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# Rules and Regulations

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

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## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

#### 9 CFR Parts 92, 93, 94, 95, 98 and 130

[Docket No. APHIS–2021–0003]

#### Definitions of the European Union and the United Kingdom

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** We are amending the animal and animal product import regulations in order to reflect the exit of the United Kingdom (UK) from the European Union (EU). The revised regulations will treat as separate entities Great Britain (England, Scotland, and Wales) (GB) and Northern Ireland in various lists and definitions. We are also announcing that, for an interim period, during which the UK will transition to and implement their new animal health laws and policies, the current Animal and Plant Health Inspection Service import conditions for animals and animal products from the UK will continue to apply to imports from GB. In addition, we are announcing that because of Northern Ireland's stated intent to continue to follow EU animal health regulations and policies, we intend to consider the animal health statuses of Northern Ireland to be the same animal health statuses of equivalent EU Member States, wherever appropriate. We are also updating our definition of the EU, where necessary, to include Croatia. Lastly, we are further amending the regulations to update the names of staff offices and websites, and we are making other minor changes.

**DATES:** Effective August 16, 2021.

**FOR FURTHER INFORMATION CONTACT:** Mr. Javier Vargas, Senior Staff Officer, Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Unit 38,

Riverdale, MD 20737–1231; (301) 851–3316; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

The regulations in 9 CFR parts 92, 93, 94, and 95 prescribe conditions for importing live animals and animal products into the United States. These regulations include regionalization and compartmentalization requirements (part 92); general requirements for animals and animal products (part 93); import restrictions and prohibitions pertaining to certain animal diseases, such as foot-and-mouth disease (part 94); and requirements for importation of certain animal byproducts (part 95).

Among other things, the regulations include provisions for the importation of animals and animal products from the European Union (EU). Heretofore, the EU has included the United Kingdom (UK). However, under the European Union (Withdrawal Agreement) Act 2020, widely referred to as Brexit, the UK ratified withdrawing from the EU and, on February 1, 2020, the UK formally left the EU. As a result, it has become necessary to update our regulations to reflect this change.

In this final rule, we are revising the regulations in parts 92, 93, 94, and 95 to indicate that the UK is no longer a Member State of the EU. With the UK's exit from the EU, Great Britain (GB), which consists of England, Scotland, and Wales, and Northern Ireland will operate under two different animal health regulation and policy structures. For an interim period, during which the UK will transition to and implement their new animal health laws and policies, the current APHIS import conditions for animals and animal products from the UK will continue to apply to imports from GB. APHIS will publish a follow-up **Federal Register** document when the interim period ends. Northern Ireland will continue to follow the EU animal health law structure and will revise its laws to remain harmonized with the EU. Because Northern Ireland has stated that it intends to continue to follow EU animal health regulations and policies, we will continue to allow Northern Ireland to maintain APHIS-recognized animal health statuses afforded to EU Member States, where appropriate.

In § 92.1, we are revising the list of Member States under the definition of

*European Union* by removing the entry for the UK. We are also updating the definition by adding Croatia to the list because Croatia is now a Member State. Finally, we are adding a footnote to the definition stating that, as noted above, for animal health purposes, Northern Ireland will be following EU guidelines and will be treated the same as the Member States of the EU.

In § 93.301, we are revising the provisions for the importation of thoroughbred horses by removing the references to the UK and replacing them with entries for, respectively, “Great Britain (England, Scotland, and Wales)” and “Northern Ireland.” This language is consistent with that we are using elsewhere in this rule. In footnote 6, we are also updating the name of the French certifying organization.

In § 94.0, we are replacing the definition of *APHIS-defined EU Poultry Trade Region* with a definition of *APHIS-defined European Poultry Trade Region*. The existing definition of *APHIS-defined EU Poultry Trade Region* lists EU countries in that region and includes the UK. Reflecting the exit of the UK from the EU, the new definition of *APHIS-defined European Poultry Trade Region* reads as follows: “A single region consisting of Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Great Britain (England, Scotland, and Wales), Greece, Hungary, Ireland (Republic of), Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Northern Ireland, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.”

In § 94.24, which contains restrictions on meat and edible products of ovines and caprines due to bovine spongiform encephalopathy, paragraph (a) contains a list of regions from which such imports are prohibited or restricted. That list includes the UK. We are revising that paragraph to eliminate that reference. In its place, we would refer instead to Great Britain (England, Scotland, and Wales) and, separately, Northern Ireland.

Section 94.28 contains restrictions on the importation of poultry and poultry products from the APHIS-defined EU Poultry Trade Region. We are revising the section heading and all the text throughout the section by replacing all references to the APHIS-defined EU Poultry Trade Region with references to



the APHIS-defined European Poultry Trade Region. We are also replacing the words “Member State” each time they appear with “country.” These changes accord with our substitution of the latter term for the former in the definitions in § 94.0 and reflect the change in status of the UK in regard to the EU.

Section 95.4 provides for the restriction of imports of various animal products due to bovine spongiform encephalopathy. Paragraph (a) contains a list of restricted regions that includes the UK. Consistent with the other changes to the regulations, we are revising that paragraph to eliminate the reference to the UK and to refer instead to Great Britain (England, Scotland, and Wales) and, separately, Northern Ireland.

#### Miscellaneous

In addition to the Brexit-related changes described above to parts 92, 93, 94, and 95, we are updating outdated web links and mailing addresses for the public to use when requesting information on the animal disease statuses of foreign regions. The updates would apply to those three parts, as well as to 9 CFR parts 98 and 130, which contain, respectively, importation requirements for certain animal embryos and semen and regulations pertaining to Veterinary Services user fees. We are also making a couple of minor editorial changes to § 93.301 to clarify the instructions regarding accessing certain information on our website.

#### Effective Date

This rule relates to internal agency management and makes various nonsubstantive changes to the regulations in 9 CFR to reflect the current composition of the European Union and ensure addresses and weblinks are up to date. Because the changes contained in this rule are nonsubstantive in nature, notice and other public procedure on this rule are unnecessary and contrary to the public interest. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity to comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12866 and 12988. Finally, this action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 501) and, thus, is exempt from the provisions of that Act.

#### Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 2 CFR chapter IV.)

#### Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

#### Congressional Review Act

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

#### Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects

##### 9 CFR Part 92

Animal diseases, Imports, Livestock, Quarantine.

##### 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Reporting and recordkeeping requirements.

##### 9 CFR Part 94

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##### 9 CFR Part 95

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##### 9 CFR Part 98

Animal diseases, Imports.

##### 9 CFR Part 130

Animal diseases, Exports, Imports, Poultry and poultry products, Quarantine.

Accordingly, 9 CFR parts 92, 93, 94, 95, 98, and 130 are amended as follows:

#### PART 92—IMPORTATION OF ANIMALS AND ANIMAL PRODUCTS: PROCEDURES FOR REQUESTING RECOGNITION OF REGIONS AND COMPARTMENTS

■ 1. The authority citation for part 92 continues to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 2. Section 92.1 is amended by redesignating footnotes 1 and 2 as footnotes 2 and 3, respectively, and revising the definition of “European Union” to read as follows:

#### § 92.1 Definitions.

\* \* \* \* \*

*European Union.* The organization of Member States consisting of Austria, Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland (Republic of), Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.<sup>1</sup>

\* \* \* \* \*

<sup>1</sup> For animal health purposes, APHIS considers that Northern Ireland is following European Union regulations and policies and is treating it the same as Member States of the European Union.

\* \* \* \* \*

#### PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, FISH, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

■ 3. The authority citation for part 93 continues to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

#### § 93.101 [Amended]

■ 4. Section 93.101 is amended as follows:

■ a. In footnote 2, by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place; and

■ b. In footnotes 3 and 4, by removing the words “Operational Support.”

■ 5. Section 93.103 is amended as follows:

■ a. By revising footnote 8; and

■ b. In footnote 9, by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

The revision reads as follows:

**§ 93.103 Import permits for birds; and reservation fees for space at quarantine facilities maintained by APHIS.**

\* \* \* \* \*

<sup>8</sup> VS import permit application forms are available from local offices of Veterinary Services, which are listed in telephone directories, from Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737–1231, or by visiting [https://www.aphis.usda.gov/aphis/resources/sa\\_epermits/eauth-epermits](https://www.aphis.usda.gov/aphis/resources/sa_epermits/eauth-epermits). For other permit requirements for birds, the regulations issued by the U.S. Department of the Interior (50 CFR parts 14 and 17) should be consulted.

\* \* \* \* \*

**§ 93.106 [Amended]**

■ 6. In § 93.106, footnote 11 is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

**§ 93.201 [Amended]**

■ 7. In § 93.201, footnote 3 is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

**§ 93.204 [Amended]**

■ 8. In § 93.204, footnote 5 is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

■ 9. Section 93.301 is amended as follows:

■ a. In footnote 4, by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy,” in their place;

■ b. By revising paragraphs (c)(1)(i) and (c)(2)(v), the paragraph (d) subject heading, paragraph (d)(1) introductory text, and footnote 6 in paragraph (d)(1)(ii)(B) introductory text;

■ c. In footnotes 7, 8, and 9, by removing the words “the National Center for Import and Export, Import/Export Animals” and adding the words “Strategy and Policy” in their place; and

■ d. By revising paragraphs (h)(6) and (7) and (j) introductory text.

The revisions read as follows:

**§ 93.301 General prohibitions; exceptions.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(i) A list of regions that APHIS considers to be affected with CEM is maintained on the APHIS website at <https://www.aphis.usda.gov/animalhealth/disease-status-of-regions>. Copies of the list can be available via postal mail or email upon request to Regionalization Evaluation Services,

Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov).

\* \* \* \* \*

(2) \* \* \*

(v) Spanish Pure Breed horses imported for permanent entry from Spain or thoroughbred horses imported for permanent entry from France, Germany, Great Britain (England, Scotland, and Wales), the Ireland (Republic of), or Northern Ireland if the horses meet the requirements of paragraph (d) of this section;

\* \* \* \* \*

(d) *Spanish Pure Breed horses from Spain and thoroughbred horses from France, Germany, Great Britain (England, Scotland, and Wales), Ireland (Republic of), and Northern Ireland.* (1) Spanish Pure Breed horses from Spain and thoroughbred horses from France, Germany, Great Britain (England, Scotland, and Wales), Ireland (Republic of), and Northern Ireland may be imported for permanent entry if the horses meet the following requirements:

\* \* \* \* \*

(h) \* \* \*

(6) Individual State requirements for receiving stallions over 731 days of age imported under paragraph (e) of this section can be accessed through the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/equine/cem/contagious-equine-metritis>. The information can also be obtained via postal mail or email upon request to Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, Maryland 20737; [VS.Live.Animal.Import.Export@usda.gov](mailto:VS.Live.Animal.Import.Export@usda.gov).

(7) Individual State requirements for receiving mares over 731 days of age imported under paragraph (e) of this section can be accessed through the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-disease-information/equine/cem/contagious-equine-metritis>. The information can also be obtained via postal mail or email upon request to Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, Maryland 20737; [VS.Live.Animal.Import.Export@usda.gov](mailto:VS.Live.Animal.Import.Export@usda.gov).

\* \* \* \* \*

(j) *Examination and treatment for screwworm.* Horses from regions where APHIS considers screwworm to exist may be imported into the United States

only if they meet the requirements in paragraphs (j)(1) through (7) of this section and all other applicable requirements of this part. APHIS maintains a list of regions where screwworm is considered to exist on the APHIS website at <https://www.aphis.usda.gov/animalhealth/disease-status-of-regions>. Copies of the list are also available via postal mail or email upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov). APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region’s disease-free status in § 92.4 of this subchapter.

\* \* \* \* \*

<sup>6</sup> The following breed associations and their record systems have been approved by the Department: Asociacion Nacional de Criadores de Caballos de Pura Raza Española for Spain; Weatherby’s Ltd. for Great Britain (England, Scotland, and Wales), Ireland (Republic of), and Northern Ireland; France Galop for France; and Direktorium für Vollblutzucht und Rennen e.V. for Germany.

\* \* \* \* \*

■ 10. Section 93.308 is amended as follows:

■ a. By revising paragraphs (a)(1)(i) and (a)(2)(i);

■ b. In footnote 11 in paragraph (a)(3), by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy,” in their place; and

■ c. In paragraphs (b)(1) and (c)(1) and footnotes 12 and 13, by removing the words “National Center for Import and Export” and adding the words “Strategy and Policy,” in their place.

The revisions read as follows:

**§ 93.308 Quarantine requirements.**

(a) \* \* \*

(1) \* \* \*

(i) Horses imported from regions of the Western Hemisphere that APHIS considers to be free of Venezuelan

equine encephalomyelitis are exempt from the requirements of paragraph (a)(1) of this section. A list of regions that APHIS has declared free of Venezuelan equine encephalomyelitis is maintained on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions>. Copies of the list can be obtained via postal mail or email upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov).

\* \* \* \* \*

(2) \* \* \*

(i) A list of regions that APHIS considers affected with African horse sickness is maintained on the APHIS website at <https://www.aphis.usda.gov/animalhealth/disease-status-of-regions>. Copies of the list can be obtained via postal mail or email upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov).

\* \* \* \* \*

**§ 93.324 [Amended]**

■ 11. In § 93.324, footnote 19 is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

**§ 93.400 [Amended]**

■ 12. Section 93.400 is amended as follows:  
■ a. In the definition of “Fever tick, *Rhipicephalus annulatus*, *Rhipicephalus microplus*”, by removing “<http://www.aphis.usda.gov/wps/portal/aphis/ourfocus/importexport>” and adding “<https://www.aphis.usda.gov/animalhealth/disease-status-of-regions>” in its place; and  
■ b. In footnote 1, by removing the words “National Center for Import and Export” and adding the words “Strategy and Policy” in their place.

**§ 93.401 [Amended]**

■ 13. In § 93.401, footnote 4 is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

**§ 93.404 [Amended]**

■ 14. In § 93.404, footnote 6 is amended by removing the words “National Center

for Import-Export” and adding the words “Strategy and Policy” in their place.

■ 15. In § 93.405, paragraph (a)(3) introductory text is revised to read as follows:

**§ 93.405 Health certificate for ruminants.**

(a) \* \* \*

(3) If the ruminants are from any region where screwworm is considered to exist, the ruminants may be imported into the United States only if they meet the requirements of paragraphs (a)(3)(i) through (iv) of this section and all other applicable requirements of this part. APHIS maintains a list of regions where screwworm is considered to exist on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions>. Copies of the list can be obtained via postal mail or email upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov). APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region’s disease-free status in § 92.4 of this subchapter.

\* \* \* \* \*

**§ 93.412 [Amended]**

■ 16. In § 93.412, paragraph (d)(1)(i) introductory text and footnote 7 are amended by removing the words “National Center for Import and Export” and adding the words “Strategy and Policy” in their place.

■ 17. In § 93.427, paragraph (b)(1) introductory text is revised to read as follows:

**§ 93.427 Cattle and other bovines from Mexico.**

\* \* \* \* \*

(b)(1) *Cattle from regions of Mexico that APHIS has determined to be free from fever ticks.* APHIS has evaluated

certain regions of Mexico in accordance with § 92.2 of this chapter, and determined that they are free from fever ticks; a list of all such regions is found on the internet at <https://www.aphis.usda.gov/animalhealth/disease-status-of-regions>. Copies of the list can be obtained via postal mail or email upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov). Regions may be removed from the list based on a determination by APHIS that fever ticks exist in the region, on the discovery of tick-infested cattle from the region at a port of entry into the United States, or on information provided by a representative of the government of that region that fever ticks exist in the region. Cattle from regions of Mexico that APHIS has determined to be free from fever ticks may be imported into the United States subject to the following conditions:

\* \* \* \* \*

**§ 93.501 [Amended]**

■ 18. In § 93.501, footnote 4 is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

**§ 93.504 [Amended]**

■ 19. In § 93.504, footnote 6 is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

■ 20. In § 93.505, paragraph (b) introductory text is revised to read as follows:

**§ 93.505 Certificate for swine.**

\* \* \* \* \*

(b) Swine from any region where screwworm is considered to exist may only be imported into the United States if they meet the requirements of paragraphs (b)(1) through (4) of this section and all other applicable requirements of this part. APHIS maintains a list of regions where screwworm is considered to exist on the APHIS website at

<https://www.aphis.usda.gov/animalhealth/disease-status-of-regions>. Copies of the list can be obtained via postal mail or email upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov). APHIS

will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

\* \* \* \* \*

■ 21. In § 93.600, paragraph (a) introductory text is revised to read as follows:

**§ 93.600 Importation of dogs.**

(a) *All dogs.* Dogs from any region of the world where screwworm is considered to exist may only be imported into the United States if they meet the requirements of paragraphs (a)(1) and (2) of this section and all other applicable requirements of this part. APHIS maintains a list of regions where screwworm is considered to exist on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions>. Copies of the list can be obtained via postal mail or email upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov). APHIS will add a region to the list upon determining that screwworm exists in the region based on reports APHIS receives of detections of the pest from veterinary officials of the exporting country, from the World Organization for Animal Health (OIE), or from other sources the Administrator determines to be reliable. APHIS will remove a region from the list after conducting an evaluation of the region in accordance with § 92.2 of this subchapter and finding that screwworm is not present in the region. In the case of a region formerly not on this list that is added due to a detection, the region may be removed from the list in accordance with the procedures for reestablishment of a region's disease-free status in § 92.4 of this subchapter.

\* \* \* \* \*

■ 22. In § 93.704, paragraph (b) is revised to read as follows:

**§ 93.704 Import permit.**

\* \* \* \* \*

(b) *Import permit required.* Any person who desires to import a hedgehog or tenrec must submit an application (VS Form 17–129) for an import permit. Applications are available from, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, Maryland 20737; or by visiting [https://www.aphis.usda.gov/aphis/resources/sa\\_epermits/eauth-epermits](https://www.aphis.usda.gov/aphis/resources/sa_epermits/eauth-epermits). A separate application must be prepared for each shipment.

\* \* \* \* \*

■ 23. In § 93.802, paragraph (b) is revised to read as follows:

**§ 93.802 Import permit.**

\* \* \* \* \*

(b) An application for an import permit may be obtained from Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, Maryland 20737; or by visiting [https://www.aphis.usda.gov/aphis/resources/sa\\_epermits/eauth-epermits](https://www.aphis.usda.gov/aphis/resources/sa_epermits/eauth-epermits). A separate application must be prepared for each shipment.

\* \* \* \* \*

**§ 93.803 [Amended]**

■ 24. In § 93.803, paragraph (a)(4) is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

■ 25. In § 93.804, the introductory text is revised to read as follows:

**§ 93.804 Declaration upon arrival.**

Upon arrival of an elephant, hippopotamus, rhinoceros, or tapir at a port of entry, the importer or the importer's agent shall notify APHIS of the arrival by giving an inspector a completed VS Form 17–29, “Declaration of Importation for Animals, Animal Semen, Birds, Poultry, and Eggs for Hatching.” (This form is available from Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, Maryland 20737 or by visiting [https://www.aphis.usda.gov/aphis/resources/forms/ct\\_vs\\_forms](https://www.aphis.usda.gov/aphis/resources/forms/ct_vs_forms).) Forms may be provided to the inspector using a U.S. Government electronic information exchange system or other authorized method. The completed form must state:

\* \* \* \* \*

■ 26. In § 93.903, paragraph (b) is revised to read as follows:

**§ 93.903 Import permits for live fish, fertilized eggs, and gametes.**

\* \* \* \* \*

(b) An application for an import permit must be submitted for each shipment of live fish, fertilized eggs, or gametes of SVC-susceptible species to Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737–1231. Application forms for import permits may be obtained from this address.

\* \* \* \* \*

**PART 94—FOOT-AND-MOUTH DISEASE, NEWCASTLE DISEASE, HIGHLY PATHOGENIC AVIAN INFLUENZA, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, SWINE VESICULAR DISEASE, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS**

■ 27. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 1633, 7701–7772, 7781–7786, and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 28. Section 94.0 is amended as follows:

■ a. By removing the definition of “APHIS-defined EU Poultry Trade Region”;

■ b. By revising the definition of “APHIS-defined European CSF region”; and

■ c. By adding in alphabetical order a definition for “APHIS-defined European Poultry Trade Region”.

The revision and addition read as follows:

**§ 94.0 Definitions.**

\* \* \* \* \*

*APHIS-defined European CSF region.* A single region of Europe recognized by APHIS as low risk for classical swine fever.

(1) A list of areas included in the region is maintained on the APHIS website at <https://www.aphis.usda.gov/animalhealth/disease-status-of-regions>. Copies of the list are also available via postal mail or email upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov).

(2) APHIS will add an area to the region after it conducts an evaluation of the area to be added in accordance with § 92.2 of this subchapter and finds that the risk profile for the area is equivalent with respect to classical swine fever to

the risk profile for the region it is joining.

APHIS-defined European Poultry Trade Region. A single region consisting of Austria, Belgium, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Great Britain (England, Scotland, and Wales), Greece, Hungary, Ireland (Republic of), Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Northern Ireland, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden.

\* \* \* \* \*

■ 29. In § 94.1, paragraph (a)(1) is revised to read as follows:

§ 94.1 Regions where foot-and-mouth disease exists; importations prohibited.

(a) \* \* \*

(1) A list of regions that APHIS has declared free of foot-and-mouth disease is maintained on the APHIS website at https://www.aphis.usda.gov/animalhealth/disease-status-of-regions. Copies of the list can be obtained via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

\* \* \* \* \*

■ 30. In § 94.6, paragraphs (a)(1)(i) and (a)(2)(i), footnote 5 in paragraph (b)(2), and paragraph (d) are revised to read as follows:

§ 94.6 Carcasses, meat, parts or products of carcasses, and eggs (other than hatching eggs) of poultry, game birds, or other birds; importations from regions where Newcastle disease or highly pathogenic avian influenza is considered to exist.

(a) \* \* \*

(1) \* \* \*

(i) A list of free regions is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies of the list are also available via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

\* \* \* \* \*

(2) \* \* \*

(i) A list of affected regions is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies

of the list can be obtained via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

\* \* \* \* \*

(d) To apply for a permit, contact Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, Maryland 20737, or visit https://efile.aphis.usda.gov/s/vs-permitting-assistant.

\* \* \* \* \*

<sup>5</sup>The names and addresses of approved establishments may be obtained from, and requests for approval may be made to, Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, Maryland 20737-1231.

■ 31. In § 94.8, paragraph (a)(2) is revised to read as follows:

§ 94.8 Pork and pork products from regions where African swine fever exists or is reasonably believed to exist.

(a) \* \* \*

(2) A list of regions where African swine fever exists or the Administrator has reason to believe that African swine fever exists is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies of the list are also available via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

\* \* \* \* \*

■ 32. In § 94.9, paragraph (a)(1) is revised to read as follows:

§ 94.9 Pork and pork products from regions where classical swine fever exists.

(a) \* \* \*

(1) A list of regions that APHIS has declared free of classical swine fever is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies of the list are also available via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale,

Maryland 20737; AskRegionalization@usda.gov.

\* \* \* \* \*

■ 33. In § 94.10, paragraph (a)(1) is revised to read as follows:

§ 94.10 Swine from regions where classical swine fever exists.

(a) \* \* \*

(1) A list of regions that APHIS has declared free of classical swine fever is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies of the list are also available via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

\* \* \* \* \*

■ 34. In § 94.11, paragraph (a)(2) is revised to read as follows:

§ 94.11 Restrictions on importation of meat and other animal products from specified regions.

(a) \* \* \*

(2) A list of regions whose products are regulated under this section is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies of the list are also available via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; AskRegionalization@usda.gov.

\* \* \* \* \*

■ 35. Section 94.12 is amended as follows:

- a. By revising paragraph (a)(1); and
■ b. In footnote 12, by removing the words "National Center for Import-Export" and adding the words "Strategy and Policy" in their place.

The revision reads as follows:

§ 94.12 Pork and pork products from regions where swine vesicular disease exists.

(a) \* \* \*

(1) A list of regions that APHIS has declared free of swine vesicular disease is maintained on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions. Copies of the list are also available via postal

mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov).

\* \* \* \* \*

■ 36. In § 94.13, paragraph (a)(2) is revised to read as follows:

**§ 94.13 Restrictions on importation of pork or pork products from specified regions.**

(a) \* \* \*

(2) A list of regions whose products are regulated under this section is maintained on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions>. Copies of the list are also available via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov).

\* \* \* \* \*

■ 37. In § 94.15, paragraphs (b)(1) and (c)(1) are revised to read as follows:

**§ 94.15 Animal products and materials; movement and handling.**

\* \* \* \* \*

(b) \* \* \*

(1) The person desiring to move the pork and pork products through the United States obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6). (An application for the permit may be obtained from Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, Maryland 20737; or by visiting <https://efile.aphis.usda.gov/s/vs-permitting-assistant>.)

\* \* \* \* \*

(c) \* \* \*

(1) The person desiring to move the poultry carcasses, parts, or products through the United States obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors (VS Form 16–6). An application for the permit may be obtained from Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, Maryland 20737; or by visiting <https://efile.aphis.usda.gov/s/vs-permitting-assistant>.

\* \* \* \* \*

**§ 94.16 [Amended]**

■ 38. In § 94.16, footnote 14 is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

■ 39. In § 94.23, paragraph (f) is revised to read as follows:

**§ 94.23 Importation of gelatin derived from bovines.**

\* \* \* \* \*

(f) The Administrator determines that the gelatin will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the gelatin has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3 (available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737–1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>). The application for such a permit must state the intended use of the gelatin and name and address of the consignee in the United States.

■ 40. In § 94.24, paragraphs (a) and (b)(2) are revised to read as follows:

**§ 94.24 Restrictions on importation of meat and edible products from ovines and caprines due to bovine spongiform encephalopathy.**

(a) Except as provided in paragraph (b) of this section and in § 94.25, the importation of meat, meat products, and edible products other than meat (excluding milk and milk products) from ovines and caprines that have been in any of the following regions is prohibited: Albania, Andorra, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, the Federal Republic of Yugoslavia, Finland, France, Germany, Great Britain (England, Scotland, and Wales), Greece, Hungary, Ireland (Republic of), Israel, Italy, Japan, Liechtenstein, Luxembourg, the Former Yugoslav Republic of Macedonia, Monaco, Northern Ireland, Norway, Oman, the Netherlands, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

(b) \* \* \*

(2) The person importing the gelatin obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16–3.

Permit applications are available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737–1231, or at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>. Forms may be submitted using a U.S. Government electronic information exchange system or other authorized method. The application for such a permit must state the intended use of the gelatin and name and address of the consignee in the United States.

■ 41. Section 94.28 is amended as follows:

■ a. By revising the section heading; and  
 ■ b. By removing the words “EU Poultry Trade Region” each time they appear and adding the words “European Poultry Trade Region” in their place, and by removing the words “Member State” each time they appear and adding the word “country” in their place.

The revision reads as follows:

**§ 94.28 Restrictions on the importation of poultry meat and products, and live birds and poultry, from the APHIS-defined European Poultry Trade Region.**

\* \* \* \* \*

■ 42. In § 94.32, paragraph (a)(2) is revised to read as follows:

**§ 94.32 Restrictions on the importation of live swine, pork, or pork products from certain regions free of classical swine fever.**

(a) \* \* \*

(2) A list of regions whose live swine, pork, and pork products are regulated under this section is maintained on the APHIS website at <https://www.aphis.usda.gov/aphis/ourfocus/animalhealth/animal-and-animal-product-import-information/animal-health-status-of-regions>. Copies of the list are also available via postal mail upon request to Regionalization Evaluation Services, Strategy and Policy, Veterinary Services, Animal and Plant Health Inspection Service, 4700 River Road, Unit 38, Riverdale, Maryland 20737; [AskRegionalization@usda.gov](mailto:AskRegionalization@usda.gov).

\* \* \* \* \*

**PART 95—SANITARY CONTROL OF ANIMAL BYPRODUCTS (EXCEPT CASINGS), AND HAY AND STRAW, OFFERED FOR ENTRY INTO THE UNITED STATES**

■ 43. The authority citation for part 95 continues to read as follows:

**Authority:** 7 U.S.C. 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

■ 44. In § 95.4, paragraphs (a)(4), (c)(8), (e)(2), and (f) are revised to read as follows:

**§ 95.4 Restrictions on the importation of processed animal protein, offal, tankage, fat, glands, certain tallow other than tallow derivatives, and serum due to bovine spongiform encephalopathy.**

(a) \* \* \*

(4) Albania, Andorra, Austria, Belgium, Bosnia-Herzegovina, Bulgaria, Canada, Croatia, the Czech Republic, Denmark, the Federal Republic of Yugoslavia, Finland, France, Germany, Great Britain (England, Scotland, and Wales), Greece, Hungary, Ireland (Republic of), Israel, Italy, Japan, Liechtenstein, Luxembourg, the Former Yugoslav Republic of Macedonia, Monaco, Northern Ireland, Norway, Oman, the Netherlands, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Sweden, and Switzerland.

\* \* \* \* \*

(c) \* \* \*

(8) The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16-3, which may be obtained from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Unit 38, Riverdale, MD 20737-1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>.

\* \* \* \* \*

(e) \* \* \*

(2) The person importing the article has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16-3, which may be obtained from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737-1231; or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>; and

\* \* \* \* \*

(f) Insulin otherwise prohibited under paragraphs (a) and (b) of this section may be imported if the insulin is for the personal medical use of the person importing it and if the person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16-3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737-1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>. The application for such a

permit must state the intended use of the insulin and the name and address of the consignee in the United States.

**Note to Paragraph (f):** Insulin that is not prohibited from importation under this paragraph may be prohibited from importation under other Federal laws, including the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 321 *et seq.*

\* \* \* \* \*

■ 45. In § 95.5, paragraph (d) is revised to read as follows:

**§ 95.5 Processed animal protein derived from ruminants.**

\* \* \* \* \*

(d) The person importing the processed animal protein obtains a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16-3. To apply for a permit, file a permit application on VS Form 16-3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737-1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>. The application for such a permit must state the intended use of the processed animal protein and name and address of the consignee in the United States.

\* \* \* \* \*

■ 46. Section 95.6 is revised to read as follows:

**§ 95.6 Offal derived from bovines.**

Offal derived from bovines is prohibited importation into the United States unless it meets the requirements for the importation of meat, meat products, and meat byproducts in either § 94.19, § 94.20, or § 94.21, with the exception of the requirements in §§ 94.19(c), 94.20(b), and 94.21(b), respectively. The person importing the offal must obtain a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors by filing a permit application on VS Form 16-3. To apply for a permit, file a permit application on VS Form 16-3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737-1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>. The application for such a permit must state the intended use of the offal and name and address of the consignee in the United States.

■ 47. In § 95.7, paragraph (f) is revised to read as follows:

**§ 95.7 Collagen derived from bovines.**

\* \* \* \* \*

(f) The Administrator determines that the collagen will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the collagen has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16-3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737-1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>. The application for such a permit must state the intended use of the collagen and the name and address of the consignee in the United States.

\* \* \* \* \*

■ 48. In § 95.8, paragraph (f) is revised to read as follows:

**§ 95.8 Tallow derived from bovines.**

\* \* \* \* \*

(f) The Administrator determines that the tallow will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the tallow has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16-3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737-1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>. The application for such a permit must state the intended use of the tallow and the name and address of the consignee in the United States.

\* \* \* \* \*

■ 49. In § 95.9, paragraph (g) is revised to read as follows:

**§ 95.9 Derivatives of tallow derived from bovines.**

\* \* \* \* \*

(g) The Administrator determines that the tallow derivative will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the tallow derivative has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16-3, which is



available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737–1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>. The application for such a permit must state the intended use of the tallow derivative and the name and address of the consignee in the United States.

\* \* \* \* \*

■ 50. In § 95.10, paragraph (f) is revised to read as follows:

**§ 95.10 Dicalcium phosphate derived from bovines.**

\* \* \* \* \*

(f) The Administrator determines that the dicalcium phosphate will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the dicalcium phosphate has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737–1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>. The application for such a permit must state the intended use of the dicalcium phosphate and the name and address of the consignee in the United States.

\* \* \* \* \*

■ 51. Section 95.11 is revised to read as follows:

**§ 95.11 Specified risk materials.**

Notwithstanding any other provisions of this part, the importation of specified risk materials from controlled-risk regions or undetermined-risk regions for BSE, and any commodities containing such materials, is prohibited, unless the Administrator determines that the materials or other commodities will not come into contact with ruminants in the United States and can be imported under conditions that will prevent the introduction of BSE into the United States, and the person importing the materials or other commodities has obtained a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737–1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>.

*efile.aphis.usda.gov/s/vs-permitting-assistant*. The application for such a permit must state the intended use of the materials and other commodities and the name and address of the consignee in the United States.

■ 52. In § 95.13, paragraph (c) is revised to read as follows:

**§ 95.13 Importation from regions of negligible risk for BSE of processed animal protein derived from animals other than ruminants.**

\* \* \* \* \*

(c) The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737–1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>.

\* \* \* \* \*

■ 53. In § 95.14, paragraph (h) is revised to read as follows:

**§ 95.14 Importation from regions of controlled risk or undetermined risk for BSE of processed animal protein derived from animals other than ruminants.**

\* \* \* \* \*

(h) The person importing the shipment has applied for and obtained from APHIS a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737–1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>.

\* \* \* \* \*

■ 54. In § 95.15, paragraph (d) is revised to read as follows:

**§ 95.15 Transit shipment of articles.**

\* \* \* \* \*

(d) The person moving the articles must obtain a United States Veterinary Permit for Importation and Transportation of Controlled Materials and Organisms and Vectors. To apply for a permit, file a permit application on VS Form 16–3, which is available from Strategy and Policy, Veterinary Services, APHIS, 4700 River Road, Riverdale, MD 20737–1231, or electronically at <https://efile.aphis.usda.gov/s/vs-permitting-assistant>.

