

*Legal Authority:* 5 U.S.C. 553(e); 15 U.S.C. 2051

*Abstract:* In 2006, the Commission granted a petition asking that the Commission issue a rule to prescribe performance standards for an active injury mitigation system to reduce or prevent injuries from contacting the blade of a table saw. The Commission subsequently issued a notice of proposed rulemaking (NPRM) that would establish a performance standard requiring table saws to limit the depth of cut to 3.5 millimeters when a test probe, acting as a surrogate for a human body/finger, contacts the table saw’s spinning blade. Staff has conducted several studies to provide information for the rulemaking. Staff is working on a final rule briefing package.

*Timetable:*

Action	Date	FR Cite
Commission Decision to Grant Petition.	07/11/06	
ANPRM .....	10/11/11	76 FR 62678
Notice of Extension of Time for Comments.	12/02/11	76 FR 75504
Comment Period End.	02/10/12	
Notice to Reopen Comment Period.	02/15/12	77 FR 8751
Reopened Comment Period End.	03/16/12	
Staff Sent NPRM Briefing Package to Commission.	01/17/17	
Commission Decision.	04/27/17	
NPRM .....	05/12/17	82 FR 22190
NPRM Comment Period End.	07/26/17	
Public Hearing .... Staff Sent 2016 NEISS Table Saw Type Study Status Report to Commission.	08/09/17 08/15/17	82 FR 31035
Staff Sent 2017 NEISS Table Saw Special Study to Commission.	11/13/18	
Notice of Availability of 2017 NEISS Table Saw Special Study.	12/04/18	83 FR 62561

Action	Date	FR Cite
Staff Sends a Status Briefing Package on Table Saws to Commission.	08/28/19	
Commission Decision.	09/10/19	
Staff Sends Final Rule Briefing Package to Commission.	09/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, *Phone:* 301 987-2225, *Email:* cpaul@cpsc.gov.  
*RIN:* 3041-AC31

**CONSUMER PRODUCT SAFETY COMMISSION (CPSC)**

Long-Term Actions

**298. Portable Generators**

*Legal Authority:* 15 U.S.C. 2051  
*Abstract:* In 2006, the Commission issued an advance notice of proposed rulemaking (ANPRM) under the Consumer Product Safety Act (CPSA) concerning portable generators. The ANPRM discussed regulatory options that could reduce deaths and injuries related to portable generators, particularly those involving carbon monoxide (CO) poisoning. In FY 2006, staff awarded a contract to develop a prototype generator engine with reduced CO in the exhaust. Also, in FY 2006, staff entered into an interagency agreement (IAG) with the National Institute of Standards and Technology (NIST) to conduct tests with a generator, in both off-the-shelf and prototype configurations, operating in the garage attached to NIST’s test house. In FY 2009, staff entered into a second IAG with NIST with the goal of developing CO emission performance requirements for a possible proposed regulation that would be based on health effects criteria. After additional staff and contractor work, the Commission issued a notice of proposed rulemaking (NPRM) in 2016, proposing a performance standard that would limit the CO emission rates from operating portable generators. In 2018, two voluntary standards adopted different CO mitigation requirements intended to address the CO poisoning hazard associated with portable generators.

Staff developed a simulation and analysis plan to evaluate the effectiveness of those voluntary standards’ requirements. In 2019, the Commission sought public comments on staff’s plan. In August 2020, staff submitted to the Commission a draft notice of availability of the modified plan, based on staff’s review and consideration of the comments, for evaluating the voluntary standards; the Commission published the notice of availability in August 2020. Staff is now executing the modified plan.

*Timetable:*

Action	Date	FR Cite
Staff Sent ANPRM to Commission.	07/06/06	
Staff Sent Supplemental Material to Commission.	10/12/06	
Commission Decision.	10/26/06	
Staff Sent Draft ANPRM to Commission.	11/21/06	
ANPRM .....	12/12/06	71 FR 74472
ANPRM Comment Period End.	02/12/07	
Staff Releases Research Report for Comment.	10/10/12	
NPRM .....	11/21/16	81 FR 83556
NPRM Comment Period Extended.	12/13/16	81 FR 89888
Public Hearing for Oral Comments.	03/08/17	82 FR 8907
NPRM Comment Period End.	04/24/17	
Staff Sends Notice of Availability to the Commission.	06/26/19	
Commission Decision.	07/02/19	
Notice of Availability.	07/09/19	84 FR 32729
Staff Sends Notice of Availability to Commission.	08/12/20	
Commission Decision.	08/19/20	
Notice of Availability.	08/24/20	85 FR 52096
Staff Report on Evaluation of Voluntary Standards.	To Be Determined	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Janet L. Buyer, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850,

*Phone:* 301 987-2293, *Email:* jbuyer@cpsc.gov.

*RIN:* 3014-AC36

**299. Recreational Off-Road Vehicles**

*Legal Authority:* 15 U.S.C. 2056; 15 U.S.C. 2058

*Abstract:* The Commission is considering whether recreational off-road vehicles (ROVs) present an unreasonable risk of injury that should be regulated. Staff conducted testing and evaluation programs to develop performance requirements addressing vehicle stability, vehicle handling, and occupant protection. In 2014, the Commission issued an NPRM proposing standards addressing vehicle stability, vehicle handling, and occupant protection. Congress directed in fiscal year 2016, and reaffirmed in subsequent fiscal year appropriations, that none of the amounts made available by the Appropriations Bill may be used to finalize or implement the proposed Safety Standard for Recreational Off-Highway Vehicles until after the National Academy of Sciences completes a study to determine specific information as set forth in the Appropriations Bill. Staff ceased work on a Final Rule briefing package and instead engaged the Recreational Off-Highway Vehicle Association (ROHVA) and Outdoor Power Equipment Institute (OPEI) in the development of voluntary standards for ROVs. Staff conducted dynamic and static tests on ROVs, shared test results with ROHVA and OPEI, and participated in the development of revised voluntary standards to address staff’s concerns with vehicle stability, vehicle handling, and occupant protection. The voluntary standards for ROVs were revised and published in 2016 (ANSI/ROHVA 1-2016 and ANSI/OPEI B71.9-2016). Staff assessed the new voluntary standard requirements and prepared a termination of rulemaking briefing package that was submitted to the Commission on November 22, 2016. The Commission voted not to terminate the rulemaking associated with ROVs. In the FY 2020 Operating Plan, the Commission directed staff to prepare a rulemaking termination briefing package. Staff submitted a briefing package to the Commission on September 16, 2020 that recommended termination of rulemaking. On September 22, 2020 the Commission voted 2-2 on this matter. A majority was not reached and no action will be taken.

*Timetable:*

Action	Date	FR Cite	Action	Date	FR Cite	Action	Date	FR Cite
Staff Sends ANPRM Briefing Package to Commission.	10/07/09		NPRM Published in FEDERAL REGISTER.	11/19/14	79 FR 68964	Commission Decision: majority not reached, no action will be taken.	09/22/20	
Commission Decision.	10/21/09		NPRM Comment Period Extended.	01/23/15	80 FR 3535			
ANPRM .....	10/28/09	74 FR 55495	Extended Comment Period End.	04/08/15		Next Step Undetermined.	To Be Determined	
ANPRM Comment Period Extended.	12/22/09	74 FR 67987						
Extended Comment Period End.	03/15/10		Staff Sends Briefing Package Assessing Voluntary Standards to Commission.	11/22/16		<i>Regulatory Flexibility Analysis Required: Yes.</i> <i>Agency Contact:</i> Caroleene Paul, Project Manager, Directorate for Engineering Sciences, Consumer Product Safety Commission, National Product Testing and Evaluation Center, 5 Research Place, Rockville, MD 20850, Phone: 301 987-2225, Email: cpaul@cpsc.gov. RIN: 3041-AC78 [FR Doc. 2021-14878 Filed 7-29-21; 8:45 am] BILLING CODE 6355-01-P		
Staff Sends NPRM Briefing Package to Commission.	09/24/14		Commission Decision Not to Terminate.	01/25/17				
Staff Sends Supplemental Information on ROVs to Commission.	10/17/14		Staff Sends Briefing Package to Commission.	09/16/20				
Commission Decision.	10/29/14							





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Part XXIII

Federal Communications Commission

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Semiannual Regulatory Agenda

**FEDERAL COMMUNICATIONS COMMISSION**

**47 CFR Ch. I**

**Unified Agenda of Federal Regulatory and Deregulatory Actions—Spring 2021**

**AGENCY:** Federal Communications Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act (U.S.C. 602). The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings. The complete Unified Agenda will be published on the internet in a searchable format at [www.reginfo.gov](http://www.reginfo.gov).

**ADDRESSES:** Federal Communications Commission, 45 L Street NE, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Maura McGowan, Telecommunications Policy Specialist, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, (202) 418-0990.

**SUPPLEMENTARY INFORMATION:**

**Unified Agenda of Major and Other Significant Proceedings**

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in the spring and fall of each year.

The following terms may clarify the status of the proceedings included in this report:

**Docket Number**—assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (e.g., Docket No. 15-1 or Docket No. 17-1). The abbreviation for the responsible bureau usually precedes the docket number, as in “MB Docket No. 17-289,” which indicates that the responsible bureau is the Media Bureau. A docket number consisting of only five digits (e.g., Docket No. 29622) indicates that the docket was established before January 1, 1978.

**Notice of Inquiry (NOI)**—issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

**Notice of Proposed Rulemaking (NPRM)**—issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are made, interested parties may submit written comments on the proposed revisions.

**Further Notice of Proposed Rulemaking (FNPRM)**—issued by the Commission when additional comment in the proceeding is sought.

**Memorandum Opinion and Order (MO&O)**—issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

**Rulemaking (RM) Number**—assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has acted on the petition.

**Report and Order (R&O)**—issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

Dated: March 2, 2021.

**Marlene H. Dortch,**  
*Secretary, Federal Communications Commission.*

**CONSUMER AND GOVERNMENTAL AFFAIRS BUREAU—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
300 .....	Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02-278).	3060-AI14
301 .....	Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03-123).	3060-AI15
302 .....	Structure and Practices of the Video Relay Service (VRS) Program (CG Docket No. 10-51) .....	3060-AJ42
303 .....	Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services; CG Docket No. 13-24.	3060-AK01
304 .....	Advanced Methods to Target and Eliminate Unlawful Robocalls (CG Docket No. 17-59) .....	3060-AK62

**ECONOMICS—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
305 .....	Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans.	3060-AJ15
306 .....	Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12-268).	3060-AJ82

**OFFICE OF ENGINEERING AND TECHNOLOGY—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
307 .....	Encouraging the Provision of New Technologies and Services to the Public (GN Docket No. 18-22) .....	3060-AK80

## OFFICE OF ENGINEERING AND TECHNOLOGY—LONG-TERM ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
308 .....	Spectrum Horizon (ET Docket No. 18–21) .....	3060–AK81
309 .....	Use of the 5.850–5.925 GHz Band (ET Docket No. 19–138) .....	3060–AK96
310 .....	Allowing Earlier Equipment Marketing and Importation Opportunities; Petition to Expand Marketing Opportunities for Innovative Technologies (ET Docket No. 20–382 & RM–11857) NPRM, 86 FR 2337, January 1.	3060–AL18
311 .....	Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20–36) .....	3060–AL22

## OFFICE OF ENGINEERING AND TECHNOLOGY—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
312 .....	Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20–36) .....	3060–AL17

## INTERNATIONAL BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
313 .....	International Settlements Policy Reform (IB Docket No. 11–80) .....	3060–AJ77
314 .....	Update to Parts 2 and 25 Concerning NonGeostationary, Fixed-Satellite Service Systems, and Related Matters: IB Docket No. 16–408.	3060–AK59
315 .....	Amendment of Parts 2 and 25 of the FCC Rules to Facilitate the Use of Earth Stations in Motion Communicating With Geostationary Orbit Space Stations in FSS Bands: IB Docket No. 17–95.	3060–AK84
316 .....	Further Streamlining Part 25 Rules Governing Satellite Services: IB Docket No. 18–314 .....	3060–AK87
317 .....	Facilitating the Communications of Earth Stations in Motion With Non-Geostationary Orbit Space Stations: IB Docket No. 18–315.	3060–AK89
318 .....	Mitigation of Orbital Debris in the New Space Age: IB Docket No. 18–313 .....	3060–AK90
319 .....	Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership (IB Docket No. 16–155).	3060–AL12

## MEDIA BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
320 .....	Revision of EEO Rules and Policies (MM Docket No. 98–204) .....	3060–AH95
321 .....	Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03–185).	3060–AI38
322 .....	Amendment of the Commission’s Rules Related to Retransmission Consent (MB Docket No. 10–71) .....	3060–AJ55
323 .....	Preserving Vacant Channels in the UHF Television Band for Unlicensed Use; (MB Docket No. 15–146) ...	3060–AK43
324 .....	Authorizing Permissive Use of the “Next Generation” Broadcast Television Standard (GN Docket No. 16–142).	3060–AK56
325 .....	2018 Quadrennial Regulatory Review of the Commission’s Broadcast Ownership Rules (MB Docket 18–349).	3060–AK77
326 .....	Children’s Television Programming Rules (MB Docket 18–202) .....	3060–AK78
327 .....	Equal Employment Opportunity Enforcement (MB Docket 19–177) .....	3060–AK86
328 .....	Revision of the Commission’s Part 76 Review Procedures (MB Docket No. 20–70) .....	3060–AL08
329 .....	Duplication of Programming on Commonly Owned Radio Stations (MB Docket No. 19–310) .....	3060–AL19
330 .....	Sponsorship Identification Requirements for Foreign Government-Provided Programming (MB Docket No. 20–299).	3060–AL20
331 .....	FM Broadcast Booster Stations (MB Docket 20–401) .....	3060–AL21

## OFFICE OF MANAGING DIRECTOR—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
332 .....	Assessment and Collection of Regulatory Fees .....	3060–AK64

## PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
333 .....	Wireless E911 Location Accuracy Requirements: PS Docket No. 07–114 .....	3060–AJ52

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU—LONG-TERM ACTIONS—Continued

Sequence No.	Title	Regulation Identifier No.
334 .....	Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15–206.	3060–AK39
335 .....	Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications: PS Docket No. 15–80.	3060–AK40
336 .....	New Part 4 of the Commission’s Rules Concerning Disruptions to Communications; ET Docket No. 04–35	3060–AK41
337 .....	Wireless Emergency Alerts (WEA): PS Docket No. 15–91.	3060–AK54
338 .....	Blue Alert EAS Event Code	3060–AK63

WIRELESS TELECOMMUNICATIONS BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
339 .....	Amendment of Parts 1, 2, 22, 24, 27, 90, and 95 of the Commission’s Rules to Improve Wireless Coverage Through the Use of Signal Boosters (WT Docket No. 10–4).	3060–AJ87
340 .....	Amendment of the Commission’s Rules Governing Certain Aviation Ground Station Equipment (Squitter) (WT Docket Nos. 10–61 and 09–42).	3060–AJ88
341 .....	Promoting Technological Solutions to Combat Wireless Contraband Device Use in Correctional Facilities; GN Docket No. 13–111.	3060–AK06
342 .....	Promoting Investment in the 3550–3700 MHz Band; GN Docket No. 17–258	3060–AK12
343 .....	Use of Spectrum Bands Above 24 GHz for Mobile Services—Spectrum Frontiers: WT Docket 10–112	3060–AK44
344 .....	Transforming the 2.5 GHz Band, WT Docket No.18–120.	3060–AK75
345 .....	Expanding Flexible Use of the 3.7 to 4.2 GHz Band: GN Docket No. 18–122	3060–AK76
346 .....	Amendment of the Commission’s Rules to Promote Aviation Safety: WT Docket No. 19–140	3060–AK92

WIRELINE COMPETITION BUREAU—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
347 .....	Local Telephone Networks That LECs Must Make Available to Competitors	3060–AH44
348 .....	Numbering Resource Optimization	3060–AH80
349 .....	Jurisdictional Separations	3060–AJ06
350 .....	Rural Call Completion; WC Docket No. 13–39	3060–AJ89
351 .....	Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14–130)	3060–AK20
352 .....	Restoring Internet Freedom (WC Docket No. 17–108); Protecting and Promoting the Open Internet (GN Docket No. 14–28).	3060–AK21
353 .....	Technology Transitions; GN Docket No 13–5, WC Docket No. 05–25; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; WC Docket No. 17–84.	3060–AK32
354 .....	Implementation of the Universal Service Portions of the 1996 Telecommunications Act	3060–AK57
355 .....	Toll Free Assignment Modernization and Toll Free Service Access Codes: WC Docket No. 17–192, CC Docket No. 95–155.	3060–AK91
356 .....	Establishing the Digital Opportunity Data Collection; WC Docket Nos. 19–195 and 11–10	3060–AK93
357 .....	Call Authentication Trust Anchor	3060–AL00
358 .....	Implementation of the National Suicide Improvement Act of 2018	3060–AL01
359 .....	Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services	3060–AL02
360 .....	Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges (WC Docket 20–71) ...	3060–AL03

WIRELINE COMPETITION BUREAU—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
361 .....	Service Quality Measurement Plan for Interstate Special Access (WC Docket No. 02–112; CC Docket No. 00–175; WC Docket No. 06–120).	3060–AJ08



**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Consumer and Governmental Affairs Bureau*

Long-Term Actions

**300. Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991 (CG Docket No. 02–278)**

*Legal Authority:* 47 U.S.C. 227

*Abstract:* In this docket, the

Commission considers rules and policies to implement the Telephone Consumer Protection Act of 1991 (TCPA). The TCPA places requirements on robocalls (calls using an automatic telephone dialing system, an autodialer, a prerecorded or, an artificial voice), telemarketing calls, and unsolicited fax advertisements.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/08/02	67 FR 62667
FNPRM .....	04/03/03	68 FR 16250
Order .....	07/25/03	68 FR 44144
Order Effective ....	08/25/03	
Order on Reconsideration.	08/25/03	68 FR 50978
Order .....	10/14/03	68 FR 59130
FNPRM .....	03/31/04	69 FR 16873
Order .....	10/08/04	69 FR 60311
Order .....	10/28/04	69 FR 62816
Order on Reconsideration.	04/13/05	70 FR 19330
Order .....	06/30/05	70 FR 37705
NPRM .....	12/19/05	70 FR 75102
Public Notice .....	04/26/06	71 FR 24634
Order .....	05/03/06	71 FR 25967
NPRM .....	12/14/07	72 FR 71099
Declaratory Ruling	02/01/08	73 FR 6041
R&O .....	07/14/08	73 FR 40183
Order on Reconsideration.	10/30/08	73 FR 64556
NPRM .....	03/22/10	75 FR 13471
R&O .....	06/11/12	77 FR 34233
Public Notice .....	06/30/10	75 FR 34244
Public Notice (Reconsideration Petitions Filed).	10/03/12	77 FR 60343
Announcement of Effective Date.	10/16/12	77 FR 63240
Opposition End Date.	10/18/12	
Rule Corrections	11/08/12	77 FR 66935
Declaratory Ruling (release date).	11/29/12	
Declaratory Ruling (release date).	05/09/13	
Declaratory Ruling and Order.	10/09/15	80 FR 61129
NPRM .....	05/20/16	81 FR 31889
Declaratory Ruling	07/05/16	
R&O .....	11/16/16	81 FR 80594
Declaratory Ruling	12/06/19	
Declaratory Ruling	12/09/19	
Order .....	03/17/20	
Declaratory Ruling	03/20/20	
Declaratory Ruling	06/25/20	
Declaratory Ruling and Order.	06/25/20	

Action	Date	FR Cite
Order on Reconsideration.	08/28/20	
Declaratory Ruling	09/04/20	
Declaratory Ruling	09/21/20	
NPRM .....	10/09/20	85 FR 64091
Public Notice .....	12/17/20	
Declaratory Ruling	12/18/20	
Declaratory Ruling	01/15/21	
Order on Recon ..	02/12/21	86 FR 9299
R&O .....	02/25/21	86 FR 11443
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kristi Thornton, Deputy Division Chief, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–2467, *Email:* kristi.thornton@fcc.gov.

*RIN:* 3060–AI14

**301. Rules and Regulations Implementing Section 225 of the Communications Act (Telecommunications Relay Service) (CG Docket No. 03–123)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225

*Abstract:* This proceeding continues the Commission’s inquiry into improving the quality of telecommunications relay service (TRS) and furthering the goal of functional equivalency, consistent with Congress’ mandate that TRS regulations encourage the use of existing technology and not discourage or impair the development of new technology. In this docket, the Commission explores ways to improve emergency preparedness for TRS facilities and services, new TRS technologies, public access to information and outreach, and issues related to payments from the Interstate TRS Fund.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/25/03	68 FR 50993
R&O, Order on Reconsideration.	09/01/04	69 FR 53346
FNPRM .....	09/01/04	69 FR 53382
Public Notice .....	02/17/05	70 FR 8034
Declaratory Ruling/Interpretation.	02/25/05	70 FR 9239
Public Notice .....	03/07/05	70 FR 10930
Order .....	03/23/05	70 FR 14568
Public Notice/Announcement of Date.	04/06/05	70 FR 17334
Order .....	07/01/05	70 FR 38134
Order on Reconsideration.	08/31/05	70 FR 51643
R&O .....	08/31/05	70 FR 51649
Order .....	09/14/05	70 FR 54294
Order .....	09/14/05	70 FR 54298

Action	Date	FR Cite
Public Notice .....	10/12/05	70 FR 59346
R&O/Order on Reconsideration.	12/23/05	70 FR 76208
Order .....	12/28/05	70 FR 76712
Order .....	12/29/05	70 FR 77052
NPRM .....	02/01/06	71 FR 5221
Declaratory Ruling/Clarification.	05/31/06	71 FR 30818
FNPRM .....	05/31/06	71 FR 30848
FNPRM .....	06/01/06	71 FR 31131
Declaratory Ruling/Dismissal of Petition.	06/21/06	71 FR 35553
Clarification .....	06/28/06	71 FR 36690
Declaratory Ruling on Reconsideration.	07/06/06	71 FR 38268
Order on Reconsideration.	08/16/06	71 FR 47141
MO&O .....	08/16/06	71 FR 47145
Clarification .....	08/23/06	71 FR 49380
FNPRM .....	09/13/06	71 FR 54009
Final Rule; Clarification.	02/14/07	72 FR 6960
Order .....	03/14/07	72 FR 11789
R&O .....	08/06/07	72 FR 43546
Public Notice .....	08/16/07	72 FR 46060
Order .....	11/01/07	72 FR 61813
Public Notice .....	01/04/08	73 FR 863
R&O/Declaratory Ruling.	01/17/08	73 FR 3197
Order .....	02/19/08	73 FR 9031
Order .....	04/21/08	73 FR 21347
R&O .....	04/21/08	73 FR 21252
Order .....	04/23/08	73 FR 21843
Public Notice .....	04/30/08	73 FR 23361
Order .....	05/15/08	73 FR 28057
Declaratory Ruling	07/08/08	73 FR 38928
FNPRM .....	07/18/08	73 FR 41307
R&O .....	07/18/08	73 FR 41286
Public Notice .....	08/01/08	73 FR 45006
Public Notice .....	08/05/08	73 FR 45354
Public Notice .....	10/10/08	73 FR 60172
Order .....	10/23/08	73 FR 63078
2nd R&O and Order on Reconsideration.	12/30/08	73 FR 79683
Order .....	05/06/09	74 FR 20892
Public Notice .....	05/07/09	74 FR 21364
NPRM .....	05/21/09	74 FR 23815
Public Notice .....	05/21/09	74 FR 23859
Public Notice .....	06/12/09	74 FR 28046
Order .....	07/29/09	74 FR 37624
Public Notice .....	08/07/09	74 FR 39699
Order .....	09/18/09	74 FR 47894
Order .....	10/26/09	74 FR 54913
Public Notice .....	05/12/10	75 FR 26701
Order Denying Stay Motion (Release Date).	07/09/10	
Order .....	08/13/10	75 FR 49491
Order .....	09/03/10	75 FR 54040
NPRM .....	11/02/10	75 FR 67333
NPRM .....	05/02/11	76 FR 24442
Order .....	07/25/11	76 FR 44326
Final Rule (Order)	09/27/11	76 FR 59551
Final Rule; Announcement of Effective Date.	11/22/11	76 FR 72124
Proposed Rule (Public Notice).	02/28/12	77 FR 11997
Proposed Rule (FNPRM).	02/01/12	77 FR 4948
First R&O .....	07/25/12	77 FR 43538