\* \* \* \* \*

**§ 95.16 [Amended]**

■ 55. In § 95.16, footnote 2 is amended by removing the words “National Center for Import and Export” and adding the words “Strategy and Policy” in their place.

**PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN**

■ 56. The authority citation for part 98 continues to read as follows:

**Authority:** 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

**§ 98.4 [Amended]**

■ 57. In § 98.4, paragraph (b) is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

**§ 98.13 [Amended]**

■ 58. In § 98.13, paragraph (b) introductory text is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

**PART 130—USER FEES**

■ 59. The authority citation for part 130 continues to read as follows:

**Authority:** 5 U.S.C. 5542; 7 U.S.C. 1622 and 8301–8317; 21 U.S.C. 136 and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

**§ 130.1 [Amended]**

■ 60. In § 130.1, footnote 1 is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

**§ 130.22 [Amended]**

■ 61. In § 130.22, paragraph (b) is amended by removing the words “National Center for Import-Export” and adding the words “Strategy and Policy” in their place.

**§ 130.50 [Amended]**

■ 62. In § 130.50, footnote 7 is amended by removing the words “National Center for Import and Export” and adding the words “Strategy and Policy” in their place.

Done in Washington, DC, this 3rd day of August 2021.

**Michael Watson,**  
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–16900 Filed 8–13–21; 8:45 am]



**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA–2021–0002; Airspace  
Docket No. 21–ASW–3]

RIN 2120–AA66

**Revocation of Class E Airspace;  
Mineola, TX**

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

**ACTION:** Final rule.

**SUMMARY:** This action revokes the Class E airspace extending upward from 700 feet above the surface at Mineola Wisener Field, Mineola, TX. The FAA is taking this action as the result of the cancellation of the instrument procedures at this airport.

**DATES:** Effective 0901 UTC, December 2, 2021. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

**ADDRESSES:** 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 Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: [fr.inspection@nara.gov](mailto:fr.inspection@nara.gov) or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Claypool, Federal Aviation Administration, Operations Support Group, Central Service Center, 10101 Hillwood Parkway, Fort Worth, TX 76177; telephone (817) 222–5711.

**SUPPLEMENTARY INFORMATION:****Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that

section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it revokes the Class E airspace extending upward from 700 feet above the surface at Mineola Wisener Field, Mineola, TX, due to the cancellation of the instrument procedures at this airport.

**History**

The FAA published a notice of proposed rulemaking in the **Federal Register** (86 FR 10889; February 23, 2021) for Docket No. FAA–2021–0002 to revoke the Class E airspace extending upward from 700 feet above the surface at Mineola Wisener Field, Mineola, TX. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in paragraph 6005 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 Class E airspace designations listed in this document will be published subsequently in the Order.

**Availability and Summary of  
Documents for Incorporation by  
Reference**

This document amends FAA Order 7400.11E, 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.

**The Rule**

This amendment to 14 CFR part 71 revokes the Class E airspace extending upward from 700 feet above the surface to at Mineola Wisener Field, Mineola, TX; and updates the city in the header of the airspace legal description from Mineola, TX, to Mineola/Quitman, TX, to coincide with the FAA's aeronautical database for Wood County Airport-Collins Field, Mineola/Quitman, TX.

This action is the result of the cancellation of the instrument procedures at Mineola Wisener Field, Mineola, TX.

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

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

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

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

■ 1. The authority citation for 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 6005 Class E Airspace Areas  
Extending Upward From 700 Feet or More  
Above the Surface of the Earth.

\* \* \* \* \*

**ASW TX E5 Mineola/Quitman, TX  
[Amended]**

Wood County Airport-Collins Field, TX  
(Lat. 32°44'32" N, long. 95°29'47" W)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Wood County Airport-Collins Field, and within 3.8 miles east and 5.7 miles west of the 182° bearing from the Wood County Airport-Collins Field extending from the 6.4-mile radius of Wood County Airport-Collins Field to 21.3 miles south of Wood County Airport-Collins Field.

Issued in Fort Worth, Texas, on August 11, 2021.

**Martin A. Skinner,**

*Acting Manager, Operations Support Group,  
ATO Central Service Center.*

[FR Doc. 2021-17443 Filed 8-13-21; 8:45 am]

**BILLING CODE 4910-13-P**

**SECURITIES AND EXCHANGE  
COMMISSION**

**17 CFR Part 249**

[Release No. 34-87005C; File No. S7-05-14]

**RIN 3235-AL45**

**Recordkeeping and Reporting  
Requirements for Security-Based  
Swap Dealers, Major Security-Based  
Swap Participants, and Broker-  
Dealers; Correction**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** On September 19, 2019, the Securities and Exchange Commission (the "Commission") adopted recordkeeping, reporting, and notification requirements applicable to security-based swap dealers and major security-based swap participants, securities count requirements applicable to certain security-based swap dealers, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities. Release 34-87005 (Sept. 19, 2019) was published in the *Federal Register* on Dec. 16, 2019 (84 FR 68550). This document corrects a technical inaccuracy in that release.

**DATES:** Effective August 16, 2021.

**FOR FURTHER INFORMATION CONTACT:** Valentina Minak Deng, Special Counsel, at (202) 551-5778; Division of Trading and Markets, Securities and Exchange

Commission, 100 F Street NE,  
Washington, DC 20549-7010.

**SUPPLEMENTARY INFORMATION:** We are making a technical correction to Part II of Form X-17A-5 (referenced in 17 CFR 249.617). The release resulting in the technical inaccuracy was published in the *Federal Register* on December 16, 2019 [84 FR 68550], and adopted by the Commission in Exchange Act Release No. 87005 on September 19, 2019.

**List of Subjects in 17 CFR Part 249**

Brokers, Recordkeeping and reporting requirements, Securities.

Accordingly, 17 CFR part 249 is corrected by making the following amendment:

**PART 249—FORMS, SECURITIES  
EXCHANGE ACT OF 1934**

■ 1. The authority citation for part 249 continues to read, in part, as follows:

**Authority:** 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *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), and Sec. 72001, Pub. L. 114-94, 129 Stat. 1312 (2015), unless otherwise noted.

\* \* \* \* \*

Section 249.617 is also issued under Pub. L. 111-203, 939, 939A, 124 Stat. 1376 (2010) (15 U.S.C. 78c, 15 U.S.C. 78o-7 note).

\* \* \* \* \*

■ 2. Amend Part II of Form X-17A-5 (referenced in § 249.617) by removing "4) Rule 18a-7 99" and adding in its place "4) Rule 18a-7 12999".

**Note:** The text of Part II of Form X-17A-5 and the instructions thereto do not and this amendment will not appear in the Code of Federal Regulations.

Dated: August 4, 2021.

**Vanessa A. Countryman,**  
*Secretary.*

[FR Doc. 2021-16960 Filed 8-13-21; 8:45 am]

**BILLING CODE 8011-01-P**

**DEPARTMENT OF THE INTERIOR**

**Bureau of Indian Affairs**

**25 CFR Part 150**

[212A2100DD/AAK001030/  
AOA501010.999900]

**RIN 1076-AF56**

**Indian Land Title and Records**

**AGENCY:** Bureau of Indian Affairs, Interior.

**ACTION:** Final rule.

**SUMMARY:** This final rule revises Bureau of Indian Affairs (BIA) regulations governing the Land Title and Records Office (LTRO) to reflect modernization of the LTRO. The LTRO maintains title documents for land held in trust or restricted status for individual Indians and Tribes (Indian land). This rule replaces outdated provisions and allows for more widespread efficiencies by reflecting current practices, while creating a framework for future LTRO operations.

**DATES:** This rule is effective September 15, 2021.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Appel, Director, Office of Regulatory Affairs & Collaborative Action, (202) 273-4680; [elizabeth.appel@bia.gov](mailto:elizabeth.appel@bia.gov).

**SUPPLEMENTARY INFORMATION:**

- I. Background and Summary of Rule
- II. Changes from Proposed Rule to Final Rule
- III. Response to Comments
- IV. Procedural Requirements
  - A. Regulatory Planning and Review (E.O. 12866 and E.O. 13563)
  - B. Regulatory Flexibility Act
  - C. Small Business Regulatory Enforcement Fairness Act
  - D. Unfunded Mandates Reform Act
  - E. Takings (E.O. 12630)
  - F. Federalism (E.O. 13132)
  - G. Civil Justice Reform (E.O. 12988)
  - H. Consultation With Indian Tribes (E.O. 13175)
  - I. Paperwork Reduction Act
  - J. National Environmental Policy Act
  - K. Effects on the Energy Supply (E.O. 13211)
  - L. Clarity of this Regulation
  - M. Public Availability of Comments

**I. Background**

The LTRO maintains title documents for land that the United States holds in trust or restricted status for individual Indians or Tribes (Indian land), roughly similar to how counties and other localities maintain title documents for fee land within their jurisdictions. Several Acts authorize BIA maintenance of these title records. *See, e.g.*, 25 U.S.C. 5, 9; 64 Stat. 1262; 34 Stat. 137; 35 Stat. 312; and 38 Stat. 582, 598.

The LTRO has several physical offices throughout the country. These LTRO offices are the successors to the "title plants" that were established by regulation in 1965 to serve what were then BIA "area offices." *See* 30 FR 11676 (September 11, 1965). Updates to the regulations in 1981 defined the role of the LTRO and assigned each LTRO office a geographic service area, containing certain BIA area offices or Tribal reservations. *See* 46 FR 47537 (September 29, 1981), later redesignated at 47 FR 13327 (March 30, 1982).

The Department published a proposed rule on December 11, 2020 (85 FR 79965) and accepted comments on the proposed rule until February 9, 2021. Section II of this document provides an overview of the final rule. Section III of this document summarizes the comments received on the proposed rule and responds to those comments. Section IV of this document details changes made from the proposed rule to the final rule stage.

**II. Overview of Final Rule**

The regulations being finalized today replace those that have been in place since 1981 (though redesignated from 25 CFR part 120 to 25 CFR part 150). Now, 40 years later, BIA “area offices” are BIA Regions, and the LTRO maintains title documents primarily through an electronic system: The Trust Asset Accounting Management System (TAAMS). Each LTRO office records land title documents that are primarily within its designated geographic area; however, it is BIA’s vision that, eventually, all title documents will be electronically stored and accessible to LTRO offices regardless of geographic area.

The rule modernizes the LTRO regulations to provide a framework for continued operations and future electronic maintenance of most title documents. This approach will more efficiently address title-related actions that support Indian land transactions (such as a title examination to take land into trust) by allowing workloads to be shifted among LTRO offices to promptly address each request and prevent the risk of any backlogs. The rule continues to provide that each LTRO office is primarily responsible for certain geographic areas, but rather than specifying those LTRO offices in the rule, it instead points to a web page where BIA can keep the list accurately updated.

The rule also addresses changes that have evolved over the past 40 years that have removed requirements for Secretarial approval of certain title documents in support of Tribal self-governance and self-determination (e.g., individual leases under approved Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Act regulations) by clarifying that these documents must still be

recorded in the LTRO because the documents affect who is authorized to use Indian land.

The rule also makes more transparent the LTRO’s role as a support office to BIA and, with respect to title-related matters related to probate, the Office of Hearings and Appeals (OHA). Generally, the Realty staff in BIA are the primary liaison to the LTRO, as the Realty staff are responsible for processing land transactions requested by Indian and Tribal landowners. Similarly, the rule would clarify the LTRO’s role with respect to any defects to title: The LTRO provides a notation of the defect in the record of title, but the originating office is responsible for providing the LTRO with a corrected title document for the LTRO to record.

Finally, the rule allows the BIA Director to delegate recording responsibilities to another office for certain transactions on an as-needed basis. This capability provides flexibility to facilitate future electronic recording capabilities for efficiency.

The following table shows changes from the current regulation to the final rule.

Current 25 CFR §	New 25 CFR §	Description of changes
150.1 Purpose and scope .....	150.1 What is the purpose of this part?	Provides more general description of responsibilities (e.g., to account for other types of reports beyond land title status reports that LTRO provides).
150.2 Definitions .....	150.2 What terms do I need to know?	Alphabetizes terms. Adds definitions for “certify,” “certified copy,” “Certifying Officer,” “defect” or “title defect,” “I” or “you” (for plain language purposes), “inherently Federal function,” “land,” “Office of Hearings and Appeals (OHA),” “Probate Inventory Report,” “record of title,” “Region,” and “title.” Deletes definitions of “Administrative Law Judge,” “Commissioner,” “land,” and “Superintendent.” Revises definition of “Agency” to clarify that contracting and compacting Tribes are included. Revises definition of “Indian land” to limit to trust or restricted land only, in accordance with other regulatory definitions, while moving provisions regarding other categories of land to proposed § 150.201(c). Revises definition of “recording” to move substantive statement as to the significance of recording a document to the body of the regulation at proposed § 150.101. Revises definition of “title document” to provide examples. Revises definition of “title examination” to add detail. Revises definition of “Tribe” to cite the List Act of 1994.
150.3 Maintenance of land records and title documents.	150.3 May Tribes administer this part on LTRO’s behalf?  150.101 What is the purpose of the record of title? 150.102 Who maintains the record of title? 150.103 What services does the LTRO perform to maintain the record of title? 150.104 How does the LTRO maintain the record of title?	New section to address that Tribes may compact or contract for LTRO functions under Tribal self-governance and self-determination compacts and contracts. New section to address the significance of recording a document in the record of title. No substantive change. New section to provide a list of services that the LTRO performs. New section to address that the LTRO primarily maintains the record of title electronically.

Current 25 CFR §	New 25 CFR §	Description of changes
150.4 Locations and service areas for land titles and records offices.	150.105 Are certain LTRO offices responsible for certain geographic areas?	Revises to provide flexibility to allow for workload sharing across LTRO offices while noting LTRO offices have primary responsibility for certain geographic areas. Replaces the list of addresses for each LTRO office with a webpage for a more frequently updated list of each LTRO office's area of primary geographic area.
150.5 Other Bureau offices with title service responsibility.	.....	Deleted because this section is no longer necessary.
150.6 Recordation of title documents ..	150.201 What is recorded in the record of title?	Removes language assuming hard copy transmission of documents.
	150.202 Must I check with any other governmental office to find title documents for Indian land?	Adds language to account for the need to record certain documents that are not subject to Secretarial approval.
	150.203 Who may submit a title document for recording?	Adds that LTRO offices may also maintain documents demonstrating the rights of use, occupancy, and/or benefit of certain Tribes to non-Indian land and certain documents related to Indian land that are not title documents.
	150.204 Who records title documents?	New section to specify that in some instances, due diligence may require examination of other records of title for Indian land.
	150.205 What are the minimum requirements for recording a title document?	Clarifies the role of the LTRO as a service office for BIA Agencies, Regions, and OHA, who act as the primary liaison to Indian and Tribal landowners.
	150.206 What actions will LTRO take if it discovers a title defect?	Clarifies that the BIA Director may delegate the recording function to other Agency offices by documenting the delegation and types of transactions to which it applies in the Indian Affairs Manual.
150.7 Curative action to correct title defects.	150.206 What actions will LTRO take if it discovers a title defect?	New section to clarify what must be included in a title document that is approved by the Secretary and what must be included in title documents that are deemed approved.
150.8 Title status reports .....	.....	Revises to provide that LTRO offices will no longer complete administrative modifications; rather they will put a notation in the record of title and contact the originating office for correction.
150.9 Land status maps .....	.....	Incorporated into new § 150.302.
150.10 Certification of land records and title documents.	150.301 How does LTRO certify copies of title documents?	Incorporated into new § 150.302.
	150.302 What reports does the LTRO provide?	Revised for plain language.
150.11 Disclosure of land records, title documents, and title reports.	150.303 Who may request and receive copies of title documents in the record of title or reports from LTRO without filing a Freedom of Information Act request?	Lists the universe of reports that the LTRO may provide for Indian land.
	150.304 Where do I request copies of title documents or reports from LTRO?	Revises to include the categories of persons/entities that may obtain information under current laws including the American Indian Probate Reform Act of 2004, 25 U.S.C. 2204.
	150.305 What information must I provide when requesting copies of title documents and reports?	New section to clarify that the BIA Agency or Region is the liaison to the LTRO.
	150.306 Will I be charged a fee for obtaining copies of records?	New section to list what information BIA will require in order to identify the land for which a report is being requested.
	150.401 Who owns the records associated with this part?	New section to provide that the LTRO may charge fees in accordance with the Freedom of Information Act fee schedule, but will not charge fees to Indian or Tribal landowners.
	150.402 How must records associated with this part be preserved?	New section to clarify what records are Federal records as opposed to Tribal records in cases where a Tribe has contracted or compacted for LTRO functions.
	150.403 How does the Paperwork Reduction Act affect this part?	New section regarding preservation requirements for Federal records.
		New section required because the regulation imposes an information collection by requiring individuals to provide certain information in order to obtain copies of records.

**III. Response to Comments**

The Department hosted two Tribal consultation sessions on this proposed rule and received written submissions from 12 Tribes. During the public comment period, the Department also

received nine comments from individuals, Indian housing and homeownership organizations, title companies, and capital companies. Of the 21 total written submissions, several, including half of the Tribes who commented, expressed general support

for the regulatory revisions as necessary for the proper functioning of LTROs and to account for technological improvements and policy changes throughout Indian country. All provided additional comments and suggestions. The Department appreciates this input

and provides its responses organized by subpart, below.

#### A. Comments on Subpart A—Purpose and Definitions

##### 1. Definition of “Indian Land”

One title insurance company that commented asked that the phrase “or in Federal law” be removed from the definition of “Indian land” because, according to the commenter, that phrase could be construed to mean the Non-Intercourse Act at 25 U.S.C. 177. The commenter stated that the consequence of that interpretation would be that “Indian land” would include title documents to Tribal fee land and, arguably, could allow LTRO to take the position that the world has constructive notice of that Tribal fee land recorded in the Indian land record of title, even if it is not recorded in the county record of title.

*Response:* The phrase “or in Federal law” captures restrictions on alienation for certain Tribes that may not be stated in the conveyance instrument but apply as a matter of Federal law due to court order or otherwise. The clear trend in the case law is that the Non-Intercourse Act does not apply to fee land, whether on-reservation or off-reservation. This trend is consistent with BIA’s authority for approving transactions that affect title.

A Tribe requested clarification that Indian land includes mineral (subsurface) interests, pointing out that the current regulations include a definition for “land” as meaning real property and without that specification, the term “Indian land” is ambiguous as to whether it includes the subsurface or mineral estate and whether “title” encompasses mineral estates that have been severed from surface estates.

*Response:* The final rule adds the definition for land as including surface and/or subsurface interests.

##### 2. “Title Document”

One Tribe stated their agreement with the proposed rule’s inclusion of examples of title documents in the definition of “title document” as adding clarity. This Tribe also agreed with the proposed rule’s removal of the provision in “title document” as including only documents required to be recorded by regulation or Bureau policy as appropriate to accord a full and accurate depiction of Indian land in the chain of title.

*Response:* The final rule includes the proposed rule’s definition of “title document.”

##### 3. Comments Requesting New Definitions

###### a. “Inherently Federal Function”

A few Tribes and one title insurance company commenter requested a definition be added for “inherently Federal function.” On Tribe requested that the term be interpreted to exclude certain items (*i.e.*, FOIA and records management).

*Response:* The final rule adds a definition of “inherently Federal function” to match the definition of the term provided in the Indian Self-Determination and Education Assistance Act (ISDEAA). More specificity on what constitutes an inherently Federal function is necessarily a case-by-case examination because different laws apply to different Tribes.

###### b. “Individual Indian”

An individual commenter requested a new definition for “individual Indian” or “Indian owner” because individuals may own Indian land and their rights to challenge decisions related to title should be acknowledged. This commenter also stated that the regulations imply that individual Indians’ fiduciary protections and rights are subordinated to Tribes because, for example, the term “Tribe” is defined while the term “individual Indian” is not.

*Response:* The term “individual Indian” is not defined in the regulation because it appears only in the definition of “Indian land” and the definition of “Probate Inventory Report,” both of which can be understood without defining “individual Indian.” Individual Indians’ rights as landowners to challenge Federal decisions regarding title are governed by different regulations, such as 25 CFR part 2, Appeals from Administrative Actions. Nothing in the final rule for 25 CFR part 150 subordinates individual Indians’ fiduciary protections and rights to Tribes. The term “Tribe” is defined because that term appears in provisions relating to Tribes as sovereign governments (*e.g.*, provisions relating to compacting or compacting Federal functions of an LTRO, provisions relating to recordation of leases between Tribes and Tribal Energy Development Organizations).

#### B. Comments on Subpart B—Record of Title

##### 1. Purpose of the Record of Title

Two title insurance company commenters asked how constructive notice works in the context of an LTRO, as far as whether the recordation of a

title document in the LTRO gives the real property interest priority over interests recorded later or whether notice impacts priority of interests.

*Response:* Recordation of title documents for Indian land is different from recordation of title documents for fee land in county records. Priority is not generally an issue in recordation of title documents for Indian land because the Department conducts a title examination before taking land into trust or restricted status, and the LTRO relies upon the date of Departmental approval (or other applicable date when Departmental approval is not required) as the valid and effective date of the transaction. In other words, there is no significance to the date of recording in the LTRO the way there may be significance to the date of recording title documents to fee land in county records. In response to this comment, the final rule deletes the statement from § 150.101 that the record of title provides the public with constructive notice; rather, only certain entities/individuals have access to information in the record of title. *See* § 150.303.

##### 2. LTRO Services

Two title insurance company commenters requested the regulations include a specific timeframe for LTRO to issue title status reports (TSRs). Another commenter stated that the rule should impose timeframes on the LTRO and provide recourse for delays.

*Response:* The LTRO processes mortgage title requests for TSRs within two working days of receipt from the BIA agency. This timeframe is included in policy but not the regulations to allow flexibility to change as circumstances require for internal management of the LTRO, without undergoing a rulemaking. Requestors should coordinate with their BIA agency contact to ensure that a request for a TSR has been submitted to LTRO.

Two title insurance company commenters suggested including uncertified TSRs in addition to certified TSRs in § 150.103 to be consistent with the language in § 150.302(b).

*Response:* The final rule adds “uncertified Title Status Reports” for consistency with § 150.302(b).

One individual commenter recommended adding a subpart for LTRO to record title transfers resulting from historic sales where a “reserve period” is included for the original “provisional sale” only upon assurance that the buyer and seller negotiated the final disposition upon expiration of the “reserve period.”

*Response:* This comment appears to relate to terms of a title transfer, which

is beyond the scope of this regulation. The commenter should raise this comment with their local BIA agency staff.

An individual commenter asked whether it would be LTRO's or the BIA agency's responsibility to notify previously recognized owners that a correction to a probate inventory report is being proposed.

*Response:* If LTRO discovers an error in a probate inventory report that impacts Indian land ownership, then the LTRO notifies the BIA agency realty staff in writing, and the BIA agency works with the Office of Hearings and Appeals, to notify landowners and make a correction as appropriate.

### 3. Maintaining the Record of Title

Two title insurance company commenters requested that the Department address any efforts to digitize physical copies and confirm that physical documents are historical documents only. These commenters and a homeownership organization requested clarification that the LTRO is currently digitizing all documents it now receives.

*Response:* The LTRO has digitized nearly all Indian land title records; however, there remain some non-imaged (*i.e.*, non-digitized) records. The LTRO digitizes all documents it currently receives so that they can be stored electronically in the record of title and will work with BIA Realty to ensure all known remaining non-digitized records are digitized.

One Tribe described the history of its agency's recordkeeping on well locations and lease information.

*Response:* The Tribe's comment has been shared with the relevant agency.

### 4. LTRO Responsibility for Certain Geographic Areas

Section 150.105 of the proposed rule provided that staff at each LTRO office has primary responsibility to maintain the record of title for Indian land under that LTRO office's assigned geographic area, and that LTRO offices may assist other LTRO offices in maintaining the record of title for Indian land not under that office's assigned geographic area as needed. A homeownership organization stated its support for a fully accessible electronic system across all LTRO offices to allow workloads to be shifted and prevent backlogs. Two title insurance company commenters asked what the process is for ensuring documents are timely and correctly transmitted among LTRO offices, how sharing workloads would impact recordation times, and whether there is

a tracking option to determine where submitted documents are.

*Response:* All title documents are digitized (scanned into electronic versions) and uploaded to a database that is accessible to all LTRO offices, regardless of geographic area. Having one LTRO office assist another in performing functions would have no impact on recording timeframes, as all LTRO offices are subject to the same standards. LTRO uses a system for tracking workloads to determine where submitted documents are pending at any given point.

A Tribe expressed concern that LTRO offices outside the Tribe's assigned geographic area may lack the knowledge and expertise to process title documents unique to the geographic region. This Tribe requested granting Tribes the option to have their title document requests completed by their local LTRO or tasking local LTROs with reviewing any reports produced by a secondary LTRO or outside BIA office. Another Tribe requested clarity on what it means for a non-assigned LTRO office to assist others, the process by which they would provide assistance, and the types of functions or services that the assistance would include. This Tribe suggested establishing a standardized process for providing as-needed assistance and clarifying whether a Tribe that has contracted or compacted to perform LTRO functions on its reservation may also carry out the function for lands located in other geographic areas.

*Response:* While there may be variations in types of title documents among regions, title documents are encoded by the knowledgeable BIA realty staff familiar with potential unique variations. The LTRO functions do not vary across geographic areas. LTRO has determined that it is more appropriate to set out in policy the details of the process by which LTRO offices would provide assistance and types of functions or services the assistance would include, as a matter of internal management that does not have any effect on landowners or others, except as a method of ensuring that LTRO continues to perform its functions expeditiously. The final rule also clarifies that this provision does not apply to Tribes that are contracting or compacting the LTRO function, because under the Indian Self-Determination and Education Assistance Act, those contacting or compacting Tribes would first need to obtain authorization from each Tribe to be benefitted by the proposed contract or compact before assuming operation of any program, function, service, or activity (PFSA). 25 CFR 900.8(d)(1).

### C. Comments on Subpart C—Recording Documents

#### 1. Documents LTRO Records (§ 150.201)

An individual commenter suggested adding a provision to require LTRO to record when title changes from trust to fee and title recordation responsibilities are transferred to State or local jurisdictions.

*Response:* When a tract is transferred to fee status, it is no longer "Indian land" and is inactivated in the record of title.

A Tribe stated that the requirement to record subleasehold mortgages under 25 CFR 150.201(a) ensures the record of title is accurate, complete, and up to date, but could constrain current staffing and resources for LTRO offices that handle a significant number of leases, noting that this requirement triples the number of instruments the LTRO records and maintains for its reservation.

*Response:* Including subleasehold mortgages as recordable documents reflects a regulatory requirement that already exists in 25 CFR part 169.

Another Tribe noted that the list in § 150.201 of documents for which Secretarial approval is not required, but must be recorded, does not include Tribal utility lines crossing Tribal lands.

*Response:* The list included in § 150.201 is not exhaustive; however, the final rule adds this item to the list for clarity.

A title insurance company commenter asked what the phrase "certain Tribes" is referencing in § 150.201(c)(1).

*Response:* The final rule replaces the phrase "certain Tribes" with "a Tribe."

This same title insurance company commenter requested a global statement be added to the regulations confirming that nothing prohibits recording title in county records with the consent of the landowner.

*Response:* While it is true that nothing prohibits recording title to Indian land in county records with the consent of the landowner, the final rule does not include this statement because that statement could cause confusion regarding the official record of title for Indian land.

#### 2. Checking With Other Governmental Land Records (§ 150.202)

A Tribe expressed concern that the regulatory provision saying that due diligence may require examination of other Federal, State, and local records is unclear and distorts the role LTRO offices play in maintaining the official record of title for Indian land. The Tribe asserts that the regulation should be clear on this point, to eliminate any

misconception that the record of title for all lands, including Indian lands, is maintained at the State or local level.

*Response:* The final rule clarifies in § 150.202 that LTRO maintains current and historical title documents to Indian land in the system of record.

A homeownership organization suggested that § 150.202 should give examples of circumstances in which due diligence may require examination in other records of title.

*Response:* Examples of circumstances in which due diligence may require examination in other records of title include: Archives for original land patents may require examination in other Federal records of titles; and fee-to-trust transactions for undivided fee interests in a tract in which other undivided interests are owned in trust or restricted status may require examination in State and local records of title. The final rule does not include these examples in the regulatory text because doing so may give the impression that these examples constitute the entire universe of documents for which due diligence may require examination in other records of title.

### 3. Who May Submit for Recording (§ 150.203)

Two title insurance company commenters requested the regulations include a timeframe for recording upon submission.

*Response:* As mentioned above, the LTRO does abide by internal timeframes. LTRO has an internal timeframe of two business days for recording any document upon receipt from the Agency, Region, or OHA. The timeframe for the Agency, Region, or OHA to prepare and transmit a document to LTRO is outside the scope of this rule.

### 4. Delegation of the Recording Function (§ 150.204)

One Tribe commented on § 150.204, which states that the BIA Director may delegate authority to record title documents to another BIA office by documenting the delegation and types of transactions to which it applies in the Indian Affairs Manual. The Tribe stated their support for the flexibility to allow workload sharing across LTRO offices, so long as the primary LTRO primarily maintains the record of title. The Tribe also requested that Tribes be given notice of any long-term delegations so the Tribe may discuss the delegation with the Regional Director. An individual commenter expressed concern with allowing BIA to delegate authority to another office.

*Response:* The final rule retains this provision to provide flexibility for workload sharing. Any long-term delegation that has potential Tribal implications would be subject to Executive Order 13175 requirements for Tribal consultation.

A Tribe asked that privacy concerns be addressed through best practices to ensure that documents are only accessed by designated and authorized personnel for BIA purposes.

*Response:* The Privacy Act applies to records within the record of title and, under its system of record, access to the record of title is limited to designated and authorized personnel for official purposes.

### 5. Minimum Requirements for Recording (§ 150.205)

An individual commenter described past sales that reserved part of the interests (such as the mineral rights) for transfer at a later date, and stated they require affirmative title actions.

*Response:* This section, § 150.205(b), sets out the minimum requirements for recording documents. Actions required to obtain BIA approval of a transfer are addressed in separate regulations.

A title insurance company commenter requested clarification as to whether the “proper notarization or other acknowledgment of the signatures of the parties” must be pursuant to State law.

*Response:* The applicable law depends upon the document, and where it was signed. Notaries are commissioned under State law. Other acknowledgments may include those authorized for military members to acknowledge other military members’ signatures, social workers or wardens to acknowledge the signatures of incarcerated individuals, and foreign country notary equivalents. The LTRO does not scrutinize the notary commission authority, beyond checking to ensure notary’s name appears on the stamp and the commission has not expired.

Another commenter asked whether notarization pursuant to remote online notarization laws is considered “proper notarization or other acknowledgment of the signatures of the parties.”

*Response:* Notarial acts follow State laws where the notary is physically located. While the Department of the Interior continues to monitor remote online notarization capabilities, the Department does not currently recognize remote online notarization for Federal purposes, even when permitted under State notarial laws. Some State laws have included language that simultaneous live audio/video would constitute “in-person”

acknowledgment. For these reasons, the final rule specifies in § 150.205(a)(3) that “traditional in-person” notarization or other “in-person” acknowledgment of the parties’ signatures, if appropriate, is a minimum requirement for recording.

Two title insurance company commenters requested more specificity about when a tract number is required in addition to the legal description to record a document.

*Response:* The final rule revises the proposed rule by stating that the tract number should be included “if available,” rather than “if required.” See § 150.205(a)(1).

A Tribe pointed out that the current Part 150 states that title documents must be submitted to the appropriate LTRO for recording immediately after final approval, issuance, or acceptance, but the new proposed rule at § 150.205 deletes any reference to a timeframe. This Tribe also asked whether the requirement to record documents that may not have been recorded in the past is retroactive.

*Response:* Any applicable timeframes for agencies to submit documents for recording are found in the regulations governing the underlying realty transactions. For example, regulations governing leasing provide that BIA will record the lease documents immediately upon approval of the transaction. See, e.g., 25 CFR 162.217, 162.246, 162.343, 162.443, 162.533, 162.568.

### 6. Title Defects (§ 150.206)

An individual commenter requested that a statement be added to § 150.206 to clarify that corrections to title documents are made after the BIA adjudicates the defect under appropriate regulations, including notice to potential owners/heirs or impacted lenders regarding the corrections that are being requested or proposed. Several title insurance company commenters had similar comments, stating that there is no process to notify the parties of a need for correction and asked how they would know that a document is being corrected.

*Response:* This regulation focuses on LTRO’s role, which is to record title documents. The BIA Region or Agency is the liaison to the parties to the transaction and is responsible for notifying them. The responsibility to notify potential owners/heirs of corrections is outside the scope of this regulation.

Title insurance company commenters asked whether a document will be disclosed on a TSR if LTRO has discovered a title defect during a title examination, requested the originating

office correct the defect, and added a notation in the record of title.

*Response:* If a document meets the minimum requirements for recording, LTRO records the document and puts a notation on title, in which case the title document will appear on the TSR. If the document does not meet the minimum requirements for recording, such as when there is a fatal defect or required information is omitted, then LTRO sends the document back to the original office for a correction, in which case the title document generally would not appear on the TSR.

A few commenters suggested adding timelines for curing defects or omissions in title documents.

*Response:* The agency who is the originating office is responsible for curing any omission or error. When LTRO discovers a defect, LTRO sends the documents electronically in real time to the LTRO for correction. Once LTRO receives the corrected document, the timeframes applicable to recording of any document applies.

#### D. Comments on Subpart D

##### 1. Certifying Copies (§ 150.301)

A Tribe questioned whether there is, in fact, an “official seal” and stated that they have not yet received one even though they have compacted LTRO functions.

*Response:* BIA will follow up with the Tribe to provide a stamp that serves as the official seal.

##### 2. LTRO Reports (§ 150.302)

An individual commenter requested clarification on who and to whom “uncertified reports” may be made.

*Response:* LTRO provides uncertified reports for the agency to provide to those authorized to receive the documents (for example, Tribal and individual Indian landowners). Uncertified reports are often provided to assist lenders in preparing mortgage documents, and then when LTRO records the finalized mortgage, LTRO provides a certified TSR.

##### 3. Who May Obtain Title Documents Without FOIA (§ 150.303)

An individual commenter requested that this section specify that owners whose ownership interests have been removed by the BIA and are appealing that removal may obtain copies of title documents without filing a Freedom of Information Act (FOIA) request.

*Response:* The Indian Land Consolidation Act, as amended by the American Indian Probate Reform Act of 2004 (AIPRA) explicitly states who may have access to title documents. AIPRA’s

list of those who may have access does not include individuals who no longer qualify as owners. If the individual is appealing, as the commenter states, then the provisions of 25 CFR part 2 and 43 CFR part 4 may apply.

Multiple commenters requested that title insurance companies, lenders, and government agencies have access to title documents to support Tribal development and housing through their insurance products and support mortgage processes in Indian Country. Two title insurance company commenters asked whether a “legally authorized representative” would include a title company.

*Response:* “Legally authorized representatives” refer to those holding powers of attorney or serving as guardians for the Indian land owners. Title companies, lenders, and government agencies involved in the mortgage process are entitled to access to the appropriate title documents and reports under § 150.303(c), because they are effectively applying to lease, use, or consolidate Indian land; the BIA agency would verify that they are entitled to access and serve as the liaison to LTRO. The usual path for title companies to access records is through the BIA agency realty staff that are handling the underlying realty transaction. The agency realty staff have access to the record of title and provide the title company with appropriate records, and then request any certified copies from LTRO. Likewise, lenders and others work through the BIA agency, who would access the record of title and obtain the appropriate documents and reports from LTRO. In accordance with a recommendation from the Housing and Urban Development (HUD), the final rule also adds clarifying language to § 150.303 to specify that Federal agencies administering Native American homeownership programs, and lenders participating in these programs, are able to request and receive copies of title documents for Indian land without additional justification regarding leasing, using, or consolidating land.

A title insurance company commenter requested that the regulations precisely address any forms needed to authorize access to title documents.

*Response:* LTRO does not have any forms for accessing title documents; instead, BIA agency realty staff will contact LTRO by email to obtain the appropriate title documents and reports, and work with the requestor and LTRO.

A Tribe stated that the regulations should specify that any person or entity seeking records based on applying to lease, use, or consolidate Indian land must also be required to submit written

proof of consent for the disclosure by the owners of the Indian land or Tribe with jurisdiction.

*Response:* In practice, the BIA agency realty staff serves as the gatekeeper and works with anyone seeking to lease, use, or consolidate Indian land to obtain the necessary title documents or reports from LTRO for the transaction. The final rule adds language to clarify that the BIA realty staff are the primary points of contact for anyone requesting information from the LTRO.

A Tribe commented on its need to have timely and unencumbered access to oil and gas records.

*Response:* This comment is beyond the scope of the regulations. The Federal records the Osage Mineral Council references in its comments are maintained by the BIA Osage Agency in relation to leasing of the Osage Mineral Estate for oil and gas mining and are not title records. Accordingly, the records are not governed by the LTRO regulations at issue.

##### 4. How To Request Copies (§ 150.304)

An individual commenter requested adding a provision to allow individuals to request records directly from the LTRO when requesting them through their local agency would be sensitive (e.g., because they are evaluating their legal options).

*Response:* A direct request to LTRO would need to provide justification for not going through the BIA Agency or Region, including a case number if there is a challenge in progress. The final rule does not provide directions for requesting information directly from the LTRO because, in nearly all cases, requests should be made through the BIA Agency or Region.

A Tribe requested “title documents” be deleted so that only the LTRO with jurisdiction over the specified lands can provide copies. The Tribe pointed to a situation where an LTRO may know that there are probates pending on a certain parcel of land and check the status of the probate to see it has been adjudicated and an update to the records is necessary.

*Response:* Title documents do not reflect pending transactions, only those that are approved. Regardless of whether the LTRO is aware of a pending probate or other transaction, the pending probate or other transaction does not affect the title until approved. The LTRO updates title as soon as a transaction is approved, and each LTRO office has the same access to that record of title, so there is no benefit to limiting the ability to provide copies to only the LTRO with jurisdiction over the specified land.



#### 5. Fees (§ 150.306)

A Tribe commented that if they were to charge fees in carrying out LTRO functions under its self-governance compact, that they should not be bound by Federal standards because those standards are out of touch with “rush” orders and other demands.

*Response:* In fulfilling Federal functions as an LTRO, Tribes are bound by Federal regulations and statutes.

Another Tribe commented that the fee schedule is outdated and not representative of geographical differences and recommended that BIA authorize LTRO offices to develop their own fee schedules that are indexed to CPI and account for geographical differences.

*Response:* The final rule continues to use the fee schedule established at 43 CFR part 2, Appendix A, for consistency across the Department, to avoid “forum shopping” for the lowest fees and for administrative efficiency to prevent each of the 12 LTRO offices from having to individually publish and update their fees.

A Tribe opposed charging a fee to a Tribe with jurisdiction to obtain copies of records concerning land under its jurisdiction.

*Response:* The final rule deletes the provision allowing for Tribes with jurisdiction to be charged a fee for copies of documents related to land under their jurisdiction.

A title insurance company commented that paying for documents adds another hurdle for development by increasing the expense of doing business in Indian County.

*Response:* The fees required under this rule are nominal and are an expected cost of doing business, given that companies charge for title searches and counties and localities often charge fees, as well.

HUD recommended adding an exception from paying fees for Federal agencies administering Native American homeownership programs and lenders participating in the programs.

*Response:* The final rule does not require LTRO to charge fees and provides that LTRO may waive the fees. LTRO generally will not charge fees to Federal agencies administering Native American homeownership programs and lenders participating in these programs for specific transactions.

#### E. Comments on Subpart E

A Tribe disagreed with the proposed rule’s provision for determining whether a record is the property of the United States, stating that ownership should depend on an analysis of the

BIA’s ability to fulfill trust obligations if documents are “owned” by the United States, statutes, case law, and how agencies have treated similar documents in the past.

*Response:* The rule restates existing statutory law regarding the ownership of Federal records. *See* Federal Records Act, 44 U.S.C. chapters 29, 31, 33.

Another comment was that it is not realistic for a party who “makes or receives records” to preserve them in accordance with Departmental records retention procedures.

*Response:* The rule restates existing law regarding contractors’ obligation to preserve records under the Federal Records Act. *See* 36 CFR 1222.32.

Title insurance company commenters stated that the rule should address what happens to title documents when property is transferred out of trust or restricted status.

*Response:* The rule does not address what happens to title documents when property is transferred out of trust or restricted status, because at that point, it is no longer LTRO’s responsibility to maintain title to the property. Once property is transferred out of trust or restricted status, responsibility for maintenance of title to that property shifts to the county or locality.

#### F. Miscellaneous

Several comments addressed Realty functions, rather than LTRO functions, including expressing concerns with mortgages and other transaction timelines, and requesting a more transparent process on land transactions. One commenter requested published listings and organization charts for identifying the correct person to contact. A commenter also requested the addition of a BIA Realty ombudsman to assist Tribes in prioritizing residential mortgage approval packages and certified TSRs.

*Response:* These comments are not directly related to the current rulemaking, but the Department will work with BIA Realty staff to address these comments, as appropriate.

One Tribe stated that the rule should address records or encumbrances that are missing from TAAMS and detail a process for Tribes to report, and the Department to resolve, data gaps in TAAMS, and establish deadlines for the Department to resolve missing records.

*Response:* LTRO will work with BIA to identify whether there are any data gaps in TAAMS.

At least one commenter stated that the LTRO needs additional staff and resources to perform their duties.

*Response:* The Department is working with the appropriate Federal agencies to increase staff.

One Tribe requested the Department revise and reissue a more expansive proposed rule. Another commenter also requested reopening the comment period because the public comment period occurred over the holidays and through a change in Administration.

*Response:* The Department has considered this request and determined that the issues addressed by the Tribe could not be remedied by changes to this regulation because the issues relate to BIA realty functions, rather than LTRO functions. The Department has determined that finalization of these regulations at this time is important to replace the outdated regulations.

One Tribe commented that Tribes should have open access to TAAMS to conduct their own uncertified TSRs and accessing other trust records, which would increase transparency and improve processing time for LTROs.

*Response:* Title documents to Indian land are Federal and trust records, so access is subject to Privacy Act and other restrictions. For Tribes that are carrying out the Federal functions of the LTRO, Tribal staff must obtain the appropriate access credentials and Federal equipment.

On Tribe stated that LTRO should manage title to water, as well as land, and suggested further consultation on the lack of a comprehensive water management system by BIA.

*Response:* LTRO is not currently equipped to track water rights; however, the suggestion that a comprehensive water management system to track water user rights may be appropriate for future discussion and consultation.

One commenter urged that any changes in this rule be coordinated with those eventually adopted under the probate regulations.

*Response:* The Department is coordinating updates to both these regulations to ensure they are substantively consistent.

A title insurance commenter requested an explanation of BIA oversight and standards for Tribal LTROs.

*Response:* Tribes compacting or contracting the LTRO functions are subject to the same standards as Federal LTROs in that they must follow the same statutes and regulations.

A commenter stated that any regulatory updates should include a training effort to inform agency and LTRO staff.

*Response:* BIA will conduct training regarding following finalization.

**IV. Changes From Proposed Rule to Final Rule**

The final rule includes several changes from the proposed rule to

address comments received on the proposed rule and for clarity. The following table lists each of the changes made from proposed to final:

25 CFR §	Description of changes final rule makes to proposed rule
150.1 What is the purpose of this part? .....	No changes to proposed rule.
150.2 What terms do I need to know? .....	Adds definitions for “inherently Federal function” and “land.”
150.3 May Tribes administer this part on LTRO’s behalf?.	No changes to proposed rule.
150.101 What is the purpose of the record of title?.	Deletes reference to the public being provided with constructive notice, because only certain individuals/entities have access to information in the record of title.
150.102 Who maintains the record of title? .....	No changes to proposed rule.
150.103 What services does the LTRO perform to maintain the record of title?.	Adds to paragraph (b) “in accordance with applicable law” to clarify that only certain individuals/entities may obtain certified copies of title documents in the record of title. Clarifies that LTRO may provide uncertified Title Status Reports, in addition to certified Title Status Reports.
150.104 How does the LTRO maintain the record of title?.	Deletes “system of record” as an unnecessary phrase that could be confused with “record of title.”
150.105 Are certain LTRO offices responsible for certain geographic areas?.	Clarifies that only LTRO offices that are operated by BIA may assist in maintaining the record of title for Indian land not under their assigned geographic area. Tribes compacting or contracting LTRO functions would be subject to the Indian Self-Determination and Education Assistance Act requirements to obtain authorizing resolutions from each Tribe to be benefited by the contract or contract. <i>See</i> 25 CFR 900.8(d)(1).
150.201 What is recorded in the record of title?.	Deletes phrase “approved by the Secretary” when referring to Tribal Energy Resource Agreements (TERAs) under 25 CFR 224 as superfluous because TERAs must by definition be Secretarially approved under 25 CFR 224. Adds Tribal authorizations for Tribal utility lines crossing Tribal lands as an example of title documents that do not require Secretarial approval but must be recorded. No changes are made to paragraph (c), but please note that examples of documents that are not title documents that LTRO may record are documents related to: off-reservation BIE schools, Indian irrigation projects, off-reservation treaty fishing access sites, Federal public works placed on Indian land, and Tribal land assignments. Adds that LTRO maintains current and historical title documents for clarification.
150.202 Must I check with any other governmental office to find title documents for Indian land?.	No changes to proposed rule.
150.203 Who may submit a title document for recording?.	No changes to proposed rule.
150.204 Who records title documents? .....	No changes to proposed rule.
150.205 What are the minimum requirements for recording a title document?.	Clarifies that a legal description of the Indian land that is encumbered by the title document must be included for the title document to be recorded. Revises to provide that the tract number must be included only if available. Adds that notarization or acknowledgment of the signatures of the parties must be in person, because the Department does not at this time accept remote notarization for Federal purposes.
150.206 What actions will LTRO take if it discovers a title defect?.	Clarifies that LTRO will take the actions in paragraphs (a) and (b) if it discovers an omission or error, respectively, prior to recording a title document. Clarifies that LTRO does not record the title document if the defect is fatal.
150.301 How does LTRO certify copies of title documents?.	No changes to proposed rule.
150.302 What reports does the LTRO provide?.	No changes to proposed rule.
150.303 Who may request and receive copies of title documents in the record of title or reports from LTRO without filing a Freedom of Information Act request?.	Clarifies that individuals and entities request copies of title documents and reports through their Region or Agency office, rather than from the LTRO directly. Adds that Federal agencies administering Native American homeownership programs and Federal lenders participating in the programs have access to title documents and reports without filing a Freedom of Information Act (FOIA) request.
150.304 Where do I request copies of title documents or reports from LTRO?.	No changes to proposed rule.
150.305 What information must I provide when requesting copies of title documents and reports?.	No changes to proposed rule.
150.306 Will I be charged a fee for obtaining copies of records?.	Deletes Tribes from list of parties that may be charged a fee for copies of records for Indian land subject to the Tribe’s jurisdiction.
150.401 Who owns the records associated with this part?.	No changes to proposed rule.
150.402 How must records associated with this part be preserved?.	No changes to proposed rule.
150.403 How does the Paperwork Reduction Act affect this part?.	No changes to proposed rule.

## V. Procedural Requirements

### A. Regulatory Planning and Review (E.O. 12866)

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

E.O. 13563 reaffirms the principles of E.O. 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The E.O. directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. E.O. 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### B. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule addresses how Indian land title and records are maintained.

### C. Small Business Regulatory Enforcement Fairness Act

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

(a) Will not have an annual effect on the economy of \$100 million or more.

(b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

(c) Will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises.

### D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or

unique effect on State, local, or Tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

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

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

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

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. A federalism summary impact statement is not required.

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

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

### H. Consultation With Indian Tribes (E.O. 13175)

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department's consultation policy and under the criteria in Executive Order 13175 and have determined that Tribal consultation is appropriate because the rule addresses maintenance of land held in trust or restricted status for Tribes. The Department hosted consultation sessions on January 12 and 14, 2021 by telephone, and provided access on its website to a Powerpoint presentation setting out the proposed rule's provisions. Twelve Tribes submitted written comments during the consultation period. Summaries of those comments and responses to the comments are provided in Section III, above.

### I. Paperwork Reduction Act

This rule contains new information collections. All information collections require approval under the Paperwork

Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The Department is seeking approval of a new information collection, as follows.

*Brief Description of Collection:* The Bureau of Indian Affairs (BIA) Land Title and Records Office (LTRO) maintains title documents for land that the United States holds in trust or restricted status for individual Indians or Tribes (Indian land), much like counties and other localities maintain title documents for fee land within their jurisdictions. Individuals or entities that are requesting information regarding title documents—either for property they own or for property they seek to lease or encumber—must provide certain information to the LTRO in order for LTRO to accurately identify the property for which they are seeking information. LTRO uses the information provided by individuals or entities in order to identify the property so that they can retrieve the appropriate title documents and produce reports for that property. The collection of information is found in § 150.305, which provides that anyone requesting title documents or reports must provide certain information, such as the name of the reservation where the land is located and the tract number or legal description.

*Title:* Requests for Indian Land Title and Records Information.

*OMB Control Number:* 1076–0196.

*Form Number:* None.

*Type of Review:* Existing collection in use without an OMB Control Number.

*Respondents/Affected Public:* Individuals, Private Sector, Government.

*Total Estimated Number of Annual Responses:* 36.

*Total Estimated Number of Annual Responses:* 36.

*Estimated Completion Time per Response:* 0.5 hours.

*Total Estimated Number of Annual Burden Hours:* 19 hours (consisting of 10 hours for private sector respondents, 3 hours for individual respondents—rounded up from 2.5 hours, and 6 hours for government respondents—rounded up from 5.5 hours).

*Respondents' Obligation:* Required to obtain a benefit.

*Frequency of Response:* Occasionally.

*Total Estimated Annual Non-Hour Burden Cost:* \$500.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other

Federal agencies to comment on any aspect of this information collection, including:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on 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 response.

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. Please provide a copy of your comments to [consultation@bia.gov](mailto:consultation@bia.gov). Please reference OMB Control Number 1076–0196 in the subject line of your comments.

#### J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 (NEPA) is not required because the environmental effects of this proposed rule are too speculative to lend themselves to meaningful analysis and will later be subject to the NEPA process, unless covered by a categorical exclusion. (For further information see 43 CFR 46.210(i)). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

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

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

#### List of Subjects in 25 CFR Part 150

Indians—lands.

For the reasons given in the preamble, the Department of the Interior amends 25 CFR chapter I, subchapter H, by revising part 150 to read as follows:

### PART 150—RECORD OF TITLE TO INDIAN LAND

#### Subpart A—Purpose and Definitions

Sec.

150.1 What is the purpose of this part?

150.2 What terms do I need to know?

150.3 May Tribes administer this part on LTRO's behalf?

#### Subpart B—Record of Title to Indian Land

150.101 What is the purpose of the record of title?

150.102 Who maintains the record of title?

150.103 What services does the LTRO perform to maintain the record of title?

150.104 How does the LTRO maintain the record of title?

150.105 Are certain LTRO offices responsible for certain geographic areas?

#### Subpart C—Procedures and Requirements to Record Documents

150.201 What is recorded in the record of title?

150.202 Must I check with any other governmental office to find title documents for Indian land?

150.203 Who may submit a title document for recording?

150.204 Who records title documents?

150.205 What are the minimum requirements for recording a title document?

150.206 What actions will the LTRO take if it discovers a title defect?

#### Subpart D—Disclosure of Title Documents and Reports

150.301 How does LTRO certify copies of title documents?

150.302 What reports does LTRO provide?

150.303 Who may request and receive copies of title documents in the record of title or reports from LTRO without filing a Freedom of Information Act request?

150.304 Where do I request copies of title documents and reports from LTRO?

150.305 What information must I provide when requesting title documents or reports?

150.306 Will I be charged a fee for obtaining copies of records?

#### Subpart E—Records

150.401 Who owns the records associated with this part?

150.402 How must records associated with this part be preserved?

150.403 How does the Paperwork Reduction Act affect this part?

**Authority:** 5 U.S.C. 301; 5 U.S.C. 552a; 25 U.S.C. 2; 25 U.S.C. 5; 25 U.S.C. 7; 25 U.S.C. 9; 25 U.S.C. 14b; 25 U.S.C. 25; 25 U.S.C. 199; 25 U.S.C. 343; 25 U.S.C. 355; 25 U.S.C. 413; 25 U.S.C. 2201 *et. seq.*; 44 U.S.C. 2901 *et. seq.*; 44 U.S.C. 3101 *et. seq.*; and 44 U.S.C. 3301 *et. seq.*

### Subpart A—Purpose and Definitions

#### § 150.1 What is the purpose of this part?

This part describes the BIA repository of title documents for Indian land and responsibilities for recording title documents, maintaining the repository, and providing reports on title to Indian land.

#### § 150.2 What terms do I need to know?

*Agency* means the BIA agency or field office with jurisdiction over a particular tract of Indian land or another BIA office through delegation and documentation of responsibilities in the Indian Affairs Manual. This term also means any Tribe acting on behalf of the Secretary or BIA under a contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5301 *et seq.*).

*BIA* means the Bureau of Indian Affairs within the Department of the Interior.

*Certified copy* means a copy of a title document that is a true and correct copy of the title document as recorded in the record of title and evidenced by an official seal.

*Certify* for the purposes of certifying Title Status Reports, probate inventory reports, title status maps, and findings of title examinations means that an LTRO Certifying Officer has determined that the report, map, or examination of land title status is complete, correct, and current, based on the record of title.

*Certifying Officer* means the LTRO Manager or another properly authorized or delegated Federal official who certifies the status of title to Indian lands or copies of title documents.

*Defect or title defect* means an error contained within, or created by, a title document that makes the title to Indian land uncertain.

*I or you* means the person to whom these regulations directly apply.

*Indian land* means land, or an interest therein, that is:

(1) Held in trust by the United States for one or more individual Indians or Tribes; or

(2) Owned by one or more individual Indians or Tribes and can only be alienated or encumbered by the owner with the approval of the Secretary because of restrictions or limitations in the conveyance instrument or in Federal law.

*Inherently Federal function* means Federal function that may not legally be delegated to an Indian Tribe.

*Land* is real property, including any interests, benefits, and rights inherent in the ownership of the real property. Land may include surface and/or subsurface interests.

*LTRO* means the Land Title and Records Office within the BIA, which is responsible for recording title documents, maintaining the record of title, and providing certified copies of title documents and reports. The term *LTRO*, as used herein, includes any Tribe acting on behalf of the Secretary or BIA under § 150.3.

*Manager* is the designated officer in charge of a *LTRO* office or his or her designated representative.

*OHA* means the Office of Hearings and Appeals within the Department of the Interior.

*Probate Inventory Report* means a report of Indian land owned by an individual Indian at the time of his or her death.

*Record of title* means the BIA's repository of title documents for Indian land.

*Recording* is the acceptance of a title document and entry into the record of title of a title document by *LTRO*. An official *LTRO* stamp affixed to the title document provides evidence that the title document has been recorded.

*Region* means a BIA regional office.

*Secretary* means the Secretary of the Interior or his or her authorized representative.

*Title* means ownership of Indian land.

*Title document* means any document that affects the title to or encumbers Indian land, including but not limited to conveyances, probate orders, encumbrances (such as mortgages, liens, permits, covenants, leases, easements, rights-of-way), plats, cadastral surveys, and other surveys.

*Title examination* means a review and evaluation by the *LTRO* of: (1) title documents submitted to it for recording, and (2) the status of title for a particular tract of Indian land based on the record of title, and a finding, certified by the *LTRO* Manager, that title is complete, correct, current, and without defect, or identifies defects that must be corrected.

*Title Status Report* means a report issued after a title examination that shows the proper legal description of a tract of Indian land; current ownership, including any applicable conditions, exceptions, restrictions or encumbrances of record; and whether interests in the land are in unrestricted, restricted, trust, and/or other status as indicated by the record of title in the *LTRO*.

*Tribe* means an Indian Tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994, 25 U.S.C. 5129(a).

**§ 150.3 May Tribes administer this part on *LTRO*'s behalf?**

A Tribe may contract or compact under the Indian Self-Determination

and Education Assistance Act (25 U.S.C. 5301 *et seq.*) to administer on *LTRO*'s behalf any portion of this part that is not an inherently Federal function.

**Subpart B—Record of Title to Indian Land**

**§ 150.101 What is the purpose of the record of title?**

The record of title provides the BIA with a record of title documents to Indian land and provides constructive notice that the title documents exist.

**§ 150.102 Who maintains the record of title?**

The *LTRO* is designated as the office responsible for maintaining the record of title.

**§ 150.103 What services does the *LTRO* perform to maintain the record of title?**

The *LTRO* is responsible for performing the following services to maintain the record of title:

- (a) Recording title documents submitted by an Agency, Region, or *OHA*;
- (b) Providing certified copies of the title documents in the record of title in accordance with applicable law;
- (c) Examining the record of title and certifying the findings of title examinations;
- (d) Providing certified and uncertified Title Status Reports;
- (e) Preparing, maintaining, and providing land status maps;
- (f) Providing and certifying probate inventory reports; and
- (g) Providing other services and reports based upon the information in the record of title.

**§ 150.104 How does the *LTRO* maintain the record of title?**

The *LTRO* maintains the record of title electronically. However, certain title documents may exist only as physical copies and not electronically.

**§ 150.105 Are certain *LTRO* offices responsible for certain geographic areas?**

Staff at each *LTRO* office will have primary responsibility to maintain the record of title for Indian land under that *LTRO* office's assigned geographic area, based on BIA Region, Tribal reservation, or otherwise, as prescribed by BIA through internal procedures. BIA will keep an updated list of each *LTRO* office's assigned geographic area of responsibility on [www.bia.gov/bia/ots/dltr](http://www.bia.gov/bia/ots/dltr). *LTRO* offices operated by BIA (as opposed to a Tribe acting on behalf of the Secretary) may assist in maintaining the record of title for Indian land not under their assigned geographic area as needed.

**Subpart C—Procedures and Requirements To Record Documents**

**§ 150.201 What is recorded in the record of title?**

(a) All title documents for Indian land must be recorded in the record of title, regardless of whether the document reflects a transaction that required Secretarial approval. For example, the following do not require Secretarial approval, but are title documents required to be recorded:

(1) Service line agreements must be recorded under 25 CFR 169.56;

(2) Individual leases under approved Helping Expedite and Advance Responsible Tribal Homeownership (HEARTH) Tribal regulations must be recorded under the Indian Affairs Manual (IAM) at 52 IAM 13;

(3) Individual leases, business agreements, and rights-of-way under Tribal Energy Resource Agreements under 25 CFR 224 must be recorded;

(4) Leases between a Tribe and a Tribal energy development organization under 25 CFR 224 must be recorded;

(5) Leases of Tribal land by a 25 U.S.C. 477 corporate entity under its charter to a third party for a period not to exceed 25 years must be recorded under 25 CFR 162.006(b)(3)(i);

(6) Tribal authorization for Tribal utility lines crossing Tribal lands must be recorded under § 169.4(b)(3)(iii); and

(7) Subleasehold mortgages under 25 CFR 162.009 must be recorded.

(b) The requirement in paragraph (a) of this section does not eliminate or supersede any Federal statute or regulation requiring the recording of title documents for Indian land in other records of title, including title documents for Indian land within the jurisdiction of the Five Civilized Tribes or the Osage Nation.

(c) *LTRO* may also record:

(1) Documents that demonstrate the rights of use, occupancy, and/or benefit of a Tribe to U.S. Government land or other non-Indian lands; and

(2) Certain documents regarding Indian lands that are not title documents.

**§ 150.202 Must I check with any other governmental office to find title documents for Indian land?**

*LTRO* maintains current and historical title documents to Indian land but in certain circumstances, due diligence may require examination of other Federal, State, and local records of title.

**§ 150.203 Who may submit a title document for recording?**

Only an Agency, Region, or *OHA* may submit title documents to the *LTRO* for

recording. All other government offices and individuals must submit title documents to the Agency, Region, or OHA, as appropriate, for that Agency, Region, or OHA to submit to the LTRO.

#### **§ 150.204 Who records title documents?**

The LTRO is the designated office to record title documents. The BIA Director may delegate the authority to record title documents to another BIA office by documenting the delegation and the types of transactions to which it applies in the Indian Affairs Manual.

#### **§ 150.205 What are the minimum requirements for recording a title document?**

(a) A title document must include the following information to be recorded in the record of title, except as provided in paragraph (b) of this section:

- (1) A legal description of the Indian land encumbered by the title document and, if available, the tract number;
- (2) The signatures of the parties to the document;
- (3) Proper traditional in-person notarization or other in-person acknowledgment of the signatures of the parties, if applicable;
- (4) Signature and citation to the authority of the approving official, if applicable; and
- (5) Approval date.

(b) If the title document reflects a transaction that was deemed approved under a statute or regulation providing that a transaction is deemed approved after a certain period of time without Secretarial action to approve or deny, then, at a minimum, the title document must include the following items:

- (1) A legal description of the Indian land encumbered by the title document and, if required, the tract number;
- (2) The signatures of the parties to the document;
- (3) Proper acknowledgement or authentication of the signatures of the parties, if applicable; and
- (4) A citation to the statutory or regulatory authority for the transaction to be deemed approved.

#### **§ 150.206 What actions will the LTRO take if it discovers a title defect?**

(a) If prior to recording a title document, the LTRO discovers that the title document omits one or more of the items required for recording by § 150.205(a) or (b), then the LTRO will notify the originating office to request correction. Once the omission is corrected, the LTRO will record the title document.

(b) If prior to recording a title document, the LTRO discovers there is an error in one or more of the items required for recording by § 150.205(a) or

(b), then the LTRO will record the title document, unless the defect is fatal, with a notation on title and notify the originating office to request correction. Once the error is corrected, the LTRO will record the corrected title document and remove the notation.

(c) If the LTRO discovers a title defect during a title examination, the LTRO will notify the originating office of the defect, request correction, and make a notation in the record of title. Once the defect is corrected, the LTRO will record the corrected title document or other legal instruments to correct the title document and remove the notation.

(d) If the defect is contained in a probate record, the LTRO will notify the Agency or Region to initiate corrective action with the OHA.

### **Subpart D—Disclosure of Title Documents and Reports**

#### **§ 150.301 How does the LTRO certify copies of title documents?**

The Certifying Officer certifies copies of title documents in the record of title by affixing an official seal to the copy of the title document. The official seal attests that the certified copy is a true and correct copy of the recorded title document.

#### **§ 150.302 What reports does the LTRO provide?**

The LTRO provides the following types of reports for Indian land to those persons or entities authorized to receive such information:

- (a) Certified reports, including a Title Status Report, Land Status Map, and, as part of the probate record, the Probate Inventory Report; and
- (b) Uncertified reports or other reports based upon the information in the record of title.

#### **§ 150.303 Who may request and receive copies of title documents in the record of title or reports from the LTRO without filing a Freedom of Information Act request?**

The following individuals and entities may request and receive, through the Region or Agency office, copies of title documents in the record of title or reports for Indian land from the LTRO without filing a Freedom of Information Act request to the extent that disclosure would not violate the Privacy Act or other law restricting access to such records, for example, 25 U.S.C. 2216(e):

- (a) Owners of an interest in Indian land (or their legally authorized representative) may request copies of title documents in the record of title or reports for the Indian land in which they own an interest;
- (b) The Tribe with jurisdiction over the Indian land may request title

documents or reports for Indian land subject to the Tribe's jurisdiction;

(c) Any person (or their legally authorized representative) or entity who is leasing, using, or consolidating Indian land or is applying to lease, use, or consolidate Indian land may request title documents or reports for such Indian land; and

(d) Federal agencies administering Native American homeownership programs and Federal lenders participating in these programs who need information on specific Indian land to provide funding.

#### **§ 150.304 Where do I request copies of title documents or reports from the LTRO?**

You may request LTRO information, such as copies of title documents or reports, at any Region or Agency office with access to the record of title, regardless of geographic location. If the Region or Agency office does not have access to the title documents or the ability to generate the reports requested, it will refer the request to the office with access to the title documents or ability to generate the reports requested.

#### **§ 150.305 What information must I provide when requesting copies of title documents and reports?**

(a) Except as provided in paragraph (b), to request title documents or reports, you must provide only one of the following items of information:

- (1) If you are inquiring about your own interest in the tract, then your name and date of birth, or identification number; or
- (2) The name of the reservation where the land is located and either the tract number or legal description; or
- (3) The Agency name and either the tract number or legal description; or
- (4) A legal description of the tract; or
- (5) A title document number pertaining to the tract; or
- (6) The allotment number including the Tribe or land area code; or
- (7) The name of the original allottee.

(b) Individuals and entities described in § 150.303(c) must also provide documents showing that they are entitled to the information they are requesting from the LTRO because they are leasing, using, or consolidating Indian land or the interests in Indian land, or because they are applying to lease, use, or consolidate Indian land or the interests in Indian land.

#### **§ 150.306 Will I be charged a fee for obtaining copies of records?**

(a) The LTRO may charge a fee to any of the parties listed in § 150.303 (c) for each copy of recorded title documents, Title Status Reports, and land status

maps to cover the costs in reviewing, preparing, or processing the documents.

(b) The fee will be at the rate established by 43 CFR 2, Appendix A.

(c) The LTRO may waive all or part of these fees, at its discretion.

(d) Paid fees are non-refundable.

### Subpart E—Records

#### § 150.401 Who owns the records associated with this part?

(a) The records associated with this part are the property of the United States if they:

(1) Are made or received by the Secretary or a Tribe or Tribal organization in the conduct of a Federal trust function under 25 U.S.C. 5301 *et seq.*, including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a Federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a Tribe or Tribal organization in the conduct of business with the Department of the Interior under this part are the property of the Tribe.

#### § 150.402 How must records associated with this part be preserved?

(a) Tribes, Tribal organizations, and any other organization that make or receives records described in § 150.401(a) must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A Tribe or Tribal organization should preserve the records identified in § 150.401(b) for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. chapter 33.

#### § 150.403 How does the Paperwork Reduction Act affect this part?

The information collections contained in this part have been approved by the Office of Management and Budget under 44 U.S.C 3301 *et seq.* and assigned OMB Control Number 1076–0196. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless the

form or regulation containing the collection of information has a currently valid OMB Control Number.

**Bryan Newland,**

*Assistant Secretary—Indian Affairs.*

[FR Doc. 2021–17377 Filed 8–13–21; 8:45 am]

BILLING CODE 4337–15–P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[Docket Number USCG–2021–0346]

RIN 1625–AA08

#### Special Local Regulation; St. Mary's River, St. George Creek, Piney Point, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary special local regulation for certain waters of the St. Mary's River. This action is necessary to provide for the safety of life on these navigable waters located at Piney Point, MD, during a high-speed power boat demonstration event on October 2, 2021, and October 3, 2021. This regulation prohibits 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.