Action	Date	FR Cite	Action	Date	FR Cite	Action	Date	FR Cite
Public Notice .....	10/29/12	77 FR 65526	NOI and FNPRM	05/30/17		FNPRM Comment	04/02/21	
Order on Recon-	12/26/12	77 FR 75894	Comment Pe-			Period End.		
Order .....	02/05/13	78 FR 8030	R&O .....	04/13/17	82 FR 17754	Public Notice; Pe-	02/22/21	86 FR 10458
Order (Interim	02/05/13	78 FR 8032	R&O .....	04/27/17	82 FR 19322	tion for Recon-		
Rule).			FNPRM .....	04/27/17	82 FR 19347	sideration.		
NPRM .....	02/05/13	78 FR 8090	FNPRM Comment	07/11/17		Oppositions Due	03/19/21	
Announcement of	03/07/13	78 FR 14701	Period End.			Date.		
Effective Date.			R&O .....	06/23/17	82 FR 28566	R&O .....	02/23/21	86 FR 10844
NPRM Comment	03/13/13		Public Notice .....	07/21/17	82 FR 33856	Next Action Unde-		
Period End.			Public Notice—	07/25/17	82 FR 34471	terminated.		
FNPRM .....	07/05/13	78 FR 40407	Correction.					
FNPRM Comment	09/18/13		Public Notice	07/31/17				
Period End.			Comment Pe-					
R&O .....	07/05/13	78 FR 40582	riod End.					
R&O .....	08/15/13	78 FR 49693	Public Notice—	08/17/17				
FNPRM .....	08/15/13	78 FR 49717	Correction					
FNPRM Comment	09/30/13		Comment Pe-					
Period End.			riod End.					
R&O .....	08/30/13	78 FR 53684	R&O .....	08/22/17	82 FR 39673			
FNPRM .....	09/03/13	78 FR 54201	Announcement of	10/17/17	82 FR 48203			
NPRM .....	10/23/13	78FR 63152	Effective Date.					
FNPRM Comment	11/18/13		Public Notice; Pe-	10/25/17	82 FR 49303			
Period End.			tion for Recon-					
Petition for Recon-	12/16/13	78 FR 76096	sideration.					
Request for Com-			Oppositions Due	11/20/17				
ment.			Date.					
Petition for Re-	12/16/13	78 FR 76097	R&O and Decla-	06/27/18	83 FR 30082			
consideration;			ratory Ruling.					
Request for			FNPRM .....	07/18/18	83 FR 33899			
Comment.			FNPRM Comment	11/15/18				
Request for Clari-	12/30/13	78 FR 79362	Period End.					
fication; Re-			Public Notice .....	08/23/18	83 FR 42630			
quest for Com-			Public Notice Op-	09/17/18				
ment; Correc-			position Period					
tion.			End.					
Petition for Re-	01/10/14		Announcement of	02/04/19	84 FR 1409			
consideration			Effective Date.					
Comment Pe-			R&O .....	03/08/19	84 FR 8457			
riod End.			FNPRM .....	03/14/19	84 FR 9276			
NPRM Comment	01/21/14		FNPRM Comment	04/29/19				
Period End.			Period End.					
Announcement of	07/11/14	79 FR 40003	R&O .....	06/06/19	84 FR 26364			
Effective Date.			FNPRM .....	06/06/19	84 FR 26379			
Announcement of	08/28/14	79 FR 51446	Petition for Recon	06/18/19	84 FR 28264			
Effective Date.			Request for					
Correction—An-	08/28/14	79 FR 51450	Comment.					
ouncement of			Petition for Recon	07/15/19				
Effective Date.			Comment Pe-					
Technical Amend-	09/09/14	79 FR 53303	riod End.					
ments.			FNPRM Comment	08/05/19				
Public Notice .....	09/15/14	79 FR 54979	Period End.					
R&O and Order ...	10/21/14	79 FR 62875	R&O .....	01/06/20	85 FR 462	Declaratory Ruling	05/07/10	75 FR 25255
FNPRM .....	10/21/14	79 FR 62935	R&O .....	01/09/20	85 FR 1125	Declaratory Ruling	07/13/10	75 FR 39945
FNPRM Comment	12/22/14		NPRM .....	01/09/20	85 FR 1134	Order .....	07/13/10	75 FR 39859
Period End.			NPRM Comment	02/13/20		Notice of Inquiry ..	07/19/10	75 FR 41863
Final Action (An-	10/30/14	79 FR 64515	Period End.			NPRM .....	08/23/10	75 FR 51735
ouncement of			Announcement of	02/19/20	85 FR 9392	Interim Final Rule	02/15/11	76 FR 8659
Effective Date).			Effective Date.			Public Notice .....	03/02/11	76 R 11462
Final Rule Effec-	10/30/14		Final Rule; re-	05/06/20	85 FR 26857	R&O .....	05/02/11	76 FR 24393
tive.			moval of com-			FNPRM .....	05/02/11	76 FR 24437
FNPRM .....	11/08/15	80 FR 72029	pliance notices.			NPRM .....	05/02/11	76 FR 24442
FNPRM Comment	01/01/16		Report & Order ...	05/08/20	85 FR 27309	R&O (Correction)	05/27/11	76 FR 30841
Period End.			Final Rule; correc-	08/26/20	85 FR 52489	Order .....	07/25/11	76 FR 44326
Public Notice .....	01/20/16	81 FR 3085	tion.			2nd R&O .....	08/05/11	76 FR 47469
Public Notice	02/16/16		R&O and Order	10/14/20	85 FR 64971	Order (Interim	08/05/11	76 FR 47476
Comment Pe-			on Recon.			Final Rule).		
riod End.			Final Rule; an-	10/23/20	85 FR 67447	Final Rule; An-	09/26/11	76 FR 59269
R&O .....	03/21/16	81 FR 14984	ouncement of			ouncement of		
FNPRM .....	08/24/16	81 FR 57851	effective and			Effective Date.		
FNPRM Comment	09/14/16		compliance			Final Rule; Peti-	09/27/11	76 FR 59557
Period End.			dates.			tion for Recon-		
NOI and FNPRM	04/12/17	82 FR 17613	FNPRM .....	02/01/21	86 FR 7681	sideration; Pub-		
						lic Notice.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Eliot Greenwald, Deputy Chief, Disability Rights Office, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, Phone: 202 418-2235, Email: [eliot.greenwald@fcc.gov](mailto:eliot.greenwald@fcc.gov). RIN: 3060-A115

**302. Structure and Practices of the Video Relay Service (VRS) Program (CG Docket No. 10-51)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225; 47 U.S.C. 303(r)

*Abstract:* The Commission takes a fresh look at its VRS rules to ensure that it is available to and used by the full spectrum of eligible users, encourages innovation, and is provided efficiently to be less susceptible to the waste, fraud, and abuse that have plagued the program and threatened its long-term viability. The Commission also considers the most effective and efficient way to make VRS available and to determine what is the most fair, efficient, and transparent cost-recovery methodology. In addition, the Commission looks at various ways to measure the quality of VRS so as to ensure a better consumer experience.

*Timetable:*

Action	Date	FR Cite
Declaratory Ruling	05/07/10	75 FR 25255
Declaratory Ruling	07/13/10	75 FR 39945
Order .....	07/13/10	75 FR 39859
Notice of Inquiry ..	07/19/10	75 FR 41863
NPRM .....	08/23/10	75 FR 51735
Interim Final Rule	02/15/11	76 FR 8659
Public Notice .....	03/02/11	76 R 11462
R&O .....	05/02/11	76 FR 24393
FNPRM .....	05/02/11	76 FR 24437
NPRM .....	05/02/11	76 FR 24442
R&O (Correction)	05/27/11	76 FR 30841
Order .....	07/25/11	76 FR 44326
2nd R&O .....	08/05/11	76 FR 47469
Order (Interim	08/05/11	76 FR 47476
Final Rule).		
Final Rule; An-	09/26/11	76 FR 59269
ouncement of		
Effective Date.		
Final Rule; Peti-	09/27/11	76 FR 59557
tion for Recon-		
sideration; Pub-		
lic Notice.		

Action	Date	FR Cite	Action	Date	FR Cite	Action	Date	FR Cite
Oppositions Due Date.	10/07/11		Public Notice; Petition for Reconsideration.	10/25/17	82 FR 49303	NPRM .....	02/05/13	78 FR 8090
Final Rule; Clarification (MO&O).	10/31/11	76 FR 67070	Oppositions Due Date.	11/20/17		Order (Interim Rule).	02/05/13	78 FR 8032
FNPRM .....	10/31/11	76 FR 67118	R&O .....	06/06/19	84 FR 26364	Order .....	02/05/13	78 FR 8030
Interim Final Rule; Announcement of Effective Date.	11/03/11	76 FR 68116	FNPRM .....	06/06/19	84 FR 26379	Announcement of Effective Date.	03/07/13	78 FR 14701
Final Rule; Announcement of Effective Date.	11/04/11	76 FR 68328	FNPRM Comment Period End.	08/05/19		NPRM Comment Period End.	03/12/13	
Final Rule; Announcement of Effective Date.	11/07/11	76 FR 68642	Report & Order ...	05/08/20	85 FR 27309	R&O .....	08/30/13	78 FR 53684
FNPRM Comment Period End.	12/30/11		R&O and Order on Recon.	10/14/20	85 FR 64971	FNPRM .....	09/03/13	78FR 54201
FNPRM .....	02/01/12	77 FR 4948	Final rule; announcement of effective and compliance dates.	10/23/20	85 FR 67447	FNPRM Comment Period End.	11/18/13	
FNPRM Comment Period End.	03/19/12		FNPRM .....	02/01/21	86 FR 7681	Petition for Reconsideration Request for Comment.	12/16/13	78 FR 76097
Final Rule; Correction.	03/27/12	77 FR 18106	FNPRM Comment Period End.	04/02/21		Petition for Reconsideration Comment Period End.	01/10/14	
Correcting Amendments.	06/07/12	77 FR 33662	Public Notice; Petition for Reconsideration.	02/22/21	86 FR 10458	Announcement of Effective Date.	07/11/14	79 FR 40003
Order (Release Date).	07/25/12		Oppositions Due Date.	03/19/21		Announcement of Effective Date.	08/28/14	79 FR 51446
Correcting Amendments.	10/04/12	77 FR 60630	Next Action Undetermined.	To Be Determined		Correction—Announcement of Effective Date.	08/28/14	79 FR 51450
Public Notice .....	10/29/12	77 FR 65526	<i>Regulatory Flexibility Analysis Required: Yes.</i>			Technical Amendments.	09/09/14	79 FR 53303
Comment Period End.	11/29/12					<i>Agency Contact: Eliot Greenwald, Deputy Chief, Disability Rights Office, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, Phone: 202 418–2235, Email: eliot.greenwald@fcc.gov. RIN: 3060–AJ42</i>		
FNPRM .....	07/05/13	78 FR 40407	<b>303. Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-To-Speech Services; CG Docket No. 13–24</b>					
R&O .....	07/05/13	78 FR 40582				<i>Legal Authority: 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 225</i>		
FNPRM Comment Period End.	09/18/13		<i>Abstract: The Federal Communications Commission (FCC) initiated this proceeding in its effort to ensure that Internet-Protocol Captioned Telephone Service (IP CTS) is provided effectively and in the most efficient manner. In doing so, the FCC adopted rules to address certain practices related to the provision and marketing of IP CTS, as well as compensation of TRS providers. IP CTS is a form of relay service designed to allow people with hearing loss to speak directly to another party on a telephone call and to simultaneously listen to the other party and read captions of what that party is saying over an IP-enabled device. To ensure that IP CTS is provided efficiently to persons who need to use this service, the Commission adopted rules establishing several requirements and issued an FNPRM to address additional issues.</i>					
Public Notice .....	09/11/13	78 FR 55696				<i>Timetable:</i>		
Public Notice .....	09/15/14	79 FR 54979	<i>Regulatory Flexibility Analysis Required: Yes.</i>					
Comment Period End.	10/10/14							
Final Action (Announcement of Effective Date).	10/30/14	79 FR 64515						
Final Rule Effective.	10/30/14							
FNPRM .....	11/18/15	80 FR 72029						
FNPRM Comment Period End.	02/01/16							
R&O .....	03/21/16	81 FR 14984						
FNPRM .....	08/24/16	81 FR 57851						
FNPRM Comment Period End.	09/14/16							
NOI and FNPRM	04/12/17	82 FR 17613						
NOI and FNPRM Comment Period End.	05/30/17							
R&O .....	04/13/17	82 FR 17754						
R&O .....	04/27/17	82 FR 19322						
FNPRM .....	04/27/17	82 FR 19347						
FNPRM Comment Period End.	07/01/17							
Order .....	06/23/17	82 FR 28566						
Public Notice .....	07/21/17	82 FR 33856						
Public Notice Comment Period End.	07/31/17							
Public Notice Correction.	07/25/17	82 FR 34471						
Public Notice Correction Comment Period End.	08/17/17							
R&O and Order ...	08/22/17	82 FR 39673						
Announcement of Effective Date.	10/17/17	82 FR 48203						

*Agency Contact:* Eliot Greenwald, Deputy Chief, Disability Rights Office, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2235, *Email:* [eliot.greenwald@fcc.gov](mailto:eliot.greenwald@fcc.gov).

*RIN:* 3060-AK01

**304. Advanced Methods To Target and Eliminate Unlawful Robocalls (CG Docket No. 17-59)**

*Legal Authority:* 47 U.S.C. 201 and 202; 47 U.S.C. 227; 47 U.S.C. 251(e)

*Abstract:* The Telephone Consumer Protection Act of 1991 restricts the use of robocalls autodialed or prerecorded calls in certain instances. In CG Docket No. 17-59, the Commission considers rules and policies aimed at eliminating unlawful robocalling. Among the issues it examines in this docket are whether to allow carriers to block calls that purport to be from unallocated or unassigned phone numbers through the use of spoofing, whether to allow carriers to block calls based on their own analyses of which calls are likely to be unlawful and whether to establish a database of reassigned phone numbers to help prevent robocalls to consumers, who did not consent to such calls.

*Timetable:*

Action	Date	FR Cite
NPRM/NOI .....	05/17/17	82 FR 22625
2nd NOI .....	07/13/17	
NPRM Comment Period End.	07/31/17	
FNPRM .....	01/08/18	83 FR 770
R&O .....	01/12/18	83 FR 1566
2nd FNPRM .....	04/23/18	83 FR 17631
2nd FNPRM Comment Period End.	06/07/18	
2nd FNPRM Reply Comment Period End.	07/09/18	
2nd R&O .....	03/26/19	84 FR 11226
3rd FNPRM .....	06/24/19	84 FR 29478
Declaratory Ruling	06/24/19	84 FR 29387
Public Notice Seeking Input on Report.	12/30/19	
Public Notice Seeking Comment on Reassigned Numbers.	01/24/20	
Public Notice Seeking Comment on RND Cost/Fee Structure.	02/26/20	
Public Notice Establishing Guidelines for RND.	04/16/20	
Report .....	06/25/20	
3rd NPRM Comment Date.	06/26/20	

Action	Date	FR Cite
Announcement of Compliance Dates.	06/26/20	85 FR 38334
3rd R&O, Order of Reconsideration, 4th FNPRM.	07/31/20	85 FR 46063
4th R&O (release date).	12/30/20	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Karen Schroeder, Associate Division Chief, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0654, *Email:* [karen.schroeder@fcc.gov](mailto:karen.schroeder@fcc.gov).  
 Jerusha Burnett, Attorney Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0526, *Email:* [jerusha.burnett@fcc.gov](mailto:jerusha.burnett@fcc.gov).  
*RIN:* 3060-AK62

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Economics*

Long-Term Actions

**305. Development of Nationwide Broadband Data To Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans**

*Legal Authority:* 15 U.S.C. 251; 47 U.S.C. 252; 47 U.S.C. 257; 47 U.S.C. 271; 47 U.S.C. 1302; 47 U.S.C. 160(b); 47 U.S.C. 161(a)(2)

*Abstract:* The Report and Order streamlined and reformed the Commission’s Form 477 Data Program, which is the Commission’s primary tool to collect data on broadband and telephone services.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/16/07	72 FR 27519
Order .....	07/02/08	73 FR 37861
Order .....	10/15/08	73 FR 60997
NPRM .....	02/08/11	76 FR 10827
Order .....	06/27/13	78 FR 49126
NPRM .....	08/24/17	82 FR 40118
NPRM Comment Period End.	09/25/17	
NPRM Reply Comment Period End.	10/10/17	
R&O and FNPRM Next Action Undetermined.	08/22/19	84 FR 43764

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Suzanne Mendez, Program Analyst, OEA, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0941, *Email:* [suzanne.mendez@fcc.gov](mailto:suzanne.mendez@fcc.gov).  
*RIN:* 3060-AJ15

**306. Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions (GN Docket No. 12-268)**

*Legal Authority:* 47 U.S.C. 309(j)(8)(G); 47 U.S.C. 1452

*Abstract:* In February 2012, the Middle Class Tax Relief and Job Creation Act was enacted (Pub. L. 112-96, 126 Stat. 156 (2012)). Title VI of that statute, commonly known as the Spectrum Act, provides the Commission with the authority to conduct incentive auctions to meet the growing demand for wireless broadband. Pursuant to the Spectrum Act, the Commission may conduct incentive auctions that will offer new initial spectrum licenses subject to flexible-use service rules on spectrum made available by licensees that voluntarily relinquish some or all of their spectrum usage rights in exchange for a portion, based on the value of the relinquished rights as determined by an auction, of the proceeds of bidding for the new licenses. In addition to granting the Commission general authority to conduct incentive auctions, the Spectrum Act requires the Commission to conduct an incentive auction of broadcast TV spectrum and sets forth special requirements for such an auction.

The Spectrum Act requires that the BIA consist of a reverse auction “to determine the amount of compensation that each broadcast television licensee would accept in return for voluntarily relinquishing some or all of its spectrum usage rights” and a forward auction of licenses in the reallocated spectrum for flexible-use services, including mobile broadband. Broadcast television licensees who elected to voluntarily participate in the auction had three bidding options: Go off-the-air, share spectrum with another broadcast television licensee, or move channels to the upper or lower VHS band in exchange for receiving part of the proceeds from auctioning that spectrum to wireless providers. The Spectrum Act also authorized the Commission to reorganize the 600 MHz band following the BIA including, as necessary, reassigning full power and Class A television stations to new channels in order to clear the spectrum sold in the BIA. That post-auction reorganization (known as the repack) is currently underway and all of the stations who

were assigned new channels are scheduled to have vacated their pre-auction channels by July 3, 2020, pursuant to a 10-phase transition schedule adopted by the Commission.

In May 2014, the Commission adopted a Report and Order that laid out the general framework for the BIA. The auction started on March 29, 2016, with the submission of initial commitments by eligible broadcast licensees. The BIA ended on April 13, 2017, with the release of the Auction Closing and Channel Reassignment Public Notice that also marked the start of the 39-month transition period during which 987 of the full power and Class A television stations remaining on-the-air will transition their stations to their post-auction channel assignments in the reorganized television band. Pursuant to the Spectrum Act, the Commission will reimburse 957 of those full power and Class A stations for the reasonable costs associated with relocating to their post-auction channel assignments and will reimburse multichannel video programming distributors for their costs associated with continuing to carry the signals of those stations.

In March 2018, the Consolidated Appropriations Act (Pub. L. 115–141, at Div. E, Title V, 511, 132 Stat. 348 (2018), codified at 47 U.S.C. 1452(j)–(n)) (the Reimbursement Expansion Act or REA), extended the deadline for reimbursement of eligible entities from April 2020 to no later than July 3, 2023, and also expanded the universe of entities eligible for reimbursement to include low-power television stations and TV translator stations displaced by the BIA for their reasonably incurred costs to relocate to a new channel, and FM broadcast stations for their reasonably incurred costs for facilities necessary to reasonably minimize disruption of service as a result of the post-auction reorganization of the television band. On March 15, 2019, the Commission adopted a Report and Order setting rules for the reimbursement of eligible costs to those newly eligible entities.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/21/12	77 FR 69933
R&O .....	08/15/14	79 FR 48441
Final Rule .....	10/11/17	82 FR 47155
NPRM .....	08/27/18	83 FR 43613
R&O .....	03/26/19	84 FR 11233
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jean L. Kiddoo, Chair, Incentive Auction Task Force,

Federal Communications Commission, 45 L Street NE, Washington, DC 20554, Phone: 202 418–7757, Email: jean.kiddoo@fcc.gov. RIN: 3060–AJ82

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Office of Engineering and Technology*

Long-Term Actions

**307. Encouraging the Provision of New Technologies and Services to the Public (GN Docket No. 18–22)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(3)

*Abstract:* In this proceeding, the FCC seeks to establish rules describing guidelines and procedures to implement the stated policy goal of section 7 to encourage the provision of new technologies and services to the public. Although the forces of competition and technological growth work together to enable the development and deployment of many new technologies and services to the public, the Commission has at times been slow to identify and take action to ensure that important new technologies or services are made available as quickly as possible. The Commission has sought to overcome these impediments by streamlining many of its processes but all too often regulatory delays can adversely impact newly proposed technologies or services.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/04/18	83 FR 14395
Comment Period End.	05/04/18	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Paul Murray, Attorney Advisor, Federal Communications Commission, Office of Engineering and Technology, 445 12th Street SW, Washington, DC 20554, Phone: 202 418–0688, Fax: 202 418–7447, Email: paul.murray@fcc.gov. RIN: 3060–AK80

**308. Spectrum Horizon (ET Docket No. 18–21)**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 201; 47 U.S.C. 301; 47 U.S.C. 302(a); 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 310; 47 U.S.C. 332; sec. 76 of 1996 Telecom Act, as amended, 47 U.S.C. 302 and sec. 1.411

*Abstract:* In this proceeding, the FCC seeks to implement a plan to make the spectrum above 95 GHz more readily accessible for new innovative services and technologies. Throughout its history, when the Commission has expanded access to what was thought to be the upper reaches of the usable spectrum, new technological advances have emerged to push the boundary of usable spectrum even further. The frequencies above 95 GHz are today’s spectrum horizons. The Notice sought comment on proposed rules to permit licensed fixed point-to-point operations in a total of 102.2 gigahertz of spectrum; on making 15.2 gigahertz of spectrum available for unlicensed use; and on creating a new category of experimental licenses to increase opportunities for entities to develop new services and technologies from 95 GHz to 3 THz with no limits on geography or technology.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/02/18	83 FR 13888
ANPRM Comment Period End.	05/02/18	
R&O .....	06/14/19	84 FR 25685
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Michael Ha, Deputy Division Chief, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, Phone: 201 418–2099, Email: michael.ha@fcc.gov. RIN: 3060–AK81

**309. Use of the 5.850–5.925 GHz Band (ET Docket No. 19–138)**

*Legal Authority:* 47 U.S.C. 1; 47 U.S.C. 4(i); 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 316; 47 U.S.C. 332; 47 CFR 1.411

*Abstract:* In this proceeding, the Commission proposes to amend its rules for the 5.850–5.925 GHz (5.9 GHz) band. The proposal would permit unlicensed devices to operate in the lower 45-megahertz portion of the band at 5.850–5.895 GHz under part 15 of the Commission’s rules. It would also permit Intelligent Transportation System (ITS) operations in the upper 30-megahertz portion of the band at 5.895–5.925 GHz under parts 90 and 95 of the Commission’s rules. ITS operations would consist of Cellular Vehicle to Everything (C–V2X) devices at 5.905–5.925 GHz, and C–V2X and/or Dedicated Short Range Communications (DSRC) devices at 5.895–5.905 GHz.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/06/20	85 FR 6841
NPRM Comment Period End.	03/09/20	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Howard Griboff, Attorney Advisor, Federal Communications Commission, 45 L Street NE, 45, Washington, DC 20554, Phone: 202 418-0657, Fax: 202 418-2824, Email: howard.griboff@fcc.gov.

RIN: 3060-AK96

**310. • Allowing Earlier Equipment Marketing and Importation Opportunities; Petition To Expand Marketing Opportunities for Innovative Technologies (ET Docket No. 20-382 & RM-11857) NPRM, 86 FR 2337, January 1**

*Legal Authority:* 47 U.S.C. 154(i), 301, 302a, 303(c), 303(f), and 303(r)

*Abstract:* In this document, the Commission recognize that our equipment authorization rules have in some ways failed to keep pace with developments in the modern device ecosystem. In particular, our rules limit the ability of device manufacturers to market and import radiofrequency devices in the most efficient and cost-effective ways possible. We therefore take the opportunity here to propose specific rule changes that would allow device manufacturers to take full advantage of modern marketing and importation practices.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/12/21	86 FR 2337
NPRM Comment Period End.	02/11/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Thomas Struble, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, Phone: 202 418-2470, Email: thomas.struble@fcc.gov.

Brian Butler, Attorney, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, Phone: 202 418-2702, Email: brian.butler@fcc.gov.

RIN: 3060-AL18

**311. • Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20-36)**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 201; 47 U.S.C. 302a; 47 U.S.C. 303; 47 U.S.C. 1.407 and 1.411

*Abstract:* In this proceeding, the Commission revises its rules to provide additional opportunities for unlicensed white space devices operating in the broadcast television bands (TV bands) to deliver wireless broadband services in rural areas and applications associated with the Internet of Things (IoT). This region of the spectrum has excellent propagation characteristics that make it particularly attractive for delivering communications services over long distances, coping with variations in terrain, as well as providing coverage into and within buildings. We offer several proposals to spur continued growth of the white space device ecosystem, especially for providing affordable broadband service to rural and underserved communities that can help close the digital divide.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/03/20	85 FR 18901
NPRM Comment Period End.	04/03/20	
R&O .....	01/12/21	86 FR 2278
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Hugh Van Tuyl, Electronics Engineer, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, Phone: 202 418-7506, Fax: 202 418-1944, Email: hugh.vantuy1@fcc.gov.