**DATES:** This rule is effective from 7:30 a.m. on October 2, 2021, through 5 p.m. on October 3, 2021. This rule will be enforced from 7:30 a.m. to 5 p.m. on October 2, 2021, and those same hours on October 3, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG–2021–0346 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Ron Houck, U.S. Coast Guard Sector Maryland-National Capital Region; telephone 410–576–2674, email [D05-DG-SectorMD-NCR-MarineEvents@uscg.mil](mailto:D05-DG-SectorMD-NCR-MarineEvents@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
COTP Captain of the Port

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

## II. Background Information and Regulatory History

The Southern Maryland Boat Club of Leonardtown, MD, notified the Coast Guard that from 8 a.m. to 4 p.m. on October 2, 2021, and from 8 a.m. to 4 p.m. on October 3, 2021, it will be conducting the Southern Maryland Boat Club Piney Point Regatta on St. George Creek at Piney Point, MD. In response, on June 25, 2021, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Special Local Regulation; St. Mary's River, St. George Creek, Piney Point, MD” (86 FR 33598). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this high-speed power boat demonstration event. During the comment period that ended July 26, 2021, we received no comments.

## III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70041. The Captain of the Port Maryland-National Capital Region (COTP) has determined that potential hazards associated with the vintage and historic racing power boat demonstration will be a safety concern for anyone intending to participate in this event and for vessels that operate within specified waters of the St. Mary's River. These hazards include risks of injury or death resulting from near or actual contact among participant vessels and spectator vessels or waterway users if normal vessel traffic were to interfere with the event. Additionally, such hazards include participants operating within and adjacent to designated navigation channels and interfering with vessels intending to operate within those channels as well as operating near approaches to local public boat landings. The purpose of this rule is to protect event participants, non-participants and transiting vessels before, during, and after the scheduled event.

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

As noted above, we received no comments on our NPRM published June 25, 2021. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes special local regulations from 7:30 a.m. on October 2, 2021, through 5 p.m. on October 3,



2021. The regulations will be enforced from 7:30 a.m. to 5 p.m. on October 2, 2021, and from 7:30 a.m. to 5 p.m. on October 3, 2021. The regulated area will cover all navigable waters of St. George Creek within an area bounded by a line connecting the following points: From the shoreline at Cedar Point at position latitude 38°09'03.4" N, longitude 076°29'55.7" W; thence south along the shoreline to Coade Bar at latitude 38°08'22.5" N, longitude 076°29'19.9" W; thence southwest across St. George Creek to Dodson Point at latitude 38°08'03.8" N, longitude 076°29'44.6" W; thence north along the shoreline and the eastern extent of the St. George Island (SR-249) Bridge to Long Bar (at the entrance to St. George Harbor) at latitude 38°30'13.0"19'16.0" N, longitude 076°08'50.6" W; thence northeast across St. George Creek to and terminating at the point of origin.

This regulation provides additional information about areas within the regulated area and their definitions and the restrictions that will apply to mariners. These areas include "Race Area," "Buffer Area," and "Spectator Area."

The duration of the special local regulations and size of the regulated area are intended to ensure the safety of life on these navigable waters before, during, and after the high-speed power boat demonstration event, scheduled to take place from 8 a.m. to 4 p.m. on October 2, 2021, and from 8 a.m. to 4 p.m. on October 3, 2021. The COTP and the Coast Guard Event PATCOM will have authority to forbid and control the movement of all vessels and persons, including event participants, in the regulated area. When hailed or signaled by an official patrol, a vessel or person in the regulated area will be required to immediately comply with the directions given by the COTP or Event PATCOM. If a person or vessel fails to follow such directions, the Coast Guard may expel them from the area, issue them a citation for failure to comply, or both.

Except for Southern Maryland Boat Club Piney Point Regatta participants and vessels already at berth, a vessel or person will be required to get permission from the COTP or Event PATCOM before entering the regulated area. Vessel operators will be able to request permission to enter and transit through the regulated area by contacting the Event PATCOM on VHF-FM channel 16. Vessel traffic will be able to safely transit the regulated area once the Event PATCOM deems it safe to do so. A vessel within the regulated area must operate at safe speed that minimizes wake. A person or vessel not registered with the event sponsor as a participant

or assigned as official patrols will be considered a spectator. Official patrols are any vessel assigned or approved by the Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign. Official patrols enforcing this regulated area can be contacted on VHF-FM channel 16 and channel 22A.

If permission is granted by the COTP or Event PATCOM, a person or vessel will be allowed to enter the regulated area or pass directly through the regulated area as instructed. Vessels will be required to operate at a safe speed that minimizes wake while within the regulated area in a manner that will not endanger event participants or any other craft. A spectator vessel must not loiter within the navigable channel while within the regulated area. Official patrol vessels will direct spectators to the designated spectator area. Only participant vessels and official patrol vessels will be allowed to enter the race area. The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

#### V. Regulatory Analyses

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

##### A. Regulatory Planning and Review

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

This regulatory action determination is based on the size and duration of the regulated area, which will impact a small designated area of St. George Creek for 19 total enforcement hours. This waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Although this regulated area extends across the entire width of the waterway, the rule will allow vessels and persons to seek permission to enter the regulated area, and vessel traffic able to do so safely will be able to transit the

regulated area on the eastern portion of the waterway away from the event area as instructed by Event PATCOM. Such vessels must operate at safe speed that minimizes wake and not loiter within the navigable channel while within the regulated area. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the status of the regulated area.

##### B. Impact on Small Entities

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

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

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

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



### C. Collection of Information

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

### D. Federalism and Indian Tribal Governments

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

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

### E. Unfunded Mandates Reform Act

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

### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves implementation of regulations within 33 CFR part 100 applicable to organized marine events on the navigable waters of the United States that could negatively impact the safety of waterway users and shore side activities

in the event area for 19 total enforcement hours. It is categorically excluded from further review under paragraph L61 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Memorandum for the Record supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

### G. Protest Activities

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

### List of Subjects in 33 CFR Part 100

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

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

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

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

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

■ 2. Add § 100.T05–0346 to read as follows:

#### § 100.T05–0346 Southern Maryland Boat Club Piney Point Regatta, St. Mary's River, St. George Creek, Piney Point, MD.

(a) *Locations.* All coordinates are based on datum NAD 1983.

(1) *Regulated area.* All navigable waters of St. George Creek, within an area bounded by a line connecting the following points: from the shoreline at Cedar Point at position latitude 38°09'03.4" N, longitude 076°29'55.7" W; thence south along the shoreline to Coade Bar at latitude 38°08'22.5" N, longitude 076°29'19.9" W; thence southwest across St. George Creek to Dodson Point at latitude 38°08'03.8" N, longitude 076°29'44.6" W; thence north along the shoreline and the eastern extent of the St. George Island (SR–249) Bridge to Long Bar (at the entrance to St. George Harbor) at latitude 38°08'50.6" N, longitude 076°30'13.0" W; thence northeast across St. George Creek to and terminating at the point of origin. The race area, buffer area, and spectator area are within the regulated area.

(2) *Race area.* The race area is a polygon in shape measuring approximately 560 yards in length by

240 yards in width. The area is bounded by a line commencing near Hodgson Point at position latitude 38°08'38.22" N, longitude 076°30'02.48" W, thence southeast to latitude 38°08'24.43" N, longitude 076°29'50.71" W; thence southwest to latitude 38°08'20.40" N, longitude 076°29'58.16" W, thence northwest to latitude 38°08'34.26" N, longitude 076°30'09.97" W; thence northeast to and terminating at the point of origin.

(3) *Buffer area.* The buffer area is a polygon in shape measuring approximately 270 feet in all directions surrounding the entire race area described in paragraph (a)(2) of this section. The area is bounded by a line commencing near Hodgson Point at position latitude 38°08'42.0" N, longitude 076°30'01.6" W; thence southeast to latitude 38°08'23.7" N, longitude 076°29'46.0" W, thence southwest to latitude 38°08'16.7" N, longitude 076°29'59.0" W; thence northwest to latitude 38°08'34.9" N, longitude 076°30'14.7" W, thence northeast to and terminating at the point of origin.

(4) *Spectator area.* The designated spectator area is a polygon in shape with its length measuring approximately 475 yards and its width measuring approximately 300 yards at its northern portion and 50 yards at its southern portion. The area is bounded by a line commencing at position latitude 38°08'47.2" N, longitude 076°29'52.9" W; thence southeast to latitude 38°08'41.9" N, longitude 076°29'47.5" W; thence southwest to latitude 38°08'37.8" N, longitude 076°29'55.3" W; thence southeast to latitude 38°08'31.3" N, longitude 076°29'50.1" W, thence southwest to latitude 38°08'30.4" N, longitude 076°29'51.7" W; thence northwest to latitude 38°08'42.0" N, longitude 076°30'01.6" W, thence northeast to and terminating at the point of origin.

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

*Buffer area* is a neutral area that surrounds the perimeter of the race area within the regulated area described by this section. The purpose of a buffer area is to minimize potential collision conflicts with marine event participants or high-speed power boats and spectator vessels or nearby transiting vessels. This area provides separation between a race area and a specified Spectator Area or other vessels that are operating in the vicinity of the regulated area established by the special local regulations.

*Captain of the Port (COTP) Maryland-National Capital Region* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region or

any Coast Guard commissioned, warrant or petty officer who has been authorized by the COTP to act on his behalf.

*Event Patrol Commander or Event PATCOM* means a commissioned, warrant, or petty officer of the U.S. Coast Guard who has been designated by the Commander, Coast Guard Sector Maryland-National Capital Region.

*Official patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Maryland-National Capital Region with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* means all persons and vessels registered with the event sponsor as participating in the "Southern Maryland Boat Club Piney Point Regatta" event, or otherwise designated by the event sponsor as having a function tied to the event.

*Race area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a race area within the regulated area defined by this section.

*Spectator* means a person or vessel not registered with the event sponsor as participants or assigned as official patrols.

*Spectator area* is an area described by a line bound by coordinates provided in latitude and longitude that outlines the boundary of a spectator area within the regulated area defined by this part.

(c) *Special local regulations.* (1) The COTP Maryland-National Capital Region or Event PATCOM may forbid and control the movement of all vessels and persons, including event participants, in the regulated area described in paragraph (a)(1) of this section. When hailed or signaled by an official patrol, a vessel or person in the regulated area shall immediately comply with the directions given by the patrol. Failure to do so may result in the Coast Guard expelling the person or vessel from the area, issuing a citation for failure to comply, or both. The COTP Maryland-National Capital Region or Event PATCOM may terminate the event, or a participant's operations at any time the COTP Maryland-National Capital Region or Event PATCOM believes it necessary to do so for the protection of life or property.

(2) Except for participants and vessels already at berth, a person or vessel within the regulated area at the start of enforcement of this section must immediately depart the regulated area.

(3) A spectator must contact the Event PATCOM to request permission to either enter or pass through the regulated area. The Event PATCOM, and official patrol vessels enforcing this regulated area, can be contacted on

marine band radio VHF-FM channel 16 (156.8 MHz) and channel 22A (157.1 MHz). If permission is granted, the spectator must enter the designated Spectator Area or pass directly through the regulated area as instructed by Event PATCOM. A vessel within the regulated area must operate at safe speed that minimizes wake. A spectator vessel must not loiter within the navigable channel while within the regulated area.

(4) Only participant vessels and official patrol vessels are allowed to enter and remain within the race area.

(5) Only participant vessels and official patrol vessels are allowed to enter and transit directly through the buffer area in order to arrive at or depart from the race area.

(6) A person or vessel that desires to transit, moor, or anchor within the regulated area must obtain authorization from the COTP Maryland-National Capital Region or Event PATCOM. A person or vessel seeking such permission can contact the COTP Maryland-National Capital Region at telephone number 410-576-2693 or on Marine Band Radio, VHF-FM channel 16 (156.8 MHz) or the Event PATCOM on Marine Band Radio, VHF-FM channel 16 (156.8 MHz).

(7) The Coast Guard will publish a notice in the Fifth Coast Guard District Local Notice to Mariners and issue a marine information broadcast on VHF-FM marine band radio announcing specific event dates and times.

(d) *Enforcement officials.* The Coast Guard may be assisted with marine event patrol and enforcement of the regulated area by other federal, state, and local agencies.

(e) *Enforcement period.* This section will be enforced from 7:30 a.m. to 5 p.m. on October 2, 2021, and from 7:30 a.m. to 5 p.m. on October 3, 2021.

Dated: August 10, 2021.

**David E. O'Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2021-17442 Filed 8-13-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket No. USCG-2021-0617]

#### Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Lake Michigan Zone—Chicago Air and Water Show

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce a safety zone for the Chicago Air and Water Show on a portion of Lake Michigan, from August 20, 2021 through August 22, 2021. This action is intended to protect the safety of life on the navigable waterway immediately before, during, and after this event. During the enforcement period listed below, no vessel may transit this safety zone without approval from the Captain of the Port Lake Michigan or a designated representative.

**DATES:** The regulations in 33 Code of Federal Regulations (CFR) 165.929 Table 1 Event (16) will be enforced for the Chicago Air and Water Show from: 9 a.m. through 3 p.m. on August 20, 2021, and from 11 a.m. to 4 p.m. on both August 21, 2021, and August 22, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email Chief Petty Officer Michael Salviati, Marine Safety Unit Chicago, U.S. Coast Guard; telephone: 630-986-2155, email: [Michael.C.Salviati@uscg.mil](mailto:Michael.C.Salviati@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the Safety Zone; Chicago Air and Water Show listed in 33 Code of Federal Regulations (CFR) 165.929 Table (1) Event (16). Section 165.929 lists many annual events requiring safety zones in the Captain of the Port Lake Michigan zone. This safety zone encompasses all waters and adjacent shoreline of Lake Michigan and Chicago Harbor bounded by a line drawn from 41°55.900' N at the shoreline, then east to 41°55.900' N, 087°37.200' W, then southeast to 41°54.000' N, 087°36.000' W, then southwestward to the northeast corner of the Jardine Water Filtration Plant, then due west to the shore. This safety zone will be enforced from 9 a.m. through 3 p.m. on August 20, 2021; and from 11 a.m. through 4 p.m. on both August 21, 2021, and August 22, 2021.

All vessels must obtain permission from the Captain of the Port Lake Michigan, or his or her designated on-scene representative to enter, move within, or exit this safety zone during the enforcement times listed in this notice of enforcement. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. Approvals will be granted on a case-by-case basis. Vessels and persons granted permission to enter the safety zone shall obey all lawful orders or directions of the Captain of the Port Lake Michigan or a designated on-scene representative.

This notice of enforcement is issued under authority of 33 CFR 165.929, Safety Zones; Annual events requiring safety zones in the Captain of the Port Lake Michigan zone, and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners and Local Notice to Mariners. The Captain of the Port Lake Michigan or a designated on-scene representative may be contacted via VHF Channel 16 or (414) 747-7182.

Dated: August 10, 2021.

**Donald P. Montoro,**

*Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.*

[FR Doc. 2021-17422 Filed 8-13-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG-2021-0553]

RIN 1625-AA00

#### Safety Zone; Swim for Alligator Lighthouse, Islamorada, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone on certain navigable waters near Islamorada, Florida, during the Swim for Alligator Lighthouse open water swim event. A permanent safety zone exists for this event; however, for this year's event the date has changed. This temporary safety zone is a short-term modification of the existing permanent safety zone, due to a change in the date for this year's event. The safety zone is necessary to ensure the safety of event participants and spectators. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone unless authorized by the Captain of the Port (COTP) Key West or a designated representative.

**DATES:** This rule is effective from 7:30 a.m. until 4 p.m. on September 11, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2021-0553 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 Ensign Vera Max, Waterways Management Division Chief, Sector Key West, FL, U.S. Coast Guard; telephone (305) 292-8768; e-mail [SKWWaterways@uscg.mil](mailto:SKWWaterways@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

##### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable and contrary to the public interest. The Coast Guard did not receive necessary information from the event sponsor for this year's event until July 10, 2021. The Coast Guard has an existing safety zone for this event in 33 CFR 165.786, Table to § 165.786, Line No. 9.1; however, the existing regulation only covers the event when it is scheduled on the third Saturday of September.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because the event is taking place on September 11, 2021, and immediate action is needed to respond to the potential safety hazards associated with this event.

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

The Coast Guard is issuing this rule under the authority in 46 U.S.C. 70034. The Captain of the Port Key West (COTP) has determined that potential hazards associated with open water swim events will be a safety concern for persons and vessels in the regulated area. This rule is needed to ensure the safety of the event participants, the

general public, vessels and the marine environment in the navigable waters within the safety zone during the Swim for Alligator Lighthouse open water swim event.

##### IV. Discussion of the Rule

This rule establishes a safety zone on September 11, 2021, for a period of 9 hours, from 7:30 a.m. to 4 p.m. The safety zone will cover all waters of the Atlantic Ocean beginning at a point Latitude 24°54.82' N, longitude 080°38.03' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to latitude 24°51.07' N, longitude 080°37.14' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to point of origin at latitude 24°54.82' N, longitude 080°38.03' W. The event course begins and ends at Amara Cay Resort in Islamorada, Florida, and extends through Hawks Channel, with a turnaround at Alligator Reef Lighthouse. Approximately 400 swimmers with kayak escorts and eight safety vessels are anticipated to participate in the event. The size and duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the open water swim. Persons and non-participant vessels are prohibited from entering, transiting through, anchoring in, or remaining within the safety zone without obtaining permission from the COTP Key West or a designated representative. If authorization to enter, transit through, anchor in, or remain within the safety zone is granted by the COTP Key West or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative. The Coast Guard will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, or by on-scene designated representatives.

##### V. Regulatory Analyses

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

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

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a

budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the size, location, duration and available exceptions to the enforcement of the safety zone. The regulated area will impact small designated areas of the Atlantic Ocean between Islamorada, Florida, and the Alligator Reef Lighthouse for only 9 hours and thus is limited in time and scope. Furthermore, the rule will allow vessels to seek permission to enter the zone. Non-participant persons and vessels may enter, transit through, anchor in, or remain within the regulated area during the enforcement periods if authorized by the COTP or a designated representative. Vessels not able to enter, transit through, anchor in, or remain within the regulated area without authorization from the COTP or a designated representative may operate in the surrounding areas during the 9 hour enforcement period. The Coast Guard will issue a Local Notice to Mariners and a Broadcast Notice to Mariners, allowing mariners to make alternative plans or seek permission to transit the zone.

#### B. Impact on Small Entities

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

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

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

concerning its provisions or options for compliance, please 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 will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### D. Federalism and Indian Tribal Governments

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

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

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

\$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01 and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. The regulated area will impact small designated areas of the Atlantic Ocean between Islamorada, Florida and the Alligator Reef Lighthouse for only 9 hours and thus is limited in time and scope. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to 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 165

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

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

#### **PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

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

■ 2. Add § 165.T07–0553 to read as follows:

**§ 165.T07–0553 Safety Zone; Swim for Alligator Lighthouse, Islamorada, FL.**

(a) *Location.* The following regulated area is a safety zone: All waters of the Atlantic Ocean beginning at a point Latitude 24°54.82' N, longitude 080°38.03' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to latitude 24°51.07' N, longitude 080°37.14' W, thence to latitude 24°54.36' N, longitude 080°37.72' W, thence to point of origin at latitude 24°54.82' N, longitude 080°38.03' W. The event course begins and ends at Amara Cay Resort in Islamorada, Florida, extending through Hawks Channel with a turnaround point at Alligator Reef Lighthouse. All coordinates are North American Datum 1983.

(b) *Definition.* As used in this section, the term “designated representative” means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Key West (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by the COTP Key West or a designated representative.

(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP Key West by telephone at (305) 292–8772, or a designated representative via VHF–FM radio on channel 16 to request authorization. If authorization is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP Key West or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Local Notice to Mariners, Broadcast Notice to Mariners via VHF–FM channel 16, or the COTP’s designated representative.

(d) *Enforcement period.* This rule will be enforced from 7:30 a.m. until 4 p.m. on September 11, 2021.

Dated: August 10, 2021.

**A. Chamie,**

*Captain, U.S. Coast Guard, Captain of the Port Key West.*

[FR Doc. 2021–17481 Filed 8–13–21; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[Docket No. USCG-2021–0662]

**Safety Zone; San Francisco Giants Fireworks Display, San Francisco Bay, San Francisco, CA**

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce the safety zone for the San Francisco Giants Fireworks Display in the Captain of the Port, San Francisco area of responsibility during the dates and times noted below. This action is necessary to protect life and property of the maritime public from the hazards associated with the fireworks display. During the enforcement period, unauthorized persons or vessels are prohibited from entering into, transiting through, or remaining in the safety zone, unless authorized by the Patrol Commander (PATCOM), any Official Patrol displaying a Coast Guard ensign, or other federal, state, or local law enforcement agencies on scene to assist the Coast Guard in enforcing the regulated area.

**DATES:** The regulations in 33 CFR 165.1191 for the location in Table 1 to § 165.1191, Item number 1, will be enforced from 10 a.m. until 11:30 p.m. on August 13, 2021.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notification of enforcement, call or email Lieutenant Anthony Solares, Waterways Management, U.S. Coast Guard Sector San Francisco; telephone (415) 399–3585, email *SFWaterways@uscg.mil*.

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce the safety zone in 33 CFR 165.1191, Table 1, Item number 1, for the San Francisco Giants Fireworks Display from 10 a.m. until 11:30 p.m. on August 13, 2021. The safety zone will extend to all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 100 feet out from the fireworks barge during the loading, transit, and arrival of the fireworks barge from the loading location to the display location and until the start of the fireworks display. From 10 a.m. until 8 p.m. on August 13, 2021, the fireworks barge will be loading pyrotechnics from Pier 50 in San Francisco, CA. The fireworks

barge will remain at the loading location until its transit to the display location. From 8:30 p.m. to 8:45 p.m. on August 13, 2021 the loaded fireworks barge will transit from Pier 50 to the launch site near Pier 48 in approximate position 37°46'36" N, 122°22'56" W (NAD 83) where it will remain until the conclusion of the fireworks display. Upon the commencement of the 10 minute fireworks display, scheduled to begin at the conclusion of the baseball game, between approximately 9:30 p.m. and 10:30 p.m. on August 13, 2021, the safety zone will increase in size and encompass all navigable waters of the San Francisco Bay, from surface to bottom, within a circle formed by connecting all points 700 feet out from the fireworks barge near Pier 48 in approximate position 37°46'36" N, 122°22'56" W (NAD 83). This safety zone will be in enforced from 10 a.m. until 11:30 p.m. on August 13, 2021, or as announced via Broadcast Notice to Mariners.

Under the provisions of 33 CFR 165.1191, unauthorized persons or vessels are prohibited from entering into, transiting through, or anchoring in the safety zone during all applicable effective dates and times, unless authorized to do so by the PATCOM or other Official Patrol, defined as a federal, state, or local law enforcement agency on scene to assist the Coast Guard in enforcing the safety zone. During the enforcement period, if you are the operator of a vessel in one of the safety zones you must comply directions from the Patrol Commander or other Official Patrol. The PATCOM or Official Patrol may, upon request allow the transit of commercial vessels through regulated areas when it is safe to do so.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners.

If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners may be used to grant general permission to enter the regulated area.

Dated: August 11, 2021.

**Taylor Q. Lam,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco.*

[FR Doc. 2021–17521 Filed 8–11–21; 4:15 pm]

**BILLING CODE 9110–04–P**

**ENVIRONMENTAL PROTECTION AGENCY****40 CFR Parts 9 and 721**

[EPA-HQ-OPPT-2020-0304; FRL-8146-02-OCSPP]

RIN 2070-AB27

**Significant New Use Rules on Certain Chemical Substances (20-8.B)****AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Final rule.

**SUMMARY:** EPA is issuing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for chemical substances which were the subject of premanufacture notices (PMNs). This action requires persons to notify EPA at least 90 days before commencing manufacture (defined by statute to include import) or processing of any of these chemical substances for an activity that is designated as a significant new use by this rule. This action further requires that persons not commence manufacture or processing for the significant new use until they have submitted a Significant New Use Notice (SNUN), EPA has conducted a review of the notice, made an appropriate determination on the notice, and has taken any risk management actions as are required as a result of that determination.

**DATES:** This rule is effective on October 15, 2021. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on August 30, 2021.

**FOR FURTHER INFORMATION CONTACT:** For technical information contact: William Wysong, New Chemicals Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 564-4163; email address: [wysong.william@epa.gov](mailto:wysong.william@epa.gov).

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave. Rochester, NY 14620; telephone number: (202) 554-1404; email address: [TSCA-Hotline@epa.gov](mailto:TSCA-Hotline@epa.gov).

**SUPPLEMENTARY INFORMATION:****I. General Information***A. Does this action apply to me?*

You may be potentially affected by this action if you manufacture, process, or use the chemical substances contained in this rule. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather

provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Manufacturers or processors of one or more subject chemical substances (NAICS codes 325 and 324110), e.g., chemical manufacturing and petroleum refineries.

This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA, which would include the SNUR requirements. Chemical importers are subject to the TSCA section 13 (15 U.S.C. 2612) import provisions. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, pursuant to 40 CFR 721.20 or 725.920 for the MCAN substance, any persons who export or intend to export a chemical substance that is the subject of this rule are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)), and must comply with the export notification requirements in 40 CFR part 707, subpart D.

*B. How can I access the docket?*

The docket includes information considered by the Agency in developing the proposed and final rules. The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2020-0304, is available at <https://www.regulations.gov> and at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW, Washington, DC. 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 OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <https://www.epa.gov/dockets>.

Due to the public health emergency, 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. Background***A. What action is the Agency taking?*

EPA is finalizing SNURs under TSCA section 5(a)(2) for chemical substances

which were the subject of PMNs P-18-399, P-18-400, and P-20-68. These SNURs require persons who intend to manufacture or process any of these chemical substances for an activity that is designated as a significant new use to notify EPA at least 90 days before commencing that activity.

Previously, in the **Federal Register** of August 25, 2020 (85 FR 52294) (FRL-10013-07), EPA proposed SNURs for these chemical substances. More information on the specific chemical substances subject to this final rule can be found in the **Federal Register** document proposing the SNURs. The docket includes information considered by the Agency in developing the proposed and final rules, including public comments and EPA's responses to the public comments received on the proposed rules, as described in Unit IV.

*B. What is the Agency's authority for taking this action?*

TSCA section 5(a)(2) (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including the four TSCA section 5(a)(2) factors listed in Unit III.

*C. Do the SNUR general provisions apply?*

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the rule. Provisions relating to user fees appear at 40 CFR part 700. Pursuant to 40 CFR 721.1(c), persons subject to these SNURs must comply with the same SNUN requirements and EPA regulatory procedures as submitters of PMNs under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), 5(h)(2), 5(h)(3), and 5(h)(5) and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA must either determine that the significant new use is not likely to present an unreasonable risk of injury or take such regulatory action as is associated with an alternative determination before manufacture or processing for the significant new use can commence. If EPA determines that the significant new use is not likely to present an unreasonable risk, EPA is required under TSCA section 5(g) to make public, and submit for publication

in the **Federal Register**, a statement of EPA's findings.

### III. Significant New Use Determination

#### A. Determination Factors

TSCA section 5(a)(2) states that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors, including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

In determining what would constitute a significant new use for the chemical substances that are the subject of these SNURs, EPA considered relevant information about the toxicity of the chemical substances, and potential human exposures and environmental releases that may be associated with the substances, in the context of the four bulleted TSCA section 5(a)(2) factors listed in this unit. During its review of these chemicals, EPA identified certain conditions of use that are not intended by the submitters, but reasonably foreseen to occur. EPA is designating those reasonably foreseen conditions of use as well as certain other circumstances of use as significant new uses.

#### B. Procedures for Significant New Uses Claimed as Confidential Business Information (CBI)

By this rule, EPA is establishing certain significant new uses which have been claimed as CBI subject to Agency confidentiality regulations at 40 CFR part 2 and 40 CFR part 720, subpart E. Absent a final determination or other disposition of the confidentiality claim under 40 CFR part 2 procedures, EPA is required to keep this information confidential. EPA promulgated a procedure to deal with the situation where a specific significant new use is CBI, at 40 CFR 721.1725(b)(1) and has referenced it to apply to other SNURs.

Under these procedures a manufacturer or processor may request EPA to determine whether a specific use would be a significant new use under the rule. The manufacturer or processor must show that it has a *bona fide* intent

to manufacture or process the chemical substance and must identify the specific use for which it intends to manufacture or process the chemical substance. If EPA concludes that the person has shown a *bona fide* intent to manufacture or process the chemical substance, EPA will tell the person whether the use identified in the *bona fide* submission would be a significant new use under the rule. Since most of the chemical identities of the chemical substances subject to these SNURs are also CBI, manufacturers and processors can combine the *bona fide* submission under the procedure in 40 CFR 721.1725(b)(1) with that under 40 CFR 721.11 into a single step.

If EPA determines that the use identified in the *bona fide* submission would not be a significant new use, *i.e.*, the use does not meet the criteria specified in the rule for a significant new use, that person can manufacture or process the chemical substance so long as the significant new use trigger is not met. In the case of a production volume trigger, this means that the production volume is not exceeded by the amount identified in the *bona fide* submission to EPA. Because of confidentiality concerns, EPA does not typically disclose the actual production volume that constitutes the use trigger. Thus, if the person later intends to exceed that volume, a new *bona fide* submission would be necessary to determine whether that higher volume would be a significant new use.

#### IV. Public Comments

EPA received public comments from four identifying entities on the proposed rule. In addition, EPA received one anonymous comment. The Agency's responses are described in a separate Response to Public Comments document that is available in the public docket for this rulemaking. The anonymous comment and three of the comments from identifying entities were broadly supportive of the rule and requested no changes to the rule itself; therefore, no response is required. EPA made no changes to the final rule based on these comments. EPA did make one change to the reporting requirements for two SNURs to make clear that the production volume limit in the SNURs was confidential.

#### V. Substances Subject to this Rule

EPA is establishing significant new use and recordkeeping requirements for chemical substances in 40 CFR part 721, subpart E. In Unit IV. of the proposed SNUR, EPA provided the following information for each chemical substance:

- PMN number.
- Chemical name (generic name, if the specific name is claimed as CBI).
- Chemical Abstracts Service (CAS) Registry number (if assigned for non-confidential chemical identities).
- Basis for the SNUR.
- Potentially useful information.
- CFR citation assigned in the regulatory text section of this final rule.

The regulatory text section of these rules specifies the activities designated as significant new uses. Certain new uses, including production volume limits and other uses designated in the rules, may be claimed as CBI.

### VI. Rationale and Objectives of the Rule

#### A. Rationale

During review of the PMNs submitted for the chemical substances that are the subject of these SNURs and as further discussed in Unit IV. of the proposed rule, EPA identified certain other reasonably foreseen conditions of use in addition to those conditions of use intended by the submitter. EPA has determined that the chemical under the intended conditions of use is not likely to present an unreasonable risk. However, EPA has not assessed risks associated with the reasonably foreseen conditions of use. EPA is designating these conditions of use as well as certain other circumstances of use as significant new uses. As a result, those significant new uses cannot occur without going through a separate, subsequent EPA review and determination process associated with a SNUN.

#### B. Objectives

EPA is issuing these SNURs because the Agency wants:

- To have an opportunity to review and evaluate data submitted in a SNUN before the notice submitter begins manufacturing or processing a listed chemical substance for the described significant new use.
- To be obligated to make a determination under TSCA section 5(a)(3) regarding the use described in the SNUN, under the conditions of use. The Agency will either determine under section 5(a)(3)(C) that the significant new use is not likely to present an unreasonable risk, including an unreasonable risk to a potentially exposed or susceptible subpopulation identified as relevant by the Administrator under the conditions of use, or make a determination under TSCA section 5(a)(3)(A) or (B) and take the required regulatory action associated with the determination, before manufacture or processing for the



significant new use of the chemical substance can occur.

- To be able to complete its review and determination on each of the PMN substances, while deferring analysis on the significant new uses proposed in these rules unless and until the Agency receives a SNUN.

Issuance of a SNUR for a chemical substance does not signify that the chemical substance is listed on the TSCA Inventory. Guidance on how to determine if a chemical substance is on the TSCA Inventory is available on the internet at <https://www.epa.gov/tscainventory>.

## VII. Applicability of the Rules to Uses Occurring Before the Effective Date of the Final Rule

To establish a significant new use, EPA must determine that the use is not ongoing. The chemical substances subject to this rule were undergoing premanufacture review at the time of signature of the proposed rule and were not on the TSCA inventory. In cases where EPA has not received a notice of commencement (NOC) and the chemical substance has not been added to the TSCA Inventory, no person may commence such activities without first submitting a PMN. Therefore, for the chemical substances subject to these SNURs, EPA concluded at the time of signature of the proposed rule that the designated significant new uses were not ongoing.

EPA designated August 4, 2020 (the date of web posting of the proposed rule) as the cutoff date for determining whether the new use is ongoing. The objective of EPA's approach is to ensure that a person cannot defeat a SNUR by initiating a significant new use before the effective date of the final rule.

Persons who began commercial manufacture or processing of the chemical substances for a significant new use identified on or after that date will have to cease any such activity upon the effective date of the final rule. To resume their activities, these persons would have to first comply with all applicable SNUR notification requirements and EPA would have to take action under TSCA section 5 allowing manufacture or processing to proceed.

## VIII. Development and Submission of Information

EPA recognizes that TSCA section 5 does not require development of any particular new information (*e.g.*, generating test data) before submission of a SNUN. There is an exception: If a person is required to submit information for a chemical substance pursuant to a

rule, Order or consent agreement under TSCA section 4, then TSCA section 5(b)(1)(A) requires such information to be submitted to EPA at the time of submission of the SNUN.

In the absence of a rule, Order, or consent agreement under TSCA section 4 covering the chemical substance, persons are required only to submit information in their possession or control and to describe any other information known to or reasonably ascertainable by them (see 40 CFR 720.50). However, upon review of PMNs and SNUNs, the Agency has the authority to require appropriate testing. Unit IV. of the proposed rule lists potentially useful information for all SNURs listed here. Descriptions are provided for informational purposes. The potentially useful information identified in Unit IV. of the proposed rule will be useful to EPA's evaluation in the event that someone submits a SNUN for the significant new use. Companies who are considering submitting a SNUN are encouraged, but not required, to develop the information on the substance, which may assist with EPA's analysis of the SNUN. For more information on alternative test methods and strategies to reduce vertebrate animal testing, visit <https://www.epa.gov/assessing-and-managing-chemicals-under-tsc/alternative-test-methods-and-strategies-reduce>.

EPA strongly encourages persons, before performing any testing, to consult with the Agency pertaining to protocol election. Furthermore, pursuant to TSCA section 4(h), which pertains to reduction of testing in vertebrate animals, EPA encourages consultation with the Agency on the use of alternative test methods and strategies (also called New Approach Methodologies, or NAMs), if available, to generate the recommended test data. EPA encourages dialog with Agency representatives to help determine how best the submitter can meet both the data needs and the objective of TSCA section 4(h).

The potentially useful information described in Unit IV. of the proposed rule may not be the only means of providing information to evaluate the chemical substance associated with the significant new uses. However, submitting a SNUN without any test data may increase the likelihood that EPA will take action under TSCA sections 5(e) or 5(f). EPA recommends that potential SNUN submitters contact EPA early enough so that they will be able to conduct the appropriate tests.

SNUN submitters should be aware that EPA will be better able to evaluate

SNUNs which provide detailed information on the following:

- Human exposure and environmental release that may result from the significant new use of the chemical substances.

## IX. SNUN Submissions

According to 40 CFR 721.1(c), persons submitting a SNUN must comply with the same notification requirements and EPA regulatory procedures as persons submitting a PMN, including submission of test data on health and environmental effects as described in 40 CFR 720.50. SNUNs must be submitted on EPA Form No. 7710-25, generated using e-PMN software, and submitted to the Agency in accordance with the procedures set forth in 40 CFR 720.40 and 721.25. E-PMN software is available electronically at <https://www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca>.

## X. Economic Analysis

EPA has evaluated the potential costs of establishing SNUN requirements for potential manufacturers and processors of the chemical substances subject to this rule. EPA's complete economic analysis is available in the docket for this rulemaking.

## XI. Statutory and Executive Order Reviews

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

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulations and Regulatory Review

This action establishes SNURs for new chemical substances that were the subject of PMNs. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

### B. Paperwork Reduction Act (PRA)

According to PRA, 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 that requires OMB approval under PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.



The information collection requirements related to this action have already been approved by OMB pursuant to PRA under OMB control number 2070-0012 (EPA ICR No. 574). This action does not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to the Agency, the annual burden is estimated to average between 30 and 170 hours per response. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN.

The listing of the OMB control numbers of the collection instruments and their subsequent codification in the table in 40 CFR 9.1 satisfies the display requirements of the PRA and OMB's implementing regulations at 5 CFR part 1320. Since this ICR was previously subject to public notice and comment prior to OMB approval, and given the technical nature of the table in 40 CFR part 9, EPA finds that further notice and comment to amend it is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) to amend this table in 40 CFR 9.1 without further notice and comment.

#### C. Regulatory Flexibility Act (RFA)

Pursuant to RFA section 605(b), 5 U.S.C. 601 *et seq.*, I hereby certify that promulgation of this SNUR would not have a significant adverse economic impact on a substantial number of small entities. The requirement to submit a SNUN applies to any person (including small or large entities) who intends to engage in any activity described in the final rule as a "significant new use." Because these uses are "new," based on all information currently available to EPA, it appears that no small or large entities presently engage in such activities. A SNUR requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN. Although some small entities may decide to pursue a significant new use in the future, EPA cannot presently determine how many, if any, there may be. However, EPA's experience to date is that, in response to the promulgation of SNURs covering over 1,000 chemicals, the Agency receives only a small number of notices per year. For example, the number of SNUNs received was seven in Federal fiscal year (FY) 2013, 13 in FY2014, six in FY2015, 12 in FY2016, 13 in FY2017, and 11 in FY2018. Only a fraction of these were from small businesses. In

addition, the Agency currently offers relief to qualifying small businesses by reducing the SNUN submission fee from \$16,000 to \$2,800. This lower fee reduces the total reporting and recordkeeping of cost of submitting a SNUN to about \$10,116 for qualifying small firms. Therefore, the potential economic impacts of complying with this SNUR are not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published in the **Federal Register** of June 2, 1997 (62 FR 29684) (FRL-5597-1), the Agency presented its general determination that final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

#### D. Unfunded Mandates Reform Act (UMRA)

Based on EPA's experience with proposing and finalizing SNURs, State, local, and Tribal governments have not been impacted by these rulemakings, and EPA does not have any reasons to believe that any State, local, or Tribal government will be impacted by this action. As such, EPA has determined that this action does not impose any enforceable duty, contain any unfunded mandate, or otherwise have any effect on small governments subject to the requirements of UMRA sections 202, 203, 204, or 205 (2 U.S.C. 1501 *et seq.*).

#### E. Executive Order 13132: Federalism

This action will not have federalism implications because it is not expected to have a substantial direct effect on 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999).

#### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action will not have Tribal implications because it is not expected to have substantial direct effects on Indian Tribes, significantly or uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175 (65 FR 67249, November 9, 2000), do not apply to this action.

#### G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because this is not an economically significant regulatory action as defined by Executive Order 12866, and this action does not address environmental health or safety risks disproportionately affecting children.

#### H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because this action is not a significant regulatory action under Executive Order 12866.

#### I. National Technology Transfer and Advancement Act (NTTAA)

In addition, since this action does not involve any technical standards, NTTAA section 12(d), 15 U.S.C. 272 note, does not apply to this action.

#### J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898 (59 FR 7629, February 16, 1994).

#### K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and EPA will submit a rule report containing this rule and other required information 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).

#### List of Subjects

##### 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

##### 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: August 9, 2021.

**Tala Henry,**

*Deputy Director, Office of Pollution Prevention and Toxics.*

Therefore, for the reasons stated in the preamble, 40 CFR chapter I is amended as follows:

**PART 9—OMB APPROVALS UNDER THE PAPERWORK REDUCTION ACT**

■ 1. The authority citation for part 9 continues to read as follows:

**Authority:** 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1, amend the table by adding entries for §§ 721.11556 through 721.11558 in numerical order under the undesignated center heading “Significant New Uses of Chemical Substances” to read as follows:

**§ 9.1 OMB approvals under the Paperwork Reduction Act.**

* * * * *				
40 CFR citation	OMB control No.			
* * * * *	* * * * *			
Significant New Uses of Chemical Substances				
* * * * *	* * * * *			
721.11556	.....	2070	0012	
721.11557	.....	2070	0012	
721.11558	.....	2070	0012	
* * * * *	* * * * *			
* * * * *				

**PART 721— SIGNIFICANT NEW USES OF CHEMICAL SUBSTANCES**

■ 3. The authority citation for part 721 continues to read as follows:

**Authority:** 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. Add §§ 721.11556 through 721.11558 to subpart E to read as follows:

**Subpart E Significant New Uses for Specific Chemical Substances**

* * * * *				
Sec.				
721.11556	Rosin adduct ester, polymer with polyols, compd. with ethanolamine (generic).			
721.11557	Rosin adduct ester, polymer with polyols, potassium salt (generic).			
721.11558	1,3-Propanediol, 2,2-dimethyl-, 1,3-diacetate.			
* * * * *	* * * * *			

**§ 721.11556 Rosin adduct ester, polymer with polyols, compd. with ethanolamine (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as rosin adduct ester, polymer with polyols, compd. with ethanolamine (PMN P–18–399) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture an annual production volume greater than the confidential production volume identified in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

**§ 721.11557 Rosin adduct ester, polymer with polyols, potassium salt (generic).**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified generically as rosin adduct ester, polymer with polyols, potassium salt (PMN P–18–400) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* It is a significant new use to manufacture an annual production volume greater than the confidential production volume identified in the PMN.

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

**§ 721.11558 1,3-Propanediol, 2,2-dimethyl-, 1,3-diacetate.**

(a) *Chemical substance and significant new uses subject to reporting.*

(1) The chemical substance identified as 1,3-propanediol, 2,2-dimethyl-, 1,3-diacetate (PMN P–20–68, CAS No. 13431–57–7) is subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section.

(2) The significant new uses are:

(i) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(j).

(ii) [Reserved]

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph (b).

(1) *Recordkeeping.* Recordkeeping requirements as specified in § 721.125(a) through (c) and (i) are applicable to manufacturers and processors of this substance.

(2) *Limitation or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Determining whether a specific use is subject to this section.* The provisions of § 721.1725(b)(1) apply to paragraph (a)(2)(i) of this section.

[FR Doc. 2021–17389 Filed 8–13–21; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**42 CFR Part 110**

**RIN 0906–AB22**

**Countermeasures Injury Compensation Program: Smallpox Countermeasures Injury Table**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

**ACTION:** Final rule.

**SUMMARY:** HHS is establishing the Smallpox Countermeasures Injury Table (Table) as authorized by the Public Readiness and Emergency Preparedness Act of 2005 (PREP Act). Through this final rule, the Secretary of the U.S. Department of Health and Human Services (Secretary) adds the Smallpox Countermeasures Injury Table to the agency’s regulations. The Table includes a list of covered smallpox countermeasures, required time

intervals for the first symptom or manifestation of onset of injuries, and the accompanying Qualifications and Aids to Interpretation (QAI), which set forth definitions and other requirements necessary to establish Table injuries.

**DATES:** This rule is effective September 15, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Tamara Overby, Acting Director, Division of Injury Compensation Programs, Healthcare Systems Bureau, HRSA, 5600 Fishers Lane, 8N146B, Rockville, MD 20857, or by telephone (855) 266-2427. This is a toll-free number.

**SUPPLEMENTARY INFORMATION:** On October 15, 2020, HHS published a notice of proposed rulemaking (NPRM) in the **Federal Register** (85 FR 65311) proposing to add the Table for designated covered smallpox countermeasures identified in the Smallpox Medical Countermeasures PREP Act declaration. The Table includes a list of smallpox countermeasures, proposed time intervals for the first symptom or manifestation of onset of injury, and Qualifications and Aids to Interpretation which set forth the definitions and requirements necessary to establish the Table injuries. The NPRM provided a 60-day comment period, and HHS received one out-of-scope comment.

### I. Background and Purpose

The PREP Act authorizes the Countermeasures Injury Compensation Program (CICP) to provide compensation to certain individuals who develop serious physical injuries or to certain survivors of individuals who die as a direct result of the administration or use of a covered countermeasure identified in a PREP Act declaration.<sup>1</sup> In carrying out the CICP, the PREP Act directs the Secretary to establish, through regulation, a Covered Countermeasures Injury Table (Table) identifying serious physical injuries that are presumed to be directly caused by the administration or use of covered countermeasures identified in PREP Act declarations issued by the Secretary. The Secretary may only add to a Table injuries that are directly caused by the administration or use of the covered countermeasure based on “compelling, reliable, valid, medical and scientific evidence.”<sup>2</sup> The Table

informs the public about serious physical injuries known to be directly caused by covered countermeasures and creates a rebuttable presumption of causation for eligible individuals whose injuries are listed on the Table and meet the Table’s requirements.

The CICP’s regulations, which detail the Program’s requirements, are found at 42 CFR part 110. The provision at 42 CFR 110.20(a) states that individuals must establish that a covered injury occurred to be eligible for benefits under the Program. A covered injury is death or a serious injury determined by the Secretary to be: (1) An injury meeting the requirements of a Table, which is presumed to be the direct result of the administration or use of a covered countermeasure unless the Secretary determines there is another more likely cause; or (2) an injury (or its health complications) that is the direct result of the administration or use of a covered countermeasure.<sup>3</sup> This includes a covered countermeasure causing a serious aggravation of a pre-existing condition.<sup>4</sup> In general, only injuries that warranted hospitalization (whether or not the person was actually hospitalized), or injuries that led to a significant loss of function or disability are considered serious injuries.<sup>5</sup>

Individuals with injuries not meeting the requirements of the Table may still pursue their claims as non-Table injuries under the Program.<sup>6</sup> In that instance, the requester does not receive the presumption of causation for a Table injury and must demonstrate that the administration or use of the covered countermeasure directly caused the injury.<sup>7</sup> Proof of a causal association for the non-Table injury must be based on compelling, reliable, valid, medical and scientific evidence.<sup>8</sup>

### II. Summary of the Final Rule

Through this final rule, the Secretary adds the Smallpox Countermeasures Injury Table to subpart K of 42 CFR part 110. The Table established in this final rule is limited to smallpox covered countermeasures identified in the Secretary’s PREP Act Declaration for Smallpox Medical Countermeasures.<sup>9</sup>

The Smallpox Countermeasures Injury Table lists several smallpox covered countermeasures and serious physical injuries that, based on compelling, reliable, valid, medical and

scientific evidence, are directly caused by the administration or use of the associated covered countermeasures. The Table provides the serious injuries associated with a specific countermeasure and the time interval within which the first symptom or manifestation of onset of injury must appear. The QAI, which accompany the Table, are definitions included to further explain the requirements for each covered injury and the level of severity necessary to qualify as a Table injury. The Secretary will stay informed of updates in the scientific and medical field concerning potential new information about causal associations between injuries and covered countermeasures and update the Table as needed.

In accordance with 42 CFR 110.42(f), in addition to the standard filing deadline, with the publication of this new Table, certain eligible requesters have one year from the effective date of the publication of the Table to file claims for injuries that meet the Table’s requirements. Individuals who sustained injuries that are not included on the Table or that do not meet all of the requirements for a Table injury, but who may prove causation of the injury through other means, are not eligible for the additional one-year filing deadline based on the Table’s publication. Because the new Table would not enable such individuals to establish a Table injury, they would be subject to the standard filing deadline in 42 CFR 110.42(a) (*i.e.*, one year from the date of administration or use of the covered countermeasure).

In this final rule, the Secretary has made the following change from what was proposed in the NPRM for the purposes of clarity.

a. Changed paragraph (d)(6) by adding a comma after “pustules)” and before “generally” to the second sentence. The revised sentence states, “The rash or lesions, characterized by multiple blisters (vesicles or pustules), generally evolve in a similar sequence or manner as the original vaccination site.

b. Changed paragraph (d)(9) by adding “to” after “attributed” and before “it” to the seventh sentence. The revised sentence states, “Symptoms that occur before 5 days or more than 14 days after receiving the smallpox vaccine should not be attributed to it.”

### III. Comments and Responses

The NPRM set forth a 60-day public comment period, which ended on December 14, 2020. During the comment period, HHS received one comment that was not relevant to the NPRM. As noted above, the only

<sup>1</sup> See Department of Defense, Emergency Supplemental Appropriation to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act of 2006, Part C (Pub. L. 109-148); 42 U.S.C. 247d-6e.

<sup>2</sup> 42 U.S.C. 247d-6e (b)(5)(A).

<sup>3</sup> 42 CFR 110.3(g).

<sup>4</sup> *Id.*

<sup>5</sup> 42 CFR 110.3(z).

<sup>6</sup> 42 CFR 110.20(c).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> 80 FR 76546 (Dec. 9, 2015).

changes made to the final rule are to paragraphs (d)(6) and (9) for clarity.

#### IV. Regulatory Impact Analysis

HHS examined the impact of this final rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Congressional Review Act (5 U.S.C. 804(2)), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 202 of the Unfunded Mandates Reform Act of 1995 (March 2, 1995; Pub. L. 104–4), section 654(c) of the Treasury and General Government Appropriations Act of 1999, and Executive Order 13132 on Federalism (August 4, 1999).

##### *Executive Orders 12866 and 13563*

Executive Order 12866 requires all regulations reflect consideration of alternatives, costs, benefits, incentives, equity, and available information. Regulations must meet certain standards, such as avoiding an unnecessary burden. Regulations that are “significant” because of cost, adverse effects on the economy, inconsistency with other agency actions, effects on the budget, or novel legal or policy issues, require special analysis. In 2011, President Obama supplemented and reaffirmed Executive Order 12866.

Executive Order 13563 provides that, to the extent feasible and permitted by law, the public must be given a meaningful opportunity to comment on any proposed regulations, with at least a 60-day comment period. In addition, to the extent feasible and permitted by law, agencies must provide timely online access to both proposed and final rules of the rulemaking docket on <https://www.regulations.gov/>, including relevant scientific and technical findings, in an open format that can be searched and downloaded. Federal agencies must consider approaches to maintain the freedom of choice and flexibility, including disclosure of relevant information to the public. Objective scientific evidence guides regulations and should be easy to understand, consistent, and written in plain language. Furthermore, Federal agencies must attempt to coordinate, simplify, and harmonize regulations to reduce costs and promote certainty for the public.

#### *Summary of Impacts*

In this final rule, the Secretary establishes a Table identifying serious physical injuries that are presumed to result from the administration or use of certain covered countermeasures, required definitions of those injuries, and the time interval in which the onset of the first symptom or manifestation of each injury must manifest for the presumption of causation to apply. The Table establishes a presumption of causation for requesters meeting the Table’s requirements and relieves requesters of the burden of demonstrating causation. However, this presumption is rebuttable if, based on the Secretary’s review of the evidence, a source other than the countermeasure is found to be the more likely cause of the injury. The publication of this Table may afford some requesters a new filing deadline.

The Secretary has determined that minimal staff and funding resources are required to implement the provisions included in this final rule. Therefore, in accordance with the Regulatory Flexibility Act of 1980 (RFA) and the Small Business Regulatory Enforcement Fairness Act of 1996, which amended the RFA, the Secretary certifies that this final rule will not have a significant impact on a substantial number of small entities.

The Secretary has determined that this final rule does not meet the criteria for an “economically significant” regulatory action as defined by Executive Order 12866 and would have no major effect on the economy or Federal expenditures. The Secretary also has determined that this final rule is not a “major rule” within the meaning of the statute providing for Congressional Review of Agency Rulemaking, 5 U.S.C. 801. The Office of Information and Regulatory Affairs within the Office of Management and Budget has determined that this rule is not a “significant regulatory action” within the meaning of section 3(f) of the Executive order.

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

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing “any rule that includes any Federal mandate that may result in the

expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any one year.” The current threshold after adjustment for inflation is \$158 million, using the most current (2020) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

##### *Executive Order 13132—Federalism*

The Secretary also reviewed this final rule in accordance with Executive Order 13132 regarding federalism and has determined that it does not have “federalism implications.” This final rule will not “have substantial direct effects on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.”

##### *Paperwork Reduction Act of 1995*

This final rule has no information collection requirements.

#### **List of Subjects in 42 CFR Part 110**

Biologics, Immunization.

Dated: August 9, 2021.

**Xavier Becerra,**

*Secretary, Department of Health and Human Services.*

#### **PART 110—COUNTERMEASURES INJURY COMPENSATION PROGRAM**

■ 1. The authority citation for part 110 continues to read as follows:

**Authority:** 42 U.S.C. 247d–6e.

■ 2. Amend § 110.100 by revising paragraph (b) introductory text and paragraph (c) and adding paragraph (d) to read as follows:

##### **§ 110.100 Injury Tables.**

\* \* \* \* \*

(b) *Qualifications and aids to interpretation (table definitions and requirements).* The following definitions and requirements shall apply to the Table set forth in paragraph (a) of this section and only apply for purposes of this subpart.

\* \* \* \* \*

(c) *Smallpox countermeasures injury table.*

TABLE 2 TO PARAGRAPH (c)

Covered countermeasures under declarations	Serious physical injury (illness, disability, injury, or condition) <sup>1</sup>	Time interval (for first symptom or manifestation of onset of injury after administration or use of covered countermeasure, unless otherwise specified)
I. Smallpox Vaccines Replication-Deficient .....	A. Anaphylaxis .....	A. 0–4 hours.
	B. Vasovagal Syncope .....	B. 0–1 hour.
II. Smallpox Vaccines Replication-Competent ..	A. Anaphylaxis .....	A. 0–4 hours.
	B. Vasovagal Syncope .....	B. 0–1 hour.
	C. Significant Local Skin Reaction .....	C. 1–21 days.
	D. Stevens-Johnson Syndrome/Toxic Epi-dermal Necrolysis.	D. 4–28 days.
	E. Inadvertent Autoinoculation .....	E. 1–21 days.
	F. Generalized <i>Vaccinia</i> .....	F. 6–9 days.
	G. Eczema <i>Vaccinatum</i> .....	G. 3–21 days.
	H. Progressive <i>Vaccinia</i> .....	H. 3–21 days.
	I. Post- <i>vaccinial</i> Encephalopathy, Encephalitis or Encephalomyelitis (PVEM).	I. 5–14 days.
	J. <i>Vaccinial</i> Myocarditis, Pericarditis, or Myopericarditis (MP).	J. 0–21 days.
III. <i>Vaccinia</i> Immunoglobulin Intravenous (VIGIV).	A. Anaphylaxis .....	A. 0–4 hours.
	B. Transfusion-Related Acute Lung Injury (TRALI).	B. 0–72 hours.
	C. Acute Renal Failure (ARF) .....	C. 0–10 days.
	D. Drug-Induced Aseptic Meningitis (DIAM) ....	D. Within 48 hours after the first dose and up to 48 hours after the last dose of VIGIV.
	E. Hemolysis .....	E. 12 hours to 14 days.
IV. Cidofovir .....	A. No Condition Covered <sup>2</sup> .....	A. Not Applicable.
V. Tecovirimat .....	A. No Condition Covered <sup>2</sup> .....	A. Not Applicable.
VI. Brincidofovir .....	A. No Condition Covered <sup>2</sup> .....	A. Not Applicable.
VII. Smallpox Infection Diagnostic Testing Devices.	A. No Condition Covered <sup>2</sup> .....	A. Not Applicable.

<sup>1</sup> Serious physical injury as defined in § 110.3(z). Only injuries that warranted hospitalization (whether or not the person was actually hospitalized) or injuries that led to a significant loss of function or disability will be considered serious physical injuries.

<sup>2</sup> The use of “No condition covered” in this Table 2 reflects that the Secretary evaluated the countermeasure, but at this time does not find compelling, reliable, valid, medical, and scientific evidence to support that any serious injury is presumed to be caused by the associated covered countermeasure. For injuries alleged to be due to covered countermeasures for which there is no associated Table 2 injury, requesters must demonstrate that the injury occurred as the direct result of the administration or use of the covered countermeasure. See § 110.20(b) and (c).

(d) *Qualifications and aids to interpretation (table definitions and requirements)*. The following definitions and requirements shall apply to the Table set forth in paragraph (c) of this section and only apply for purposes of this subpart.

(1) *Anaphylaxis*. Anaphylaxis is an acute, severe, and potentially lethal systemic reaction that occurs as a single discrete event with simultaneous involvement of two or more organ systems. Most cases resolve without *sequelae*. Signs and symptoms begin within minutes to a few hours after exposure. Death, if it occurs, usually results from airway obstruction caused by laryngeal edema or bronchospasm and may be associated with cardiovascular collapse. Other significant clinical signs and symptoms may include the following: Cyanosis, hypotension, bradycardia, tachycardia, arrhythmia, edema of the pharynx and/or trachea and/or larynx with stridor and dyspnea. There are no specific pathological findings to confirm a diagnosis of anaphylaxis.

(2) *Vasovagal syncope*. Vasovagal syncope (also sometimes called

neurocardiogenic syncope) means loss of consciousness (fainting) and loss of postural tone caused by a transient decrease in blood flow to the brain occurring after the administration of an injected countermeasure. Vasovagal syncope is usually a benign condition, but may result in falling and injury with significant *sequelae*. Vasovagal syncope may be preceded by symptoms, such as nausea, lightheadedness, diaphoresis (sweating), and/or pallor. Vasovagal syncope may be associated with transient seizure-like activity, but recovery of orientation and consciousness generally occurs simultaneously. Loss of consciousness resulting from the following conditions will not be considered vasovagal syncope: Organic heart disease, cardiac arrhythmias, transient ischemic attacks, hyperventilation, metabolic conditions, neurological conditions, psychiatric conditions, seizures, trauma, and situational as can occur with urination, defecation, or cough. This list is not complete as other conditions that are not associated with the vaccine also may cause loss of consciousness.

Episodes of recurrent syncope occurring after the applicable timeframe are not considered to be *sequelae* of an episode of syncope meeting the Table 2 requirements.

(3) *Significant local skin reaction*. Significant local skin reaction is an unexpected and extreme response at the vaccination or inoculation site that results in a significant scar that is serious enough to require surgical intervention. The onset of this injury is the initial skin lesion at the vaccination site that generally occurs with replication-competent smallpox vaccinations. Minor scarring or minor local reactions do not constitute a Table 2 injury. A robust take, defined as an area of redness at the vaccination site that exceeds 7.5 cm in diameter with associated swelling, warmth and pain, is generally considered an expected response to the vaccination or inoculation. A robust take, in itself, does not constitute a Table 2 injury, even when the redness and swelling involves the entire upper arm with associated enlargement and tenderness of the glands (lymph nodes) in the underarm (axilla).

(4) *Stevens-Johnson syndrome/Toxic epidermal necrolysis (SJS/TEN)*. SJS/TEN is a spectrum of acute hypersensitivity reactions that affects skin, mucous membranes, and sometimes, internal organs (systemic toxicity) associated with the use or administration of replication-competent smallpox vaccines. For purposes of Table 2, both skin and mucous membrane rash or lesions must be present. Rash or lesion distribution must be widespread. Rash must not have a symmetric acral distribution (affecting arms, hands, legs or feet). Two or more mucosal sites must be involved. Mucosal lesions generally manifest as painful lesions in sites, such as the mouth or eyes. Skin rash or lesions in SJS/TEN usually consist of red or purple raised areas (erythematous macules), blisters, and ulcerations.

(5) *Inadvertent autoinoculation (IA)*. IA is the spread of *vaccinia* virus from an existing vaccination site to a second location usually by scratching the vaccination site and subsequently spreading the virus, which produces a new *vaccinial* lesion on the same person who received the vaccination. IA is the most common adverse event associated with the replication-competent smallpox vaccine.

(6) *Generalized vaccinia (GV)*. GV is a *vaccinial* infection that occurs from the spread of *vaccinia* from an existing vaccination or inoculation site, with the use or administration of a replication-competent smallpox vaccine, to otherwise normal skin, resulting in multiple new areas of *vaccinial* rash or lesions. The *vaccinia* is believed to be spread through the blood. The rash or lesions, characterized by multiple blisters (vesicles or pustules), generally evolve in a similar sequence or manner as the original vaccination site.

(7) *Eczema vaccinatum (EV)*. EV is the transmission or the spread of *vaccinia* virus from a vaccination site, after the use or administration of a replication-competent smallpox vaccine, to skin that has been affected by, or is currently affected with, eczema or atopic dermatitis. EV is characterized by lesions that include multiple blisters (vesicles or pustules), which generally evolve in a similar sequence or manner as the original vaccination site. The lesions may come together to form larger lesions. Lesions may also spread to patches of skin that have never been involved with eczema or atopic dermatitis. The new lesions, if cultured, will be positive for *vaccinia* virus. A person with EV may become severely ill with signs and symptoms that involve the whole body (systemic illness), such

as fever, malaise, or enlarged glands (lymph nodes).

(8) *Progressive vaccinia (PV)*. PV is the failure to initiate the healing process in an initial vaccination or inoculation site, after the use or administration of a replication-competent smallpox vaccine, by 21 days after exposure to *vaccinia*, with progressive ulceration or necrosis at the vaccination site leading to a large destructive ulcer. PV is seen in people who are immunocompromised (have an impaired immune system) and is characterized by a complete or near complete lack of inflammation or absence of inflammatory cells in the dermis of the skin at the vaccination site. The diagnosis of PV may be made before 21 days after exposure, especially in a known immunocompromised individual who develops a lesion at the vaccination site. PV may spread through the blood to any location in the body. No one who experiences a significant healing process of the vaccination site within 21 days after receipt of the replication-competent smallpox vaccine or exposure to *vaccinia* has PV.

(9) *Post-vaccinial encephalopathy, encephalitis, and encephalomyelitis (PVEM)*. PVEM is a spectrum of overlapping conditions that includes post-vaccinial encephalopathy, encephalitis, and encephalomyelitis, and, for the purposes of Table 2, is treated as one injury. For the purposes of Table 2, PVEM is an autoimmune central nervous system injury that occurs after the use or administration of a replication-competent smallpox vaccine. In rare cases, the *vaccinia* virus is isolated from the central nervous system. Manifestations usually occur abruptly and may include fever, vomiting, loss of appetite (anorexia), headache, general malaise, impaired consciousness, confusion, disorientation, delirium, drowsiness, seizures, language difficulties (aphasia), coma, muscular incoordination (ataxia), urinary incontinence, urinary retention, and clinical signs consistent with inflammation of the spinal cord (myelitis), such as paralysis or meningismus (meningeal irritation). Long-term central nervous system impairments, such as paralysis, seizure disorders, or developmental delays are known to occur as *sequelae* of the acute PVEM. No clinical criteria, radiographic findings, or laboratory tests are specific for the diagnosis of PVEM. Symptoms that occur before 5 days or more than 14 days after receiving the smallpox vaccine should not be attributed to it. In addition, encephalopathy caused by an infection, a toxin, a metabolic disturbance, a structural lesion, a

genetic disorder, or trauma would not meet the Table 2 definition.

(10) *Vaccinial myocarditis, pericarditis, or myopericarditis (MP)*. For purposes of Table 2, MP is *vaccinial* myocarditis, pericarditis, or myopericarditis. *Vaccinial* myocarditis is defined as an inflammation of the heart muscle (myocardium) because of receiving the replication-competent smallpox vaccine. *Vaccinial* pericarditis is defined as an inflammation of the covering of the heart (pericardium) because of receiving the smallpox vaccine. *Vaccinial* myopericarditis is defined as an inflammation of both the heart muscle and its covering because of receiving the smallpox vaccine. The inflammation associated with MP may range in severity from very mild (subclinical) to life threatening. In many mild cases, myocarditis is diagnosed solely by transient electrocardiographic (EKG) abnormalities (e.g., ST segment and T wave changes), increased cardiac enzymes, or mild echocardiographic abnormalities. Arrhythmias, abnormal heart sounds, heart failure, and death may occur in more severe cases. Pericarditis generally manifests with chest pain, abnormal heart sounds (pericardial friction rub), EKG abnormalities (e.g., ST segment and T wave changes), and/or increased fluid accumulation around the heart. A Table 2 injury of MP requires sufficient evidence in the medical records of the occurrence of acute MP.

(11) *Transfusion-related acute lung injury (TRALI)*. TRALI is defined as the onset of respiratory distress within 6 hours in non-critically ill patients, and 72 hours in critically ill patients, after receipt of blood products containing plasma, in this case, VIGIV. The relative level of illness will be determined on a case-by-case basis after reviewing the medical records and the medical history. The respiratory distress is the result of receiving a plasma containing transfusion (VIGIV) and subsequently developing pulmonary edema, respiratory distress, and hypoxia. TRALI occurs as the result of an antibody response in the host to the donor antibodies within the plasma product. Pulmonary edema is non-cardiac in nature and does not occur more than 72 hours after receiving VIGIV. Pulmonary edema occurring more than 72 hours after receiving a blood product containing plasma (VIGIV) or associated with cardiac dysfunction is not TRALI and is excluded as a countermeasure-related injury. TRALI has been identified as a major cause of mortality in those individual receiving plasma-containing transfusions. A Table 2 injury for TRALI has occurred in a

recipient if there is sufficient evidence in the medical record of an occurrence of TRALI and the pulmonary edema is not caused by cardiac dysfunction or other causes and occurs within 72 of receiving a blood product containing plasma, in this case VIGIV.

(12) *Acute renal failure (ARF)*. ARF is the sudden loss of the kidneys' ability to perform their main function of eliminating excess fluids and electrolytes (salts), as well as waste material from the blood. ARF, which is also called acute kidney injury, develops rapidly over a few hours or a few days. ARF can be fatal and requires intensive treatment; however, ARF may be reversible. ARF may cause permanent loss of kidney function, or end-stage renal disease necessitating dialysis or transplant. A Table 2 injury for ARF has occurred if there is sufficient evidence in the medical record of an occurrence of ARF within the identified timeframe and the individual received the associated countermeasure (VIGIV).

(13) *Drug-induced aseptic meningitis (DIAM)*. (i) DIAM is an inflammation of the meninges (linings of the brain) that is not caused by a bacteria or virus, but is caused by a drug or medication. The symptoms of meningitis include severe headache, nuchal (neck) rigidity, drowsiness, fever, photophobia (light sensitivity), painful eye movements, nausea, and vomiting. Discontinuation of the medication leads to a resolution of the symptoms. DIAM is thought to occur because of an immunological hypersensitivity reaction to a specific medication. In the case of immunoglobulins, DIAM may be precipitated by the immunologically active components within the plasma or because of the stabilizers used within the product. The symptoms of DIAM may reoccur with another exposure to the offending agent.

(ii) A Table 2 injury for DIAM has occurred in a recipient if there is sufficient evidence in the medical record of an occurrence of DIAM within the identified timeframe and the individual received the associated countermeasure (VIGIV). DIAM occurring in the absence of the use of VIGIV, or DIAM occurring with the use of VIGIV outside the established timeframe of onset, which is any time after the first dose and up to 48 hours after the last dose of this medication, is not a Table 2 injury.