RIN: 3060-AL22

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Office of Engineering and Technology*

Completed Actions

**312. • Unlicensed White Space Device Operations in the Television Bands (ET Docket No. 20-36)**

*Timetable:*

Action	Date	FR Cite
Duplicate of 3060-AL22.	04/01/21	

RIN: 3060-AL17

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*International Bureau*

Long-Term Actions

**313. International Settlements Policy Reform (IB Docket No. 11-80)**

*Legal Authority:* 47 U.S.C. 151 to 152; 47 U.S.C. 154; 47 U.S.C. 201 to 205; 47 U.S.C. 208; 47 U.S.C. 211; 47 U.S.C. 214; 47 U.S.C. 303(r); 47 U.S.C. 309; 47 U.S.C. 403

*Abstract:* The FCC is reviewing the International Settlements Policy (ISP). It governs the ways U.S. carriers negotiate with foreign carriers for the exchange of international traffic and is the structure by which the Commission has sought to respond to concerns that foreign carriers with market power are able to take advantage of the presence of multiple U.S. carriers serving a particular market. In 2011, the FCC released an NPRM that proposed to further deregulate the international telephony market and enable U.S. consumers to enjoy competitive prices when they make calls to international destinations. First, it proposed to remove the ISP from all international routes except Cuba. Second, the FCC sought comment on a proposal to enable the Commission to better protect U.S. consumers from the effects of anticompetitive conduct by foreign carriers in instances necessitating Commission intervention. In 2012, the FCC adopted a Report and Order that eliminated the ISP on all routes but maintained the nondiscrimination requirement of the ISP on the U.S.-Cuba route and codified it in 47 CFR 63.22(f). In the Report and Order, the FCC also adopted measures to protect U.S. consumers from anticompetitive conduct by foreign carriers. In 2016, the FCC released an FNPRM seeking comment on removing the discrimination requirement on the U.S.-Cuba route.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/13/11	76 FR 42625
NPRM Comment Period End.	09/02/11	
Report and Order FNPRM .....	02/15/13	78 FR 11109
FNPRM Comment Period End.	03/04/16	81 FR 11500
Next Action Undetermined.	04/18/16	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* David Krech, Assoc. Chief, Telecommunications & Analysis Division, Federal Communications Commission, International Bureau, 445

12th Street SW, Washington, DC 20554, Phone: 202 418-7443, Fax: 202 418-2824, Email: david.krech@fcc.gov. RIN: 3060-AJ77

**314. Update to Parts 2 and 25 Concerning Nongeostationary, Fixed-Satellite Service Systems, and Related Matters: IB Docket No. 16-408**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 303; 47 U.S.C. 316

*Abstract:* On January 11, 2017, the Commission began a rulemaking to update its rules and policies concerning non-geostationary-satellite orbit (NGSO), fixed-satellite service (FSS) systems and related matters. The Commission proposed among other things, to provide for more flexible use of the 17.8-20.2 GHz bands for FSS, promote shared use of spectrum among NGSO FSS satellite systems, and remove unnecessary design restrictions on NGSO FSS systems. The Commission subsequently adopted a Report and Order establishing new sharing criteria among NGSO FSS systems and providing additional flexibility for FSS spectrum use. The Commission also released a Further Notice of Proposed Rulemaking proposing to remove the domestic coverage requirement for NGSO FSS systems and later adopted a Second Report and Order removing this requirement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/11/17	82 FR 3258
NPRM Comment Period End.	04/10/17	
FNPRM .....	11/15/17	82 FR 52869
R&O .....	12/18/17	82 FR 59972
FNPRM Comment Period End.	01/02/18	
2nd R&O .....	02/21/21	86 FR 11642
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Clay DeCell, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, Phone: 202 418-0803, Email: clay.decell@fcc.gov. RIN: 3060-AK59

**315. Amendment of Parts 2 and 25 of the FCC Rules To Facilitate the Use of Earth Stations in Motion Communicating With Geostationary Orbit Space Stations in FSS Bands: IB Docket No. 17-95**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303; 47 U.S.C. 308(b); 47 U.S.C. 316

*Abstract:* In June 2017, the Commission began a rulemaking to

streamline, consolidate, and harmonize rules governing earth stations in motion (ESIMs) used to provide satellite-based services on ships, airplanes and vehicles communicating with geostationary-satellite orbit (GSO), fixed-satellite service (FSS) satellite systems. In September 2018, the Commission adopted rules governing communications of ESIMs with GSO satellites. These rules addressed communications in the conventional C-, Ku-, and Ka-bands, as well as portions of the extended Ku-band. At the same time, the Commission also released a Further Notice of Proposed Rulemaking that sought comment on allowing ESIMs to operate in all of the frequency bands in which earth stations at fixed locations operating in GSO FSS satellite networks can be blanket-licensed. Specifically, comment was sought on expanding the frequencies available for communications of ESIMs with GSO FSS satellites to include the following frequency bands: 10.7-10.95 GHz, 11.2-11.45 GHz, 17.8-18.3 GHz, 18.8-19.3 GHz, 19.3-19.4 GHz, 19.6-19.7 GHz (space-to-Earth); and 28.6-29.1 GHz (Earth-to-space).

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/16/17	82 FR 27652
NPRM Comment Period End.	08/30/17	
OMB-approval for Information Collection of R&O Comment Period End.	08/28/18	
FNPRM .....	07/24/20	85 FR 44818
R&O .....	07/24/20	85 FR 44772
FNPRM Comment Period End.	09/22/20	
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Sean O'More, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, Phone: 202 418-0803, Email: sean.omore@fcc.gov. RIN: 3060-AK84

**316. Further Streamlining Part 25 Rules Governing Satellite Services: IB Docket No. 18-314**

*Legal Authority:* 47 U.S.C. secs. 154(i); 47 U.S.C. 161; 47 U.S.C. 303; 47 U.S.C. 316

*Abstract:* Under the Commission's rules, satellite operators must follow separate application and authorization processes for the satellites and earth stations that make up their networks

and have no option for a single, unified network license. In a Notice of Proposed Rulemaking, the FCC proposed to create a new, optional, unified license to include both space stations and earth stations operating in a geostationary-satellite orbit, fixed-satellite service (GSO FSS) satellite network. In addition, the Commission proposed to repeal or modify unnecessarily burdensome rules in Part 25 governing satellite services, such as annual reporting requirements. These proposals would greatly simplify the Commission's licensing and regulation of satellite systems. In a subsequent Report and Order, the Commission streamlined its rules governing satellite services by creating an optional framework for the authorization of blanket-licensed earth stations and space stations in a satellite system through a unified license. The Commission also aligned the build-out requirements for earth stations and space stations and eliminated unnecessary reporting rules.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/31/19	84 FR 638
NPRM Comment Period End.	03/18/19	
NPRM Reply Comment Period End.	04/16/19	
Report & Order ... Next Action Undetermined.	03/01/21	86 FR 11880

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Clay DeCell, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, Phone: 202 418-0803, Email: clay.decell@fcc.gov. RIN: 3060-AK87

**317. Facilitating the Communications of Earth Stations in Motion With Non-Geostationary Orbit Space Stations: IB Docket No. 18-315**

*Legal Authority:* 47 U.S.C. 154(i); 47 U.S.C. 157(a); 47 U.S.C. 303; 47 U.S.C. 308(b); 47 U.S.C. 316

*Abstract:* In November 2018, the Commission adopted a notice of proposed rulemaking that proposed to expand the scope of the Commission's rules governing ESIMs operations to cover communications with NGSO FSS satellites. Comment was sought on establishing a regulatory framework for communications of ESIMs with NGSO FSS satellites that would be analogous to that which exists for ESIMs communicating with GSO FSS satellites.

In this context, comment was sought on: (1) Allowing ESIMs to communicate in many of the same conventional Ku-band, extended Ku-band, and Ka-band frequencies that were allowed for communications of ESIMs with GSO FSS satellites (with the exception of the 18.6–18.8 GHz and 29.25–29.5 GHz frequency bands); (2) extending blanket licensing to ESIMs communicating with NGSO satellites; and (3) revisions to specific provisions in the Commission’s rules to implement these changes. The specific frequency bands for communications of ESIMs with NGOS FSS satellites on which comment was sought are as follows: 10.7–11.7 GHz; 11.7–12.2 GHz; 14.0–14.5 GHz; 17.8–18.3 GHz; 18.3–18.6 GHz; 18.8–19.3 GHz; 19.3–19.4 GHz; 19.6–19.7 GHz; 19.7–20.2 GHz; 28.35–28.6 GHz; 28.6–29.1 GHz; and 29.5–30.0 GHz.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/28/18	83 FR 67180
NPRM Comment Period End.	03/13/19	
R&O .....	07/24/20	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Cindy Spiers, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1593, *Email:* cindy.spiers@fcc.gov. *RIN:* 3060–AK89

**318. Mitigation of Orbital Debris in the New Space Age: IB Docket No. 18–313**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 302; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 336; 47 U.S.C. 605; 47 U.S.C. 721

*Abstract:* The Commission’s current orbital debris rules were first adopted in 2004. Since then, significant changes have occurred in satellite technologies and market conditions, particularly in Low Earth Orbit, *i.e.*, below 2000 kilometers altitude. These changes include the increasing use of lower cost small satellites and proposals to deploy large constellations of non-geostationary satellite orbit (NGSO) systems, some involving thousands of satellites.

The NPRM proposes changes to improve disclosure of debris mitigation plans. The NPRM also makes proposals and seeks comment related to satellite disposal reliability and methodology, appropriate deployment altitudes in low-Earth-orbit, and on-orbit lifetime,

with a particular focus on large NGSO satellite constellations. Other aspects of the NPRM include new rule proposals for geostationary orbit satellite (GSO) license term extension requests, and consideration of disclosure requirements related to several emerging technologies and new types of commercial operations, including rendezvous and proximity operations.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/19/19	84 FR 4742
NPRM Comment Period End.	05/06/19	
R&O .....	08/25/20	85 FR 52422
FNPRM .....	08/25/20	
FNPRM Comment Period End.	10/09/20	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Merissa Velez, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–0751, *Email:* merissa.velez@fcc.gov. *RIN:* 3060–AK90

**319. Process Reform for Executive Branch Review of Certain FCC Applications and Petitions Involving Foreign Ownership (IB Docket No. 16–155)**

*Legal Authority:* 47 U.S.C 154(l); 47 U.S.C . 154(j); 47 U.S.C. 214; 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 413; 47 U.S.C. 34–39; E.O. 10530; 3 U.S.C. 301

*Abstract:* In this proceeding, the Commission considers rules and procedures that streamline and improve the timeliness and transparency of the process by which the Commission refers certain applications and petitions for declaratory ruling to the Executive Branch agencies for assessment of any national security, law enforcement, foreign policy or trade policy issues related to foreign investment in the applicants and petitioners.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/24/16	81 FR 46870
NPRM Comment Period End.	09/02/16	
Public Notice .....	04/27/20	85 FR 29914
Public Notice Comment Period End.	09/02/20	
Report & Order ...	10/01/20	85 FR 76360
Public Notice .....	12/30/20	85 FR 12312
Public Notice Comment Period End.	04/19/21	

Action	Date	FR Cite
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Arthur T. Lechtman, Attorney Advisor, Federal Communications Commission, International Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1465, *Fax:* 202 418–0175, *Email:* arthur.lechtman@fcc.gov. *RIN:* 3060–AL12

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Media Bureau*

Long-Term Actions

**320. Revision of EEO Rules and Policies (MM Docket No. 98–204)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 257; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307 to 309; 47 U.S.C. 334; 47 U.S.C. 403; 47 U.S.C. 554

*Abstract:* FCC authority to govern Equal Employment Opportunity (EEO) responsibilities of cable television operators was codified in the Cable Communications Policy Act of 1984. This authority was extended to television broadcast licensees and other multi-channel video programming distributors in the Cable and Television Consumer Protection Act of 1992. In the Second Report and Order, the FCC adopted new EEO rules and policies. This action was in response to a decision of the U.S. Court of Appeals for the District of Columbia Circuit that found prior EEO rules unconstitutional. The Third Notice of Proposed Rulemaking (NPRM) requests comment as to the applicability of the EEO rules to part-time employees. The Third Report and Order adopted revised forms for broadcast station and MVPDs Annual Employment Report. In the Fourth NPRM, comment was sought regarding public access to the data contained in the forms.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/14/02	67 FR 1704
Second R&O and Third NPRM.	01/07/03	68 FR 670
Correction .....	01/13/03	68 FR 1657
Fourth NPRM .....	06/23/04	69 FR 34986
Third R&O .....	06/23/04	69 FR 34950
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*



*Agency Contact:* Brendan Holland, Chief, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2486, *Email:* [brendan.holland@fcc.gov](mailto:brendan.holland@fcc.gov).

*RIN:* 3060-AH95

**321. Establishment of Rules for Digital Low-Power Television, Television Translator, and Television Booster Stations (MB Docket No. 03-185)**

*Legal Authority:* 47 U.S.C. 309; 47 U.S.C. 336

*Abstract:* This proceeding initiated the digital television conversion for low-power television (LPTV) and television translator stations. The rules and policies adopted as a result of this proceeding provide the framework for these stations' conversion from analog to digital broadcasting.

The Report and Order adopts definitions and permissible use provisions for digital TV translator and LPTV stations. The Second Report and Order takes steps to resolve the remaining issues in order to complete the low-power television digital transition. The third Notice of Proposed Rulemaking seeks comment on a number of issues related to the potential impact of the incentive auction and the repacking process.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/26/03	68 FR 55566
NPRM Comment Period End.	11/25/03	
R&O .....	11/29/04	69 FR 69325
FNPRM and MO&O.	10/18/10	75 FR 63766
2nd R&O .....	07/07/11	76 FR 44821
3rd NPRM .....	11/28/14	79 FR 70824
NPRM Comment Period End.	12/29/14	
NPRM Reply Comment Period End.	01/12/15	
3rd R&O .....	02/01/16	81 FR 5041
4th NPRM .....	02/01/16	81 FR 5086
Comment Period End.	02/22/16	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Shaun Maher, Attorney, Video Division, Federal Communications Commission, Media Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2324, *Fax:* 202 418-2827, *Email:* [shaun.maher@fcc.gov](mailto:shaun.maher@fcc.gov).

*RIN:* 3060-AI38

**322. Amendment of the Commission's Rules Related to Retransmission Consent (MB Docket No. 10-71)**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 325; 47 U.S.C. 534

*Abstract:* Cable systems and other multichannel video programming distributors are not entitled to retransmit a broadcast station's signal without the station's consent. This consent is known as "retransmission consent." Since Congress enacted the retransmission consent regime in 1992, there have been significant changes in the video programming marketplace. In this proceeding, comment is sought on a series of proposals to streamline and clarify the Commission's rules concerning or affecting retransmission consent negotiations.

In the 2014 Report and Order, the Commission adopted a rule providing that it is a violation of the duty to negotiate retransmission consent in good faith for a television station that is ranked among the top four stations to negotiate retransmission consent jointly with another such station if the stations are not commonly owned and serve the same geographic market.

In 2019, the Commission sought comment on amending the rules concerning notices cable operators must provide to subscribers.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/28/11	76 FR 17071
NPRM Comment Period End.	05/27/11	
R&O .....	05/19/14	79 FR 28615
NPRM .....	10/02/15	80 FR 59706
NPRM .....	01/07/20	85 FR 656
Report & Order ...	11/12/20	85 FR 71843
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* John Cobb, Attorney, Policy Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2120 *Email:* [john.cobb@fcc.gov](mailto:john.cobb@fcc.gov).

*RIN:* 3060-AJ55

**323. Preserving Vacant Channels in the UHF Television Band for Unlicensed Use; (MB Docket No. 15-146)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 308; 47 U.S.C. 309; 47 U.S.C. 310; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 336; 47 U.S.C. 403

*Abstract:* In this proceeding, the Commission considers proposals to preserve vacant television channels in

the UHF television band for shared use by white space devices and wireless microphones following the repacking of the band after the conclusion of the Incentive Auction. In the NPRM, the Commission proposed preserving in each area of the country at least one vacant television channel. In the Public Notice, the Commission notes that a limited number of broadcast television stations may be reassigned during the incentive auction and repacking process to channels within the duplex gap established as part of the 600 MHz Band Plan, resulting in a restriction on the ability of white space devices and wireless microphone to use this spectrum. To address this concern, the Public Notice tentatively concluded that a second available television channel should be preserved in the remaining television band in such areas for shared use by white space devices and wireless microphones, in addition to the one such channel proposed in the NPRM.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/02/15	80 FR 38158
NPRM Comment Period End.	08/03/15	
NPRM Reply Comment Period End.	08/31/15	
Public Notice .....	09/01/15	80 FR 52715
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Shaun Maher, Attorney, Video Division, Federal Communications Commission, Media Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2324, *Fax:* 202 418-2827, *Email:* [shaun.maher@fcc.gov](mailto:shaun.maher@fcc.gov).

*RIN:* 3060-AK43

**324. Authorizing Permissive Use of the "Next Generation" Broadcast Television Standard (GN Docket No. 16-142)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 157; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 307 to 309; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 325(b); 47 U.S.C. 336; 47 U.S.C. 399(b); 47 U.S.C. 403; 47 U.S.C. 534; 47 U.S.C. 535

*Abstract:* In this proceeding, the Commission seeks to authorize television broadcasters to use the "Next Generation" ATSC 3.0 broadcast television transmission standard on a voluntary, market-driven basis, while they continue to deliver current-generation digital television broadcast service to their viewers. In the Report and Order, the Commission adopted

rules to afford broadcasters flexibility to deploy ATSC 3.0-based transmissions, while minimizing the impact on, and costs to, consumers and other industry stakeholders.

In the 2nd R&O, the Commission provided additional guidance to broadcasters deploying Next Gen TV.

In 2021, the Commission made a technical modification to the rules governing the use of a distribution transmission system by a television station to account for deployment of ATSC 3.0.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/10/17	82 FR 13285
NPRM Comment Period End.	05/09/17	
FNPRM .....	12/20/17	82 FR 60350
R&O .....	02/02/18	83 FR 4998
FNPRM Comment Period End.	02/20/18	
FNPRM Reply Comment Period End.	03/20/18	
NPRM .....	05/13/20	85 FR 28586
2nd R&O Order on Recon.	07/17/20	85 FR 43478
Report & Order ...	To Be	Determined

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Evan Baranoff, Attorney, Policy Division, Federal Communications Commission, Media Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-7142, *Email:* [evan.baranoff@fcc.gov](mailto:evan.baranoff@fcc.gov), *RIN:* 3060-AK56

**325. 2018 Quadrennial Regulatory Review of the Commission's Broadcast Ownership Rules (MB Docket 18-349)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 152(a); 47 U.S.C. 154(i); 47 U.S.C. 257; 47 U.S.C. 303; 47 U.S.C. 307; 47 U.S.C. 309 and 310; 47 U.S.C. 403; sec. 202(h) of the Telecommunications Act

*Abstract:* Section 202(h) of the Telecommunications Act of 1996 requires the Commission to review its broadcast ownership rules every 4 years and to determine whether any such rules are necessary in the public interest as the result of competition. The rules subject to review in the 2018 quadrennial review are the Local Radio Ownership Rule, the Local Television Ownership Rule, and the Dual Network Rule. The Commission also sought comment on potential pro-diversity proposals including extending cable procurement requirements to broadcasters, adopting formulas aimed at creating media ownership limits that promote diversity, and developing a model for market-based, tradeable

diversity credits to serve as an alternative method for setting ownership limits.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/28/19	84FR 6741
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Brendan Holland, Chief, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2486, *Email:* [brendan.holland@fcc.gov](mailto:brendan.holland@fcc.gov), *RIN:* 3060-AK77

**326. Children's Television Programming Rules (MB Docket 18-202)**

*Legal Authority:* 47 U.S.C. 303; 47 U.S.C. 303b; 47 U.S.C. 307; 47 U.S.C. 336

*Abstract:* The Children's Television Act (CTA) of 1990 requires that the Commission consider, in its review of television license renewals, the extent to which the licensee has served the educational and informational needs of children through its overall programming, including programming specifically designed to serve such needs. The Commission adopted rules implementing the CTA in 1991 and revised these rules in 1996, 2004, and 2006. In this proceeding, the Commission proposes to revise the children's television programming rules to modify outdated requirements and to give broadcasters greater flexibility in serving the educational and informational needs of children.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/25/18	83 FR 35158
NPRM Comment Period End.	09/28/18	
R&O .....	08/16/19	84 FR 41947
FNPRM .....	08/16/19	84 FR 41949
FNPRM Comment Period End.	09/16/19	
FNPRM Reply Comment Period End.	10/15/19	
Move to Inactive Status.	01/25/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Kathy Berthot, Attorney, Policy Division Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554,

*Phone:* 202 418-7454, *Email:* [kathy.berthot@fcc.gov](mailto:kathy.berthot@fcc.gov), *RIN:* 3060-AK78

**327. Equal Employment Opportunity Enforcement (MB Docket 19-177)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 334; 47 U.S.C. 554

*Abstract:* In this proceeding, the Commission seeks comment on ways in which it can make improvements to equal employment opportunity (EEO) compliance and enforcement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/22/19	84 FR 35063
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Radhika Karmarker, Attorney Advisor, IAD, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-1523, *Email:* [radhika.karmarker@fcc.gov](mailto:radhika.karmarker@fcc.gov), *RIN:* 3060-AK86

**328. Revision of the Commission's Part 76 Review Procedures (MB Docket No. 20-70)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 303(r); 47 U.S.C. 536; 47 U.S.C. 548; 47 U.S.C. 573

*Abstract:* In this proceeding, the Commission considers changes to procedural rules governing the resolution of program carriage disputes between video programming vendors and multichannel video programming distributors. The rule changes are intended to make the Commission's procedures more consistent and encourage the timely resolution of program carriage disputes.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/16/20	85 FR 21131
NPRM Comment Period End.	05/18/20	
Report & Order ...	12/17/20	85 FR 81805
Move to Inactive Status.	01/25/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* John Cobb, Attorney, Policy Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2120, *Email:* [john.cobb@fcc.gov](mailto:john.cobb@fcc.gov).

RIN: 3060-AL08

**329. • Duplication of Programming on Commonly Owned Radio Stations (MB Docket No. 19-310)**

*Legal Authority:* 47 U.S.C. 151, 154(i), 154(j), and 303(r)

*Abstract:* In this proceeding, the Commission seeks comment on whether to modify or eliminate the radio duplication rule. The rule bars same-service (AM or FM) commercial radio stations from duplicating more than 25% of their total hours of programming in an average broadcast week if the stations have 50% or more contour overlap and are commonly owned or subject to a time brokerage agreement.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/23/19	84 FR 70485
Report & Order ...	10/22/20	85 FR 67303
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jamile Kadre, Industry Analysis Division, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2245, *Email:* jamile.kadre@fcc.gov.

RIN: 3060-AL19

**330. • Sponsorship Identification Requirements for Foreign Government-Provided Programming (MB Docket No. 20-299)**

*Legal Authority:* 47 U.S.C. 151, 154, 155, 301, 303, 307, 309, 310, 334, 336, 339

*Abstract:* In this proceeding, the Commission seeks comment on rules proposing to require specific disclosure requirements for broadcast programming that is paid for, or provided by a foreign government or its representative.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/24/20	85 FR 74955
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Radhika Karmarker, Attorney Advisor, IAD, Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-1523, *Email:* radhika.karmarker@fcc.gov.

RIN: 3060-AL20

**331. • FM Broadcast Booster Stations (MB Docket 20-401)**

*Legal Authority:* 47 U.S.C. 151, 154, 157, 301, 302, 303, 307, 308, 309, 316, 319, 324

*Abstract:* In this proceeding, the Commission proposes to amend its rules to enable FM broadcasters to use FM booster stations to air geo-targeted content (e.g., news, weather, and advertisements) independent of the signals of its primary station within different portions of the primary station's protected service contour for a limited period of time during the broadcast hour.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/11/21	86 FR 1909
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Al Shuldiner, Chief, Audio Div., Media Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2700, *Email:* albert.shuldiner@fcc.gov.

RIN: 3060-AL21

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Office of Managing Director*

Long-Term Actions

**332. Assessment and Collection of Regulatory Fees**

*Legal Authority:* 47 U.S.C. 159  
*Abstract:* Section 9 of the Communications Act of 1934, as amended (47 U.S.C. 159), requires the Federal Communications Commission to recover the cost of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/06/17	82 FR 26019
R&O .....	09/22/17	82 FR 44322
NPRM .....	06/14/18	83 FR 27846
NPRM Comment Period End.	06/21/18	
R&O .....	09/18/18	83 FR 47079
NPRM .....	06/05/19	84 FR 26234
NPRM Comment Period End.	06/07/19	
R&O .....	09/26/19	84 FR 50890
NPRM .....	05/08/20	85 FR 32256
R&O .....	06/22/20	85 FR 37364
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Roland Helvajian, Office of the Managing Director, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418-0444, *Email:* roland.helvajian@fcc.gov.