(14) *Hemolysis*. Hemolysis is the physical breakdown of red blood cells (RBCs) either through natural attrition or as caused by external factors. The RBC's function is to transport oxygen throughout the body in the hemoglobin

contained within the RBC. Additionally, the RBCs contain the majority of the body's potassium stores. With hemolysis, the body is unable to transport oxygen effectively, and the person develops hypoxia. Additionally, the rapid breakdown of the cell releases large amounts of potassium into the blood stream, which can cause abnormal heart rhythms and cardiac arrest. In severe cases of hemolysis, a blood transfusion may be required to correct the resulting anemia. A Table 2 injury for hemolysis has occurred if there is sufficient evidence in the medical record of an occurrence of hemolysis, and the patient received the associated countermeasure (VIGIV). Hemolysis occurring in the absence of the use of VIGIV and outside of the timeframe of 12 hours to 14 days after receiving VIGIV is not a Table 2 injury. Hemolysis occurring from a more likely alternative diagnosis, such as infections, toxins, poisons, hemodialysis, or medications, is not a Table 2 injury. This list of conditions that can cause hemolysis, not associated with VIGIV, is not exhaustive, and all additional diagnoses within the medical documentation will be evaluated.

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## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

#### 44 CFR Part 206

[Docket ID: FEMA-2019-0012]

RIN 1660-AB00

#### Public Assistance Appeals and Arbitrations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Final rule.

**SUMMARY:** This final rule implements the new right of arbitration authorized by the Disaster Recovery Reform Act of 2018 (DRRA) and revises the Federal Emergency Management Agency's regulations regarding first and second Public Assistance appeals.

**DATES:** This rule is effective on January 1, 2022. Proposed information collection comments must be submitted on or before September 15, 2021.

**ADDRESSES:** The docket for this rulemaking is available for inspection using the Federal eRulemaking Portal: <http://www.regulations.gov> and can be

viewed by following that website's instructions.

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:** Shabnum Amjad, Deputy Associate Chief Counsel, Regulatory Affairs, Office of Chief Counsel, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472. Phone: 202-212-2398 or email: [Shabnum.Amjad@fema.dhs.gov](mailto:Shabnum.Amjad@fema.dhs.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Proposed Rule

On August 31, 2020, the Federal Emergency Management Agency (FEMA) published a Notice of Proposed Rulemaking (NPRM) (85 FR 53725) proposing to revise its current Public Assistance (PA) appeals regulation at 44 CFR 206.206 to add in the new right to arbitration under the Disaster Recovery Reform Act of 2018 (DRRA),<sup>1</sup> in conjunction with some revisions to the current appeals process. The DRRA adds arbitration as a permanent alternative to a second appeal under the PA Program. Additionally, applicants that have had a first appeal pending with FEMA for more than 180 calendar days may withdraw such appeal and submit a request for arbitration. In both cases, the amount in dispute must be greater than \$500,000, or greater than \$100,000 for an applicant for assistance in a rural area. The other major proposed revisions to 44 CFR 206.206 included adding definitions; adding subparagraphs to clarify what actions FEMA may take and will not take while an appeal is pending and stating that FEMA may issue separate guidance as necessary, similar to current 44 CFR 206.209(m); adding a finality of decision paragraph; requiring electronic submission for appeals and arbitrations documents; and clarifying overall time limits for first and second appeals.

These proposed rules for arbitration are separate and distinct from the arbitration provisions located in 44 CFR 206.209. Under § 206.209, applicants may request arbitration to resolve disputed PA applications under major disaster declarations for Hurricanes Katrina and Rita, pursuant to the

<sup>1</sup> Disaster Recovery Reform Act of 2018, Public Law 115-254, 132 Stat. 3186 (Oct. 5, 2018), 42 U.S.C. 5189a.



authority of the American Recovery and Reinvestment Act of 2009 (ARRA).<sup>2</sup>

As amended by Section 1219 of the DRRRA, 42 U.S.C. 5189a(d) names the Civilian Board of Contract Appeals (CBCA) as the entity responsible for conducting public assistance arbitrations. Therefore, FEMA recommends that applicants review the CBCA regulations at 48 CFR part 6101, Rules of Procedure of the Civilian Board of Contract Appeals, and 48 CFR part 6106, Rules of Procedure for Arbitration of Public Assistance Eligibility or Repayment, for additional CBCA rules of procedure, as both cover FEMA public assistance arbitrations.

## II. Discussion of Public Comments and FEMA's Responses

The public comment period of the NPRM closed on October 30, 2020. FEMA received germane comments from six separate commenters. The first anonymous commenter [FEMA-2019-0012-0002] was unconditionally supportive of the NPRM, as they found the DRRRA population thresholds fair. The second commenter, a member of the public [FEMA-2019-0012-0003], addressed five separate issues regarding the NPRM in their comment including: Suggesting the use of “applicant” to refer to all entities; suggesting the use of “appellant” instead of “applicant” and “subrecipient”; stating that using the date of issuance of the FEMA determination instead of the date the “appellant” views the FEMA determination does not provide clarity; suggesting that the “appellant” now has 150 days to make a complete appeal with the new 30-day deadline to provide additional information; and questioning whether the NPRM removed the first 60-day requirement to make the entire deadline 120-days regardless of when each entity appeals so long as it is within 120 days. The third commenter, also a member of the public [FEMA-2019-0012-0004], suggested FEMA adjust the amount in dispute thresholds for hyper-inflation. This commenter also submitted a duplicative comment which was withdrawn [FEMA-2019-0012-0005]. The second anonymous commenter submitted an unrelated comment [FEMA-2019-0012-DRAFT-0006], which was not posted to the Docket. The fourth commenter, from a State Emergency Management Agency [FEMA-2019-0012-0006], also asked whether the NPRM’s combination of the applicant and recipient’s 60-day

submission requirements could equate to additional submission time for appeals. The fifth commenter, from the same State Emergency Management Agency [FEMA-2019-0012-0007], asked numerous questions regarding applicant and recipient proposed appeal submission timeframes. The sixth commenter, a State Division of Emergency Management (DEM) [FEMA-2019-0012-0008], generally supports the effort to amend the regulations. However, the State DEM believes many of the changes proposed in the NPRM conflict with the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act)<sup>3</sup> and expressed concern with FEMA removing its own deadlines while strictly applying them to applicants and recipients. The State DEM included attachments of cases—or parts of cases—and a detailed table of their comments.

### A. Adjustment Amount in Dispute Thresholds

Under Section 1219 of the DRRRA, in order to request arbitration a PA applicant must dispute an amount that exceeds \$500,000 (or \$100,000 for an applicant in a “rural area” with a population of less than 200,000 and outside of an urbanized area).

One member of the public [FEMA-2019-0012-0004] commented that, for the most part, the proposed changes are well thought out and stand to reason. However, the commenter suggested that the amount in dispute threshold allow for future adjustment based upon hyper-inflation. Including provisions for hyper-inflation, this commenter posited, will allow FEMA to carry out its crucial work without returning to the rulemaking process if the dollar fluctuates in the future. A lower threshold could subsequently overwhelm the arbitration or appeal process.

Since the amount in dispute thresholds are statutorily set in Section 1219 of DRRRA, it is not within FEMA’s discretion to change them in this rulemaking. While FEMA appreciates the commenter’s support, FEMA did not make any changes to the regulatory text at 206.206 as a result of the comment.

### B. Population Thresholds

The DRRRA defines a rural area to mean an area with a population of less than 200,000 outside an urbanized area. The NPRM proposed to define the term “urbanized area” to mean the area as

identified by the United States Census Bureau (USCB). The USCB defines an “urbanized area” as an area that consists of densely settled territory that contains 50,000 or more people.<sup>4</sup> For clarity and to comply with publication requirements found in 1 CFR chapter I, FEMA has revised the final rule’s definition of “urbanized area” as an area that consists of densely settled territory that contains 50,000 or more people.

An anonymous commenter [FEMA-2019-0012-0002] supports the different population thresholds of the NPRM. The anonymous commenter suggested that the population requirements give all areas a fair chance of receiving Federal assistance. FEMA appreciates the anonymous commenter’s support but, did not make any changes to the regulatory text at 206.206 as a result of the comment.

### C. “Applicant/Subrecipient” Different Entities Versus “Applicant” for All Entities

A member of the public [FEMA-2019-0012-0003] commented that FEMA views the applicant/subrecipient as two different entities: An “applicant” is one that has applied for but not yet received funding, while a “subrecipient” has applied for and been awarded funding. This member of the public [FEMA-2019-0012-0003] also commented that the definition of “applicant” does not include “subrecipient” (although one could argue that all “subrecipients” are “applicants,” but not all “applicants” are “subrecipients,” so the use of “applicant” for all entities could still be correct).

The “applicant,” as defined at 44 CFR 206.201(a), is a State agency, local government, or eligible private nonprofit organization (PNP) submitting an application to the recipient for assistance under the recipient’s grant. The “recipient,” as defined at 44 CFR 206.201(m), is the government to which a grant is awarded, and which is accountable for the use of the funds provided. The “recipient” is typically the State to which a grant is awarded.

In the NPRM, FEMA proposed changing the phrase “applicant, subrecipient, or recipient” to “applicant or recipient” since the definition of “applicant” at 44 CFR 206.201(a) already includes the term “subrecipient.” Since an “applicant” submits an application to the “recipient” for assistance under the recipient’s grant, the “recipient” and the “applicant” are not interchangeable

<sup>2</sup> American Recovery and Reinvestment Act of 2009, Public Law 111-5, 123 Stat. 115 (Feb. 17, 2009), 26 U.S.C. 1 note.

<sup>3</sup> Disaster Relief Act of 1974, Public Law 93-288, 88 Stat. 143 (May 22, 1974), as amended, 42 U.S.C. 5121 *et seq.*

<sup>4</sup> See “Qualifying Urban Areas for the 2010 Census,” 77 FR 18651, Mar. 27, 2012.



phrases. It follows that the definition of “applicant” at 206.201(a) cannot include a “recipient,” so FEMA disagrees with the public commenter’s [FEMA–2019–0012–0003] statement that the use of “applicant” for all entities could still be correct.

Therefore, FEMA did not make any changes to the regulatory text at 206.206 as a result of the comment.

#### *D. “Appellant” Versus “Applicant” and “Subrecipient”*

A member of the public [FEMA–2019–0012–0003] also commented that there is a difference in “applicant” and “subrecipient” per 44 CFR 206.201(a). FEMA disagrees with the statement that there is a difference in “applicant” and “subrecipient” per 206.201(a). As indicated above, the definition of “applicant” at 206.201(a) includes “subrecipient,” but not “recipient.” Therefore, FEMA did not make any changes to the regulatory text at 206.206 as a result of the comment.

The commenter further stated that the use of “appellant” allows for both “applicants” and “subrecipients” to be represented in the terminology. In the past, FEMA used the term “appellant” instead of “applicant or recipient” for the requirement of specifying the provisions in Federal law, regulator, or policy in dispute. In the NPRM, FEMA’s reason for changing from “appellant” to “applicant or recipient” was for consistency in terminology and no substantive change was intended. Since FEMA’s goal is consistency in terminology, FEMA will not add “appellant” as a defined term to paragraph (a) of 44 CFR 206.206, as it could lead to confusion for the reader as to whether it refers to an “applicant” or a “recipient.” Therefore, FEMA did not make any changes to the regulatory text at 206.206 as a result of the comment.

#### *E. Other Definitions*

The State DEM [FEMA–2019–0012–0008] commented that in 44 CFR 206.206(a), FEMA should define “Regional Administrator” because applicants submit first appeals to the appropriate FEMA Regional office and then submit second appeals to the Assistant Administrator for the Recovery Directorate. The State DEM proposed to define “Regional Administrators” as “the Administrator of the Federal Emergency Management Agency Regional Office in which the Applicant resides.”

FEMA decided against the commenter’s suggested definition of “Regional Administrator” since 44 CFR 206.2(a)(21) already provides a definition for “Regional Administrator”

with general applicability throughout part 206. *Regional Administrator*: An administrator of a regional office of FEMA, or his/her designated representative. As used in these regulations, Regional Administrator also means the Disaster Recovery Manager who has been appointed to exercise the authority of the Regional Administrator for a particular emergency or major disaster.

This second sentence in the definition of *Regional Administrator* at 206.2(a)(21) is contrary to the structure proposed in the NPRM at 206.206, as it says that the Regional Administrator also means the Disaster Recovery Manager. In the NPRM, the Regional Administrator/Disaster Recovery Manager is not making the FEMA determination. Otherwise, the submission of the first appeal to the Regional Administrator for review would mean that the Regional Administrator could review their own determination. Therefore, FEMA decided to add only the first sentence of the “Regional Administrator” definition at 206.2(a)(21) to this final rule for consistency and clarity. So, FEMA added the following definition of “Regional Administrator” to the regulatory text: *Regional Administrator* means an administrator of a regional office of FEMA, or his/her designated representative.

Both, “Administrator” and “Regional Administrator” were added to Title V of the Homeland Security Act of 2002 by the Post-Katrina Emergency Management Reform Act of 2006.<sup>5</sup> Therefore, it makes sense that they are defined terms under 44 CFR 206.206, as they are statutorily mandated FEMA positions.

The State DEM also recommended that FEMA define the term “Assistant Administrator for the Recovery Directorate.” FEMA chose not to provide a definition of “Assistant Administrator for the Recovery Directorate” since future FEMA reorganizations may change that position title. Additionally, the “Assistant Administrator for the Recovery Directorate” is not a FEMA statutorily mandated position.

Finally, the State DEM [FEMA–2019–0012–0008] suggested that FEMA define “final agency determination” to mean the decision of FEMA as provided through electronic transmission of a formal determination if the applicant or recipient does not submit a first appeal within the time limits. FEMA does not

adopt the commenter’s definition because the definition in the NPRM is a more fulsome definition which covers all eventualities. In the NPRM, “final agency determination” means the decision of FEMA, if the applicant or recipient does not submit a first appeal within the time limits provided for in paragraph (b)(1)(ii)(A) of proposed § 206.206; or the decision of FEMA, if the applicant or recipient withdraws the pending appeal and does not file a request for arbitration within 30 calendar days of the withdrawal of the pending appeal; or the decision of the FEMA Regional Administrator, if the applicant or recipient does not submit a second appeal within the time limits provided for in paragraph (b)(2)(ii)(A) of proposed § 206.206. For this reason, FEMA declines to adopt the commenter’s definition. Therefore, FEMA only added the definition of “Regional Administrator” to the regulatory text at 206.206(a) as a result of the comment.

#### *F. First and Second Appeals’ Deadlines*

Proposed paragraph 206.206(b)(1)(ii) of the NPRM addressed time limits for first appeals. Under proposed paragraph (b)(1)(ii)(A), the applicant may make a first appeal through the recipient within 60 calendar days from the date of the FEMA determination that is the subject of the appeal. Moreover, the recipient must electronically forward to the Regional Administrator the applicant’s first appeal with a recommendation within 120 calendar days from the date of the FEMA determination that is the subject of the appeal. There is no recourse for the applicant if the recipient misses the deadline to forward the appeal and recommendation to the Regional Administrator. There is also no recourse for the applicant in a second appeal where the recipient does not make the deadline.

Several commenters—including a member of the public [FEMA–2019–0012–0003], a State agency [FEMA–2019–0012–0007], and State DEM [FEMA–2019–0012–0008]—sought clarification on when, exactly, the applicant’s initial 60-day deadline is triggered. For instance, is the deadline triggered on the day the applicant views the determination [FEMA–2019–0012–0003]? Does the deadline begin once the applicant has physically received the determination paperwork [FEMA–2019–0012–0008]? As FEMA was aware of this issue, the NPRM provided clarity by adding an electronic submission requirement for both first and second appeals. This requirement will enable FEMA to accurately track the transmittal and receipt of appeals since they will be

<sup>5</sup> Post-Katrina Emergency Management Reform Act of 2006, 109–295, 120 Stat. 1394 (Oct. 4, 2006), 6 U.S.C. 701 note.

the same date, while providing the applicant with a clear timeline for compliance. Specifically the deadline is triggered by FEMA's transmittal of the determination, not the date the applicant views the determination.

Nonetheless, a member of the public [FEMA-2019-0012-0003] questioned whether the NPRM's proposal to change the language "after receipt of a notice of the action that is being appealed" to "from the date of the FEMA determination that is the subject of the appeal" will actually assist FEMA with tracking. In her opinion, using the date of the issuance of the determination, rather than the date the "appellant" views the determination, does not provide clarity. Since the proposed language of the NPRM relies on the electronic submission for appeals, it would not matter when the FEMA determination that is subject of the appeal is viewed. With the switch to electronic submission, the date of the FEMA determination and the date of receipt are the same. Therefore, FEMA did not make any changes to the regulatory text as a result of the comments.

A State DEM [FEMA-2019-0012-0008] commented that it agrees with electronic submission to ease in tracking and ensuring timely receipt of appeals. However, the commenter stated, applicants and recipients do not always receive FEMA's determination on the same day as the date of the transmission letter. This could potentially reduce the amount of time for an applicant to appeal. In support of this comment, the State DEM submitted an emergency (as opposed to major disaster) declaration determination with what appeared to be a discrepancy between the date of receipt and the date of determination, as attachments. Upon further review, FEMA finds the discrepancy between the date of receipt and date of determination was an administrative error or an anomaly. FEMA is taking programmatic and technological steps to tie the date of determination to date of the determination's transmittal, but should a similar error or discrepancy recur in the future FEMA would use the date of transmittal as the deadline trigger.

Nonetheless, the State DEM suggested remedy language for both first and second appeals which would start the clock on the 60-day deadline on the confirmed receipt of FEMA's determination. Further, the commenter proposed language to create a rebuttable presumption in favor of the date of receipt claimed by the applicant or recipient. Because the NPRM proposed requiring electronic submission for both

applicant and recipient and the NPRM proposed FEMA simultaneously electronically notify both applicant and recipient, these concerns are unfounded. Therefore, FEMA did not make any changes to the regulatory text at 206.206(b)(1)(ii) and (b)(2)(ii) as a result of the comments.

#### *G. First and Second Appeals' Deadlines—60/60-Day Versus 120-Day*

A member of the public [FEMA-2019-0012-0003] queried: Is the NPRM to remove the first 60-day requirement for the appellant to appeal, and make the entire deadline 120 days regardless of when each entity appeals so long as it is within 120 days? This simplifies the timeliness requirement for all parties she stated, but the proposed language is confusing as to whether the 60-day deadline remains for the applicant. By the NPRM, she continues, the applicant could appeal on day 120 and the recipient could forward on same that day. In this scenario, the commenter believed the submission would remain timely. The commenter stated that this removes some of the intent behind the timeliness requirements for each party to responsibly review the appeal.

The applicant's 60-day deadline remains, as the Stafford Act requires it for appeals. See 423(a) of the Stafford Act. In order to resolve the confusion identified by the public commenter [FEMA-2019-0012-0003], FEMA has added regulatory text to both the first and second appeals paragraphs of the final rule for clarity and consistency. Specifically, FEMA replaced the second to the last sentence of the appeals paragraphs of the final rule at 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A) with the following: "[i]f the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal." This is consistent with current FEMA policy. See page 40 of the Public Assistance Program and Policy Guide,<sup>6</sup> which says that "[i]f either the Applicant or Recipient does not meet the respective 60-day deadlines, FEMA will deny the appeal as untimely."

Also in reference to the 120-day deadline, a State agency [FEMA-2019-0012-0006] inquired: Does this mean that if the applicant appeals to the recipient 45 days from the FEMA determination, that the recipient still has 120 calendar days from the date of the FEMA determination to transmit the appeal to FEMA? In the above scenario,

an applicant that appeals 45 days after its FEMA determination would then leave the recipient with 75 days to forward the appeal to FEMA. The NPRM is in no way extending the 120-day deadline.

A separate comment from the same State agency [FEMA-2019-0012-0007] correctly stated that the applicant still has a firm 60-day deadline to submit its appeal to the applicant. The commenter then inquired whether FEMA will deny any appeal as untimely if the applicant submits its appeal to the recipient after the 60-day deadline, but FEMA receives the appeal within 120 days. In this scenario, the commenter is correct that FEMA would deny this appeal as untimely. Even if the recipient ultimately submitted the appeal to FEMA within 120 days from the date of determination, if an applicant submits its appeal to the recipient outside of the 60 days, it has exceeded the deadline imposed by Section 423 of the Stafford Act. As stated above, FEMA added new regulatory text in the final rule to both the first and second appeals paragraphs for clarity and consistency. The new language states that if the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal.

Finally, the State DEM [FEMA-2019-0012-0008] suggested that the regulatory language was misleading because it implies that FEMA will deny all first appeals it does not receive by the recipient's 120-day deadline and is not clear that applicant's untimeliness will jeopardize the appeal. As the scenarios above make clear, both an applicant and recipient's untimeliness will continue to jeopardize either a first or second appeal based upon their respective 60-calendar day and 120-calendar day deadlines. For these reasons, FEMA made changes to the regulatory text regarding first appeals at 206.206(b)(1)(ii)(A) and regarding second appeals at (b)(2)(ii)(A) as a result of the comments.

#### *H. Denial Based Upon Timeliness*

The State DEM [FEMA-2019-0012-0008] objected to FEMA denying either a first or second appeal based upon timeliness. The State DEM argued that FEMA lacked the authority to unilaterally deny an appeal based upon timeliness because this is not specifically permitted by the Stafford Act. The State DEM stated that it was "administratively unfair" for FEMA to deny second appeals solely based on timeliness without considering the merits thereof.

<sup>6</sup> Public Assistance Program and Policy Guide Version 4 (*fema.gov*).

The State DEM specifically proposed language prohibiting FEMA from denying a second appeal based on untimeliness if a determination on the merits would be in the applicant or recipient's favor. It offered language barring FEMA from denying an otherwise timely second appeal solely on the grounds that the relevant first appeal was untimely. To bolster its argument, the State DEM attached an exhibit wherein FEMA rejected a second appeal based on the first appeal being untimely even though, the State DEM argued, FEMA incorrectly de-obligated funds initially. Had FEMA examined the issue on the merits the argument continues, the applicant would have prevailed.

Section 423 of the Stafford Act requires an applicant to submit an appeal within 60 days. FEMA does not have the unilateral authority to alter or ignore this requirement. The State DEM's suggestions would have the effect of removing timeliness as a meaningful consideration for appeals. Further, FEMA has no ability to extend the deadlines listed in Section 423, just as it lacks express authority to waive timelines. FEMA is solely implementing requirements prescribed by law. In addition, the start of the mandatory 60-day period, the date of FEMA's determination, and the date of the applicant and recipient's receipt thereof should be identical with the implementation of electronic transmission. Since electronic transmission addresses the State DEM's concerns regarding the start of the appeals period and FEMA cannot waive, alter, or modify the 60-day appeal deadline in the Stafford Act, FEMA did not make any changes to the regulatory text at 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A) as a result of these comments. However, as stated above FEMA added new regulatory text in the final rule to both the first and second appeals paragraphs for clarity and consistency. The new language states that if the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal.

The State DEM [FEMA-2019-0012-0008] also suggested that the regulatory language in 206.206(b)(3)(iii)(B)(2) of the NPRM be modified to permit requests for arbitration from untimely appeals. This comment and proposed language would render timeliness moot, as applicants could make an untimely appeal and then attempt to arbitrate the rejection on timeliness. Section 423 of the Stafford Act only permits an applicant to submit an appeal within 60 days; FEMA does not have the authority

to alter or ignore this deadline. Consequently, FEMA did not make any changes to the regulatory text at 206.206(b)(3)(iii)(B)(2) as a result of these comments.

However, FEMA provided clarifying edits to 206.206(b)(3)(iii)(B)(2) in the final rule, so that an applicant understands that if they choose arbitration pursuant to Section 423(d) of the Stafford Act, as FEMA has not responded to an applicant's first appeal within 180 days, then they must withdraw the pending appeal before they file the request for arbitration. Basically, the applicant cannot arbitrate and appeal at the same time. Additionally, FEMA provided clarifying edits to 206.206(b)(3)(iii)(B)(2) to remove the phrase "and the CBCA." FEMA deleted this phrase, as a pending first appeal would not be pending before the CBCA, so the applicant would have no reason to notify the CBCA of the first appeal withdrawal.

So in the final rule, FEMA has split the first sentence of 206.206(b)(3)(iii)(B)(2) into two sentences that say if the first appeal was timely submitted, and the Regional Administrator has not rendered a decision within 180 calendar days of receiving the appeal, an applicant may arbitrate the decision of FEMA. To request arbitration, the applicant must first electronically submit a withdrawal of the pending appeal simultaneously to the recipient and the FEMA Regional Administrator. Plus, FEMA added clarifying language to the last sentence of 206.206(b)(3)(iii)(B)(2) by replacing "may" with "must" and by adding the phrase "to the recipient, the CBCA, and FEMA" after arbitration. So, 206.206(b)(3)(iii)(B)(2) in the final rule says that the applicant must then submit a request for arbitration to the recipient, the CBCA, and FEMA within 30 calendar days from the date of the withdrawal of the pending appeal. FEMA wants to clarify that if an applicant withdraws a first appeal, then the applicant must submit a request for arbitration within 30 calendar days. If the applicant does not follow the requirements of 206.206(b)(3)(iii)(B)(2), then the applicant's request for arbitration will be denied for timeliness.

#### *I. Simultaneously Provide Decisions to Applicants & Recipients*

The State DEM [FEMA-2019-0012-0008] commented that it agrees with electronic submission to ease in tracking and ensuring timely receipt of appeals, and suggested FEMA also provide its decisions electronically to both the applicant and recipient simultaneously. This is the course of action that FEMA

proposed in the NPRM's 206.206(b)(1)(iii); therefore, FEMA did not make any changes to the regulatory text as a result of this comment.

#### *J. FEMA Exceeds 90-Day Deadline*

A State DEM [FEMA-2019-0012-0008] commented that in both paragraphs 206.206(b)(1)(ii)(C) and (b)(2)(ii)(C) of the NPRM, FEMA allows itself 90 days from *receipt* of the appeal, rather than the date of the appeal itself, to respond per Section 423(b) of the Stafford Act. The State DEM further suggests regulatory text changes imposing penalties for any response beyond the 90-day deadline.

First and foremost, the date an applicant makes an appeal is not the same date FEMA receives the appeal because it must first pass through the recipient. In addition, though FEMA endeavors to render all appeals decisions within 90 days, it is an agile agency with emergent responsibilities. Nevertheless, FEMA remains stewards of Federal monies and must perform a thorough review to ensure grants follow the law. This constant conflict demands an ongoing shift of resources and priorities. With the final rule's implementation of electronic transmission, FEMA determinations should be received electronically when issued. The Regional Administrator will provide electronic notice of the disposition of the appeal to the applicant and the recipient thereby avoiding delays inherent in methods such as carrier delivery. FEMA will know the date received as it will be the same as the electronic transmission date. Lastly, FEMA notes that, pursuant to Section 423(d) of the Stafford Act, if the agency fails to respond to an applicant's first appeal within 180 days, said applicant may choose to arbitrate the dispute provided they meet all the other arbitration threshold requirements. Consequently, FEMA did not make any changes to the regulatory text at 206.206(b)(1)(ii)(C) and (b)(2)(ii)(C) as a result of the comments.

#### *K. 90-Day Deadline for Technical Information*

Proposed paragraphs 206.206(b)(1)(iii) and (b)(2)(iii) provide that, for highly technical matters, the Regional Administrator may submit the appeal to an independent scientific or technical person/group having expertise in the subject matter of the appeal for advice or recommendation. The period of this review may be in addition to other allotted time periods.

In lieu of the above, a State DEM [FEMA-2019-0012-0008] commented that FEMA does not have the authority

to expand the time it has to render a determination on a first or second appeal. Moreover, the State DEM argued, the time taken to seek technical advice should be deducted from FEMA's allotted 90 days, as FEMA should have already conducted a proper full technical review prior to making a final agency determination.

FEMA, as the steward of Federal monies, must always pursue the public's best interest by ensuring that all grants follow the law. For highly technical matters, the Agency has a responsibility to seek outside guidance if it lacks the requisite expertise inhouse. This will allow the Agency to make the correct decision and serve the greater good of distributing equitable disaster assistance. Moreover, pursuant to Section 423(d) of the Stafford Act, if FEMA fails to respond to an applicant's first appeal within 180 days, said applicant may choose to arbitrate the dispute provided they meet all the other arbitration threshold requirements. For these reasons, FEMA did not alter the regulatory text at 206.206(b)(1)(iii) and (b)(2)(iii) as a result of the comments.

#### L. 30 Days To Provide Additional Information

In the NPRM, under paragraphs 206.206(b)(1)(ii)(B) and (b)(2)(ii)(B), FEMA proposed allowing the recipient only 30-calendar days to provide any additional information to the Regional Administrator; instead of having the Regional Administrator include the date by which the information must be provided. Quantifying the period for additional information better allows FEMA to issue timely determinations on first and second appeals.

A member of the public [FEMA-2019-0012-0003] commented that the proposed change allows an appellant to provide additional information even 30 days after the appeal submittal. This change would not serve the public's interest of FEMA issuing timely determinations on first appeal she argued. In this instance, FEMA would be required to delay its adjudication by 30 days while it waits for the window of opportunity to submit additional information on a first appeal to pass. Thus, if this change was implemented, an appellant would have 150 days to make a complete appeal. While the member of the public [FEMA-2019-0012-0003] is correct that the new 30-day deadline may add to the appeals timeline, it could also shorten the timeline of future appeals by quantifying the deadline. FEMA intends to provide a fair deadline for additional information. Therefore, FEMA did not make any changes to the regulatory text

at 206.206(b)(1)(ii)(B) and (b)(2)(ii)(B) as a result of the comment.

#### M. Untimeliness and Imposition of Penalties Upon FEMA

The State DEM [FEMA-2019-0012-0008] proposed the imposition of penalties on FEMA when it exceeds the 90-day deadline for requesting additional information for both first and second appeals. This commenter also suggested that if FEMA misses its deadline, recipients and applicants should not be held to their deadlines, and FEMA should be barred from requesting information to substantiate timeliness. The State DEM also proposed a requirement for FEMA to provide monthly status updates concerning each appeal to the applicant and recipient. As noted above, the Stafford Act does not include any remedies or corrective actions in the event that FEMA fails to meet the 90-day deadline to decide appeals. However, FEMA has a public assistance second appeals tracker available to the public at <https://www.fema.gov/about/openfema/data-sets/fema-public-assistance-second-appeals-tracker>.

With regards to the State DEM's [FEMA-2019-0012-0008] suggestion that untimeliness on FEMA's part should relieve applicants and recipients from complying with their own deadlines. Section 423 of the Stafford Act requires an applicant to submit an appeal within 60 days; FEMA does not have the authority to alter or ignore this requirement. FEMA does have a duty to be a responsible steward of public monies and must therefore conduct a thorough review of all grants to ensure compliance with the law, even if that review happens to exceed the 90-day deadline provided for disposition of appeals. Finally, FEMA will not impose additional responsibilities upon itself, such as status updates, outside of what is prescribed by law. Consequently, FEMA did not make any changes to the regulatory text as a result of the comment.

#### N. Implementation

A State DEM [FEMA-2019-0012-0008] commented that 206.206(b)(1)(v) and (b)(2)(v) do not have deadlines or timelines for implementing a successful appeal. The State DEM suggested that FEMA adopt an actual deadline to avoid delaying project development without explanation to the applicant or recipient. The State DEM suggested language stating that if the Regional Administrator grants an appeal, FEMA must begin implementing the action within 30 days of the determination date, or at a minimum, provide the

applicants and recipient with a status update indicating when the action would be implemented. In a separate comment, the agency also suggested requiring the Assistant Administrator for the Recovery Directorate to perform this action regarding second appeals.

FEMA finds the proposed language to be unnecessary because it effectively requires FEMA to impose requirements on itself not otherwise imposed by Congress. FEMA trusts the discretion of its Regional Administrators<sup>7</sup> to make appropriate decisions on addressing successful appeals. Also, providing status updates would unintentionally affect FEMA's ability to meet timelines for other actions. Therefore, FEMA did not make any changes to the regulatory text at 206.206(b)(1)(v) and (b)(2)(v) as a result of the comment.

#### O. Content of Arbitration Request

A State DEM [FEMA-2019-0012-0008] commented on 206.206(b)(3)(iii)(C), which states that a request for arbitration must contain a written statement that specifies the amount in dispute, all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel. Additional supplemental documentation is permitted as ordered by the CBCA.

The State DEM believed the language was confusing because "all documentation" implied applicants could not submit supplemental information within a request for arbitration. The State DEM suggested removing the word "all" and adding language to allow supplemental documentation as requested by the CBCA. FEMA notes that the CBCA already has rules on supplemental materials located at 48 CFR 6106.608, Evidence; timing [Rule 608]. Accordingly, FEMA did not make any changes to the regulatory text at 206.206(b)(3)(iii)(C) as a result of the comment.

#### P. Emergency Versus Major Disaster Declaration Determinations

As mentioned before, the State DEM [FEMA-2019-0012-0008] submitted an emergency declaration determination as their second and third attachment to their comment related to timeliness of appeals. In the third attachment, FEMA cites to 44 CFR 206.206 for the authority to appeal this emergency declaration determination. During the course of adjudicating this comment, FEMA

<sup>7</sup> The Assistant Administrator for the Recovery Directorate will direct the Regional Administrator to take appropriate implementing action(s) regarding successful second appeals.

reviewed how the NPRM discussed emergency versus major disaster determinations.

In the NPRM, FEMA limited arbitrations to major disaster declaration determinations at proposed 206.206(b)(3)(i)(A) since the right of arbitration is housed in paragraph (d) of Section 423 of the Stafford Act. Section 423 is under Title IV of the Stafford Act, which is entitled “Major Disaster Assistance Programs.” Also, subparagraph (d)(5)(A) of 423 of the Stafford Act states that the applicant shall submit to the arbitration process established under the authority granted under Section 601 of Public Law 111–5. FEMA’s corresponding regulations under 206.209 are entitled “Arbitration for Public Assistance determinations related to Hurricanes Katrina and Rita (Major disaster declarations DR–1603, DR–1604, DR–1605, DR–1606, and DR–1607).” Therefore, FEMA limited arbitration in the NPRM to major disaster declarations.