RIN: 3060-AK64

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Public Safety and Homeland Security Bureau*

Long-Term Actions

**333. Wireless E911 Location Accuracy Requirements: PS Docket No. 07-114**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 332

*Abstract:* This rulemaking is related to the proceedings in which the FCC previously acted to improve the quality of all emergency services. Wireless carriers must provide specific automatic location information in connection with 911 emergency calls to Public Safety Answering Points (PSAPs). Wireless licensees must satisfy enhanced 911 location accuracy standards at either a county-based or a PSAP-based geographic level.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/20/07	72 FR 33948
R&O .....	02/14/08	73 FR 8617
Public Notice .....	09/25/08	73 FR 55473
FNPRM; NOI .....	11/02/10	75 FR 67321
Public Notice .....	11/18/09	74 FR 59539
2nd R&O .....	11/18/10	75 FR 70604
Second NPRM ...	08/04/11	76 FR 47114
Second NPRM Comment Period End.		
Final Rule .....	04/28/11	76 FR 23713
NPRM, 3rd R&O, and 2nd FNPRM.	09/28/11	76 FR 59916
3rd FNPRM .....	03/28/14	79 FR 17820
Order Extending Comment Period.	06/10/14	79 FR 33163
3rd FNPRM Comment Period End.	07/14/14	
Public Notice (Release Date).	11/20/14	
Public Notice Comment Period End.	12/17/14	
4th R&O .....	03/04/15	80 FR 11806
Final Rule .....	08/03/15	80 FR 45897
Order Granting Waiver.	07/10/17	
NPRM .....	09/26/18	83 FR 54180
4th NPRM .....	03/18/19	84 FR 13211
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Brenda Boykin, Attorney Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2062, *Email:* [brenda.boykin@fcc.gov](mailto:brenda.boykin@fcc.gov), *RIN:* 3060-AJ52

**334. Improving Outage Reporting for Submarine Cables and Enhancing Submarine Cable Outage Data; GN Docket No. 15-206**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 34 to 39; 47 U.S.C. 301

*Abstract:* This proceeding takes steps toward assuring the reliability and resiliency of submarine cables, a critical piece of the Nation’s communications infrastructure, by proposing to require submarine cable licensees to report to the Commission when outages occur and communications are disrupted. The Commission’s intent is to enhance national security and emergency preparedness by these actions. In December 2019, the Commission adopted an Order on Reconsideration that modifies the requirement for submarine cable licensees to report outages to the Commission.

*Timetable:*

Action	Date	FR Cite
NPRM (Release Date).	09/18/15	
R&O .....	06/24/16	81 FR 52354
Petitions for Recon.	09/08/16	
Petitions for Recon—Public Comment.	10/17/16	81 FR 75368
Order on Recon. Next Action Undetermined.	12/20/19	84 FR 15733

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Scott Cinnamon, Attorney-Advisor, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2319, *Email:* [scott.cinnamon@fcc.gov](mailto:scott.cinnamon@fcc.gov), *RIN:* 3060-AK39

**335. Amendments to Part 4 of the Commission’s Rules Concerning Disruptions to Communications; PS Docket No. 15-80**

*Legal Authority:* Sec. 1, 4(i), 4(j), 4(o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307, 309(a), 309(j); 316, 332, 403, 615a-1, and 615c of Pub. L. 73-416, 4 Stat. 1064, as amended; and section 706 of Pub. L. 104-104, 110 Stat. 56; 47

U.S.C. 151, 154(i)-(j) & (o), 251(e)(3), 254, 301, 303(b), 303(g), 303(r), 307; 309(a), 309(j), 316, 332, 403, 615a-1, 615c, and 1302, unless otherwise noted

*Abstract:* The 2004 Report and Order (R&O) extended the Commission’s communication disruptions reporting rules to non-wireline carriers and streamlined reporting through a new electronic template (see docket ET Docket 04-35). In 2015, this proceeding, PS Docket 15-80, was opened to amend the original communications disruption reporting rules from 2004 in order to reflect technology transitions observed throughout the telecommunications sector. The Commission seeks to further study the possibility to share the reporting database information and access with State and other Federal entities. In May 2016, the Commission released a Report and Order, FNPRM, and Order on Reconsideration (see also Dockets 11-82 and 04-35). The R&O adopted rules to update the part 4 requirements to reflect technology transitions. The FNPRM sought comment on sharing information in the reporting database. Comments and replies were received by the Commission in August and September 2016.

In March 2020, the Commission adopted a Second Further Notice of Proposed Rulemaking in PS Docket No. 15-80 that proposed a framework to provide state and federal agencies with access to outage information to improve their situational awareness while preserving the confidentiality of this data, including proposals to: Provide direct, read-only access to NORS and DIRS filings to qualified agencies of the 50 states, the District of Columbia, Tribal nations, territories, and federal government; allow these agencies to share NORS and DIRS information with other public safety officials that reasonably require NORS and DIRS information to prepare for and respond to disasters; allow participating agencies to publicly disclose NORS or DIRS filing information that is aggregated and anonymized across at least four service providers; condition a participating agency’s direct access to NORS and DIRS filings on their agreement to treat the filings as confidential and not disclose them absent a finding by the Commission that allows them to do so; and establish an application process that would grant agencies access to NORS and DIRS after those agencies certify to certain requirements related to maintaining confidentiality of the data and the security of the databases. In March 2021, the Commission adopted the proposed information sharing

framework with some modifications in a Second Report and Order.

*Timetable:*

Action	Date	FR Cite
NPRM, 2nd R&O, Order on Recon. NPRM Comment Period End.	06/16/15	80 FR 34321
R&O .....	07/31/15	
FNPRM, 1 Part 4 R&O, Order on Recon.	07/12/16	81 FR 45055
Order Denying Reply Comment Deadline Extension Request.	08/11/16	81 FR 45059
FNPRM Comment Period End.	09/08/16	
Announcement of Effective Date for Rule Changes in R&O.	09/12/16	
Announcement of Effective Date for Rule Changes in R&O.	06/22/17	82 FR 28410
Announcement of Effective Date for Rule Changes in R&O.	06/22/17	82 FR 28410
Second Further NPRM.	02/28/20	85 FR 17818
Second Further NPRM Comment Period End.	06/01/20	
2nd R&O ..... Next Action Undetermined.	03/17/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Robert Finley, Attorney Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-7835, *Email:* [robert.finley@fcc.gov](mailto:robert.finley@fcc.gov), *RIN:* 3060-AK40

**336. New Part 4 of the Commission’s Rules Concerning Disruptions to Communications; ET Docket No. 04-35**

*Legal Authority:* 47 U.S.C. 154 and 155; 47 U.S.C. 201; 47 U.S.C. 251; 47 U.S.C. 307; 47 U.S.C. 316

*Abstract:* The proceeding creates a new part 4 in title 47 and amends part 63.100. The proceeding updates the Commission’s communication disruptions reporting rules for wireline providers formerly in 47 CFR 63.100 and extends these rules to other non-wireline providers. Through this proceeding, the Commission streamlines the reporting process through an electronic template. The Report and Order received several petitions for reconsideration, of which two were eventually withdrawn. In 2015, seven were addressed in an Order on

Reconsideration and in 2016 another petition was addressed in an Order on Reconsideration. One petition (CPUC Petition) remains pending regarding NORS database sharing with States, which is addressed in a separate proceeding, PS Docket 15–80. To the extent the communication disruption rules cover VoIP, the Commission studies and addresses these questions in a separate docket, PS Docket 11–82.

In May 2016, the Commission released a Report and Order, FNPRM, and Order on Reconsideration (see Dockets 11–82 and 15–80). The Order on Reconsideration addressed outage reporting for events at airports, and the FNPRM sought comment on database sharing. The Commission received comments and replies in August and September 2016.

In March 2020, the Commission adopted a Second Further Notice of Proposed Rulemaking in PS Docket No. 15–80 that proposed a framework to provide state and federal agencies with access to outage information to improve their situational awareness while preserving the confidentiality of this data, including proposals to: Provide direct, read-only access to NORS and DIRS filings to qualified agencies of the 50 states, the District of Columbia, Tribal nations, territories, and federal government; allow these agencies to share NORS and DIRS information with other public safety officials that reasonably require NORS and DIRS information to prepare for and respond to disasters; allow participating agencies to publicly disclose NORS or DIRS filing information that is aggregated and anonymized across at least four service providers; condition a participating agency’s direct access to NORS and DIRS filings on their agreement to treat the filings as confidential and not disclose them absent a finding by the Commission that allows them to do so; and establish an application process that would grant agencies access to NORS and DIRS after those agencies certify to certain requirements related to maintaining confidentiality of the data and the security of the databases.

*Timetable:*

Action	Date	FR Cite
NPRM .....	03/26/04	69 FR 15761
R&O .....	11/26/04	69 FR 68859
Denial for Petition for Partial Stay.	12/02/04	
Seek Comment on Petition for Recon.	02/02/10	
Reply Period End	03/19/10	

Action	Date	FR Cite
Seek Comment on Broadband and Inter-connected VOIP Service Providers.	07/02/10	
Reply Period End 2nd R&O, and Order on Recon, NPRM.	08/16/12 06/16/15	80 FR 34321
R&O .....	07/12/16	81 FR 45055
FNPRM, 1 Part 4 R&O, Order on Recon.	08/11/16	81 FR 45095, 81 FR 45055
Order Denying Extension of Time to File Reply Comments.	09/08/16	
Announcement of Effective Date for Rule Changes in R&O.	06/22/17	82 FR 28410
Second Further NPRM.	02/28/20	85 FR 17818
Second Further Notice of Proposed Rule-making.	03/31/20	
Second Further NPRM Comment Period End.	06/01/20	
Report & Order ...	To Be Determined	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Robert Finley, Attorney Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7835, *Email:* robert.finley@fcc.gov. *RIN:* 3060–AK41

**337. Wireless Emergency Alerts (WEA): PS Docket No. 15–91**

*Legal Authority:* Pub. L. 109–347, title VI; 47 U.S.C. 151; 47 U.S.C. 154(i)

*Abstract:* This proceeding was initiated to improve Wireless Emergency Alerts (WEA) messaging, ensure that WEA alerts reach only those individuals to whom they are relevant, and establish an end-to-end testing program based on advancements in technology.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/19/15	80 FR 77289
NPRM Comment Period End.	01/13/16	
NPRM Reply Comment Period End.	02/12/16	
Order .....	11/01/16	81 FR 75710

Action	Date	FR Cite
FNPRM .....	11/08/16 12/08/16	81 FR 78539
Petition for Recon Order on Recon ..	12/19/16 12/04/17	81 FR 91899 82 FR 57158
2nd R&O and 2nd Order on Recon.	02/28/18	83 FR 8619
Public Notice .....	04/26/18	83 FR 18257
Public Notice Comment Period End.	05/29/18	
Public Notice Reply Comment Period End.	06/11/18	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* James Wiley, Attorney Advisor, Public Safety and Homeland Security Bureau, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–1678, *Email:* james.wiley@fcc.gov. *RIN:* 3060–AK54

**338. Blue Alert EAS Event Code**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and 154(o); 47 U.S.C. 301; 47 U.S.C. 303(r) and (v); 47 U.S.C. 307; 47 U.S.C. 309; 47 U.S.C. 335; 47 U.S.C. 403; 47 U.S.C. 544 (g); 47 U.S.C. 606 and 615

*Abstract:* In 2015, Congress adopted the Blue Alert Act to help the States provide effective alerts to the public and law enforcement when police and other law enforcement officers are killed or are in danger. To ensure that these State plans are compatible and integrated throughout the United States as envisioned by the Blue Alert Act, the Blue Alert Coordinator made a series of recommendations in a 2016 Report to Congress. Among these recommendations, the Blue Alert Coordinator identified the need for a dedicated EAS event code for Blue Alerts, and noted the alignment of the EAS with the implementation of the Blue Alert Act. On June 22, 2017, the FCC released an NPRM proposing to revise the EAS rules to adopt a new event code, which would allow transmission of Blue Alerts to the public over the EAS and thus satisfy the stated need for a dedicated EAS event code. On December 14, 2017, the Commission released an Order adopting a new Blue Alert EAS Code-BLU. EAS participants must be able to implement the BLU code by January 19, 2019. BLU alerts must be available to wireless emergency alerts by July, 2019.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/30/17	82 FR 29811
NPRM Comment Period End.	07/31/17	
NPRM Reply Comment Period End.	08/29/17	
Order .....	12/14/18	83 FR 2557
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Linda Pintro, Attorney Advisor, Policy and Licensing Division, PSHSB, Federal Communications Commission, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-7490, *Email:* linda.pintro@fcc.gov, *RIN:* 3060-AK63

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Wireless Telecommunications Bureau*

Long-Term Actions

**339. Amendment of Parts 1, 2, 22, 24, 27, 90, and 95 of the Commission's Rules To Improve Wireless Coverage Through the Use of Signal Boosters (WT Docket No. 10-4)**

*Legal Authority:* 15 U.S.C. 79; 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 155; 47 U.S.C. 157; 47 U.S.C. 225; 47 U.S.C. 227; 47 U.S.C. 303(r)

*Abstract:* This action adopts new technical, operational, and registration requirements for signal boosters. It creates two classes of signal boosters—consumer and industrial—with distinct regulatory requirements for each, thereby establishing a two-step transition process for equipment certification for both consumer and industrial signal boosters sold and marketed in the United States.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/10/11	76 FR 26983
R&O .....	04/11/13	78 FR 21555
Petition for Reconsideration.	06/06/13	78 FR 34015
Order on Reconsideration.	11/08/14	79 FR 70790
FNPRM .....	11/28/14	79 FR 70837
2nd R&O and 2nd FNPRM.	03/23/18	83 FR 17131
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Jaclyn Rosen, Federal Communications Commission, Wireless

Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-0154, *Email:* jaclyn.rosen@fcc.gov, *RIN:* 3060-AJ87

**340. Amendment of the Commission's Rules Governing Certain Aviation Ground Station Equipment (Squitter) (WT Docket Nos. 10-61 and 09-42)**

*Legal Authority:* 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154; 47 U.S.C. 303; 47 U.S.C. 307(e); 47 U.S.C. 151 to 156; 47 U.S.C. 301

*Abstract:* This action amends part 87 rules to authorize new ground station technologies to promote safety and allow use of frequency 1090 MHz by aeronautical utility mobile stations for airport surface detection equipment (commonly referred to as “squitters”) to help reduce collisions between aircraft and airport ground vehicles.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/28/10	75 FR 22352
R&O .....	03/01/13	78 FR 61023
NPRM (release date).	06/07/19	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Tim Maguire, Electronics Engineer, Federal Communications Commission, Wireless Telecommunications Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418-2155, *Fax:* 202 418-7247, *Email:* tim.maguire@fcc.gov, *RIN:* 3060-AJ88

**341. Promoting Technological Solutions To Combat Wireless Contraband Device Use in Correctional Facilities; GN Docket No. 13-111**

*Legal Authority:* 47 U.S.C. 151 to 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 301; 47 U.S.C. 303(a); 47 U.S.C. 303(b); 47 U.S.C. 307 to 310; 47 U.S.C. 332; 47 U.S.C. 302(a)

*Abstract:* In the Report and Order, the Commission addresses the problem of illegal use of contraband wireless devices by inmates in correctional facilities by streamlining the process of deploying contraband wireless device interdiction systems (CIS)—systems that use radio communications signals requiring Commission authorization—in correctional facilities. In particular, the Commission eliminates certain filing requirements and provides for immediate approval of the lease applications needed to operate these systems.

In the Further Notice, the Commission seeks comment on a process for wireless providers to disable contraband wireless devices once they have been identified. The Commission also seeks comment on additional methods and technologies that might prove successful in combating contraband device use in correctional facilities, and on various other proposals related to the authorization process for CISs and their deployment.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/18/13	78 FR 36469
NPRM Comment Period End.	08/08/13	
FNPRM .....	05/18/17	82 FR 22780
R&O .....	05/18/17	82 FR 22742
Final Rule Effective (Except for Rules Requiring OMB Approval).	06/19/17	
FNPRM Comment Period End.	07/17/17	
Final Rule Effective for 47 CFR 1.9020(n), 1.9030(m), 1.9035(o), and 20.23(a).	10/20/17	82 FR 48773
Final Rule Effective for 47 CFR 1.902(d)(8), 1.9035(d)(4), 20.18(a), and 20.18(r).	02/12/18	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Melissa Conway, Attorney Advisor, Mobility Div., Wireless Bureau, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554, *Phone:* 202 418-2887, *Email:* melissa.conway@fcc.gov, *RIN:* 3060-AK06

**342. Promoting Investment in the 3550-3700 MHz Band; GN Docket No. 17-258**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i); 47 U.S.C. 154(j); 47 U.S.C. 302(a); 47 U.S.C. 303 and 304; 47 U.S.C. 307(e); 47 U.S.C. 316

*Abstract:* The Report and Order and Second Further Notice of Proposed Rulemaking (NPRM) adopted by the Commission established a new Citizens Broadband Radio Service for shared wireless broadband use of the 3550 to 3700 MHz band. The Citizens Broadband Radio Service is governed by a three-tiered spectrum authorization framework to accommodate a variety of commercial uses on a shared basis with incumbent Federal and non-Federal users of the band. Access and operations

will be managed by a dynamic spectrum access system. The three tiers are: Incumbent Access, Priority Access, and General Authorized Access. Rules governing the Citizens Broadband Radio Service are found in part 96 of the Commission's rules.

The Order on Reconsideration and Second Report and Order addressed several Petitions for Reconsideration submitted in response to the Report and Order and resolved the outstanding issues raised in the Second Further Notice of Proposed Rulemaking.

The 2017 NPRM sought comment on limited changes to the rules governing Priority Access Licenses in the band, adjacent channel emissions limits, and public release of base station registration information.

The 2018 Report and Order addressed the issues raised in the 2017 NPRM and implemented changes rules governing Priority Access Licenses in the band and public release of base station registration information.

On July 2020, the Commission commenced an auction of Priority Access Licenses in the band. "Winning bidders were announced on September 2, 2020".

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/08/13	78 FR 1188
NPRM Comment Period End.	03/19/13	
FNPRM .....	06/02/14	79 FR 31247
FNPRM Comment Period End.	08/15/14	
R&O and 2nd FNPRM.	06/15/15	80 FR 34119
2nd FNPRM Comment Period End.	08/14/15	
Order on Recon and 2nd R&O.	07/26/16	81 FR 49023
NPRM .....	11/28/17	82 FR 56193
NPRM Comment Period End.	01/29/18	
R&O .....	12/07/18	83 FR 6306
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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*RIN:* 3060-AK12

**343. Use of Spectrum Bands Above 24 GHz for Mobile Services—Spectrum Frontiers: WT Docket 10-112**

*Legal Authority:* 47 U.S.C. 151 to 154; 47 U.S.C. 157; 47 U.S.C. 160; 47 U.S.C. 201; 47 U.S.C. 225; 47 U.S.C. 227; 47 U.S.C. 301 and 302; 47 U.S.C. 302(a); 47 U.S.C. 303 and 304; 47 U.S.C. 307; 47 U.S.C. 309 and 310; 47 U.S.C. 316; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 336; 47 U.S.C. 1302

*Abstract:* In this proceeding, the Commission adopted service rules for licensing of mobile and other uses for millimeter wave (mmW) bands. These high frequencies previously have been best suited for satellite or fixed microwave applications; however, recent technological breakthroughs have newly enabled advanced mobile services in these bands, notably including very high speed and low latency services. This action will help facilitate Fifth Generation mobile services and other mobile services. In developing service rules for mmW bands, the Commission will facilitate access to spectrum, develop a flexible spectrum policy, and encourage wireless innovation.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/13/16	81 FR 1802
NPRM Comment Period End.	02/26/16	
FNPRM .....	08/24/16	81 FR 58269
Comment Period End.	09/30/16	
FNPRM Reply Comment Period End.	10/31/16	
R&O .....	11/14/16	81 FR 79894
R&O .....	01/02/18	83 FR 37
FNPRM .....	01/02/18	83 FR 85
FNPRM Comment Period End.	01/23/18	
R&O .....	07/20/18	83 FR 34478
FNPRM .....	07/20/18	83 FR 34520
FNPRM Comment Period End.	09/28/18	
R&O .....	02/05/19	84 FR 1618
R&O .....	05/01/19	84 FR 18405
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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**344. Transforming the 2.5 GHz Band, WT Docket No. 18-120**

*Legal Authority:* 47 U.S.C. 151 to 153; 47 U.S.C. 154(i); 47 U.S.C. 157; 47

U.S.C. 201; 47 U.S.C. 301 and 302; 47 U.S.C. 304; 47 U.S.C. 307 to 310; 47 U.S.C. 1302

*Abstract:* The 2.5 GHz band (2496-2690 MHz) constitutes the single largest band of contiguous spectrum below 3 GHz and has been identified as prime spectrum for next generation mobile operations, including 5G uses. Significant portions of this band, however, currently lie fallow across approximately one-half of the United States, primarily in rural areas. Moreover, access to the Educational Broadband Service (EBS) has been strictly limited since 1995, and current licensees are subject to a regulatory regime largely unchanged from the days when educational TV was the only use envisioned for this spectrum. The Commission proposes to allow more efficient and effective use of this spectrum band by providing greater flexibility to current EBS licensees as well as providing new opportunities for additional entities to obtain unused 2.5 GHz spectrum to facilitate improved access to next generation wireless broadband, including 5G. The Commission also seeks comment on additional approaches for transforming the 2.5 GHz band, including by moving directly to an auction for some or all of the spectrum.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/07/18	83 FR 26396
NPRM Comment Period Extended.	06/21/18	83 FR 31515
NPRM Comment Period End.	09/07/18	
Final Rule .....	10/25/19	84 FR 57343
Dismissal of Petitions for Reconsideration.	02/23/21	86 FR 10839
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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**345. Expanding Flexible Use of the 3.7 to 4.2 GHz Band: GN Docket No. 18-122**

*Legal Authority:* 47 U.S.C.151 to 153; 47 U.S.C.154(i); 47 U.S.C.157; 47 U.S.C. 201; 47 U.S.C. 301 to 304; 47 U.S.C. 307 to 310; 47 U.S.C. 1302; . . .

*Abstract:* In the 2020 Report and Order, the Commission adopted rules to make 280 megahertz of mid-band



spectrum available for flexible use (plus a 20-megahertz guard band) throughout the contiguous United States. Pursuant to the Report and Order, existing fixed satellite service (FSS) and fixed services (FS) must relocate operations out of the lower portion of the 3.7–4.0 GHz band. The Commission will issue flexible use licenses in the 3.7–3.98 GHz portion of the band in the contiguous United States via a system of competitive bidding. The Commission established rules to govern the transition including optional payments for satellite operators that choose to relocate on an accelerated schedule and provide reimbursement to FSS operators and their associated earth stations for reasonable expenses incurred to facilitate the transition. The Report and Order also established service and technical rules for the new flexible use licenses that will be issued in the 3.7–3.98 GHz portion of the band. “On December 8, 2020, the Commission began an auction of licenses in the 3.7–3.98 GHz portion of the band. the winning bidders were announced on February 24, 2021”.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/29/18	83 FR 44128
NPRM Comment Period End.	11/27/18	
Public Notice .....	05/20/19	84 FR 22733
Certifications and Data Filing Deadline.	05/28/19	
Public Notice .....	06/03/19	84 FR 22514
Public Notice Comment Period End.	07/03/19	
Public Notice Reply Comment Period End.	07/18/19	
R&O .....	04/23/20	85 FR 22804
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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*RIN:* 3060–AK76

**346. Amendment of the Commission’s Rules To Promote Aviation Safety: WT Docket No. 19–140**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 303; 307(e)

*Abstract:* The Federal Communications Commission regulates the Aviation Radio Service, a family of services using dedicated spectrum to enhance the safety of aircraft in flight, facilitate the efficient movement of aircraft both in the air and on the ground, and otherwise ensure the reliability and effectiveness of aviation communications. Recent technological advances have prompted the Commission to open this new rulemaking proceeding to ensure the timely deployment and use of today’s state-of-the-art safety-enhancing technologies. With this Notice of Proposed Rulemaking, the Commission proposes changes to its part 87 Aviation Radio Service rules to support the deployment of more advanced avionics technology, increase the efficient use of limited spectrum resources, and generally improve aviation safety.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/02/19	84 FR 31542
NPRM Comment Period End.	09/03/19	
NPRM Reply Comment Period End.	09/30/19	
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Wireline Competition Bureau*

Long-Term Actions

**347. Local Telephone Networks That LECS Must Make Available to Competitors**

*Legal Authority:* 47 U.S.C. 251  
*Abstract:* The Commission adopted rules applicable to incumbent local exchange carriers (LECs) to permit competitive carriers to access portions of the incumbent LECs’ networks on an unbundled basis. Unbundling allows

competitors to lease portions of the incumbent LECs’ network to provide telecommunications services. These rules, adopted in dockets CC 96–98, WC 01–338, and WC 04–313, are intended to accelerate the development of local exchange competition.

*Timetable:*

Action	Date	FR Cite
Second FNPRM ..	04/26/99	64 FR 20238
Fourth FNPRM ....	01/14/00	65 FR 2367
Errata Third R&O and Fourth FNPRM.	01/18/00	65 FR 2542
Second Errata Third R&O and Fourth FNPRM.	01/18/00	65 FR 2542
Supplemental Order.	01/18/00	65 FR 2542
Third R&O .....	01/18/00	65 FR 2542
Correction .....	04/11/00	65 FR 19334
Supplemental Order Clarification.	06/20/00	65 FR 38214
Public Notice .....	02/01/01	66 FR 8555
Public Notice .....	03/05/01	66 FR 18279
Public Notice .....	04/10/01	
Public Notice .....	04/23/01	
Public Notice .....	05/14/01	
NPRM .....	01/15/02	67 FR 1947
Public Notice .....	05/29/02	
Public Notice .....	08/01/02	
Public Notice .....	08/13/02	
NPRM .....	08/21/03	68 FR 52276
R&O and Order on Remand.	08/21/03	68 FR 52276
Errata .....	09/17/03	
Report .....	10/09/03	68 FR 60391
Order .....	10/28/03	
Order .....	01/09/04	
Public Notice .....	01/09/04	
Public Notice .....	02/18/04	
Order .....	07/08/04	
Second R&O .....	07/08/04	69 FR 43762
Order on Recon ..	08/09/04	69 FR 54589
Interim Order .....	08/20/04	69 FR 55111
NPRM .....	08/20/04	69 FR 55128
Public Notice .....	09/10/04	
Public Notice .....	09/13/04	
Public Notice .....	10/20/04	
Order on Recon ..	12/29/04	69 FR 77950
Order on Remand	02/04/04	
Public Notice .....	04/25/05	70 FR 29313
Public Notice .....	05/25/05	70 FR 34765
Declaratory Ruling	05/26/11	
NPRM .....	01/06/20	85 FR 472
NPRM Comment Period End.	03/06/20	
Report & Order ...	01/08/21	86 FR 1636
Next Action Undetermined.	To Be Determined	

*Regulatory Flexibility Analysis Required: Yes.*

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### 348. Numbering Resource Optimization

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154; 47 U.S.C. 201 *et seq.*; 47 U.S.C. 251(e)

*Abstract:* To slow the rate of numbering exhaust in the U.S. and prolong the life of the North American Numbering Plan, this proceeding considers and implements a number of strategies to ensure that telephone numbers are used efficiently, and that all carriers have the numbering resources they need to compete in the rapidly expanding telecommunications marketplace.

In 1999, the Commission released the Numbering Resource Optimization Notice of Proposed Rulemaking (Notice) in CC Docket 99–200. The Notice examined and sought comment on several administrative and technical measures aimed at improving the efficiency with which telecommunications numbering resources are used and allocated. It incorporated input from the North American Numbering Council (NANC), a Federal advisory committee, which advises the Commission on issues related to number administration.

In the Numbering Resource Optimization First Report and Order and Further Notice of Proposed Rulemaking (NRO First Report and Order), released on March 31, 2000, the Commission adopted a mandatory utilization data reporting requirement, a uniform set of categories of numbers for which carriers must report their utilization, and a utilization threshold framework to increase carrier accountability and incentives to use numbers efficiently. In addition, the Commission adopted a single system for allocating numbers in blocks of 1,000, rather than 10,000, wherever possible, and established a plan for national rollout of thousands-block number pooling. The Commission also adopted numbering resource reclamation requirements to ensure that unused numbers are returned to the North American Numbering Plan (NANP) inventory for assignment to other carriers. Also, to encourage better management of numbering resources, carriers are required, to the extent possible, to first assign numbering resources within thousands blocks (a form of sequential numbering).

In the NRO Second Report and Order, the Commission adopted a measure that requires all carriers to use at least 60 percent of their numbering resources before they may get additional numbers in a particular area. That 60 percent utilization threshold increases to 75 percent over the next three years. The

Commission also established a 5-year term for the national pooling administrator and an auditing program to verify carrier compliance with the Commission's rules. Furthermore, the Commission declined to amend the existing Federal rules for area code relief or specify any new Federal guidelines for the implementation of area code relief. The Commission also declined to state a preference for either all-services overlays or geographic splits as a method of area code relief.

Regarding mandatory nationwide 10-digit dialing, the Commission declined to adopt this measure at the present time. Furthermore, the Commission declined to mandate nationwide expansion of the "D digit" (the "N" of an NXX or central office code) to include zero or one, or to grant State commissions the authority to implement the expansion of the "D" digit as a numbering resource optimization measure presently.

In the NRO Third Report and Order, the Commission addressed national thousands-block number pooling administration issues, including declining to alter the implementation date for covered CMRS carriers to participate in pooling. The Commission also addressed Federal cost recovery for national thousands-block number pooling, and continued to require States to establish cost recovery mechanisms for costs incurred by carriers participating in pooling trials. The Commission reaffirmed the Months-To-Exhaust (MTE) requirement for carriers. The Commission declined to lower the utilization threshold established in the Second Report and Order, and declined to exempt pooling carriers from the utilization threshold. The Commission also established a safety valve mechanism to allow carriers that do not meet the utilization threshold in a given rate center to obtain additional numbering resources. In the NRO Third Report and Order, the Commission lifted the ban on technology-specific overlays (TSOs) and delegated authority to the Common Carrier Bureau, in consultation with the Wireless Telecommunications Bureau, to resolve any such petitions. Furthermore, the Commission found that carriers who violate its numbering requirements, or fail to cooperate with an auditor conducting either a "for cause" or random audit, should be denied numbering resources in certain instances. The Commission also reaffirmed the 180-day reservation period, declined to impose fees to extend the reservation period, and found that State commissions should be

allowed password-protected access to the NANP Administrator database for data pertaining to NPAs located within their State. The measures adopted in the NRO orders will allow the Commission to monitor more closely the way numbering resources are used within the NANP, and will promote more efficient allocation and use of NANP resources by tying a carrier's ability to obtain numbering resources more closely to its actual need for numbers to serve its customers.

In NRO Third Order on Recon in CC Docket No. 99–200, Third Further Notice of Proposed Rulemaking in CC Docket No. 99–200, and Second Further Notice of Proposed Rulemaking in CC Docket No. 95–116, the Commission reversed its clarification that those requirements extend to all carriers in the largest 100 MSAs, regardless of whether they have received a request from another carrier to provide LNP. The Commission also sought comment on whether the Commission should again extend the LNP requirements to all carriers in the largest 100 MSAs, regardless of whether they receive a request to provide LNP. The Commission also sought comment on whether all carriers in the top 100 MSAs should be required to participate in thousands-block number pooling, regardless of whether they are required to be LNP capable. In addition, the Commission sought comment on whether all MSAs included in Combined Metropolitan Statistical Areas (CMSAs) on the Census Bureau's list of the largest 100 MSAs should be included on the Commission's list of the top 100 MSAs.

In the NRO Fourth Report and Order and Further Notice of Proposed Rulemaking, the Commission reaffirmed that carriers must deploy LNP in switches within the 100 largest Metropolitan Statistical Areas (MSAs) for which another carrier has made a specific request for the provision of LNP. The Commission delegated the authority to State commissions to require carriers operating within the largest 100 MSAs that have not received a specific request for LNP from another carrier to provide LNP, under certain circumstances and on a case-by-case basis. The Commission concluded that all carriers, except those specifically exempted, are required to participate in thousands-block number pooling in accordance with the national rollout schedule, regardless of whether they are required to provide LNP, including commercial mobile radio service (CMRS) providers that were required to deploy LNP as of November 24, 2003. The Commission specifically exempted

from the pooling requirement rural telephone companies and Tier III CMRS providers that have not received a request to provide LNP. The Commission also exempted from the pooling requirement carriers that are the only service provider receiving numbering resources in a given rate center. Additionally, the Commission sought further comment on whether these exemptions should be expanded to include carriers where there are only two service providers receiving numbering resources in the rate center. Finally, the Commission reaffirmed that the 100 largest MSAs are identified in the 1990 U.S. Census reports, as well as those areas included on any subsequent U.S. Census report of the 100 largest MSAs.

In the NRO Order and Fifth Further Notice of Proposed Rulemaking, the Commission granted petitions for delegated authority to implement mandatory thousands-block pooling filed by the Public Service Commission of West Virginia, the Nebraska Public Service Commission, the Oklahoma Corporation Commission, the Michigan Public Service Commission, and the Missouri Public Service Commission. In granting these petitions, the Commission permitted these States to optimize numbering resources and further extend the life of the specific numbering plan areas. In the Further Notice of Proposed Rulemaking, the Commission sought comment on whether it should delegate authority to all States to implement mandatory thousands-block number pooling consistent with the parameters set forth in the NRO Order.

In its 2013 Notice of Proposed Rulemaking, the Commission proposed to allow interconnected Voice over internet Protocol (VOIP) providers to obtain telephone numbers directly from the North American Numbering Plan Administrator and the Pooling Administrator, subject to certain requirements. The Commission also sought comment on a forward-looking approach to numbers for other types of providers and uses, including telematics and public safety, and the benefits and number exhaust risks of granting providers other than interconnected VoIP providers direct access.

In its 2015 Report and Order, the Commission established an authorization process to enable interconnected VoIP providers that choose to obtain access to North American Numbering Plan telephone numbers directly from the North American Numbering Plan Administrator and/or the Pooling Administrator (Numbering

Administrators), rather than through intermediaries. The Order also set forth several conditions designed to minimize number exhaust and preserve the integrity of the numbering system. Specifically, the Commission required interconnected VoIP providers obtaining numbers to comply with the same requirements applicable to carriers seeking to obtain numbers. The requirements included any State requirements pursuant to numbering authority delegated to the States by the Commission, as well as industry guidelines and practices, among others. The Commission also required interconnected VoIP providers to comply with facilities readiness requirements adapted to this context, and with numbering utilization and optimization requirements. In addition, as conditions to requesting and obtaining numbers directly from the Numbering Administrators, the Commission required interconnected VoIP providers to (1) provide the relevant State commissions with regulatory and numbering contacts when requesting numbers in those States, (2) request numbers from the Numbering Administrators under their own unique OCN, (3) file any requests for numbers with the relevant State commissions at least 30 days prior to requesting numbers from the Numbering Administrators, and (4) provide customers with the opportunity to access all abbreviated dialing codes (N11 numbers) in use in a geographic area. Finally, the Order also modified Commission's rules in order to permit VoIP Positioning Center providers to obtain pseudo-Automatic Number Identification codes directly from the Numbering Administrators for purposes of providing E911 services.

*Timetable:*

Action	Date	FR Cite
NPRM .....	06/17/99	64 FR 32471
R&O and FNPRM	06/16/00	65 FR 37703
Second R&O and	02/08/01	66 FR 9528
Second FNPRM.		
Third R&O and	02/12/02	67 FR 643
Second Order		
on Recon.		
Third R&O on	04/05/02	67 FR 16347
Recon and		
Third FNPRM.		
Fourth R&O and	07/21/03	68 FR 43003
Fourth NPRM.		
Order and Fifth	03/15/06	71 FR 13393
FNPRM.		
Order .....	06/19/13	78 FR 36679
NPRM & NOI .....	06/19/13	78 FR 36725
R&O .....	10/29/15	80 FR 66454
Next Action Unde-		
termined.		

*Regulatory Flexibility Analysis Required: Yes.*

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**349. Jurisdictional Separations**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i) and 154(j); 47 U.S.C. 205; 47 U.S.C. 221(c); 47 U.S.C. 254; 47 U.S.C. 403; 47 U.S.C. 410

*Abstract:* Jurisdictional separations is the process, pursuant to part 36 of the Commission's rules, by which incumbent local exchange carriers apportion regulated costs between the intrastate and interstate jurisdictions. In 1997, the Commission initiated a proceeding seeking comment on the extent to which legislative changes, technological changes, and marketplace changes warrant comprehensive reform of the separations process. In 2001, the Commission adopted the Federal-State Joint Board on Jurisdictional Separations' Joint Board's recommendation to impose an interim freeze on the part 36 category relationships and jurisdictional cost allocation factors for a period of 5 years, pending comprehensive reform of the part 36 separations rules. In 2006, the Commission issued an Order and Further Notice of Proposed Rulemaking that extended the separations freeze for a period of 3 years and sought comment on comprehensive reform. In 2009, the Commission issued a Report and Order extending the separations freeze an additional year to June 2010. In 2010, the Commission issued a Report and Order extending the separations freeze for an additional year to June 2011. In 2011, the Commission adopted a Report and Order extending the separations freeze for an additional year to June 2012. In 2012, the Commission issued a Report and Order extending the separations freeze for an additional 2 years to June 2014. In 2014, the Commission issued a Report and Order extending the separations freeze for an additional 3 years to June 2017.

In 2016, the Commission issued a Report and Order extending the separations freeze for an additional 18 months until January 1, 2018. In 2017, the Joint Board issued a Recommended Decision recommending changes to the part 36 rules designed to harmonize them with the Commission's previous amendments to its part 32 accounting rules. In February 2018, the Commission issued a Notice of Proposed Rulemaking proposing amendments to part 36

consistent with the Joint Board's recommendations. In October 2018, the Commission issued a Report and Order adopting each of the Joint Board's recommendations and amending the Part 36 consistent with those recommendations. In July 2018, the Commission issued a Notice of Proposed Rulemaking proposing to extend the separations freeze for an additional 15 years and to provide rate-of-return carriers that had elected to freeze their category relationships a time limited opportunity to opt out of that freeze. In December 2018, the Commission issued a Report and Order extending the freeze for up to 6 years until December 31, 2024, and granting rate-of-return carriers that had elected to freeze their category relationships a one-time opportunity to opt out of that freeze.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/05/97	62 FR 59842
NPRM Comment Period End.	12/10/97	
Order .....	06/21/01	66 FR 33202
Order and FNPRM.	05/26/06	71 FR 29882
Order and FNPRM Comment Period End.	08/22/06	
R&O .....	05/15/09	74 FR 23955
R&O .....	05/25/10	75 FR 30301
R&O .....	05/27/11	76 FR 30840
R&O .....	05/23/12	77 FR 30410
R&O .....	06/13/14	79 FR 36232
R&O .....	06/02/17	82 FR 25535
Recommended Decision.	10/27/17	
NPRM .....	03/13/18	83 FR 10817
NPRM Comment Period End.	04/27/18	
NPRM .....	07/27/18	83 FR 35589
NPRM Comment Period End.	09/10/18	
R&O .....	12/11/18	83 FR 63581
R&O .....	02/15/19	84 FR 4351
Announcement of OMB Approval. Next Action Undetermined.	03/01/19	84 FR 6977

*Regulatory Flexibility Analysis Required: Yes.*

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**350. Rural Call Completion; WC Docket No. 13-39**

*Legal Authority:* 47 U.S.C. 154; 47 U.S.C. 217; 47 U.S.C. 201; 47 U.S.C. 202;

47 U.S.C. 218; 47 U.S.C. 220; 47 U.S.C. 262; 47 U.S.C. 403(b)(2)(B); 47 U.S.C. 251(a); 47 U.S.C. 225; 47 U.S.C. 620; 47 U.S.C. 251; 47 U.S.C. 251(e); 47 U.S.C. 254(k); 47 U.S.C. 616; 47 U.S.C. 226; 47 U.S.C. 227; 47 U.S.C. 228; 47 U.S.C. 1401-1473

*Abstract:* The Third RCC Order began implementation of the Improving Rural Call Quality and Reliability Act of 2017 (RCC Act), by adopting rules designed to ensure the integrity of our nation's telephone network and prevent unjust or unreasonable discrimination among areas of the United States in the delivery of telephone service. In particular, the Third RCC Order adopted rules to establish a registry for intermediate providers entities that transmit, but do not originate or terminate, voice calls. The Order requires intermediate providers to register with the Commission before offering to transmit covered voice communications, and requires covered providers entities that select the initial long-distance route for a large number of lines to use only registered intermediate providers to transmit covered voice communications.

The Fourth RCC Order completed the Commission's implementation of the RCC Act by adopting service quality standards for intermediate providers, as well as an exception to those standards for intermediate providers that qualify for the covered provider safe harbor in our existing rules. The Order also set forth procedures to enforce our intermediate provider requirements. Finally, the Fourth RCC Order adopted provisions to sunset the rural call completion data recording and retention requirements adopted in the First RCC Order one year after the effective date of the new intermediate provider service quality standards.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/12/13	78 FR 21891
Public Notice .....	05/07/13	78 FR 26572
NPRM Comment Period End.	05/28/13	
R&O and FNPRM PRA 60 Day Notice.	12/17/13	78 FR 76218
FNPRM Comment Period End.	12/30/13	78 FR 79448
FNPRM Comment Period End.	02/18/14	
PRA Comments Due.	03/11/14	
Public Notice .....	05/06/14	79 FR 25682
Order on Reconsideration.	12/10/14	79 FR 73227
Erratum .....	01/08/15	80 FR 1007
Public Notice .....	03/04/15	80 FR 11593
2nd FNPRM .....	07/27/17	82 FR 34911
2nd FNPRM Comment Period End.	08/28/17	

Action	Date	FR Cite
Reply Comment Period End.	09/25/17	
2nd Order .....	04/17/18	83 FR 21723
3rd FNPRM .....	04/17/18	83 FR 21983
3rd FNPRM Comment Period End.	06/04/18	
3rd FNPRM Reply Comment Period End.	06/19/18	
3rd Order .....	08/13/18	83 FR 47296
4th Order .....	03/15/19	84 FR 25692
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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**351. Comprehensive Review of the Part 32 Uniform System of Accounts (WC Docket No. 14-130)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201(b); 47 U.S.C. 219 and 220

*Abstract:* The Commission initiates a rulemaking proceeding to review the Uniform System of Accounts (USOA) to consider ways to minimize the compliance burdens on incumbent local exchange carriers while ensuring that the Agency retains access to the information it needs to fulfill its regulatory duties. In light of the Commission's actions in areas of price cap regulation, universal service reform, and intercarrier compensation reform, the Commission stated that it is likely appropriate to streamline the existing rules even though those reforms may not have eliminated the need for accounting data for some purposes. The Commission's analysis and proposals are divided into three parts. First, the Commission proposes to streamline the USOA accounting rules while preserving their existing structure. Second, the Commission seeks more focused comment on the accounting requirements needed for price cap carriers to address our statutory and regulatory obligations. Third, the Commission seeks comment on several related issues, including state requirements, rate effects, implementation, continuing property records, and legal authority.

On February 23, 2017, the Commission adopted a Report and Order that revised the part 32 USOA to substantially reduce accounting burdens

for both price cap and rate-of-return carriers. First, the Order streamlines the USOA for all carriers. In addition, the USOA will be aligned more closely with generally accepted accounting principles, or GAAP. Second, the Order allows price cap carriers to use GAAP for all regulatory accounting purposes as long as they comply with targeted accounting rules, which are designed to mitigate any impact on pole attachment rates. Alternatively, price cap carriers can elect to use GAAP accounting for all purposes other than those associated with pole attachment rates and continue to use the part 32 accounts for pole attachment rates for up to 12 years. Third, the Order addresses several miscellaneous issues, including referral to the Federal-State Joint Board on Separations the issue of examining jurisdictional separations rules in light of the reforms adopted to part 32.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/15/14	79 FR 54942
NPRM Comment Period End.	11/14/14	
NPRM Reply Comment Period End.	12/15/14	
R&O .....	04/04/17	82 FR 20833
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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**352. Restoring Internet Freedom (WC Docket No. 17-108); Protecting and Promoting the Open Internet (GN Docket No. 14-28)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i) and (j); 47 U.S.C. 201(b)

*Abstract:* In December 2017, the Commission adopted the Restoring Internet Freedom Declaratory Ruling, Report and Order, and Order (Restoring Internet Freedom Order), which restored the light-touch regulatory framework under which the Internet had grown and thrived for decades by classifying broadband internet access service as an information service. The Restoring Internet Freedom Order ends title II regulation of the internet and returns broadband internet access service to its long-standing classification as an information service; reinstates the determination that mobile broadband internet access service is not a

commercial mobile service and returns it to its original classification as a private mobile service; finds that transparency, Internet Service Providers (ISPs) economic incentives, and antitrust and consumer protection laws will protect the openness of the internet, and that title II regulation is unnecessary to do so; and adopts a transparency rule similar to that in the 2010 Open Internet Order, requiring disclosure of network management practices, performance characteristics, and commercial terms of service. Additionally, the transparency rule requires ISPs to disclose any blocking, throttling, paid prioritization, or affiliate prioritization, and eliminates the internet conduct standard and the bright-line conduct rules set forth in the 2015 title II Order.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/01/14	79 FR 37448
NPRM Comment Period End.	07/18/14	
NPRM Reply Comment Period End.	09/15/14	
R&O on Remand, Declaratory Ruling, and Order.	04/13/15	80 FR 19737
NPRM .....	06/02/17	82 FR 25568
NPRM Comment Period End.	07/03/17	
Declaratory Ruling, R&O, and Order.	02/22/18	83 FR 7852
Order on Remand Next Action Undetermined.	01/07/21	86 FR 994

*Regulatory Flexibility Analysis Required: Yes.*

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**353. Technology Transitions; GN Docket No. 13-5, WC Docket No. 05-25; Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment; WC Docket No. 17-84**

*Legal Authority:* 47 U.S.C. 214; 47 U.S.C. 251

*Abstract:* On April 20, 2017, the Commission adopted a Notice of Proposed Rulemaking, Notice of Inquiry, and Request for Comment (Wireline Infrastructure NPRM, NOI, and RFC) seeking input on a number of actions designed to accelerate: (1) The deployment of next-generation networks

and services by removing barriers to infrastructure investment at the Federal, State, and local level; (2) the transition from legacy copper networks and services to next-generation fiber-based networks and services; and (3) the reduction of Commission regulations that raise costs and slow, rather than facilitate, broadband deployment.

On November 16, 2017, the Commission adopted a Report and Order (R&O), Declaratory Ruling, and Further Notice of Proposed Rulemaking (Wireline Infrastructure Order) that takes a number of actions and seeks comment on further actions designed to accelerate the deployment of next-generation networks and services through removing barriers to infrastructure investment.

The Wireline Infrastructure Order took a number of actions. First, the Report and Order revised the pole attachment rules to reduce costs for attachers, reforms the pole access complaint procedures to settle access disputes more swiftly, and increases access to infrastructure for certain types of broadband providers. Second, the Report and Order revised the section 214(a) discontinuance rules and the network change notification rules, including those applicable to copper retirements, to expedite the process for carriers seeking to replace legacy network infrastructure and legacy services with advanced broadband networks and innovative new services. Third, the Report and Order reversed a 2015 ruling that discontinuance authority is required for solely wholesale services to carrier-customers. Fourth, the Declaratory Ruling abandoned the 2014 “functional test” interpretation of when section 214 discontinuance applications are required, bringing added clarity to the section 214(a) discontinuance process for carriers and consumers alike. Finally, the Further Notice of Proposed Rulemaking sought comment on additional potential pole attachment reforms, reforms to the network change disclosure and section 214(a) discontinuance processes, and ways to facilitate rebuilding networks impacted by natural disasters. Various parties filed a Petition for Review of the Wireline Infrastructure Order in the U.S. Court of Appeals for the Ninth Circuit. The Ninth Circuit denied the Petition on January 23, 2020 on the grounds that the parties lacked standing. On June 7, 2018, the Commission adopted a Second Report and Order (Wireline Infrastructure Second Report and Order) taking further actions designed to expedite the transition from legacy networks and services to next

generation networks and advanced services that benefit the American public and to promote broadband deployment by further streamlining the section 214(a) discontinuance rules, network change disclosure processes, and part 68 customer notification process.

The Wireline Infrastructure NPRM, NOI, and RFC sought comment on additional issues not addressed in the November Wireline Infrastructure Order or the June Wireline Infrastructure Second Report and Order. It sought comment on changes to the Commission's pole attachment rules to: (1) Streamline the timeframe for gaining access to utility poles; (2) reduce charges paid by attachers for work done to make a pole ready for new attachments; and (3) establish a formula for computing the maximum pole attachment rate that may be imposed on an incumbent LEC.

The Wireline Infrastructure NPRM, NOI, and RFC also sought comment on whether the Commission should enact rules, consistent with its authority under section 253 of the Act, to promote the deployment of broadband infrastructure by preempting State and local laws that inhibit broadband deployment. It also sought comment on whether there are State laws governing the maintenance or retirement of copper facilities that serve as a barrier to deploying next-generation technologies and services that the Commission might seek to preempt.

Previously, in November 2014, the Commission adopted a Notice of Proposed Rulemaking and Declaratory Ruling that: (1) Proposed new backup power rules; (2) proposed new or revised rules for copper retirements and service discontinuances; and (3) adopted a functional test in determining what constitutes a service for purposes of section 214(a) discontinuance review. In August 2015, the Commission adopted a Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking that: (i) Lengthened and revised the copper retirement process; (ii) determined that a carrier must obtain Commission approval before discontinuing a service used as a wholesale input if the carrier's actions will discontinue service to a carrier-customer's retail end users; (iii) adopted an interim rule requiring incumbent LECs that seek to discontinue certain TDM-based wholesale services to commit to certain rates, terms, and conditions; (iv) proposed further revisions to the copper retirement discontinuance process; and (v) upheld the November 2014 Declaratory Ruling. In July 2016, the

Commission adopted a Second Report and Order, Declaratory Ruling, and Order on Reconsideration that: (i) Adopted a new test for obtaining streamlined treatment when carriers seek Commission authorization to discontinue legacy services in favor of services based on newer technologies; (ii) set forth consumer education requirements for carriers seeking to discontinue legacy services in favor of services based on newer technologies; (iii) allowed notice to customers of discontinuance applications by email; (iv) required carriers to provide notice of discontinuance applications to Tribal entities; (v) made a technical rule change to create a new title for copper retirement notices and certifications; and (vi) harmonized the timeline for competitive LEC discontinuances caused by incumbent LEC network changes.

On August 2, 2018, the Commission adopted a Third Report and Order and Declaratory Ruling (Wireline Infrastructure Third Report and Order) establishing a new framework for the vast majority of pole attachments governed by Federal law by instituting a one-touch make-ready regime, in which a new attacher may elect to perform all simple work to prepare a pole for new wireline attachments in the communications space. This new framework includes safeguards to promote coordination among parties and ensures that new attachers perform work safely and reliably. The Commission retained its multi-party pole attachment process for attachments that are complex or above the communications space of a pole, but made significant modifications to speed deployment, promote accurate billing, expand the use of self-help for new attachers when attachment deadlines are missed, and reduce the likelihood of coordination failures that lead to unwarranted delays. The Commission also improved its pole attachment rules by codifying and redefining Commission precedent that requires utilities to allow attachers to overlap existing wires, thus maximizing the usable space on the pole; eliminating outdated disparities between the pole attachment rates that incumbent carriers must pay compared to other similarly-situated cable and telecommunications attachers; and clarifying that the Commission will preempt, on an expedited case-by-case basis, State and local laws that inhibit the rebuilding or restoration of broadband infrastructure after a disaster. The Commission also adopted a Declaratory Ruling that interpreted section 253(a) of the

Communications Act to prohibit State and local express and *de facto* moratoria on the deployment of telecommunications services or facilities and directed the Wireline Competition and Wireless Telecommunications Bureaus to act promptly on petitions challenging specific alleged moratoria. Numerous parties filed appeals of the Wireline Infrastructure Third Report and Order, and the appeals were consolidated in the U.S. Court of Appeals of the Ninth Circuit. On August 12, 2020, the Ninth Circuit issued an opinion upholding the Wireline Infrastructure Third Report and Order in all respects.