Yet, there was no corresponding limitation in the appeals section of the NPRM because applicants may appeal emergency declaration decisions. As a result of the deliberation surrounding a response to this comment, FEMA did discover that the NPRM imprecisely stated in the Executive Orders 12866 and 13563 section that “[t]his proposed rule does not apply to emergency disaster declarations.” Rather, it should have stated that “[t]he Regulatory Evaluation does not include a discussion of emergency disaster declarations; since, arbitration is only available to dispute the determinations of major disaster declarations.” There was no need to analyze the cost for applicants to appeal determinations of emergency disaster declarations in the NPRM, since FEMA currently allows for such and the NPRM did not limit appeals to major disaster declaration determinations. FEMA did not make any changes to the regulatory text at 206.206 as a result of this comment but it did update the Regulatory Evaluation as noted above.

### III. Summary of Other Changes

The NPRM at 44 CFR 206.206(a) proposed to define the term “urbanized area” to mean the area as identified by the United States Census Bureau (USCB). The USCB defines an “urbanized area” as an area that consists of densely settled territory that contains 50,000 or more people. For clarity and to comply with publication requirements found in 1 CFR chapter I, FEMA has revised the final rule’s definition of “urbanized area” as an area

that consists of densely settled territory that contains 50,000 or more people.

FEMA realized that the NPRM at 206.206 was silent regarding the recipient-related first and second appeal time limits. Section 423(a) of the Stafford Act allows appeals within 60 days. Therefore, in the first appeal time limits portion of the final rule FEMA aligned with this requirement by adding the following sentence at the end of 206.206(b)(1)(ii)(A): A recipient may make a recipient-related first appeal within 60 calendar days from the date of the FEMA determination that is the subject of the appeal and must electronically submit their first appeal to the Regional Administrator. FEMA also had to make a corresponding addition to the second appeal time limits portion of the final rule by adding the following sentence to the end of 206.206(b)(2)(ii)(A): If the Regional Administrator denies a recipient-related first appeal in whole or in part, the recipient may make a recipient-related second appeal within 60 calendar days from the date of the Regional Administrator’s first appeal decision and the recipient must electronically submit their second appeal to the Assistant Administrator for the Recovery Directorate.

FEMA realized that the NPRM at 206.206(b)(3)(i)(A) does not follow the language of Section 423(d)(1) of the Stafford Act, which says that an applicant for assistance may request arbitration to dispute the eligibility for assistance or repayment of assistance. Rather, the NPRM at 206.206(b)(3)(i)(A) states that an applicant may request arbitration if there is a disputed agency determination. Therefore, in the final rule FEMA is removing the phrase “disputed agency determination” from paragraph 206.206(b)(3)(i)(A) and adding “dispute of the eligibility for assistance or of the repayment of assistance” in its place.

FEMA also realized that the NPRM at 206.206(b) does not follow the language of Section 423 of the Stafford Act, which says that an applicant for assistance may request arbitration to dispute the eligibility for assistance or repayment of assistance. Rather, the NPRM at 206.206(b) says that an eligible applicant or recipient may appeal or an eligible applicant may arbitrate any determination previously made related to an application for or the provision of PA according to the procedures of this section. Because the regulatory text does not follow the statutory language, FEMA is removing the phrase “or an eligible applicant may arbitrate” from 206.206(b) and FEMA is adding a second sentence to 206.206(b) that says:

“An eligible applicant may request arbitration to dispute the eligibility for assistance or repayment of assistance.”

FEMA is making these technical changes because FEMA does not have the discretion to deviate from statutorily imposed restrictions. Section 423(a) of the Stafford Act allows an applicant to appeal any decision regarding eligibility for, from, or amount of assistance. Whereas, Section 423(d)(1) of the Stafford Act allows an applicant to arbitrate the eligibility for assistance or repayment of assistance. Since Congress did not use the same language, there is a difference between what an applicant can arbitrate and what an applicant can appeal, which FEMA must delineate in its regulations at 44 CFR 206.206. Since these requirements are statutorily imposed and FEMA has no discretion FEMA may make these edits as technical changes in the final rule.

Additional technical changes to the final rule are at 44 CFR 206.206(b)(1)(iv)(B)(1) and (b)(2)(iv)(B)(1) as the Office of Management and Budget (OMB) revised the cross references from 2 CFR 200.338 to 2 CFR 200.339; as, OMB revised sections of their Guidance for Grants and Agreements. (See 85 FR 49506, Aug. 13, 2020.)

The final rule also includes corrections of typographical errors and other non-substantive stylistic changes from the NPRM. FEMA made a typographical error under the Executive Orders 12866 and 13563 section Impartiality heading. In the NPRM, the Executive Orders 12866 and 13563 section stated that CBCA found in favor of the applicant fully or partially in less than 20 percent of the time. The “20 percent” was a typographical error. It should have read “55 percent” to align with the correct data, which was listed on Table 13 of the NPRM. In this final rule, the data for the Executive Orders 12866 and 13563 section has been updated with the most recent 10-years of available data at the time of the analysis. Therefore, FEMA has replaced “less than 20” with “about 13” in the final rule to make sure that the narrative of the percentage that the CBCA found in favor of the applicant fully or partially aligns with Table 13.

The final rule also includes other non-substantive changes from the NPRM. For instance, FEMA added a footnote to the Executive Orders 12866 and 13563 section under the Cost to Government/FEMA heading that “FEMA estimates that we could need up to four expert witnesses. FEMA’s expert witnesses may or may not speak at the hearing. Additionally, FEMA may hire an expert witness so that FEMA can consult with

them about the subject matter.” The footnote adds clarity to the statement that FEMA assumes that it would use four expert witnesses per case. This change is for clarification purposes only.

In this final rule, FEMA added onto footnote 11 in the Executive Orders 12866 and 13563 section under the first bullet point under the Assumptions heading that “[i]n the final rule, the data for the Executive Orders 12866 and 13563 section has been updated with the most recently available data at the time of the analysis.” The edits to footnote 11 clarifies that the Executive Orders 12866 and 13563 section contains the most recent data at the time of the analysis and that the figures will be in the most recent dollars. For the NPRM, 2018 dollars were used based off the Bureau of Labor Statistics (BLS) Consumer Price Index (CPI) data. In the final rule, 2019 dollars were used based off the BLS CPI data as it became available. This addition is for clarification purposes only.

Another non-substantive stylistic change from the NPRM was made to the definition of “applicant” and “recipient” in 206.206(a). Instead of saying that the “applicant” or the “recipient” “refers to,” the final rule regulatory text says that the “applicant” or the “recipient” “has the same meaning as.” So, the definitions in the final rule regulatory text are: *Applicant* has the same meaning as the definition at § 206.201(a) and *Recipient* has the same meaning as the definition at § 206.201(m).

The final non-substantive stylistic and grammar changes from the NPRM were made to 206.206(c) in the final rule. First, FEMA split the paragraph into two subparagraphs based on whether the subparagraph dealt with the finality of a FEMA decision or a CBCA decision. Then, FEMA corrected a grammar error in the first sentence of 206.206(c)(1) by revising “constitute” to “constitutes.” Since, FEMA split paragraph 206.206(c) from the NPRM into two subparagraphs in the final rule, FEMA had to include that final decisions are not subject to further administrative review in both subparagraphs, as it applies to the finality of both FEMA and CBCA decisions.

#### IV. Regulatory and Statutory Analyses

##### A. Executive Order 12866, as Amended, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders 12866 (“Regulatory Planning and Review”) and 13563 (“Improving Regulation and Regulatory

Review”) 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 (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

OMB has designated this rule as a non-significant regulatory action, under section 3(f) of Executive Order 12866. Accordingly, OMB has not reviewed it.

##### Need for Regulatory Action

When FEMA determines that an applicant or recipient is ineligible for PA funding, or if the applicant or recipient disputes the amount awarded, FEMA has implemented a process to appeal the decision. First, the applicant or recipient can appeal to the FEMA Regional Administrator (RA), who will make a determination on the appeal. If the applicant or recipient does not submit a second appeal of the RA’s determination, the result of the first appeal is the final agency determination. If the applicant or recipient is not satisfied with the result of the first appeal, they can submit a second appeal to the FEMA Assistant Administrator for the Recovery Directorate. The result of the second appeal is a final decision of FEMA.

This rule implements provisions for arbitration in lieu of a second appeal, or in cases where an applicant has had a first appeal pending with FEMA for more than 180 calendar days. Applicants choosing arbitration would have their case heard by a panel of judges with the CBCA. A decision by the majority of the CBCA panel constitutes a final decision that would be binding on all parties. Final decisions would not be subject to further administrative review.

Pursuant to 42 U.S.C. 5189a, as amended by Section 1219 of the DRRRA, to request arbitration, an applicant (1) must have a dispute arising from a disaster declared after January 1, 2016; (2) must be disputing an amount that exceeds \$500,000 (or \$100,000 for an applicant in a “rural area” with a population of less than 200,000 and outside of an urbanized area); and, (3) must have submitted a first appeal and has either received a denial of the first appeal or has not received a decision after 180 calendar days.

This final rule will directly affect applicants or recipients disputing FEMA PA eligibility determinations or

disputing the amount awarded for PA projects. Applicants are required to submit appeals through their State, or in the case of a Tribal declaration,<sup>8</sup> their Tribal government (recipients). The recipient will then forward the request to the FEMA Regional Administrator, along with a recommendation for a first appeal.

If an applicant has not received a decision on their first appeal after 180 days and meets the other two previously-outlined criteria, they may withdraw the first appeal and request arbitration. Alternatively, if the applicant does not agree with the Regional Administrator’s decision on the first appeal, they may either submit a second appeal to the FEMA Assistant Administrator for the Recovery Directorate or request arbitration. A panel of judges with the CBCA would hear any arbitration cases. The applicant would send a representative and possibly expert witnesses to the arbitration hearing. The recipient would also send a representative to support the applicant. FEMA representatives and expert witnesses would also attend the hearing to defend FEMA’s determination in the case of an applicant not receiving the first appeal decision within 180 days or to defend FEMA’s first appeal decision.

The final rule will codify regulations for the arbitration process as directed by 42 U.S.C. 5189a(d)(5). Applicants are eligible for arbitration for disputes arising from major disasters declared on or after January 1, 2016. This process is already available, and eligible applicants have been notified of this option.<sup>9</sup>

As amended by Section 1219 of the DRRRA, 42 U.S.C. 5189a(d) names the CBCA as the entity responsible for conducting these arbitrations. The CBCA has promulgated regulations at 48 CFR part 6106 establishing its arbitration procedures for such purpose.<sup>10</sup>

This final rule establishes a 60-calendar day deadline for submitting

<sup>8</sup> Tribes may choose to apply for PA independently as a recipient (tribal declaration) or may submit through their State as a subrecipient.

<sup>9</sup> On December 18, 2018, FEMA implemented section 1219 of DRRRA by posting a Fact Sheet on its website. After CBCA published their March 5, 2019 proposed rule, see 84 FR 7861, FEMA updated the: Section 1219 Public Assistance Appeals and Arbitration Fact Sheet (3–27–19). After CBCA finalized their rule on June 21, 2019, see 84 FR 29085, FEMA again updated the Fact Sheet. The current Fact Sheet can be found at: [https://www.fema.gov/sites/default/files/2020-07/fema\\_DRRRA-1219-public-assistance-arbitration-right\\_fact-sheet.pdf](https://www.fema.gov/sites/default/files/2020-07/fema_DRRRA-1219-public-assistance-arbitration-right_fact-sheet.pdf). (2–20). Accessed June 8, 2021.

<sup>10</sup> 48 CFR part 6101, Rules of Procedure of the Civilian Board of Contract Appeals, also covers PA arbitrations.

requests for arbitration (§ 206.206(b)(3)(iii)(B)) so that submission time limits for second appeals and arbitrations are the same. FEMA believes that there should be consistency between the time to request arbitration and the time to submit second appeals for administrative ease and to reduce potential confusion amongst applicants.

#### Affected Population

The final rule will affect disputes from PA applicants arising from major disaster declarations. Specifically, applicants that (1) submitted a first appeal and received a negative decision, or, (2) have a first appeal pending for more than 180 days and wish to withdraw the appeal in favor of arbitration. Applicants may only request arbitration for disputes in excess of \$500,000, or \$100,000 in rural areas, and for disputes that arise from major disasters declared on or after January 1, 2016.

#### Summary of Regulatory Changes

FEMA is revising its PA appeals regulation at 44 CFR 206.206 to add in the new right to arbitration under DRRRA, in conjunction with some revisions to the appeals process. DRRRA added arbitration as a permanent alternative to a second appeal under the PA Program, or for applicants that have had a first appeal pending with FEMA for more than 180 calendar days that may withdraw such appeal and submit a request for arbitration, provided the dispute is in excess of \$500,000, or \$100,000 in rural areas, and for disputes that arise from major disasters declared on or after January 1, 2016. The other major revisions to 44 CFR 206.206 include adding definitions; adding subparagraphs to clarify what actions FEMA may take and will not take while an appeal is pending and state that FEMA may issue separate guidance as necessary, similar to current 44 CFR 206.209(m); adding a finality of decision paragraph; requiring electronic submission for appeals and arbitrations documents; and clarifying overall time limits for first and second appeals.

In the final rule, a non-substantive stylistic change from the NPRM was made to the definition of “applicant” and “recipient” in § 206.206(a). Instead of saying that the “applicant” or the “recipient” “refers to,” the final rule regulatory text says that the “applicant” or the “recipient” “has the same meaning as.” So, the definitions in the final rule regulatory text are: *Applicant* has the same meaning as the definition at § 206.201(a) and *Recipient* has the

same meaning as the definition at § 206.201(m).

In this final rule, FEMA is adding a definition of *Regional Administrator* and making changes to the regulatory text regarding first appeals and second appeals at § 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A) as a result of the 60-day appeals deadline comments.

Additionally, in this final rule, FEMA is making technical revisions at §§ 206.206(b) and 206.206(b)(3)(i)(A) to align the regulatory text with the dispute of the eligibility for assistance or repayment of assistance language of Section 423(d)(1) of the Stafford Act.

FEMA realized that the NPRM at § 206.206 was silent regarding the recipient-related first and second appeal time limits. Section 423(a) of the Stafford Act allows appeals within 60 days. Therefore, in the first appeal time limits portion of the final rule FEMA aligned with this requirement by adding the following sentence at the end of § 206.206(b)(1)(ii)(A): A recipient may make a recipient-related first appeal within 60 calendar days from the date of the FEMA determination that is the subject of the appeal and must electronically submit their first appeal to the Regional Administrator. FEMA also had to make a corresponding addition to the second appeal time limits portion of the final rule by adding the following sentence to the end of § 206.206(b)(2)(ii)(A): If the Regional Administrator denies a recipient-related first appeal in whole or in part, the recipient may make a recipient-related second appeal within 60 calendar days from the date of the Regional Administrator’s first appeal decision and the recipient must electronically submit their second appeal to the Assistant Administrator for the Recovery Directorate. This regulatory change is not expected to have a significant economic impact.

FEMA provided clarifying edits to § 206.206(b)(3)(iii)(B)(2) in the final rule, so that an applicant understands that if they choose arbitration pursuant to Section 423(d) of the Stafford Act, as FEMA has not responded to an applicant’s first appeal within 180 days, then they must withdraw the pending appeal before they file the request for arbitration. Basically, the applicant cannot arbitrate and appeal at the same time. Plus, FEMA provided clarifying edits to § 206.206(b)(3)(iii)(B)(2) to remove the phrase “and the CBCA.” FEMA deleted this phrase, as a pending first appeal would not be pending before the CBCA, so the applicant would have no reason to notify the CBCA of the first appeal withdrawal.

For clarity and to comply with publication requirements found in 1 CFR chapter I, FEMA has revised the final rule’s definition of “urbanized area” as an area that consists of densely settled territory that contains 50,000 or more people.

Additional technical changes to the final rule are at 44 CFR 206.206(b)(1)(iv)(B)(1) and (b)(2)(iv)(B)(1) as the Office of Management and Budget (OMB) revised the cross references from 2 CFR 200.338 to 2 CFR 200.339; as, OMB revised sections of their Guidance for Grants and Agreements. (See 85 FR 49506, Aug. 13, 2020.)

So in the final rule, FEMA has split the first sentence of § 206.206(b)(3)(iii)(B)(2) into two sentences that say if the first appeal was timely submitted, and the Regional Administrator has not rendered a decision within 180 calendar days of receiving the appeal, an applicant may arbitrate the decision of FEMA. To request arbitration, the applicant must first electronically submit a withdrawal of the pending appeal simultaneously to the recipient and the FEMA Regional Administrator. This regulatory change will not have an economic impact.

FEMA also added clarifying language to the last sentence of § 206.206(b)(3)(iii)(B)(2) by replacing “may” with “must” and by adding the phrase “to the recipient, the CBCA, and FEMA” after arbitration. So, § 206.206(b)(3)(iii)(B)(2) in the final rule says that the applicant must then submit a request for arbitration to the recipient, the CBCA, and FEMA within 30 calendar days from the date of the withdrawal of the pending appeal. FEMA wants to clarify that if an applicant withdraws a first appeal, then the applicant must submit a request for arbitration within 30 calendar days. If the applicant does not follow the requirements of § 206.206(b)(3)(iii)(B)(2), then the applicant’s request for arbitration will be denied for timeliness. This regulatory change will not have an economic impact.

The final non-substantive stylistic and grammar changes from the NPRM were made to § 206.206(c) in the final rule. First, FEMA split the paragraph into two subparagraphs based on whether it dealt with the finality of a FEMA decision or a CBCA decision. Then, FEMA corrected a grammar error in the first sentence of § 206.206(c)(1) by revising “constitute” to “constitutes.” Since, FEMA split paragraph 206.206(c) from the NPRM into two subparagraphs in the final rule, FEMA had to include that final decisions are not subject to further



administrative review in both subparagraphs, as it applies to the finality of both FEMA and CBCA decisions.

#### Assumptions

This analysis used the following assumptions:

- All monetary values are presented in 2019 dollars. FEMA used the Bureau of Labor Statistics (BLS) Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month, Annual Average as published December 2019.<sup>11</sup>

- This analysis does not include a discussion of emergency disaster declarations; since, arbitration is only available to dispute the determinations of major disaster declarations.<sup>12</sup>

- FEMA assumed the length of time for an arbitration case is based on the hearing location.

- FEMA used 2019 wage rates for all parties involved in arbitration cases.

#### Baseline

Following guidance in OMB Circular A-4, FEMA assessed the impacts of this final rule against a pre-statutory baseline. The pre-statutory baseline is an assessment of what the world would look like if the relevant statute(s) had not been adopted. In this instance, FEMA has been accepting arbitration cases since the implementation of DRRRA, and retroactive to January 1, 2016. Since the statute has already been implemented and because this rule is not making additional substantive changes, the rule has no cost or benefits related to the new right of arbitration under a no-action baseline. The costs, benefits, and transfers of this rule are measured against the pre-statutory baseline. The benefit of this rule is making information publicly available in the CFR for transparency and to prevent any confusion on the most up-to-date arbitration process.

Currently, FEMA has no permanent regulations for arbitrations outside of Hurricanes Katrina and Rita. Since the

passage of the DRRRA, certain PA applicants under declarations since January 1, 2016 may request arbitration pursuant to 42 U.S.C. 5189a(d). On June 21, 2019, CBCA published a final rule (see 84 FR 29085) and FEMA has published a corresponding fact sheet. Between January 1, 2016 and November 9, 2020, FEMA received 20 requests for arbitration.<sup>13</sup> Three of these cases are still in progress, so FEMA does not have available data on the outcome of these cases. Of the 17 closed cases, FEMA prevailed in 10 cases, the applicant prevailed in 4 cases, and the applicant withdrew from the arbitration process prior to a decision in 3 cases. These figures will change as FEMA continues to receive arbitration requests.

While arbitration is available for disaster declarations retroactive to January 1, 2016, the process did not become available to applicants until FEMA published guidance in December 2018, and FEMA did not begin receiving arbitration requests until March 7, 2019. This means that FEMA only has 19 months of historical data, and therefore, FEMA relied on older arbitration regulations as a proxy for the expected number of arbitration cases arising out of this final rule.

FEMA previously had regulations permitting arbitrations arising from disaster declarations for Superstorm Sandy. No applicants requested arbitration pursuant to these regulations. The authority for these arbitrations has sunset and FEMA has since removed the regulations. FEMA has regulations, at 44 CFR 206.209, permitting arbitrations arising from disaster declarations for Hurricanes Katrina and Rita. This regulation is only available for PA applicants under Hurricane Katrina and Rita disaster declarations. The number of arbitrations submitted under this authority and the process relied on to conduct these arbitrations provide insight to project the number of arbitration cases in this final rule. While the Katrina/Rita arbitration regulations have some key differences from this final regulation, such as time frames and allowing applicants to request arbitration in lieu of first appeals, it is the best historical data that FEMA has available to estimate the number of expected arbitration cases for this final rule.

FEMA recognized that the regulations at 44 CFR 206.209 have a 30-day time limit for submitting arbitration requests; whereas, this final rule has a 60 calendar-day time limit for arbitrations.

FEMA was not able to estimate the impact these additional 30 days may have on the number of arbitrations submitted.

#### Number of Potential Arbitration Cases

In addition to reviewing the limited historical data available on the 20 arbitration cases, FEMA also examined the number of arbitrations submitted from the Hurricane Katrina and Rita disasters pursuant to 44 CFR 206.209, in lieu of filing a first appeal, from 2010 through 2019 to derive an estimate of the number of arbitration cases that applicants might submit per year pursuant to 42 U.S.C. 5189a(d). Pursuant to 42 U.S.C. 5189(d)(5)(A), arbitrations authorized by the DRRRA must follow the process established in 44 CFR 206.209 for Katrina and Rita arbitrations, so FEMA relied on the annual average percentage of cases submitted under this regulation as a basis for estimating the number of cases that would arise for this final rule. This analysis was conducted using data from 2010 through 2019.<sup>14</sup> Applicants could arbitrate in lieu of a first appeal only if the amount of the project was greater than \$500,000.<sup>15</sup> During this period, applicants submitted a total of 73 arbitrations and a total 225 first appeals.<sup>16</sup> From this available data, applicants chose arbitration in lieu of a first appeal 32 percent of the time ( $(73 \div 225) \times 100 =$  approximately 32 percent).

Pursuant to 42 U.S.C. 5189(d)(5)(B), arbitration is authorized by the DRRRA in lieu of a second appeal where the dispute is more \$500,000, or \$100,000 for rural areas. For second appeals

<sup>14</sup> The proposed rule stated that “The authority to arbitrate in lieu of a filing a first appeal for Hurricanes Katrina and Rita became available in February 2009 and 2017 is the latest calendar year where complete data was available at the time of this analysis.” Review under the Executive Orders 12866 and 13563 section in the proposed rule was conducted with data available at the time. FEMA typically uses 10 years of historical data for their analysis. However, 10 years of historical data was not available at the time of the analysis of the proposed rule. For this final rule, FEMA was able to use 10 years of historical data, 2010 through 2019. Hurricane Katrina and Rita occurred in 2005. FEMA notes that as time passes, fewer applicants are submitting requests for public assistance each year, as over 15 years has passed since the Katrina/Rita declarations.

<sup>15</sup> Please note that arbitration cases for Hurricanes Katrina and Rita are not bound by a threshold for rural areas as is this rule. FEMA does not know if this limitation will result in more or less cases submitted.

<sup>16</sup> Data on appeals and arbitrations is provided by FEMA’s Office of Chief Counsel Disaster Disputes Branch. Not all these first appeals would have been eligible for arbitration. To be eligible for arbitration, the amount in dispute would have had to have been greater than \$500,000. FEMA does not have amount in dispute data available for these cases, so the arbitration percentage may be overstated.

<sup>11</sup> Historical Consumer Price Index for All Urban Consumers (CPI-U): U.S. city average, all items, by month. Bureau of Labor Statistics: Consumer Price Index 2019. Accessed October 23, 2020. <https://www.bls.gov/cpi/tables/supplemental-files/archive-2019.zip>. In the final rule, the data for the Executive Orders 12866 and 13563 section has been updated with the most recently available data at the time of the analysis.

<sup>12</sup> The NPRM incorrectly stated in the Executive Orders 12866 and 13563 section that “[t]his proposed rule does not apply to emergency disaster declarations.” The NPRM should have stated that here was no need to the cost for applicants to appeal determinations of emergency disaster declarations because FEMA currently allows for such and the NPRM did not limit appeals to major disaster declaration determinations.

<sup>13</sup> The number of arbitration requests was provided by FEMA’s Office of Chief Counsel Disaster Disputes Branch as of November 9, 2020.



estimates, FEMA looked at all PA appeals from 2010 through 2019, rather than just the appeals resulting from Hurricanes Katrina and Rita since a second appeal was available to all applicants. FEMA found that there were 874 second appeals submitted.<sup>17</sup> Of that total, FEMA had data on the amount in

dispute for 751 appeals. FEMA applied the urban/rural and minimum project amount requirements to these appeals and found that 353 or 47 percent would have been eligible for arbitration under this final rule ((353 ÷ 751) × 100 = approximately 47 percent).<sup>18</sup>

FEMA used the number of second appeals by year, then applied the percent eligible for arbitration under the final rule of 47 percent, then applied the percent choosing arbitration in lieu of a first appeal of 32 percent to calculate the expected number of arbitration cases from 2010 to 2019 as shown in Table 1.

TABLE 1—TOTAL AND ANNUAL AVERAGE ESTIMATED ARBITRATION CASES PER YEAR

CY	Number of second appeals	Percent eligible under final rule (%)	Percent choosing arbitration (%)	Expected number of arbitration cases
2010	93	47	32	14
2011	107	47	32	16
2012	92	47	32	14
2013	102	47	32	15
2014	82	47	32	12
2015	43	47	32	6
2016	83	47	32	12
2017	76	47	32	11
2018	110	47	32	17
2019	86	47	32	13
Total	874			130
Average	87			13

Based on historical data from 2010 through 2019 and case data from 44 CFR 206.209, FEMA estimates that there would be an average of 13 arbitration cases in lieu of a second appeal per year under the final rule.

Arbitration has been available under 42 U.S.C. 5189a(d)(5) since January 1, 2016. So far, 20 cases were submitted, with three submitted for a first appeal lasting more than 180 days. Based on this limited data, FEMA estimates that 15 percent of arbitration cases would result from a withdrawal of a first appeal.<sup>19</sup> Applying the 15 percent arbitration rate to the annual average number of expected arbitration cases would result in two additional arbitration case per year (15 percent × 13 cases = 1.95, rounded to two cases). Therefore, FEMA estimates an average of 15 arbitration cases per year (13 + 2 = 15 arbitrations per year).

In this final rule, FEMA is removing the phrase “or an eligible applicant may arbitrate” from “206.206(b) and FEMA added a second sentence to 206.206(b) that says: “[a]n eligible applicant may request arbitration to dispute the eligibility for assistance or repayment of assistance” so that it follows the Stafford Act. This change in this final rule will not impact the number of

arbitration cases per year since applicants can still request to arbitrate the case. However, the results of the arbitration may be impacted by the change in language. FEMA further discusses this point in our transfers and uncertainty analysis sections.

Costs

Based on experience from the arbitrations conducted for Hurricanes Katrina and Rita, costs from this final rule would arise mainly from travel expenses; opportunity costs of time for the applicant and applicant’s representatives, recipient’s representatives, and FEMA’s representatives; and contract costs for applicants and FEMA to retain legal counsel and experts. Cost estimates are based on the expected number of arbitration cases per year. Since FEMA does not reimburse for applicant arbitration expenses, FEMA does not have data on the expenses incurred by applicants who have arbitrated from Hurricanes Katrina and Rita to serve as a proxy for this final rule. Other provisions of the final rule, such as timeframe requirements, electronic filing requirements, technical advice and clarifications would not have associated costs. FEMA does not expect

the electronic filing requirement to have associated costs since nearly all applicants have access to internet and email, and most submit arbitration requests through their attorneys. The final timeframe requirements would align the submission deadlines for arbitration and appeals and would not place additional burdens on the applicants. FEMA currently provides technical advice as needed, so this would not be a new practice under this final rule.

The arbitration process is highly customizable for the applicant. The applicant may choose to use an attorney, or several attorneys to represent them during the arbitration process. The applicant may also choose not to hire legal representation at all. Additionally, the applicant may use any number of expert witnesses or none. Because of the variability in the way arbitrations are conducted, FEMA is presenting what it considers a typical case upon which to base its cost estimates. This “typical case” is based on recent experience with the 20 arbitration cases already filed. Generally, the applicant will use one or two attorneys and at least one expert witness. However, the arbitration

<sup>17</sup> During the period of 2010–2019, 874 second level appeals were submitted. FEMA has amount in dispute data for 751 cases. FEMA does not have the amount in dispute data on the 123 cases because FEMA did not maintain electronic records for appeals prior to 2015. Prior to 2015, this data was

manually entered into a database with many fields left blank.

<sup>18</sup> Out of 751 cases, 258 had an amount in dispute greater than \$500,000 and would be eligible regardless of the urban/rural classification. 288 cases were for amounts between \$100,000 and \$500,000, of which 95 were classified as rural. 353

(= 258 + 95) cases out of 751, or 47 percent would have met the eligibility requirements for arbitration in lieu of a second appeal.

<sup>19</sup> Calculation: (3 cases where a first appeal lasted more than 180 days ÷ 20 arbitration cases) × 100 = 15 percent.

process is extremely flexible, and an applicant can use whatever resources it thinks would be most appropriate for its case. For example, in one case, the applicant hired several non-local attorneys for representation. In another case, the arbitration was conducted via written reports only, and no hearing was conducted.

Costs to the CBCA are not discussed in this analysis. CBCA promulgated their own regulations regarding their procedures for FEMA arbitration cases. Under DRRRA, CBCA will be responsible for covering the costs of conducting arbitration hearings. All other parties including the applicant, the recipient, and FEMA would be responsible for covering their own expenses. The final rule does not mandate any costs for the applicant or recipient. The arbitration process would be entirely voluntary on the part of the applicant. Applicants would choose to request arbitration if they determine that the cost of arbitration is justified by the potential benefits.

This analysis estimates a range of potential costs based on the applicant's or recipient's use of attorneys for representation. The final rule would not require attorneys to represent any party for arbitration. However, FEMA would be represented by attorneys at any arbitration hearing.

The costs to the applicant, recipient, and FEMA would be due to travel and opportunity cost of time and contract costs for legal counsel and experts. To estimate the opportunity cost of time, FEMA assumed that each case would take each party 46.5 hours (rounded to 47 hours) to prepare for the hearing, attend the hearing, and for post hearing work.<sup>20</sup> Hearings have historically lasted two working days, or 16 hours.<sup>21</sup> Additional time would be required for travel as is discussed later in this analysis. FEMA also assumes that each party would make use of expert witnesses in support of their case. Additionally, FEMA generally pays for a court reporter.

Regulations at 44 CFR 206.209 have a 30-day time limit for submitting arbitration requests; whereas, this final rule has a 60 calendar-day time limit for arbitrations. Since the 60 calendar-day appeals deadline is current FEMA policy there will be no additional costs for the regulatory text changes at § 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A) since it has already been accounted for.

<sup>20</sup> Based on information provided by FEMA Office of Chief Counsel Disaster Disputes Branch.

<sup>21</sup> Based on information provided by FEMA Office of Chief Counsel Disaster Disputes Branch.

#### Opportunity Cost of Time and Wages

A typical arbitration request requires the work of several people, including lawyers to represent the applicants, a court reporter to take a transcript of the hearing, and State, local, Tribal, or PNP managers who are responsible for compiling and submitting the original PA request. Applicants will also typically supply expert witnesses when making their case to the CBCA panel. FEMA used wage rates for General and Operations Managers to represent State, Tribal, local, and PNP managers. Many PA projects involve repair or replacement of buildings and infrastructure, so FEMA assumes that Engineers would be the most likely occupation used as expert witnesses.

FEMA used hourly wage rates from the Bureau of Labor Statistics Occupational Employment Statistics for the following occupations: \$69.86 for Lawyers (SOC 23-1011), \$31.25 for Court Reporters and Simultaneous Captioners (SOC 23-2093), \$48.45 for Engineers (SOC 17-2000), and \$59.15 for General and Operations Managers (SOC 11-1021).<sup>22</sup> To account for the benefits paid by employers, FEMA used a wage multiplier of 1.46,<sup>23</sup> resulting in fully-loaded hourly wages of \$102.00 for Lawyers, \$45.63 for Court Reporters and Simultaneous Captioners, \$70.74 for Engineers, and \$86.36 for General and Operations Managers.

FEMA used the 2019 hourly wage tables for the Washington-Baltimore-Arlington, DC-MD-VA-WV-PA<sup>24</sup> locality rate for FEMA employees participating in arbitration cases. Based on current FEMA practice, FEMA assumes that GS-13 employees would perform both legal and other services for an arbitration case and the work would be reviewed by a manager at the GS-15 level. The hourly GS-13 Step 5 salary was \$53.85, and the hourly GS-15 step 5 salary was \$74.86. In order to account

<sup>22</sup> U.S. Bureau of Labor Statistics. National Occupational Employment and Wage Estimates United States. May 2019. Accessed August 18, 2020. [https://www.bls.gov/oes/2019/may/oes\\_nat.htm](https://www.bls.gov/oes/2019/may/oes_nat.htm).

<sup>23</sup> Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 1. "Employer costs per hour worked for employee compensation and costs as a percent of total compensation: Civilian workers, by major occupational and industry group, March 2019." Available at [http://www.bls.gov/news.release/archives/ecec\\_06182020.pdf](http://www.bls.gov/news.release/archives/ecec_06182020.pdf). Accessed August 18, 2020. The wage multiplier is calculated by dividing total compensation for all workers of \$37.73 by wages and salaries for all workers of \$25.91 per hour yielding a benefits multiplier of approximately 1.46.