On August 8, 2018, Public Knowledge filed a Petition for Reconsideration of the Second Report and Order and Motion to Hold in Abeyance. On October 20, 2020, the Wireline Competition Bureau (Bureau) adopted a Declaratory Ruling, Order on Reconsideration, and Order. In the Declaratory Ruling, the Bureau clarified that any carrier seeking to discontinue legacy voice service to a community or part of a community that is the last retail provider of such legacy TDM service to that community or part of the community is subject to the Commission's technology transition discontinuance rules, including the requirements to receive streamlined treatment of its discontinuance application. In the Order on Reconsideration, the Bureau denied the Public Knowledge Petition for Reconsideration because all of Public Knowledge's arguments were fully considered, and rejected, by the Commission in the underlying proceeding. It also dismissed as moot the accompanying motion to have the Commission hold that *Order* in abeyance pending the outcome of the appeal that the Ninth Circuit ultimately denied.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/06/15	80 FR 450
NPRM Comment Period End.	02/05/15	
NPRM Reply Comment Period End.	03/09/15	
FNPRM .....	09/25/15	80 FR 57768
R&O .....	09/25/15	80 FR 57768
FNPRM Comment Period End.	10/26/15	
FNPRM Reply Comment Period End.	11/24/15	
2nd R&O .....	09/12/16	81 FR 62632
NPRM .....	05/16/17	82 FR 224533
NPRM Comment Period End.	06/15/17	

Action	Date	FR Cite
NPRM Reply Comment Period End.	07/17/17	
R&O .....	12/28/17	82 FR 61520
FNPRM Comment Period End.	01/17/18	
FNPRM Reply Comment Period End.	02/16/18	
2nd R&O .....	07/09/18	83 FR 31659
3rd R&O .....	09/14/18	83 FR 46812
Order on Reconsideration.	02/02/21	86 FR 8872
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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**354. Implementation of the Universal Service Portions of the 1996 Telecommunications Act**

*Legal Authority:* 47 U.S.C. 151 *et seq.*  
*Abstract:* The Telecommunications Act of 1996 expanded the traditional goal of universal service to include increased access to both telecommunications and advanced services such as high-speed internet for all consumers at just, reasonable and affordable rates. The Act established principles for universal service that specifically focused on increasing access to evolving services for consumers living in rural and insular areas, and for consumers with low-incomes. Additional principles called for increased access to high-speed internet in the nation’s schools, libraries, and rural healthcare facilities. The FCC established four programs within the Universal Service Fund to implement the statute: Connect America Fund (formally known as High-Cost Support) for rural areas; Lifeline (for low-income consumers), including initiatives to expand phone service for Native Americans; Schools and Libraries (E-rate); and Rural Healthcare. The Universal Service Fund is paid for by contributions from telecommunications carriers, including wireline and wireless companies, and interconnected Voice over Internet Protocol (VoIP) providers, including cable companies that provide voice service, based on an assessment on their interstate and international end-user revenues. The Universal Service Administrative Company, or USAC,

administers the four programs and collects monies for the Universal Service Fund under the direction of the FCC.

On February 7, 2020, the Commission launched \$20 Billion Rural Digital Opportunity Fund.

On April 2, 2020, the Commission fought COVID-19 with \$200M; Adopts Long-Term Connected Care Study.

On July 17, 2020, the Commission integrated provisions of the recently enacted Secure and Trusted Communications Networks Acts of 2019 into the existing supply chain rulemaking.

*Timetable:*

Action	Date	FR Cite
R&O and FNPRM NPRM Comment Period End.	01/13/17 02/13/17	82 FR 4275
NPRM Reply Comment Period End.	02/27/17	
R&O and Order on Recon.	03/21/17	82 FR 14466
Order on Recon ..	05/19/17	82 FR 22901
Order on Recon ..	06/08/17	82 FR 26653
Memorandum, Opinion & Order.	06/21/17	82 FR 228224
NPRM .....	07/30/19	84 FR 36865
NPRM .....	08/21/19	84 FR 43543
R&O and Order on Recon.	11/07/19	84 FR 59937
Order on Recon ..	12/09/19	84 FR 67220
R&O .....	12/20/19	84 FR 70026
R&O .....	12/27/19	84 FR 71308
R&O .....	01/17/20	85 FR 3044
Report & Order ...	03/10/20	85 FR 13773
Report & Order ...	05/11/20	85 FR 19892
Declaratory Ruling/2nd FNPRM.	08/04/20	85 FR 48134
Next Action Undetermined.		

*Regulatory Flexibility Analysis Required: Yes.*

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**355. Toll Free Assignment Modernization and Toll Free Service Access Codes: WC Docket No. 17-192, CC Docket No. 95-155**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 201(b); 47 U.S.C. 251(e)(1)

*Abstract:* In this Report and Order (Order), the Federal Communications Commission (FCC) initiates an auction to distribute certain toll free numbers. The numbers to be auctioned will be in the new 833 toll free code for which

there have been multiple, competing requests.

By using an auction, the FCC will ensure that sought-after numbers are awarded to the parties that value them most. In addition, the FCC will reserve certain 833 numbers for distribution to government and non-profit entities that request them for public health and safety purposes. The FCC will study the results of the auction to determine how to best use the mechanism to distribute toll-free numbers equitably and efficiently in the future as well. Revenues from the auction will be used to defray the cost of toll-free numbering administration, reducing the cost of numbering for all users. The Order establishing the toll-free number auction will also authorize and accommodate the use of a secondary market for numbers awarded at auction to further distribute these numbers to the entities that value them most. The Order also adopted several definitional and technical updates to improve clarity and flexibility in toll-free number assignment.

The Commission sought comment and then adopted auctions procedures and deadlines on August 2, 2019. Bidding for the auction occurred on December 17, 2019, and Somos issued an announcement of the winning bidders on December 20, 2019. On December 16, 2019, to facilitate the preparation of its study of the auction, the Bureau charged the North American Numbering Council, via its Toll Free Access Modernization Working Group, to issue a report evaluating various aspects of the 833 Auction, and recommending improvements for any future toll free number auctions.

On January 16, 2020, Somos released all of the 833 Auction data for public review. On March 13, 2020, the Bureau invited public comment on the 833 Auction in preparation for issuing a report on the lessons learned from the Auction. Comments were due on April 13, 2020. On July 14, 2020, the North American Numbering Council approved the Toll Free Assignment Modernization Working Group’s report, Perspectives on the December 2019 Auction of Numbers in the 833 Numbering Plan Area.

On January 15, 2021, the Bureau released a report that examined various aspects of this toll free number assignment experiment, including lessons learned, examination of auction outcomes, and recommendations for future toll free number assignment. The Bureau concluded that the 833 Auction was a successful experiment that provided invaluable experience and data that can facilitate further Commission efforts to continue to

modernize toll free number allocation in the future.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/13/17	82 FR 47669
NPRM Comment Period End.	11/13/17	
Final Rule .....	10/23/18	83 FR 53377
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

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**356. Establishing the Digital Opportunity Data Collection; WC Docket Nos. 19-195 and 11-10**

*Legal Authority:* 47 U.S.C. 35 to 39; 47 U.S.C. 154; 47 U.S.C. 211; 47 U.S.C. 219; 47 U.S.C. 220; 47 U.S.C. 402(b)(2)(B); Pub. L. 104-104; 47 U.S.C. 151-154; 47 U.S.C. 157; 47 U.S.C. 201; 47 U.S.C. 254; 47 U.S.C. 301; 47 U.S.C. 303; 47 U.S.C. 309; 47 U.S.C. 319; 47 U.S.C. 332; 47 U.S.C. 641 to 646; Pub. L 116-130; . . .

*Abstract:* In the Report and Order, the Federal Communications Commission (FCC), moving to better identify gaps in broadband coverage across the nation, initiated a new process for collecting fixed broadband data to better pinpoint where broadband service is lacking. The Report and Order concluded that there is a compelling and immediate need to develop more granular broadband deployment data to meet this goal and, accordingly, created the new Digital Opportunity Data Collection.

The Digital Opportunity Data Collection will collect geospatial broadband coverage maps from fixed broadband internet service providers of areas where they make fixed service available. This geospatial data will facilitate development of granular, high-quality fixed broadband deployment maps, which should improve the FCC's ability to target support for broadband expansion through the agency's Universal Service Fund programs. The Report and Order also adopts a process to collect public input on the accuracy of service providers' broadband maps, facilitated by a crowd-sourcing portal that will gather input from consumers as well as from state, local, and Tribal governments.

The Second Further NPRM sought comment on additional technical standards for fixed broadband providers that could ensure greater precision for

the Digital Opportunity Data Collection deployment reporting and on ways the Commission could incorporate crowdsourced and location-specific fixed broadband deployment data into this new data collection. The Second Further NPRM also sought comment on incorporating the collection of accurate, reliable mobile wireless voice and broadband coverage data into the Digital Opportunity Data Collection. In addition, the Second Further NPRM sought comment on sunseting the Form 477 broadband deployment collection following the creation of the Digital Opportunity Data Collection.

The Second Report and Order established requirements for: (1) Collecting fixed broadband availability and quality of service data; (2) collecting mobile broadband deployment data, including the submission of standardized propagation maps, propagation model details, and infrastructure information; (3) establishing a common dataset of all locations in the United States where fixed broadband service can be installed; (4) verifying the accuracy of broadband availability data; (5) collecting crowdsourced data; (6) enforcing the requirements of the Broadband DATA Act; (7) creating coverage maps from the data submitted; and (8) ensuring the privacy, confidentiality, and security of information submitted by broadband providers.

The Third Further NPRM sought comment on a range of additional measures to implement the requirements of the Broadband DATA Act, including additional processes for verifying broadband availability data submitted by providers, the development of a challenge process, and FCC Form 477 reforms.

The Third Report and Order specified which fixed and mobile broadband internet access service providers are required to report broadband availability data and expanded the reporting and certification requirements for certain fixed and mobile broadband filers in order to ensure that Commission staff have the necessary tools to assess the quality and accuracy of its broadband coverage maps. The Third Report and Order also adopted standards for collecting verified broadband data from State, local, and Tribal entities and certain third parties and adopted processes for submitting challenges to fixed and mobile coverage map data and data in the location Fabric, along with processes for providers to respond to such challenges. In addition, the Third Report and Order established standards for identifying

locations that will be included in the broadband serviceable locations Fabric and for enforcement of the requirements associated with the Digital Opportunity Data Collection.

*Timetable:*

Action	Date	FR Cite
NPRM .....	08/03/17	82 FR 40118
NPRM Comment Period End.	09/25/17	
Report & Order ...	08/01/19	84 FR 43705
Second Further Notice of Proposed Rule-making.	08/01/19	84 FR 43764
Second Further NPRM Comment Period End.	10/07/19	
2nd R&O .....	07/16/20	85 FR 50886
3rd FNPRM .....	07/16/20	85 FR 50911
3rd FNPRM Comment Period End.	09/08/20	
3rd R&O .....	01/13/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

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**357. Call Authentication Trust Anchor**

*Legal Authority:* 47 U.S.C. 201; 47 U.S.C. 251; 47 U.S.C. 227; 47 U.S.C. 227b; 47 U.S.C. 503

*Abstract:* On June 6, 2019, the Commission adopted a Declaratory Ruling and Third Further Notice of Proposed Rulemaking (CG Docket No. 17-59, WC Docket No. 17-97) that proposed and sought comment on mandating implementation of STIR/SHAKEN in the event that major voice service providers did not voluntarily implement the framework by the end of 2019.

On December 30, 2019, Congress enacted the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act. Along with numerous other provisions directed at addressing robocalls, the TRACED Act directs the Commission to require all voice service providers to implement STIR/SHAKEN in the internet Protocol (IP) portions of their networks, and to implement an effective caller ID authentication framework in the non-IP portions of their networks. The TRACED Act further creates processes by which voice service providers may be exempt from this



mandate if the Commission determines they have achieved certain implementation benchmarks, and by which voice service providers may be granted a delay in compliance based on a finding of undue hardship because of burdens or barriers to implementation or based on a delay in development of a caller ID authentication protocol for calls delivered over non-IP networks.

On March 31, 2020, the Commission adopted a Report and Order and Further Notice of Proposed Rulemaking (WC Docket Nos. 17–97, 20–67). The Report and Order mandated that all originating and terminating voice service providers implement the STIR/SHAKEN caller ID authentication framework in the IP portions of their networks by June 30, 2021. In the Further Notice the Commission sought comment on proposals to further promote caller ID authentication and implement the TRACED Act.

On September 29, 2020, the Commission adopted a Second Report and Order (WC Docket No. 17–97). The Second Report and Order implemented rules (1) granting extensions for compliance with the STIR/SHAKEN implementation mandate for small voice service providers, voice service providers that cannot obtain a SPC token from the Governance Authority, services scheduled for section 214 discontinuance, for those portions of a voice service provider’s network that rely on non-IP technology, and establishing a process for individual voice service providers to seek provider specific extensions; (2) requiring voice service providers using non-IP technology either to upgrade their networks to IP to enable STIR/SHAKEN implementation, or work to develop non-IP caller ID authentication technology and implement a robocall mitigation program in the interim; (3) establishing a process whereby a voice service provider may be exempt from the STIR/SHAKEN implementation mandate if the provider has achieved certain implementation benchmarks; (4) prohibiting voice service providers from imposing line item charges on consumer and small business subscribers for caller ID authentication; and (5) requiring intermediate providers to implement STIR/SHAKEN.

On January 13, 2021, the Commission adopted a Second Further Notice of Proposed Rulemaking proposing and seeking comment on a limited role for the Commission to oversee certificate revocation decisions by the private STIR/SHAKEN Governance Authority that would have the effect of placing providers in noncompliance with the Commission’s rules.

*Timetable:*

Action	Date	FR Cite
NOI .....	07/14/17	
DR and 3rd FNPRM.	06/06/19	84 FR 29478
NPRM .....	06/24/19	84 FR 29478
NPRM Comment Period End.	08/23/19	
3rd FNPRM Comment Period End.	08/23/19	
R&O and FNPRM FNPRM Comment Period End.	03/31/20	85 FR 22029
2nd R&O .....	09/29/20	85 FR 73360
2nd FNPRM .....	01/13/21	86 FR 9894
2nd FNPRM Comment Period.	03/19/21	
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

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**358. Implementation of the National Suicide Improvement Act of 2018**

*Legal Authority:* 47 U.S.C. 201; 47 U.S.C. 251

*Abstract:* On August 14, 2018, Congress passed the National Suicide Hotline Improvement Act (Act). Pub. L. 115–233, 132 Stat. 2424 (2018). The purpose of the Act was to study and report on the feasibility of designating a 3-digit dialing code to be used for a national suicide prevention and mental health crisis hotline system by considering each of the current N11 designations. The Act directed the Commission to: (1) Conduct a study that examines the feasibility of designating a simple, easy-to-remember, 3-digit dialing code to be used for a national suicide prevention and mental health crisis hotline system; and (2) analyze how well the current National Suicide Prevention Lifeline is working to address the needs of veterans. The Act also directed the Commission to coordinate with the Department of Health and Human Services’ Substance Abuse and Mental Health Services Administration (SAMHSA), the Secretary of Veterans Affairs, and the North American Numbering Council (NANC) in conducting the study, and to produce a report on the study by August 14, 2019.

On August 14, 2019, the Wireline Competition Bureau and Office of Economics and Analytics submitted its

report to Congress recommending that: (1) A 3-digit dialing code be used for a national suicide prevention and mental health crisis hotline system; and (2) the Commission should initiate a rulemaking proceeding to consider designating 988 as the 3-digit code.

On December 12, 2019, the Commission released a notice of proposed rulemaking (NPRM) proposing to designate 988 as a new, nationwide, 3-digit dialing code for a suicide prevention and mental health crisis hotline. WC Docket No. 18–336. The NPRM proposes that calls made to 988 be directed to the existing National Suicide Prevention Lifeline, which is made up of an expansive network of over 170 crisis centers located across the United States, and to the Veterans Crisis Line. The NPRM also proposes to require all telecommunications carriers and interconnected VoIP service providers to make, within 18 months, any changes necessary to ensure that users can dial 988 to reach the National Suicide Prevention Lifeline and Veterans Crisis Line.

On July 16, 2020, the Commission adopted an Order designating 988 as the 3-digit number to reach the Lifeline and Veterans Crisis Line (800–273–TALK or 800–273–8255) and requiring all telecommunications carriers, interconnected voice over internet Protocol (VoIP) providers, and one-way VoIP providers to make any network changes necessary to ensure that users can dial 988 to reach the Lifeline by July 16, 2022.

On October 16, 2020, the Communications Equality Advocates filed a petition for partial reconsideration of the FCC’s July 16, 2020 Report and Order. In their petition, Communications Equality Advocates requested that the FCC revise the Order to mandate text-to-988 and direct video calling (DVC) requirements and to have such requirements be implemented on the same timeline as voice calls to 988, by July 16, 2022.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/15/20	85 FR 2359
NPRM Comment Period End.	03/16/20	
Report & Order ...	07/16/20	
PFR .....	10/16/20	
Oppositions Due	12/02/20	
Replies Due .....	12/14/20	
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

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**359. Modernizing Unbundling and Resale Requirements in an Era of Next-Generation Networks and Services**

*Legal Authority:* 47 U.S.C. 10; 47 U.S.C. 251  
*Abstract:* On November 22, 2019, the Commission adopted a Notice of Proposed Rulemaking (NPRM) seeking comment on proposals to update the unbundling and avoided-cost resale obligations stemming from the 1996 Act and applicable only to incumbent LECs. Many of these obligations appear to no longer be necessary in many geographic areas due to vigorous competition for mass market broadband services in urban areas and numerous intermodal voice capabilities and services. But recognizing that rural areas pose special challenges for broadband deployment, the NPRM did not propose any change to unbundling requirements for broadband-capable loops in rural areas. The NPRM sought to promote the Commission's efforts to reduce unnecessary and outdated regulatory burdens that appear to discourage the deployment of next-generation networks, delay the IP transition, unnecessarily burden incumbent LECs with no similar obligations placed on their competitors, and no longer benefit consumers or serve the purpose for which they were intended.

On October 27, 2020, the Commission adopted a Report and Order (1) eliminating unbundling requirements, subject to a reasonable transition period, for enterprise-grade DS1 and DS3 loops where there is evidence of actual and potential competition, for broadband-capable DS0 loops and associated subloops in the most densely populated areas, and for voice-grade narrowband loops nationwide, but preserving unbundling requirements for DS0 loops in less densely populated areas and DS1 and DS3 loops in areas without sufficient evidence of competition; (2) eliminating unbundling requirements for network interface devices and multiunit premises subloops; (3) eliminating unbundled dark fiber transport provisioned from wire centers within a half-mile of competitive fiber networks, but providing an eight-year transition period for existing circuits so as to avoid stranding investment and last-mile deployment by competitive LECs that may harm consumers; (4) eliminating unbundling requirements for operations support systems, except

where carriers are continuing to manage UNEs and for purposes of local interconnection and local number portability; and (5) eliminating remaining avoided-cost resale requirements. The Report and Order ended unbundling and resale requirements where they stifle technology transitions and broadband deployment, but preserved unbundling requirements where they are still necessary to realize the 1996 Act's goal of robust intermodal competition benefiting all Americans.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/06/20	85 FR 472
NPRM Comment Period End.	03/06/20	
Report & Order ...	01/08/21	86 FR 1636
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Michele Berlove, Special Counsel, Competition Policy Div., WCB, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE., Washington, DC 20554, Phone: 202 418-1477, Email: michele.berlove@fcc.gov. RIN: 3060-AL02

**360. Eliminating Ex Ante Pricing Regulation and Tariffing of Telephone Access Charges (WC Docket 20-71)**

*Legal Authority:* 47 U.S.C. 151; 47 U.S.C. 154(i); 47 U.S.C. 160; 47 U.S.C. 201 to 203; 47 U.S.C. 214; 47 U.S.C. 225; 47 U.S.C. 251; 47 U.S.C. 254; 47 U.S.C. 303(r); 47 U.S.C. 616

*Abstract:* The NPRM proposes to deregulate and detariff Telephone Access Charges, which represent the last handful of interstate end-user charges that remain subject to regulation. The Notice also proposes to prohibit all carriers from separately listing these charges on customers' bills, given that some Telephone Access Charges are used to calculate contributions to the Federal Universal Service Fund and other federal programs as well as high cost support this Notice also proposes and seeks comment on ways to ensure stability in funding these programs.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/01/20	85 FR 30899
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

*Required:* Yes.

*Agency Contact:* Victoria Goldberg, Attorney-Advisor, Federal

Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, Phone: 202 418-7353, Email: victoria.goldberg@fcc.gov. RIN: 3060-AL03

**FEDERAL COMMUNICATIONS COMMISSION (FCC)**

*Wireline Competition Bureau*

Completed Actions

**361. Service Quality Measurement Plan for Interstate Special Access (WC Docket No. 02-112; CC Docket No. 00-175; WC Docket No. 06-120)**

*Legal Authority:* 47 U.S.C. 151 and 152; 47 U.S.C. 154(i) and (j); 47 U.S.C. 201 to 204; 47 U.S.C. 214; 47 U.S.C. 220(a); 47 U.S.C. 251 and 252; 47 U.S.C. 272; 47 U.S.C. 303(r)

*Abstract:* Pursuant to the Communications Act of 1934, as amended, the Commission imposed two information collections as conditions of substantial regulatory relief granted to the Bell Operating Companies (BOCs), including their independent incumbent local exchange carrier affiliates. The first information collection requires the BOCs, including their independent incumbent local exchange carrier (LEC) affiliates, to report special access performance metrics on a quarterly basis. The second information collection required the BOCs, and their independent incumbent LEC affiliates, to provide their residential customers with the total number of long distance telecommunications service minutes they use each month. The second information collection expired in 2011.

On May 4, 2018, USTelecom filed a forbearance petition in which it sought forbearance from, among other things, obligations under section 272 of the Communications Act, including special access performance metrics reporting requirements for all carriers. See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, WC Docket No. 18-141 (filed May 4, 2018).

The Commission has sought comment on the USTelecom petition—*Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. 160(c) to Accelerate Investment in Broadband and Next-Generation Networks*, WC Docket No. 18-141, Order, DA 18-574 (June 1, 2018).

Comments and oppositions were due June 7, 2018, and replies by June 22, 2018 (DA18-475). These dates were extended until August 6, 2018, and September 5, 2018 (DA-18-574). The Commission extended the date by which the petition would be deemed

granted in the absence of a Commission decision that the petition fails to meet the standards for forbearance under section 10(a) of the Act by 90 days until August 2, 2019. (DA 19–75).

The Commission terminated these two information collections. See Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. 160(c) to Accelerate Investment in Broadband and Next-Generation Networks, Memorandum Opinion and Order, WC Docket No. 18–141, FCC 19–31 (April 15, 2019).

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/02/01	66 FR 50139
NPRM Comment Period End.	11/01/01	
NPRM .....	05/29/03	68 FR 32007
NPRM Comment Period End.	06/30/03	

Action	Date	FR Cite
R&O .....	10/12/07	72 FR 58021
NPRM .....	01/22/13	78 FR 4369
R&O .....	11/13/13	78 FR 67956
FNPRM .....	11/13/13	78 FR 68005
FNPRM Comment Period End.	12/20/13	
FNPRM Reply Comment Period End.	01/13/14	
OMB Approval .....	06/12/14	79 FR 33709
Inactive per Maura McGowan.	03/31/16	
Notice and Request for Comment.	05/16/17	82 FR 22545
Comment Period End.	07/17/17	
OMB Approval .....	09/06/17	
US Telecom Petition for Forbearance Comment Period End.	08/06/18	

Action	Date	FR Cite
US Telecom Petition for Forbearance Reply Comment Period End.	09/05/18	
Withdrawn .....	03/31/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Heather Hendrickson, Federal Communications Commission, Wireline Competition Bureau, 45 L Street NE, Washington, DC 20554, *Phone:* 202 418–7295, *Email:* [heather.hendrickson@fcc.gov](mailto:heather.hendrickson@fcc.gov).

*RIN:* 3060–AJ08

[FR Doc. 2021–14879 Filed 7–29–21; 8:45 am]

**BILLING CODE 6712–01–P**



# FEDERAL REGISTER

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Part XXIV

Federal Permitting Improvement Steering  
Council

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Semiannual Regulatory Agenda

**FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL**

**40 CFR Part 1900**

**Unified Agenda of Federal Regulatory and Deregulatory Actions**

**AGENCY:** Federal Permitting Improvement Steering Council.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** This agenda contains the proposed regulatory actions that the Federal Permitting Improvement Steering Council (Permitting Council) plans to undertake in 12 months following the General Service Administration’s Fall 2020 edition of its semiannual regulatory agenda, which included the Permitting Council’s previous regulatory agenda. The Permitting Council developed this agenda consistent with the Executive Order 12866 “Regulatory Planning and Review,” and Executive Order 13563 “Improving Regulation and Regulatory Review.”

**FOR FURTHER INFORMATION CONTACT:** John Cossa, General Counsel, Federal Permitting Improvement Steering Council, Office of the Executive Director, 1800 G Street NW, Suite 2400, Washington, DC 20006, (202) 607–3498, [john.cossa@fpisc.gov](mailto:john.cossa@fpisc.gov).

**SUPPLEMENTARY INFORMATION:** Established pursuant to Title 41 of the Fixing America’s Surface Transportation Act (FAST–41), 42 U.S.C. 4370m *et seq.*, the Permitting Council is comprised of the Permitting Council Executive Director, the designees of 13 Federal agency councilmembers (including designees of the Secretaries of Agriculture, Army, Commerce, the Interior, Energy, Transportation, Defense, and Homeland Security, Administrators of the Environmental Protection Agency and the Department of Housing and Urban Development, and Chairmen of the Federal Energy Regulatory Commission, Nuclear Regulatory Commission, and the Advisory Council on Historic Preservation), and additional council members, the Chair of CEQ and the Director of OMB. The Permitting

Council facilitates coordinated and timely Federal environmental review and permitting for FAST–41 “covered” infrastructure projects. Certain actions of the Permitting Council may affect the rights of the public or the regulated community, and accordingly warrant informal rulemaking pursuant to section 553 of the Administrative Procedure Act, 5 U.S.C. 553.

The Permitting Council’s complete Unified Agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov) and [www.regulations.gov](http://www.regulations.gov) in a format that offers users an enhanced ability to obtain information from the Unified Agenda database. Publication in the **Federal Register** is mandated for the regulatory flexibility agendas required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 602. Printing of the semiannual regulatory agenda entries is limited to fields that contain information required by the RFA’s Unified Agenda requirements.

Dated: March 22, 2021.

**Karen Hanley,**  
*Acting Executive Director.*

**FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL—COMPLETED ACTIONS**

Sequence No.	Title	Regulation Identifier No.
390 .....	FPISC Case 2018–001; Fees for Governance, Oversight, and Processing of Environmental Reviews and Authorizations.	3121–AA00
391 .....	FPISC Case 2020–001, Adding Mining as a Sector of Projects Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act (FAST–41).	3121–AA01

**FEDERAL PERMITTING IMPROVEMENT STEERING COUNCIL (FPISC)**

**Completed Actions**

**390. FPISC Case 2018–001; Fees for Governance, Oversight, and Processing of Environmental Reviews and Authorizations**

*Legal Authority:* 42 U.S.C. 4370m–8  
*Abstract:* The Permitting Council is withdrawing its proposal (83 FR 44846 (Sep. 4, 2018)) to establish an initiation fee for project sponsors to reimburse the Permitting Council for reasonable costs associated with implementing and managing certain aspects of the program established under Title 41 of the Fixing America’s Surface Transportation Act (FAST41). The Permitting Council will continue to assess the relative merits of collecting fees from project sponsors and various fee structures.

*Timetable:*

Action	Date	FR Cite
NPRM .....	09/04/18	83 FR 44846

Action	Date	FR Cite
NPRM Comment Period End.	11/05/18	
Withdrawn .....	05/30/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Amber Levofsky, Executive Operations Manager, Federal Permitting Improvement Steering Council, 1800 G Street NW, Suite 2400, Washington, DC 20006, *Phone:* 202 412–2064, *Email:* [amber.levofsky@fpisc.gov](mailto:amber.levofsky@fpisc.gov).  
*RIN:* 3121–AA00

**391. FPISC Case 2020–001, Adding Mining as a Sector of Projects Eligible for Coverage Under Title 41 of the Fixing America’s Surface Transportation Act (FAST–41)**

*Legal Authority:* 42 U.S.C. 4370m(6)(A)  
*Abstract:* Title 41 of the Fixing America’s Surface Transportation Act (FAST–41), 42 U.S.C. 4370m *et seq.*, established the Federal Permitting Improvement Council (Permitting Council), which is comprised of an

Office of the Executive Director, 13 Federal Agency Council members, and additional Council members, the Council on Environmental Quality, and Office of Management and Budget. The Permitting Council is charged with improving the timeliness, predictability, and transparency of the federal environmental review and authorization process for “covered” infrastructure projects across a statutorily-identified range of industry sectors, including renewable and conventional energy production, electricity transmission, surface transportation, aviation, ports and waterways, water resource projects, broadband, pipelines, manufacturing, and carbon capture. FAST–41 authorizes the Permitting Council, by majority vote of the Council members, to add classes of projects to those eligible for FAST–41 coverage. 42 U.S.C. 4370m(6)(A). Pursuant to that authority, and consistent with Executive Orders 13807 and 13817, the Permitting Council is proposing to include mining as a sector of projects eligible for coverage under FAST–41. Inclusion of

mining on the covered sector list does not guarantee that any particular mining project will be covered under FAST-41 or receive the benefits of enhanced coordination under the statute. A project sponsor seeking the benefits of FAST-41 must apply to the Permitting Council for project coverage.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/27/20	85 FR 75998
NPRM Comment Period End.	12/28/20	
Final Rule .....	01/08/21	86 FR 1281
Final Rule Effective.	01/08/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* John Cossa, General Counsel, Office of the Executive Director, Federal Permitting Improvement Steering Council, 1800 G Street NW, Suite 2400, Washington, DC 20006, *Phone:* 202 255-6936, *Email:* [john.cossa@fpisc.gov](mailto:john.cossa@fpisc.gov).  
*RIN:* 3121-AA01

[FR Doc. 2021-14890 Filed 7-29-21; 8:45 am]

**BILLING CODE 6820-PL-P**





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Part XXV

Federal Reserve System

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Semiannual Regulatory Agenda

**FEDERAL RESERVE SYSTEM**

**12 CFR Ch. II**

**Semiannual Regulatory Flexibility Agenda**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Board is issuing this agenda under the Regulatory Flexibility Act and the Board’s Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period May 1, 2021, through October 31, 2021. The next agenda will be published in fall 2021.

**DATES:** Comments about the form or content of the agenda may be submitted any time during the next 6 months.

**ADDRESSES:** Comments should be addressed to Ann E. Misback, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**FOR FURTHER INFORMATION CONTACT:** A staff contact for each item is indicated with the regulatory description below.

**SUPPLEMENTARY INFORMATION:** The Board is publishing its spring 2021 agenda as part of the Spring 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. The complete Unified Agenda will be available to the public at the following website: [www.reginfo.gov](http://www.reginfo.gov). Participation

by the Board in the Unified Agenda is on a voluntary basis.

The Board’s agenda is divided into four sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. The third section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. And a fourth section, Long-Term Actions, reports on matters where the next action is undetermined, 00/00/0000, or will occur more than 12 months after publication of the Agenda. A dot (•) preceding an entry indicates a new matter that was not a part of the Board’s previous agenda.

**Yao-Chin Chao,**  
*Assistant Secretary of the Board.*

**FEDERAL RESERVE SYSTEM—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
362 .....	Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R-1429).	7100-AD80

**FEDERAL RESERVE SYSTEM—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
363 .....	Source of Strength (Section 610 Review) .....	7100-AE73

**FEDERAL RESERVE SYSTEM (FRS)**

Final Rule Stage

**362. Regulation LL—Savings and Loan Holding Companies and Regulation MM—Mutual Holding Companies (Docket No: R-1429)**

*Legal Authority:* 5 U.S.C. 552; 5 U.S.C. 559; 5 U.S.C. 1813; 5 U.S.C. 1817; 5 U.S.C. 1828

*Abstract:* The Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) transferred responsibility for supervision of Savings and Loan Holding Companies (SLHCs) and their non-depository subsidiaries from the Office of Thrift Supervision (OTS) to the Board of Governors of the Federal Reserve System (the Board), on July 21, 2011. The Act also transferred supervisory functions related to Federal savings associations and State savings associations to the Office of the Comptroller of the Currency (OCC) and the Federal Deposit Insurance Corporation (FDIC), respectively. The Board on August 12, 2011, approved an interim final rule for SLHCs, including

a request for public comment. The interim final rule transferred from the OTS to the Board the regulations necessary for the Board to supervise SLHCs, with certain technical and substantive modifications. The interim final rule has three components: (1) New Regulation LL (part 238), which sets forth regulations generally governing SLHCs; (2) new Regulation MM (part 239), which sets forth regulations governing SLHCs in mutual form; and (3) technical amendments to existing Board regulations necessary to accommodate the transfer of supervisory authority for SLHCs from the OTS to the Board. The structure of interim final Regulation LL closely follows that of the Board’s Regulation Y, which governs bank holding companies, in order to provide an overall structure to rules that were previously found in disparate locations. In many instances, interim final Regulation LL incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation LL

also reflects statutory changes made by the Dodd-Frank Act with respect to SLHCs, and incorporates Board precedent and practices with respect to applications processing procedures and control issues, among other matters. Interim final Regulation MM organized existing OTS regulations governing SLHCs in mutual form (MHCs) and their subsidiary holding companies into a single part of the Board’s regulations. In many instances, interim final Regulation MM incorporated OTS regulations with only technical modifications to account for the shift in supervisory responsibility from the OTS to the Board. Interim final Regulation MM also reflects statutory changes made by the Dodd-Frank Act with respect to MHCs. The interim final rule also made technical amendments to Board rules to facilitate supervision of SLHCs, including to rules implementing Community Reinvestment Act requirements and to Board procedural and administrative rules. In addition, the Board made technical amendments to implement section 312(b)(2)(A) of the



Act, which transfers to the Board all rulemaking authority under section 11 of the Home Owner's Loan Act relating to transactions with affiliates and extensions of credit to executive officers, directors, and principal shareholders. These amendments include revisions to parts 215 (Insider Transactions) and part 223 (Transactions with Affiliates) of Board regulations.

*Timetable:*

Action	Date	FR Cite
Board Requested Comment.	09/13/11	76 FR 56508
Board Expects Further Action.	12/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Keisha Patrick, Special Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452-3559.

*RIN:* 7100-AD80

### FEDERAL RESERVE SYSTEM (FRS)

#### Long-Term Actions

#### 363. Source of Strength (Section 610 Review)

*Legal Authority:* 12 U.S.C. 1831(o)  
*Abstract:* The Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) plan to issue a proposed rule to implement section 616(d) of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Section 616(d) requires that bank holding companies, savings and loan holding companies, and other companies that directly or indirectly control an insured depository institution serve as a source of strength for the insured depository institution.

*Timetable:*

Action	Date	FR Cite
Next Action Undetermined.	To Be Determined	

*Regulatory Flexibility Analysis Required:* Undetermined.

*Agency Contact:* Melissa Clark, Lead Financial Institution Policy Analyst, Federal Reserve System, Division of Supervision and Regulation, Washington, DC 20551, *Phone:* 202 452-2277.

Jay Schwarz, Special Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452-2970.

Claudia Von Pervieux, Senior Counsel, Federal Reserve System, Legal Division, Washington, DC 20551, *Phone:* 202 452-2552.

*RIN:* 7100-AE73

[FR Doc. 2021-15327 Filed 7-29-21; 8:45 am]

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Part XXVI

Nuclear Regulatory Commission

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Semiannual Regulatory Agenda

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Chapter I

[NRC–2021–0053]

### Unified Agenda of Federal Regulatory and Deregulatory Actions

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** We are publishing our semiannual regulatory agenda (the Agenda) in accordance with Public Law 96–354, “The Regulatory Flexibility Act,” and Executive Order 12866, “Regulatory Planning and Review.” The NRC’s Agenda is a compilation of all rulemaking activities on which we have recently completed action or have proposed or are considering action. We have completed 7 rulemaking activities since our complete Agenda was issued online at the Office of Management and Budget’s website at <https://www.reginfo.gov> on December 9, 2020. This issuance of our Agenda contains 34 active and 20 long-term rulemaking activities: 3 are Economically Significant; 15 represent Other Significant agency priorities; 34 are Substantive, Nonsignificant rulemaking activities; and 2 are Administrative rulemaking activities. In addition, 3 rulemaking activities impact small entities. We are requesting comment on the rulemaking activities as identified in this Agenda. The NRC’s last Agenda was issued for public comment on March 31, 2021.

**DATES:** Submit comments on rulemaking activities as identified in this Agenda by August 30, 2021.

**ADDRESSES:** Submit comments on any rulemaking activity in the Agenda by the date and methods specified in the **Federal Register** notice for the rulemaking activity. Comments received on rulemaking activities for which the comment period has closed will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before the closure date specified in the **Federal Register** notice. You may submit comments on this Agenda through the Federal Rulemaking website by going to <https://www.regulations.gov> and searching for Docket ID NRC–2021–0053. Address questions about NRC dockets to Dawn Forder, telephone: 301–415–3407; email: [Dawn.Forder@nrc.gov](mailto:Dawn.Forder@nrc.gov).

For additional direction on obtaining information and submitting comments, see “Obtaining Information and

Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Cindy K. Bladey, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3280; email: [Cindy.Bladey@nrc.gov](mailto:Cindy.Bladey@nrc.gov). Persons outside the Washington, DC, metropolitan area may call, toll-free: 1–800–368–5642. For further information on the substantive content of any rulemaking activity listed in the Agenda, contact the individual listed under the heading “Agency Contact” for that rulemaking activity.

#### **SUPPLEMENTARY INFORMATION:**

#### **Obtaining Information and Submitting Comments**

##### *A. Obtaining Information*

Please refer to Docket ID NRC–2021–0053 when contacting the NRC about the availability of information for this document. You may obtain publicly available information related to this document by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2021–0053.
- *Attention:* The Public Document Room (PDR), where you may examine, and order copies of public documents is currently closed. You may submit your request to the PDR via email at [PDR.Resource@nrc.gov](mailto:PDR.Resource@nrc.gov) or call 1–800–397–4209 between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.
- *Reginfo.gov:*
  - For completed rulemaking activities go to <https://www.reginfo.gov/public/do/eAgendaMain>, select link for “Current Long Term Actions”, and select “Nuclear Regulatory Commission” from drop down menu.

##### *B. Submitting Comments*

Please include Docket ID NRC–2021–0053 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at <http://www.regulations.gov> as well as enter the comment submissions into the NRC’s Agencywide Documents Access and Management System (ADAMS). The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should

inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

#### **Introduction**

The Agenda is a compilation of all rulemaking activities on which an agency has recently completed action or has proposed or is considering action. The Agenda reports rulemaking activities in three major categories: Completed, active, and long-term. Completed rulemaking activities are those that were completed since publication of an agency’s last Agenda; active rulemaking activities are those for which an agency currently plans to have an Advance Notice of Proposed Rulemaking, a Proposed Rule, or a Final Rule issued within the next 12 months; and long-term rulemaking activities are rulemaking activities under development but for which an agency does not expect to have a regulatory action within the 12 months after publication of the current edition of the Unified Agenda.

The NRC assigns a “Regulation Identifier Number” (RIN) to a rulemaking activity when the Commission initiates a rulemaking and approves a rulemaking plan, or when the NRC staff begins work on a Commission-delegated rulemaking that does not require a rulemaking plan. The Office of Management and Budget uses this number to track all relevant documents throughout the entire “lifecycle” of a particular rulemaking activity. The NRC reports all rulemaking activities in the Agenda that have been assigned a RIN and meet the definition for a completed, an active, or a long-term rulemaking activity.

The information contained in this Agenda is updated to reflect any action that has occurred on a rulemaking activity since publication of our last Agenda on December 9, 2020. Specifically, the information in this Agenda has been updated through March 17, 2021. The NRC provides additional information on planned rulemaking and petition for rulemaking activities, including priority and schedule, in NRC’s Rulemaking Tracking System on our website at <https://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/active/ruleindex.html>.

The date for the next scheduled action under the heading “Timetable” is the

date the next regulatory action for the rulemaking activity is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. The Agenda is intended to provide the public early notice and opportunity to participate in our rulemaking process. However, we may consider or act on any rulemaking activity even though it is not included in the Agenda.

**Section 610 Periodic Reviews Under the Regulatory Flexibility Act**

Section 610 of the Regulatory Flexibility Act (RFA) requires agencies

to conduct a review within 10 years of issuance of those regulations that have or will have a *significant* economic impact on a *substantial* number of small entities. We undertake these reviews to decide whether the rules should be unchanged, amended, or withdrawn. At this time, we do not have any rules that have a *significant* economic impact on a *substantial* number of small entities; therefore, we have not included any RFA Section 610 periodic reviews in this edition of the Agenda. A complete listing of our regulations that impact small entities and related Small Entity

Compliance Guides are available from the NRC’s website at <https://www.nrc.gov/about-nrc/regulatory/rulemaking/flexibility-act/small-entities.html>.

Dated at Rockville, Maryland, this 17th day of March 2021.

For the Nuclear Regulatory Commission.

**Cindy K. Bladey,**

*Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety and Safeguards.*

**NUCLEAR REGULATORY COMMISSION—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
364 .....	Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC–2020–0031] .....	3150–AK44

**NUCLEAR REGULATORY COMMISSION—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
365 .....	Revision of Fee Schedules: Fee Recovery for FY 2021 [NRC–2018–0292] .....	3150–AK24

**NUCLEAR REGULATORY COMMISSION—LONG-TERM ACTIONS**

Sequence No.	Title	Regulation Identifier No.
366 .....	Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024] .....	3150–AK58

**NUCLEAR REGULATORY COMMISSION (NRC)**

Proposed Rule Stage

**364. Revision of Fee Schedules: Fee Recovery for FY 2022 [NRC–2020–0031]**

*Legal Authority:* 31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

*Abstract:* This rulemaking would amend the NRC’s regulations for fee schedules. The NRC conducts this rulemaking annually to recover approximately 100 percent of the NRC’s FY 2022 budget authority, less excluded activities to implement NEIMA. This rulemaking would affect the fee schedules for licensing, inspection, and annual fees charged to the NRC’s applicants and licensees.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Anthony Rossi, Nuclear Regulatory Commission, Office

of the Chief Financial Officer, Washington, DC 20555–0001, *Phone:* 301 415–7341, *Email:* [anthony.rossi@nrc.gov](mailto:anthony.rossi@nrc.gov).

*RIN:* 3150–AK44

**NUCLEAR REGULATORY COMMISSION (NRC)**

Final Rule Stage

**365. Revision of Fee Schedules: Fee Recovery for FY 2021 [NRC–2018–0292]**

*Legal Authority:* 31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

*Abstract:* This rulemaking would amend the NRC’s regulations for fee schedules. The NRC conducts this rulemaking annually to recover approximately 100 percent of the NRC’s FY 2021 budget authority, less excluded activities to implement NEIMA. This rulemaking would affect the fee schedules for licensing, inspection, and annual fees charged to the NRC’s applicants and licensees.

*Timetable:*

Action	Date	FR Cite
NPRM .....	02/22/21	86 FR 10459
NPRM Comment Period End.	03/24/21	
Final Rule .....	05/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Anthony Rossi, Nuclear Regulatory Commission, Office of the Chief Financial Officer, Washington, DC 20555–0001, *Phone:* 301 415–7341, *Email:* [anthony.rossi@nrc.gov](mailto:anthony.rossi@nrc.gov).

*RIN:* 3150–AK24

**NUCLEAR REGULATORY COMMISSION (NRC)**

Long-Term Actions

**366. • Revision of Fee Schedules: Fee Recovery for FY 2023 [NRC–2021–0024]**

*Legal Authority:* 31 U.S.C. 483; 42 U.S.C. 2201; 42 U.S.C. 2214; 42 U.S.C. 5841

*Abstract:* This rulemaking would amend the NRC’s regulations for fee schedules. The NRC conducts this

rulemaking annually to recover approximately 100 percent of the NRC's annual budget authority, less excluded activities to implement NEIMA. This rulemaking would affect the fee schedules for licensing, inspection, and annual fees charged to the NRC's applicants and licensees.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/00/23	

*Regulatory Flexibility Analysis Required: Yes.*  
*Agency Contact:* Anthony Rossi, Nuclear Regulatory Commission, Office of the Chief Financial Officer,

Washington, DC 20555-0001, *Phone:* 301 415-7341, *Email:* anthony.rossi@nrc.gov.

*RIN:* 3150-AK58

[FR Doc. 2021-14887 Filed 7-29-21; 8:45 am]

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# FEDERAL REGISTER

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Part XXVII

Securities and Exchange Commission

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Semiannual Regulatory Agenda

**SECURITIES AND EXCHANGE COMMISSION**

**17 CFR Ch. II**

[Release Nos. 33–10942; 34–91852; IA–5734; IC–34269; S7–06–21]

**Regulatory Flexibility Agenda**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Securities and Exchange Commission is publishing the Chair’s agenda of rulemaking actions pursuant to the Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 94 Stat. 1164) (Sep. 19, 1980). The items listed in the Regulatory Flexibility Agenda for Spring 2021 reflect only the priorities of the Chair of the U.S. Securities and Exchange Commission, and do not necessarily reflect the view and priorities of any individual Commissioner.

Information in the agenda was accurate on May 11, 2021, the date on which the Commission’s staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries.

The Commission is now printing in the **Federal Register**, along with our preamble, only those agenda entries for which we have indicated that preparation of an RFA analysis is required.

The Commission’s complete RFA agenda will be available online at [www.reginfo.gov](http://www.reginfo.gov).

**DATES:** Comments should be received on or before August 30, 2021.

**ADDRESSES:** Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/other.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7–06–21 on the subject line.

*Paper Comments*

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. S7–06–21. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/other.shtml>). Comments are also available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Due to pandemic conditions, however, access to the Commission’s public reference room is not permitted at this time. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

**FOR FURTHER INFORMATION CONTACT:** William Miller, Office of the General Counsel, 202–551–8372.

**SUPPLEMENTARY INFORMATION:** The RFA requires each Federal agency, twice each year, to publish in the **Federal Register** an agenda identifying rules that the agency expects to consider in the next 12 months that are likely to have a significant economic impact on a

substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). The Commission may consider or act on any matter earlier or later than the estimated date provided on the agenda. While the agenda reflects the current intent to complete a number of rulemakings in the next year, the precise dates for each rulemaking at this point are uncertain. Actions that do not have an estimated date are placed in the long-term category; the Commission may nevertheless act on items in that category within the next 12 months. The agenda includes new entries, entries carried over from prior publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

- “Securities Act”—Securities Act of 1933
- “Exchange Act”—Securities Exchange Act of 1934
- “Investment Company Act”—Investment Company Act of 1940
- “Investment Advisers Act”—Investment Advisers Act of 1940
- “Dodd Frank Act”—Dodd-Frank Wall Street Reform and Consumer Protection Act

The Commission invites public comment on the agenda and on the individual agenda entries.

By the Commission.  
Dated: May 11, 2021.

**Vanessa A. Countryman,**  
*Secretary.*

**DIVISION OF CORPORATION FINANCE—PROPOSED RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
367 .....	Listing Standards for Recovery of Erroneously Awarded Compensation .....	3235–AK99
368 .....	Mandated Electronic Filings .....	3235–AM15

**DIVISION OF CORPORATION FINANCE—FINAL RULE STAGE**

Sequence No.	Title	Regulation Identifier No.
369 .....	Pay Versus Performance .....	3235–AL00
370 .....	Universal Proxy .....	3235–AL84
371 .....	Filing Fee Disclosure and Payment Methods Modernization .....	3235–AL96
372 .....	Rule 144 Holding Period and Form 144 Filings .....	3235–AM78



## DIVISION OF CORPORATION FINANCE—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
373 .....	Modernization of Rules and Forms for Compensatory Securities Offerings and Sales .....	3235-AM38

## DIVISION OF CORPORATION FINANCE—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
374 .....	Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets.	3235-AM27
375 .....	Temporary Rules to Include Certain “Platform Workers” in Compensatory Offerings Under Rule 701 and Form S-8.	3235-AM79

## DIVISION OF INVESTMENT MANAGEMENT—PROPOSED RULE STAGE

Sequence No.	Title	Regulation Identifier No.
376 .....	Reporting of Proxy Votes on Executive Compensation and Other Matters .....	3235-AK67
377 .....	Amendments to the Custody Rules for Investment Advisers .....	3235-AM32
378 .....	Amendments to Rule 17a-7 Under the Investment Company Act .....	3235-AM69

## DIVISION OF INVESTMENT MANAGEMENT—FINAL RULE STAGE

Sequence No.	Title	Regulation Identifier No.
379 .....	Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and ETFs; Fee Information in Investment Company Ads.	3235-AM52

## DIVISION OF INVESTMENT MANAGEMENT—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
380 .....	Amendments to the Custody Rules for Investment Companies .....	3235-AM66
381 .....	Amendments to Improve Fund Proxy System .....	3235-AM73

## DIVISION OF INVESTMENT MANAGEMENT—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
382 .....	Use of Derivatives by Registered Investment Companies and Business Development Companies .....	3235-AL60
383 .....	Investment Adviser Marketing .....	3235-AM08
384 .....	Reporting Threshold for Institutional Investment Managers .....	3235-AM65
385 .....	Amendments to the Family Office Rule .....	3235-AM67
386 .....	Good Faith Determinations of Fair Value .....	3235-AM71

## DIVISION OF TRADING AND MARKETS—LONG-TERM ACTIONS

Sequence No.	Title	Regulation Identifier No.
387 .....	Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934 .....	3235-AL14

## OFFICES AND OTHER PROGRAMS—COMPLETED ACTIONS

Sequence No.	Title	Regulation Identifier No.
388 .....	Qualifications of Accountants .....	3235-AM63

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Corporation Finance*

Proposed Rule Stage

**367. Listing Standards for Recovery of Erroneously Awarded Compensation**

*Legal Authority:* Pub. L. 111–203, sec. 954; 15 U.S.C. 78j–4

*Abstract:* The Division is considering recommending that the Commission re-propose rules to implement section 954 of the Dodd Frank Act, which requires the Commission to adopt rules to direct national securities exchanges to prohibit the listing of securities of issuers that have not developed and implemented a policy providing for disclosure of the issuer’s policy on incentive-based compensation and mandating the clawback of such compensation in certain circumstances.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/14/15	80 FR 41144
NPRM Comment Period End.	09/14/15	
NPRM .....	04/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Anne M. Krauskopf, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3500, *Email:* krauskopfa@sec.gov.

RIN: 3235–AK99

**368. Mandated Electronic Filings**

*Legal Authority:* 15 U.S.C. 77d; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77h; 15 U.S.C. 77j; 15 U.S.C. 77s(a); 15 U.S.C. 78c; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o(d); 15 U.S.C. 78p; 15 U.S.C. 78w(a); 15 U.S.C. 78ll

*Abstract:* The Division is considering recommending that the Commission propose amendments to Regulation S–T that would update the mandated electronic submissions requirements to include additional filings.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Noel Sean Harrison, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3249, *Email:* harrisons@sec.gov.

RIN: 3235–AM15

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Corporation Finance*

Final Rule Stage

**369. Pay Versus Performance**

*Legal Authority:* Pub. L. 111–203, sec. 953(a); 15 U.S.C. 78c(b); 15 U.S.C. 78n; 15 U.S.C. 78w(a); 15 U.S.C. 78mm

*Abstract:* The Division is considering recommending that the Commission adopt rules to implement section 953(a) of the Dodd-Frank Act, which added section 14(i) to the Exchange Act to require issuers to disclose information that shows the relationship between executive compensation actually paid and the financial performance of the issuer.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/07/15	80 FR 26329
NPRM Comment Period End.	07/06/15	
Final Action .....	04/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Steven G. Hearne, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3430, *Email:* hearnes@sec.gov.

RIN: 3235–AL00

**370. Universal Proxy**

*Legal Authority:* 15 U.S.C. 78n; 15 U.S.C. 78w(a)

*Abstract:* The Division is considering recommending that the Commission adopt amendments to the proxy rules to allow a shareholder voting by proxy to choose among all duly-nominated candidates in a contested election of directors.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/10/16	81 FR 79122
NPRM Comment Period End.	01/09/17	
NPRM Comment Period Re-opened.	05/06/21	86 FR 24364
NPRM Comment Period Re-opened End.	06/07/21	
Final Action .....	04/00/22	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Ted Yu, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3440, *Email:* yut@sec.gov.

RIN: 3235–AL84

**371. Filing Fee Disclosure and Payment Methods Modernization**

*Legal Authority:* 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s(a); 15 U.S.C. 78c; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78o(d); 15 U.S.C. 78s(a); 15 U.S.C. 78ll; 15 U.S.C. 80a–8; 15 U.S.C. 80a–24; 15 U.S.C. 80a–29; 15 U.S.C. 80a–37

*Abstract:* The Division is considering recommending that the Commission adopt amendments that would modernize filing fee disclosure and payment methods by requiring fee calculation information to be provided in a structured format, and by updating the fee payment options. The amendments are intended to improve filing fee preparation and payment processing by facilitating both enhanced validation through fee structuring and lower-cost, easily routable payments.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/27/19	84 FR 71580
NPRM Comment Period End.	02/25/20	
Final Action .....	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Mark W. Green, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–0301, *Phone:* 202 551–3809, *Email:* greenm@sec.gov.

RIN: 3235–AL96

**372. Rule 144 Holding Period and Form 144 Filings**

*Legal Authority:* 12 U.S.C. 5461 *et seq.*; 15 U.S.C. 77b; 15 U.S.C. 77b note; 15 U.S.C. 77c; 15 U.S.C. 77d; 15 U.S.C. 77f; 15 U.S.C. 77g; 15 U.S.C. 77h; 15 U.S.C. 77j; 15 U.S.C. 77r; 15 U.S.C. 77s; 15 U.S.C. 77s(a); 15 U.S.C. 77z–2; 15 U.S.C. 77z–3; 15 U.S.C. 77sss; 15 U.S.C. 77sss(a); 15 U.S.C. 78a *et seq.*; 15 U.S.C. 78c; 15 U.S.C. 78c(b); 15 U.S.C. 78d; 15 U.S.C. 78j; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o; 15 U.S.C. 78o–7 note; 15 U.S.C. 78o(d); 15 U.S.C. 78t; 15 U.S.C. 78u–5; 15 U.S.C. 78w; 15 U.S.C. 78w(a); 15 U.S.C. 78ll; 15 U.S.C. 78ll(d); 15 U.S.C. 78mm; 15 U.S.C. 80a–2(a); 15 U.S.C. 80a–3; 15 U.S.C. 80a–6(c); 15 U.S.C. 80a–8; 15 U.S.C. 80a–9; 15 U.S.C. 80a–10; 15 U.S.C. 80a–13; 15 U.S.C. 80a–24; 15 U.S.C. 80a–26; 15 U.S.C. 80a–28; 15 U.S.C. 80a–29; 15 U.S.C. 80a–30; 15 U.S.C. 80a–37; 15 U.S.C. 7201 *et seq.*; 18 U.S.C. 1350; sec. 953(b) Pub. L. 111–203, 124 Stat. 1904; sec. 102(a)(3) Pub. L. 112–106, 126 Stat. 309 (2012); sec. 107 Pub. L. 112–106,

126 Stat. 313 (2012); sec. 201(a) Pub. L. 112–106, 126 Stat. 313 (2012); sec. 401 Pub. L. 112–106, 126 Stat. 313 (2012); sec. 72001 Pub. L. 114–94, 129 Stat. 1312 (2015), unless otherwise noted;

*Abstract:* The Division is considering recommending that the Commission adopt amendments to Rule 144, a non-exclusive safe harbor that permits the public resale of restricted or control securities if the conditions of the rule are met, and rule amendments to update the electronic filing requirements applicable to Form 144.

*Timetable:*

Action	Date	FR Cite
NPRM .....	01/19/21	86 FR 5063
NPRM Comment Period End.	03/22/21	
Final Action .....	10/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* John Fieldsend, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3430, *Email:* fieldsendj@sec.gov.  
*RIN:* 3235–AM78

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Corporation Finance*

Long-Term Actions

**373. Modernization of Rules and Forms for Compensatory Securities Offerings and Sales**

*Legal Authority:* 15 U.S.C. 77bb  
*Abstract:* The Division is considering recommending that the Commission adopt rule amendments to Securities Act Rule 701, the exemption from registration for securities issued by non-reporting companies pursuant to compensatory arrangements, and Form S–8, the registration statement for compensatory offerings by reporting companies.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	07/24/18	83 FR 34958
ANPRM Comment Period End.	09/24/18	
NPRM .....	12/11/20	85 FR 80232
NPRM Comment Period End.	02/09/21	
Next Action Undetermined.	To Be Determined	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Anne M. Krauskopf, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3500, *Email:* krauskopfa@sec.gov.  
*RIN:* 3235–AM38

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Corporation Finance*

Completed Actions

**374. Facilitating Capital Formation and Expanding Investment Opportunities by Improving Access to Capital in Private Markets**

*Legal Authority:* 15 U.S.C. 77c; 15 U.S.C. 77d; 15 U.S.C. 77d–1; 15 U.S.C. 77s; 15 U.S.C. 77z–3; 15 U.S.C. 78c; 15 U.S.C. 78j(b); 15 U.S.C. 78l; 15 U.S.C. 78o; 15 U.S.C. 78q; 15 U.S.C. 78w(a); 15 U.S.C. 78mm; 15 U.S.C. 80a–6(c); 15 U.S.C. 80a–8; 15 U.S.C. 80a–24; 15 U.S.C. 80a–30; 15 U.S.C. 80a–38; 15 U.S.C. 80a–45; . . .

*Abstract:* The Commission adopted rule amendments to harmonize and streamline the Commission’s rules for exempt offerings under the Securities Act of 1933, including Regulation A, Regulation D, and Regulation Crowdfunding, in order to enhance their clarity and ease of use.

*Timetable:*

Action	Date	FR Cite
ANPRM .....	06/26/19	84 FR 30460
ANPRM Comment Period End.	09/24/19	
NPRM .....	03/31/20	85 FR 17956
NPRM Comment Period End.	06/01/20	
Final Action .....	01/14/21	86 FR 3496
Final Action Effective.	03/15/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Jennifer Zepralka, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3430, *Email:* zepralkaj@sec.gov.  
*RIN:* 3235–AM27

**375. Temporary Rules To Include Certain “Platform Workers” in Compensatory Offerings Under Rule 701 and Form S–8**

*Legal Authority:* 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s(a); 15 U.S.C. 78c(b); 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78o; 15 U.S.C. 78w(a); 15 U.S.C. 78mm; . . .

*Abstract:* The Commission proposed temporary rule amendments to Rule 701 and Form S–8 for offers and sales of securities for a compensatory purpose to certain platform workers. This item is being withdrawn.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/11/20	85 FR 79936
NPRM Comment Period End.	02/09/21	
Withdrawn .....	05/11/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Elliot Staffin, Division of Corporation Finance, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551–3243, *Email:* staffine@sec.gov.  
*RIN:* 3235–AM79

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Investment Management*

Proposed Rule Stage

**376. Reporting of Proxy Votes on Executive Compensation and Other Matters**

*Legal Authority:* 15 U.S.C. 78m; 15 U.S.C. 78w(a); 15 U.S.C. 78mm; 15 U.S.C. 78x; 15 U.S.C. 80a–8; 15 U.S.C. 80a–29; 15 U.S.C. 80a–30; 15 U.S.C. 80a–37; 15 U.S.C. 80a–44; Pub. L. 111–203, sec. 951

*Abstract:* The Division is considering recommending that the Commission repropose rule amendments to implement section 951 of the Dodd-Frank Act and to enhance the information reported on Form N–PX. The Commission previously proposed amendments to rules and Form N–PX that would require institutional investment managers subject to section 13(f) of the Exchange Act to report how they voted on any shareholder vote on executive compensation or golden parachutes pursuant to sections 14A(a) and (b) of the Exchange Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	10/28/10	75 FR 66622
NPRM Comment Period End.	11/18/10	
NPRM .....	11/00/21	

*Regulatory Flexibility Analysis Required: Yes.*

*Agency Contact:* Pamela Ellis, Division of Investment Management, Securities and Exchange Commission,

100 F Street NE, Washington, DC 20549, Phone: 202 551-3506, Email: ellisp@sec.gov.

RIN: 3235-AK67

**377. Amendments to the Custody Rules for Investment Advisers**

*Legal Authority:* 15 U.S.C. 80a-6(c); 15 U.S.C. 80a-17(f); 15 U.S.C. 80a-26; 15 U.S.C. 80a-28; 15 U.S.C. 80a-29; 15 U.S.C. 80a-30; 15 U.S.C. 80a-37(a); 15 U.S.C. 80a-30; 15 U.S.C. 80a-31; 15 U.S.C. 80a-36; 15 U.S.C. 80a-37; 15 U.S.C. 80b-4; 15 U.S.C. 80b-6(4); 15 U.S.C. 80b-11(a); 15 U.S.C. 80b-3(c)(1); 15 U.S.C. 80b-18b

*Abstract:* The Division is considering recommending that the Commission propose amendments to existing rules and/or propose new rules under the Investment Advisers Act of 1940 to improve and modernize the regulations around the custody of funds or investments of clients by Investment Advisers.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Melissa Harke, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-6722, Email: harkem@sec.gov.

RIN: 3235-AM32

**378. Amendments to Rule 17A-7 Under the Investment Company Act**

*Legal Authority:* 15 U.S.C. 80a-6(c); 15 U.S.C. 80a-10(f); 15 U.S.C. 80a-17(d); 15 U.S.C. 80a-37(a)

*Abstract:* The Division is considering recommending that the Commission propose amendments to rule 17a-7 under the Investment Company Act of 1940 concerning the exemption of certain purchase or sale transactions between an investment company and certain affiliated persons.

*Timetable:*

Action	Date	FR Cite
NPRM .....	04/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Adam Lovell, Senior Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-6637, Email: lovella@sec.gov.

RIN: 3235-AM69

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Investment Management*

Final Rule Stage

**379. Tailored Shareholder Reports, Treatment of Annual Prospectus Updates for Existing Investors, and Improved Fee and Risk Disclosure for Mutual Funds and ETFs; Fee Information in Investment Company Ads**

*Legal Authority:* 15 U.S.C. 77e ; 15 U.S.C. 77g; 15 U.S.C. 77j; 15 U.S.C. 77s; 15 U.S.C. 78c(b); 15 U.S.C. 77f; 15 U.S.C. 78j; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78o; 15 U.S.C. 78mm; 15 U.S.C. 80a-6; 15 U.S.C. 80a-8; 15 U.S.C. 80a-20; 15 U.S.C. 80a-24; 15 U.S.C. 80a-29; 15 U.S.C. 80a-37; 44 U.S.C. 3506; 44 U.S.C. 3507

*Abstract:* The Division is considering recommending that the Commission adopt a new streamlined shareholder report under the Investment Company Act of 1940. The Division is also considering recommending that the Commission adopt rule and form amendments to improve and modernize certain aspects of the current disclosure framework under the Investment Company Act.

*Timetable:*

Action	Date	FR Cite
NPRM .....	11/05/20	85 FR 70716
NPRM Comment Period End.	01/04/21	
Final Action .....	04/00/22	

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Michael Kosoff, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-6754, Email: kosoffm@sec.gov.

RIN: 3235-AM52

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Investment Management*

Long-Term Actions

**380. Amendments to the Custody Rules for Investment Companies**

*Legal Authority:* 15 U.S.C. 80a-6(c); 15 U.S.C. 80a-17(f); 15 U.S.C. 80a-26; 15 U.S.C. 80a-28; 15 U.S.C. 80a-29; 15 U.S.C. 80a-30; 15 U.S.C. 80a-31; 15 U.S.C. 80a-36; 15 U.S.C. 80a-37; 15 U.S.C. 80a-37(a)

*Abstract:* The Division is considering recommending that the Commission

propose amendments to rules concerning custody under the Investment Company Act of 1940.

*Timetable:* Next Action

Undetermined.

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Bradley Gude, Special Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-5590, Email: gudeb@sec.gov.

RIN: 3235-AM66

**381. Amendments To Improve Fund Proxy System**

*Legal Authority:* 15 U.S.C. 78m; 15 U.S.C. 78w; 15 U.S.C. 78mm; 15 U.S.C. 80a-2; 15 U.S.C. 80a-6; 15 U.S.C. 80a-20; 15 U.S.C. 80a-30; 15 U.S.C. 80a-37

*Abstract:* The Division is considering recommending that the Commission propose rule and form amendments to address the fund proxy system and the unique challenges that funds as issuers may experience in seeking shareholder approvals.

*Timetable:* Next Action

Undetermined.

*Regulatory Flexibility Analysis Required:* Yes.

*Agency Contact:* Amanda Wagner, Branch Chief, Investment Company Regulation Office, Securities and Exchange Commission, Division of Investment Management, 100 F Street NE, Washington, DC 20549, Phone: 202 551-6762, Email: wagnera@sec.gov.

RIN: 3235-AM73

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Investment Management*

Completed Actions

**382. Use of Derivatives by Registered Investment Companies and Business Development Companies**

*Legal Authority:* 15 U.S.C. 80a-6(c); 15 U.S.C. 80a-12(a); 15 U.S.C. 80a-18; 15 U.S.C. 80a-22(c); 15 U.S.C. 80a-22(e); 15 U.S.C. 80a-29; 15 U.S.C. 80a-30(a); 15 U.S.C. 80a-33(b); 15 U.S.C. 80a-35; 15 U.S.C. 80a-8; 15 U.S.C. 80a-37; 15 U.S.C. 80a-37(a); 15 U.S.C. 80a-60; 15 U.S.C. 80b-6(4); 15 U.S.C. 77f; 15 U.S.C. 77g(a); 15 U.S.C. 77j; 15 U.S.C. 77s(a); 15 U.S.C. 77a et seq; 15 U.S.C. 78j; 15 U.S.C. 78m; 15 U.S.C. 78o; 15 U.S.C. 78w; 15 U.S.C. 78ll

*Abstract:* The Commission adopted a new rule designed to enhance the regulation of the use of derivatives by registered investment companies, including mutual funds, exchange-traded funds, closed-end funds, and business development companies.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/28/15	80 FR 80884
NPRM Comment Period End.	03/28/16	
Second NPRM ....	01/24/20	85 FR 4446
Second NPRM Comment Period End.	03/04/20	
Final Action .....	12/21/20	85 FR 83162

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Brian Johnson, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551-6740, *Email:* johnsonbm@sec.gov.

RIN: 3235-AL60

**383. Investment Adviser Marketing**

*Legal Authority:* 15 U.S.C. 80b-3(d); 15 U.S.C. 80b-6(4); 15 U.S.C. 80b-11(a); 15 U.S.C. 80b-11(h); 15 U.S.C. 80b-4; 15 U.S.C. 80b-11; 15 U.S.C. 77s(a); 15 U.S.C. 78w(a); 15 U.S.C. 78bb(e)(2); 15 U.S.C. 7sss(a); 15 U.S.C. 80a-37(a); 15 U.S.C. 80b-3(c)(1); 15 U.S.C. 80b-4; 15 U.S.C. 80b-11(a)

*Abstract:* The Commission adopted amended rule 206(4)-1 under the Investment Advisers Act of 1940 regarding marketing communications and practices by investment advisers and rescinded rule 206(4)-3 under the Investment Advisers Act of 1940.

*Timetable:*

Action	Date	FR Cite
NPRM .....	12/10/19	84 FR 67518
NPRM Comment Period End.	02/10/20	
Final Action .....	03/05/21	86 FR 13024
Final Action Effective.	05/04/21	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Melissa Harke, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551-6722, *Email:* harkem@sec.gov.

RIN: 3235-AM08

**384. Reporting Threshold for Institutional Investment Managers**

*Legal Authority:* 15 U.S.C. 78c(b); 15 U.S.C. 78m(f); 15 U.S.C. 78w; 15 U.S.C. 78x; 15 U.S.C. 78mm

*Abstract:* Form 13F is the reporting form filed by institutional investment managers pursuant to section 13(f) of the Securities Exchange Act of 1934. Institutional investment managers that exercise investment discretion over

\$100 million or more in section 13(f) securities must file Form 13F. The Commission proposed rule and related form amendments regarding, among other things, the thresholds for Form 13F filers. The Division is considering recommendations for next steps, including whether to recommend targeted amendments to Form 13F and targeted exemptions from the filing requirements where duplicative filings exist. This item is being withdrawn.

*Timetable:*

Action	Date	FR Cite
NPRM .....	07/31/20	85 FR 46016
NPRM Comment Period End.	09/29/20	
Withdrawn .....	05/11/21	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Zeena Abdul-Rahman, Senior Counsel, Divisions of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551-4099, *Email:* abdulrahmanz@sec.gov.

RIN: 3235-AM65

**385. Amendments to the Family Office Rule**

*Legal Authority:* 15 U.S.C. 80b-2(a)(11)(G); 15 U.S.C. 80b-6a

*Abstract:* The Division is considering recommending that the Commission propose targeted amendments to the family office rule under section 202(a)(11) of the Investment Advisers Act of 1940. Family offices, as so defined in the Act, are excluded from the Act's definition of investment adviser, and are thus not subject to any of the provisions of the Act. This item is being withdrawn.

*Timetable:*

Action	Date	FR Cite
Withdrawn .....	05/11/21	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Alexis Palascak, Senior Counsel, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551-6246, *Email:* palascaka@sec.gov.

RIN: 3235-AM67

**386. Good Faith Determinations of Fair Value**

*Legal Authority:* 15 U.S.C. 80a-2(a); 15 U.S.C. 80a-6(c); 15 U.S.C. 80a-30(a); 15 U.S.C. 80a-31(c); 15 U.S.C. 80a-37(a); 15 U.S.C. 80a-58; 15 U.S.C. 80a-63(a)

*Abstract:* The Commission adopted a rule regarding the valuation practices

and the role of the board of directors with respect to the fair value of the investments of a registered investment company or business development company.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/13/20	85 FR 28734
NPRM Comment Period End.	07/21/20	
Final Action .....	01/06/21	86 FR 748
Final Action Effective.	03/08/21	

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* Thoreau Adrian Bartmann, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, *Phone:* 202 551-6745, *Email:* bartmannt@sec.gov.

RIN: 3235-AM71

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

*Division of Trading and Markets*

Long-Term Actions

**387. Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934**

*Legal Authority:* Pub. L. 111-203, sec. 939A

*Abstract:* Section 939A of the Dodd-Frank Act requires the Commission to remove certain references to credit ratings from its regulations and to substitute such standards of creditworthiness as the Commission determines to be appropriate. The Commission amended certain rules and one form under the Exchange Act applicable to broker-dealer financial responsibility and confirmation of transactions. The Commission has not yet finalized amendments to certain rules regarding the distribution of securities.

*Timetable:*

Action	Date	FR Cite
NPRM .....	05/06/11	76 FR 26550
NPRM Comment Period End.	07/05/11	
Final Action .....	01/08/14	79 FR 1522
Final Action Effective.	07/07/14	
Next Action Undetermined.		

*Regulatory Flexibility Analysis*

Required: Yes.

*Agency Contact:* John Guidroz, Division of Trading and Markets,

Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-6439, Email: guidrozj@sec.gov. RIN: 3235-AL14

**SECURITIES AND EXCHANGE COMMISSION (SEC)**

Offices and Other Programs

Completed Actions

**388. Qualifications of Accountants**

Legal Authority: 15 U.S.C. 77aa; 15 U.S.C. 77g and 77h; 15 U.S.C. 77j; 15 U.S.C. 77s; 15 U.S.C. 78c; 15 U.S.C. 78j-

1; 15 U.S.C. 78l; 15 U.S.C. 78m; 15 U.S.C. 78n; 15 U.S.C. 78q; 15 U.S.C. 78w; 15 U.S.C. 80a-8; 15 U.S.C. 80a-30; 15 U.S.C. 80a-31; 15 U.S.C. 80a-38; 15 U.S.C. 80b-3; 15 U.S.C. 80b-11; Pub. L. 107-204, 116 Stat. 745 (2002), sec. 3(a)

Abstract: The Commission adopted amendments to update certain auditor independence rules to facilitate capital formation, in a manner consistent with investor protection.

Timetable:

Action	Date	FR Cite
NPRM .....	01/15/20	85 FR 2332
NPRM Comment Period End.	03/16/20	

Action	Date	FR Cite
Final Action .....	12/11/20	85 FR 80508
Final Action Effective.	06/09/21	

Regulatory Flexibility Analysis Required: Yes.

Agency Contact: Duc Dang, Attorney, Office of Chief Accountant, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549, Phone: 202 551-3386, Email: dangd@sec.gov.

RIN: 3235-AM63

[FR Doc. 2021-14888 Filed 7-29-21; 8:45 am]

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# FEDERAL REGISTER

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Part XXVIII

Surface Transportation Board

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Semiannual Regulatory Agenda

**SURFACE TRANSPORTATION BOARD****49 CFR Ch. X**

[STB Ex Parte No. 536 (Sub-No. 50)]

**Semiannual Regulatory Agenda****AGENCY:** Surface Transportation Board.**ACTION:** Semiannual regulatory agenda.**SUMMARY:** The Chairman of the Surface Transportation Board is publishing the Regulatory Flexibility Agenda for spring 2021.**FOR FURTHER INFORMATION CONTACT:** A contact person is identified for each of the rules listed below.**SUPPLEMENTARY INFORMATION:** The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, sets forth several requirements for agency rulemaking. Among other things, the RFA requires that, semiannually, each agency shall publish in the **Federal Register** a Regulatory Flexibility Agenda, which shall contain:

(1) A brief description of the subject area of any rule that the agency expects to propose or promulgate, which is likely to have a significant economic

impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1).

Accordingly, a list of proceedings appears below containing information about subject areas in which the Board is currently conducting rulemaking proceedings or may institute such proceedings in the near future. It also contains information about existing regulations being reviewed to determine whether to propose modifications through rulemaking.

The agenda represents the Chairman's best estimate of rules that may be considered over the next 12 months but does not necessarily reflect the views of any other individual Board Member.

RIN 2140-AB29, as referenced on [reginfo.gov](http://reginfo.gov).

However, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a Regulatory Flexibility Agenda or requires an agency to consider or act on any matter listed in such agenda."

The Chairman is publishing the agency's Regulatory Flexibility Agenda for spring 2021 as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Unified Agenda is coordinated by the Office of Management and Budget (OMB), pursuant to Executive Orders 12866 and 13563. The Board is participating voluntarily in the program to assist OMB and has included rulemaking proceedings in the Unified Agenda beyond those required by the RFA.

Dated: March 17, 2021.

By the Board, Martin J. Oberman.

**Jeffrey Herzig,***Clearance Clerk.*

[FR Doc. 2021-14889 Filed 7-29-21; 8:45 am]

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