<sup>24</sup> U.S. Office of Personnel Management. 2019 General Schedule (GS) Locality Pay Tables. August 19, 2020. [https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB\\_h.pdf](https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/DCB_h.pdf).

for the benefits paid by employers, FEMA used a 1.46 multiplier to calculate loaded wage rates of \$78.62 for a GS-13 Federal employee and \$109.30 for a GS-15 Federal employee.

#### Travel

Arbitration cases are heard by a panel of judges of the CBCA, which is based in Washington, DC. The arbitration process is very customizable, so applicants can choose to have the hearings locally, where a CBCA judge would travel to their location, and FEMA would also send its representatives. Alternatively, cases could be heard at the CBCA, and the applicant would travel to Washington, DC, along with any lawyers and expert witnesses. Finally, the applicant could choose to have the CBCA review documents, and nobody would be required to travel. Because PA applicants are located throughout the U.S. and can be travelling from any location within the U.S., FEMA used average nationwide travel costs to estimate the travel costs for this rule.

The U.S. General Service Administration (GSA) provides guidance on travel policy, hotel rates, and meals and incidentals for Federal employees. FEMA used GSA data on hotel prices and per diem rates to estimate travel expense costs of attending a hearing in person.<sup>25</sup> Because data on travel expenses for non-Federal employees is not available, FEMA used the Federal lodging and per diem rates for applicants traveling to Washington, DC to attend hearings. According to GSA, in 2019, the average price of a hotel room in Washington, DC was \$216 per night<sup>26</sup> and outside of the Washington, DC metro area was \$94 per night.<sup>27</sup> The per diem rate for meals and incidentals on the first and last travel days<sup>28</sup> is \$57 and \$76 for other travel

<sup>25</sup> U.S. General Services Administration. "FY 2019 Per Diem Rates for District of Columbia." Accessed on August 19, 2020. Standard CONUS rate used for lodging and MI&E. [https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems\\_report&state=DC&fiscal\\_year=2019&zip=&city=](https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=DC&fiscal_year=2019&zip=&city=). Per diem rates are calendar year instead of fiscal year.

<sup>26</sup> FEMA took the average of the 12 month per diem lodging rates provided by GSA for Washington, DC from October 2018 to September 2019, available at [https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems\\_report&state=DC&fiscal\\_year=2019&zip=&city=](https://www.gsa.gov/travel/plan-book/per-diem-rates/per-diem-rates-lookup/?action=perdiems_report&state=DC&fiscal_year=2019&zip=&city=).

<sup>27</sup> U.S. General Service Administration. "FY 2019 Per Diem Rates—Effective October 1, 2018." Accessed on May 24, 2021. Standard CONUS rate used for lodging and MI&E. [https://www.gsa.gov/cdnstatic/FY2019\\_PerDiemRatesMasterFile\\_0.xls](https://www.gsa.gov/cdnstatic/FY2019_PerDiemRatesMasterFile_0.xls). Per diem rates are calendar year instead of fiscal year.

<sup>28</sup> U.S. General Services Administration. "MI&E Breakdown." Accessed on May 24, 2021. <https://>

day(s) in Washington, DC. Similarly, the per diem rates for meals and incidentals on the first and last day is \$41 and \$55 for the other days outside of Washington, DC.<sup>29</sup>

The U.S. Department of Transportation (DOT) provides information on the price of domestic airfare.<sup>30</sup> According to the Bureau of Transportation Statistics, the annual unadjusted cost of an average domestic flight within the United States, the average airfare was \$355 roundtrip in 2019.<sup>31</sup> The total travel costs for applicants attending hearings in Washington, DC that typically last 3 nights and 4 days would be \$1,269 per

person (\$355 average airfare + (\$216 hotel in Washington, DC × 3 nights) + (\$76 meals and incidentals × 2 days of stay) + (\$57 meals and incidentals × 2 travel days)) = \$1,269).

Expert Witnesses

FEMA assumes that each party would make use of expert witnesses to support their case. The expert witnesses would be required to travel to the hearing at the expense of the party that hired them. Based on historical experience, preparing for the hearing is estimated to take 20 hours, the duration of the hearing is estimated to be 16 hours and the travel time is estimated at 11 hours

for a total of 47 hours for a hearing in Washington, DC. Therefore, the opportunity costs of time for one expert witness to attend a hearing would be \$3,325 (\$70.74 engineers wages × 47 hours). Thus, the total cost for one expert witness' travel and opportunity cost of time is \$4,594 (\$1,269 + \$3,325). Table 2 shows the detailed costs per expert witness to attend a hearing in Washington, DC. To provide a range of estimates since cases vary, a hearing at the applicant's location for an expert witness would cost \$2,547 (\$70.74 engineers wages × 36 hours<sup>32</sup>). This total assumes the expert witness is local and therefore incurs no travel costs.

TABLE 2—ESTIMATED COST PER EXPERT WITNESS, WASHINGTON, DC HEARING [2019\$]

Round trip flight	Three nights of lodging at \$219 per night	Meals and incidentals	Total travel expenses	Opportunity costs of time for a hearing in Washington, DC	Total expert witness cost
(A)	(B)	(C)	(D) = (A + B + C)	(E)	(D + E)
\$355	\$648	\$266	\$1,269	\$3,325	\$4,594

Cost for the Applicant

The typical total cost for the applicant includes travel expenses (round trip flight, three nights of lodging, and meals and incidentals) and opportunity costs of time for the applicant, the applicant's representatives, and the expert witnesses. The total travel expenses for the applicant and the representative would be \$2,538 (\$1,269 × 2 personnel = \$2,538), if the hearing is held in Washington, DC. As previously discussed in this analysis, costs include

47 hours for hearing preparation, attending the hearing, and post hearing work, plus 11 hours of travel time for applicants and the applicant's representative. FEMA notes that an applicant can choose not to bring a representative or an applicant's representative could be one attorney or in some cases more than one attorney. To provide a range of costs, FEMA analyzes the typical case where one attorney or no attorneys are present. If the applicant's representative is an attorney, the opportunity costs of time

would be \$10,925 ((\$102.00 per hour wages for a lawyer × 58 hours) + (\$86.36 per hour wages for a general and operations manager × 58 hours) = \$10,925). If the applicant does not use an attorney as their representative, the opportunity costs of time would be \$10,018 (2 general and operations managers at \$86.36 each × 58 hours = \$10,018). Table 3 shows the range of total costs to the applicant which include the opportunity costs of time and the travel costs.

TABLE 3—RANGE OF APPLICANT COSTS—WASHINGTON, DC HEARING [2019\$]

	Opportunity cost of time	Travel	Total
1 Attorney and 1 Non-Attorney .....	\$10,925	\$2,538	\$13,463
2 Non-Attorneys .....	10,018	2,538	12,556

The total cost to the applicant if they were to travel to Washington, DC for a hearing with a representative and two expert witnesses, ranges from \$21,744

((2 expert witnesses at a cost of \$4,594 each) + \$12,556 applicant cost) if the representatives are 2 non-attorneys to \$22,651 ((2 expert witnesses at \$4,594

each) + \$13,463 applicant and attorney cost) if the representatives are 1 attorney and 1 non-attorney.

[www.gsa.gov/travel/plan-book/per-diem-rates/mie-breakdown](http://www.gsa.gov/travel/plan-book/per-diem-rates/mie-breakdown). Per GSA, first and last travel days meals and incidentals expenses (M&IE) for the first and last calendar day of travel is calculated at 75 percent of the total M&IE.

<sup>29</sup> U.S. General Service Administration. "FY 2019 Per Diem Rates—Effective October 1, 2018." Accessed on May 24, 2021. Standard CONUS rate used for lodging and MI&E. [https://www.gsa.gov/cdnstatic/FY2019\\_PerDiemRatesMasterFile\\_0.xls](https://www.gsa.gov/cdnstatic/FY2019_PerDiemRatesMasterFile_0.xls).

Per diem rates are calendar year instead of fiscal year.

<sup>30</sup> Bureau of Transportation Statistics. "Annual Fares 1995–2019 4Q 2019" (.xlsx) March 23, 2020. U.S. Department of Transportation. <https://www.bts.gov/sites/bts.dot.gov/files/Annual%20Fares%201995-2020%201Q2020.xlsx>.

<sup>31</sup> Unadjusted 2019 dollars. Excludes airline tickets under \$50.

<sup>32</sup> FEMA deducts the 11 hours of travel time from the total of 47 hours used for a hearing in Washington, DC to come up with the total time for a hearing at the applicant's location assuming the expert witness is also local. Therefore, 36 hours is derived from the 20 hours estimated for preparing for the hearing and 16 hours for the duration of the hearing.

For a local hearing, the costs to the applicant would include 47 hours of opportunity costs of time for the applicant and representative (assuming the representative is local), and 36 hours of opportunity costs of time to attend the hearing for two expert witnesses

(assuming the expert witnesses are local) and would range from \$13,211 ((2 general and operations managers at \$86.36 each × 47 hours) + (2 expert witnesses at \$70.74 each × 36 hours) = \$13,211) to \$13,946 ((\$86.36 for a general and operations manager × 47

hours) + (\$102.00 for an attorney × 47 hours) + (2 expert witnesses at \$70.74 each × 36 hours) = \$13,946) depending on who the recipient uses as a representative. Table 4 shows the range of total costs for an applicant for hearings held at the applicant's location.

TABLE 4—APPLICANT COSTS—LOCAL HEARING

[2019\$]

	Expert witnesses	Opportunity cost of time	Total
1 Attorney and 1 Non-Attorney .....	\$5,093	\$8,853	\$13,946
2 Non-Attorneys .....	5,093	8,118	13,211

Cost for the Recipient

The recipient would not present information in the arbitration case but would send one or more representatives in a supporting role for the applicant.

The cost per arbitration case for the recipient is the opportunity costs of time for the representatives totaling \$10,018 (2 general and operations managers at \$86.36 each × 58 hours = \$10,018) and travel expenses \$2,538 (2

representatives × \$1,269) of those attending the hearing in Washington, DC. As shown in table 5, the total cost to the recipient would be \$12,556 if the hearing was held in Washington, DC.

TABLE 5—ESTIMATED RECIPIENT COSTS, WASHINGTON, DC HEARING

[2019\$]

	Opportunity cost of time	Travel	Total
General and Operations Managers .....	\$10,018	\$2,538	\$12,556

For a local hearing, two representatives would spend 47 hours on the case and the cost to the recipient would be \$8,118 (2 general and operations managers at \$86.36 each × 47 hours = \$8,118).

Cost to Government/FEMA

FEMA would require two attorneys for a typical arbitration case, a GS-13 step 5 attorney and a GS-15 step 5 supervisory attorney, to review and to prepare a response to the request for arbitration. Based on historical experience, the two attorneys' total time from preparation to post hearing is 47 hours.<sup>33</sup> The opportunity costs of time of the attorneys, including preparation and review of a case, is \$8,832 ((\$78.62 GS-13 Step 5 attorney × 47 hours) + (\$109.30 GS 15 Step 5 Supervisory Attorney × 47) hours = \$8,832).

Based on historical experience, FEMA would also require four non-attorneys (e.g., GS-13 Step 5 program analysts) to support the arbitration case only for the duration of the hearing. The opportunity costs of time associated with the program analysts would be \$5,032 (4 GS-13 Step 5 program analysts at \$78.62 each × 16 hours = \$5,032). Thus, the total opportunity costs of time for all six FEMA personnel would be \$13,864. FEMA would also call their own expert witnesses to attend the hearing. Based on historical experience, FEMA assumes that it would use four expert witnesses per case<sup>34</sup> for a total of \$10,188 (\$2,547 cost per expert witness × 4 expert witnesses = \$10,188). The expert witnesses provide testimony on a range of subjects, for example soil degradation or building construction.

Arbitration hearings do not require transcription services. However, FEMA has historically hired a court reporter for hearings and provided the transcript to the CBCA for their records. FEMA will continue to pay for a court reporter for the duration of a hearing under the final rule, but will not provide a transcript to the CBCA. The opportunity costs of time for the court reporter services for a transcript would be \$730 per arbitration case (\$45.63 per hour wages for Court Reporters and Simultaneous Captioners × 16 hours of arbitration time = \$730).

The estimated total cost to FEMA, including staff time, expert witnesses, and transcript services, would be \$24,782 per case. Table 6 presents the cost of each component by opportunity cost of time and other costs.

TABLE 6—ESTIMATED FEMA COSTS—WASHINGTON, DC HEARING

[2019\$]

Cost for four expert witnesses	Cost of court reporter	Cost for FEMA employees (2 attorneys and 4 program analysts)	Total per-case cost to FEMA
\$10,188	\$730	\$13,864	\$24,782

<sup>33</sup> Based on information provided by FEMA Office of Chief Counsel Disaster Disputes Branch.

<sup>34</sup> FEMA estimates that we could need up to four expert witnesses. FEMA's expert witnesses may or may not speak at the hearing. Additionally, FEMA

may hire an expert witness so that FEMA can consult with them about the subject matter.

For a hearing at the applicant’s location, FEMA representatives would need to travel to the location of the hearing. Costs for a local hearing would be higher for FEMA due to paying for travel time as well as actual travel costs. Travel costs are estimated using the

figures previously mentioned and would be \$1,269 per person for a total of \$2,538, if 2 attorneys travel to the applicant’s location. Additionally, FEMA estimates that the time would increase to 58 hours due to 11 hours of travel time for the attorneys totaling (2

attorneys at \$109.30 each × 58 hours) \$12,679 plus \$5,032 for non-travelling program analysts resulting in a total cost of \$17,711. The total estimated costs to FEMA for a local hearing are presented in Table 7.

TABLE 7—ESTIMATED FEMA COSTS—LOCAL

[2019\$]

Cost for four expert witnesses	Cost of court reporter	Opportunity costs of time for FEMA employees	Travel costs (2 attorneys)	Total per-case cost to FEMA
\$10,188	\$730	\$ 17,711	\$2,538	\$31,167

In addition to these costs, FEMA’s PA Program hired an Arbitration Coordinator at the GS–13 Step 5 level with an annual salary of \$116,353. With the 1.46 multiplier for a fully loaded wage rate, the additional cost to FEMA is \$169,875 per year. Therefore, the annual total costs to FEMA range from \$194,657 (\$169,875 + \$24,782) if the

hearing is held in Washington, DC to \$201,042 (\$169,875 + \$31,167) if the hearing is held at the applicant’s location.

Total Costs

The total cost per case vary based on who the applicant uses as a representative, and whether the hearing is held in Washington, DC or local to the

applicant. Government and FEMA costs would be higher for a hearing held local to the applicant, and likewise, applicant and recipient costs would be higher if the hearing was held in Washington, DC. FEMA estimates that the total costs per case to range between \$52,496 and \$59,989. Table 8 presents the range of estimated costs per arbitration case.

TABLE 8—TOTAL COST PER CASE

[2019\$]

	FEMA	Applicant	Recipient	Total
Low .....	\$31,167	\$13,211	\$8,118	\$52,496
High .....	24,782	22,651	12,556	59,989

As established earlier in this analysis, FEMA estimates an average of 15 arbitration cases per year. Therefore, FEMA estimates the total annual costs to range between \$957,315 ((15 cases × \$31,167 per case) + \$169,875 to hire a new FEMA employee + (15 cases ×

\$13,211 per case for applicant) + (15 cases × \$8,118 per case for the recipient) = \$957,315 (low) and \$1,069,710 ((15 cases × \$24,782 per case) + \$169,875 for a new FEMA employee + (15 cases × \$22,651 per case for the applicant) + (15 cases × \$12,556 for the recipient) =

\$1,069,710) (high). Table 9 shows the estimated total costs per year of this final rule. The low-cost estimate assumes that all hearings would be held at the applicant’s location, while the high estimate assumes hearings would be held in Washington, DC.

TABLE 9—TOTAL COST PER YEAR FOR 15 CASES

[2019\$]

	FEMA	Applicant	Recipient	Total
Low .....	\$637,380	\$198,165	\$121,770	\$957,315
High .....	\$541,605	\$339,765	\$188,340	\$1,069,710

Tables 10 and 11 show the total 10-year costs and 10-year costs annualized at 3 percent and 7 percent.

TABLE 10—10-YEAR COST TOTALS USING 3 PERCENT AND 7 PERCENT DISCOUNT RATES

[Low estimate, 2019\$]

Year	FEMA costs	Applicant costs	Recipient costs	Total costs	Annual costs discounted at 3% <sup>1</sup>	Annual costs discounted at 7% <sup>1</sup>
1 .....	\$637,380	\$198,165	\$121,770	\$957,315	\$929,432	\$894,687
2 .....	637,380	198,165	121,770	957,315	902,361	836,156
3 .....	637,380	198,165	121,770	957,315	876,079	781,454
4 .....	637,380	198,165	121,770	957,315	850,562	730,331
5 .....	637,380	198,165	121,770	957,315	825,788	682,552

TABLE 10—10-YEAR COST TOTALS USING 3 PERCENT AND 7 PERCENT DISCOUNT RATES—Continued  
[Low estimate, 2019\$]

Year	FEMA costs	Applicant costs	Recipient costs	Total costs	Annual costs discounted at 3% <sup>1</sup>	Annual costs discounted at 7% <sup>1</sup>
6 .....	637,380	198,165	121,770	957,315	801,736	637,899
7 .....	637,380	198,165	121,770	957,315	778,385	596,168
8 .....	637,380	198,165	121,770	957,315	755,713	557,166
9 .....	637,380	198,165	121,770	957,315	733,702	520,716
10 .....	637,380	198,165	121,770	957,315	712,332	486,650
Total .....	6,373,800	1,981,650	1,217,700	9,573,150	8,166,090	6,723,779
Annualized .....	.....	.....	.....	.....	957,315	957,315

<sup>1</sup> The annualized amounts for 7 percent and 3 percent are equal in this table because the amounts for each year are identical and the first year is discounted.

TABLE 11—10-YEAR COST TOTALS USING 3 PERCENT AND 7 PERCENT DISCOUNT RATES  
[High estimate, 2019\$]

Year	FEMA costs	Applicant costs	Recipient costs	Total costs	Annual costs discounted at 3% <sup>1</sup>	Annual costs discounted at 7% <sup>1</sup>
1 .....	\$541,605	\$339,765	\$188,340	\$1,069,710	\$1,038,553	\$999,729
2 .....	541,605	339,765	188,340	1,069,710	1,008,304	934,326
3 .....	541,605	339,765	188,340	1,069,710	978,936	873,202
4 .....	541,605	339,765	188,340	1,069,710	950,423	816,077
5 .....	541,605	339,765	188,340	1,069,710	922,741	762,688
6 .....	541,605	339,765	188,340	1,069,710	895,865	712,793
7 .....	541,605	339,765	188,340	1,069,710	869,772	666,162
8 .....	541,605	339,765	188,340	1,069,710	844,439	622,581
9 .....	541,605	339,765	188,340	1,069,710	819,844	581,851
10 .....	541,605	339,765	188,340	1,069,710	795,965	543,786
Total .....	5,416,050	3,397,650	1,883,400	10,697,100	9,124,842	7,513,195
Annualized .....	.....	.....	.....	.....	1,069,710	1,069,710

<sup>1</sup> The annualized amounts for 7 percent and 3 percent are equal in this table because the amounts for each year are identical and the first year is discounted.

FEMA continues to believe that there will not be any implementation or familiarization costs. FEMA currently has an arbitration process that is very similar to the final rule for cases arising from Hurricanes Katrina and Rita. Additionally, FEMA has already notified eligible applicants, dating back to January 1, 2016 of their eligibility for arbitration under DRRRA Section 1219.

Further, applicants will not have familiarization costs because the process for requesting arbitration will consist of an email request and will use materials previously submitted in the application for PA funding.

**Benefits**

The benefits of this final rule are qualitative in nature and apply mostly to the applicant. FEMA believes that this final rule will further its mission of supporting State, Tribal, and local governments, as well as eligible PNPs by offering them an alternative procedure for disputing PA eligibility and funding decisions. Applicants retain the option

to submit a second appeal. The final rule offers an alternative that the applicant might see as more impartial because the arbitration cases would be heard by CBCA judges, as opposed to second appeals that would continue to be conducted entirely within FEMA. Additionally, applicants have the opportunity to present their case in person and call expert witnesses to support their claims. These two options allow applicants to choose a course of action that is most appropriate to their circumstances.

**Customization**

Applicants may select arbitration, if they consider this process more customizable. The arbitration process provides applicants with the opportunity to appear in person before an impartial panel and present evidence as to why they are disputing a FEMA determination. Applicants can also retain expert witnesses to provide support to their position. Expert witnesses provide testimony within

their technical specialty to assist the arbitration panel in understanding the underlying work for which FEMA ultimately decides eligibility.

Additionally, applicants have the opportunity to respond in real time to evidence presented by FEMA, allowing them more control over the dispute than they might have under a second appeal. Applicants may opt to hire an expert witness in arbitration to help present the disputed information in a manner more favorable to the applicant. The ability to hire expert witnesses may provide applicants with additional utility and may be an incentive to select arbitration.

The final rule also allows applicants to present the same technical documentation in both the appeals and arbitration procedures. An applicant who submits a first appeal but elects withdrawal in favor of arbitration may opt to reuse the information in the request for arbitration that was previously submitted in the first appeal.

Applicants may gain utility from the convenience of reusing documents.

**Impartiality**

It is not possible to quantify an applicant’s increased utility due to perceived impartiality. The purpose of arbitration is to create a process to resolve the issues in a manner satisfactory to all parties. Based on past cases, FEMA has granted or partially granted about 23 percent of the second appeals submitted by applicants.<sup>35</sup> CBCA has found in favor or partially in

favor for the applicant about 13 percent of Katrina/Rita arbitrations.<sup>36</sup>

The applicant may nevertheless perceive they have a better opportunity to gain additional Federal funding through arbitration. Applicants may select arbitration to have cases reviewed by a third party, rather than an appeal process that is conducted entirely by FEMA. Applicants may perceive this to be a more impartial system, if the forum encourages both parties to solicit discussion rather than “paper” based appeals. Applicants may expect that

impartiality would best achieve the objective of an equitable resolution.

Tables 12 and 13 analyze the historical outcomes from second appeals and arbitration from 44 CFR 206.209. Because of the unpredictable nature and unique circumstances of every disaster, these figures may not be representative of future outcomes, as the outcomes are based on the arbitration policies for Hurricanes Rita and Katrina and the unique circumstances of each case.

**TABLE 12—SECOND APPEALS OUTCOMES**  
[2010–2019]

Second appeal outcome	Number of cases	Percent
Granted .....	138	15.8
Denied .....	594	68.0
Partially Granted .....	78	8.9
Active .....	37	4.2
Other <sup>1</sup> .....	27	3.1
<b>Total .....</b>	<b>874</b>	<b>100.0</b>

<sup>1</sup> The category of Other includes appeal decision not available, remand, rescind, arbitration, and withdrawn.

**TABLE 13—ARBITRATION OUTCOMES UNDER 44 CFR 206.209**  
[2010–2019]

Arbitration outcome	Number of cases	Percent
Matters Resolved Without CBCA Decision .....	24	33.3
In Favor of FEMA .....	22	30.6
In Favor of Applicant .....	6	8.3
Partial in Favor of Applicant .....	3	4.2
Withdrawn .....	12	16.7
Other <sup>2</sup> .....	5	6.9
<b>Total .....</b>	<b>72</b>	<b>100</b>

<sup>2</sup> The category of Other includes other decision, dismissed, and ongoing cases.

**Transfers**

FEMA is unable to quantify transfers because of the unpredictability of the results of this final rule. Transfers would arise from the possibility that FEMA may award a different amount of

grant funding under the arbitration process than it would under current regulations that only allow for a second appeal. However, it would be speculative for FEMA to make an estimate as to the potential changes in

grant disbursement that would result from this final rule.

**Impacts**

Table 14 summarizes the costs, benefits, and transfer impacts of this final rule.

**TABLE 14—OMB CIRCULAR A–4 ACCOUNTING TABLE**

Category	Estimates		Units		
	Low estimate	High estimate	Dollar year	Discount rate (%)	Period covered
<b>Benefits:</b>					
Annualized Monetized .....	\$0	\$0	2019	7	10 Years.
	0	0	2019	3	10 Years.
Annualized Quantified .....	0	0			

<sup>35</sup> Based on information provided by FEMA Office of Chief Counsel Disaster Disputes Branch.

<sup>36</sup> Based on information provided by FEMA Office of Chief Counsel Disaster Disputes Branch.

TABLE 14—OMB CIRCULAR A-4 ACCOUNTING TABLE—Continued

Category	Estimates		Units		
	Low estimate	High estimate	Dollar year	Discount rate (%)	Period covered
	0	0			
Qualitative .....	<ul style="list-style-type: none"> <li>• Additional option for review of PA projects and decisions.</li> <li>• Greater perception of impartiality in the arbitration process.</li> <li>• Ability to customize arbitration process.</li> </ul>				
Costs:					
Annualized Monetized .....	957,315	1,069,710	2019	7	10 Years.
	957,315	1,069,710	2019	3	10 Years.
Annualized Quantified .....	0	0			
	0	0			
Qualitative .....	<ul style="list-style-type: none"> <li>• Longer time frame to resolve disputes under arbitration option.</li> </ul>				
Transfers .....	Possible changes to PA grant disbursements.				
Effects:					
Small Entities .....	FEMA expects 11 arbitration cases per year from small entities with an estimated cost of between \$13,211 and \$22,651 per small entity.				
Wages .....	None.				
Growth .....	None.				

Uncertainty Analysis

The estimates of the costs of the final rule are subject to uncertainty due to the uniqueness of each arbitration case. The cost estimates can vary widely depending on complexity and other factors. As a result, the cost estimate could be overstated or understated.

There are several sources of uncertainty in this analysis: The number of eligible applicants, the final deadlines for filing, and the potential number of arbitration cases. Major disasters do not occur on a regular time interval. The severity of the disaster would affect the number of applicants that decide to apply for funding in the PA Program. The number of eligible applicants can vary year-to-year.

Historical data used in this analysis was based on the arbitration process for Hurricanes Katrina and Rita, which is different in a couple of key respects from this final arbitration process. While the cost shares for Katrina and Rita were 100 percent, cost shares for future disaster declarations may be as high as 25 percent for applicants.<sup>37</sup> Because Katrina/Rita applicants were

not required to pay for any portion of their project cost, they had an incentive to apply for more costly projects and pursue arbitration when denied. Future disasters with a cost share may lead applicants to be more conservative in applying for PA projects, which may result in fewer arbitration requests than was indicated in the primary estimate.

Additionally, the timeframe for submitting arbitration requests under 44 CFR 206.209 was 30 days. However, FEMA is implementing a 60-day submission deadline for arbitration submissions under DRRA requirements to align with the 60-day submission timeframe for second appeals. This additional time may affect the number of arbitration cases submitted in the future, but FEMA cannot reliably predict these impacts at this time.

Alternatives

FEMA identified several alternative regulatory approaches to the requirements in this final rule. The alternatives included: (1) Not issuing a mandatory regulation; (2) an alternate definition of rural; and (3) not requiring electronic submission.

FEMA did not consider the first alternative option of not issuing a mandatory regulation. The DRRA mandates FEMA to promulgate a rule allowing the option of arbitration in lieu of a second appeal and specifies the

CBCA as the arbitration administrator. As such, FEMA must pursue a regulatory action.

FEMA considered using an alternate definition of rural, such as OMB's nonmetropolitan area definition. OMB's nonmetropolitan area is defined as areas outside the boundaries of metropolitan areas.<sup>38</sup>

Nonmetropolitan areas are outside the boundaries of metropolitan areas and are further subdivided into two types:

1. Micropolitan (micro) areas, which are nonmetro labor-market areas centered on urban clusters of 10,000–49,999 persons and defined with the same criteria used to define metro areas.

2. All remaining counties, often labeled “noncore” counties because they are not part of “core-based” metro or micro areas.

OMB defines metropolitan areas to include:

1. Central counties with one or more urbanized areas; urbanized areas are densely-settled urban entities with 50,000 or more people.

2. Outlying counties that are economically tied to the core counties as measured by labor-force commuting. Outlying counties are included if 25

<sup>37</sup> “The Federal share of assistance is not less than 75 percent of the eligible cost. The recipient determines how the non-Federal share (up to 25 percent) is split with the subrecipients (*i.e.*, eligible applicants).” Program Overview: Public Assistance. FEMA. <https://www.fema.gov/assistance/public-program-overview>. Last accessed on: May 25, 2021.

<sup>38</sup> 2010 Standards for Delineating Metropolitan and Micropolitan Statistical Areas; Notice. Office of Management and Budget. See 75 FR 37246, June 28, 2010. <https://www.govinfo.gov/content/pkg/FR-2010-06-28/pdf/2010-15605.pdf>. Last accessed: May 25, 2021.



percent of workers living in the county commute to the central counties, or if 25 percent of the employment in the county consists of workers coming out from the central counties—the so-called “reverse” commuting pattern.

FEMA did not recommend using OMB’s definition because it combines rural area populations into Metropolitan counties. The OMB definition would also result in some rural areas, such as the Grand Canyon, being considered a metropolitan county. This alternative would not result in reducing the impact on small entities, while accomplishing the stated objective of the rule.

FEMA considered not requiring applicants to submit a request for arbitration electronically. Current practices allow FEMA to accept hard copy submissions (through U.S. Mail or other means) for first and second appeals. In addition, FEMA currently accepts electronic submissions for requests for arbitration under 44 CFR 206.209. FEMA chose to require electronic submissions as it would provide FEMA with enhanced ability to track and establish deadlines in the arbitration process. CBCA’s rule requires applicants to use an electronic method to submit their documentation and request for arbitration to CBCA. Thus, requiring electronic submission will not pose an undue burden on most applicants.

### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare a Final Regulatory Flexibility Analysis (FRFA) unless it determines and certifies that a rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This final rule will not have a significant economic impact on a substantial number of small entities. In accordance with the Regulatory Flexibility Act, a FRFA must contain the following statements, including descriptions of the reason(s) for the rulemaking, its objective(s), the affected small entities, any additional burden for book or record keeping and other compliance requirements; any Federal rules that duplicate, overlap, or conflict with the rulemaking, and significant alternatives considered. The following sections address these subjects individually in the context of this final rule.

#### *1. Statement of a need for, and objectives of the rule.*

PA helps State and local governments respond to and recover from the challenges faced during major disasters and emergencies. To support State and local governments facing those challenges, Congress passed DRRRA.

Under the PA Program, as authorized by the Stafford Act, FEMA awards grants to eligible applicants to assist them in responding to and recovering from Presidentially-declared emergencies and major disasters. The recipient, as defined at 44 CFR 206.201(m), is the government to which a grant is awarded, and which is accountable for the use of the funds provided. Generally, the State for which the emergency or major disaster is declared is the recipient. The recipient can also be an Indian Tribal government. The applicant, as defined at 44 CFR 206.201(a), is a State agency, local government, or eligible PNP submitting an application to the recipient for assistance under the State’s grant.

The PA Program provides Federal funds for debris removal, emergency protective measures, repair and replacement of roads and bridges, utilities, water treatment facilities, public buildings, and other infrastructure. When the President declares an emergency or major disaster declaration authorizing disbursement of funds through the PA Program, that presidential declaration automatically authorizes FEMA to accept applications from eligible applicants under the PA Program. To apply for a grant under the PA Program, the eligible applicant must submit a Request for PA to FEMA through the recipient. Upon award, the recipient notifies the applicant of the award, and the applicant becomes a subrecipient.

Applicants currently have a right to arbitration to dispute FEMA eligibility determinations associated with Hurricanes Katrina and Rita; see 44 CFR 206.209. The DRRRA amended the Stafford Act and FEMA promulgated a regulation providing all applicants the right to request arbitration for disputes under all disaster declarations after January 1, 2016 that are above certain dollar amount thresholds. This final rule implements the Section 1219 requirements of DRRRA and will grant applicants an additional method of recourse.

#### *2. Statement of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), a statement of the assessment of the agency of such issues, and a statement of any changes made to the proposed rule as a result of such comments.*

FEMA did not receive any comments on the IRFA for this rule, and therefore did not make any changes to this FRFA from the proposed rule due to public comments.

#### *3. The response of the agency to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA) in response to the proposed rule, and a detailed statement of any change made to the final rule as a result of the comments.*

FEMA did not receive any comments on the proposed rule from the Chief Counsel for Advocacy of the SBA.

#### *4. A description of and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.*

“Small entity” is defined in 5 U.S.C. 601. The term “small entity” can have the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.” Section 601(3) defines a “small business” as having the same meaning as “small business concern” under Section 3 of the SBA. This includes any small business concern that is independently owned and operated and is not dominant in its field of operation. Section 601(4) defines a “small organization” as any not-for-profit enterprise which is independently owned and operated and is not dominant in their field of operation. Section 601(5) defines “small governmental jurisdiction” as governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.

The SBA also stipulates in its size standards of how large an entity may be and still be classified as a “small entity.” These small business size standards are matched to industries described in the North American Industry Classification System to determine if an entity is considered small.

This final rule does not place any additional requirements on small entities. It does, however, offer them an alternative means to dispute FEMA’s determination for PA eligibility. If the entity chooses to dispute a PA determination, and they select

arbitration rather than a second appeal, they would be responsible for their share of the cost of the arbitration process.

All small entities would have to meet the final requirements to be eligible for arbitration. FEMA identified 3,478 applicants for FEMA's PA Program<sup>39</sup> that would be eligible for arbitration under the final requirements for the time frame from 2010 through 2019. FEMA used Slovin's formula<sup>40</sup> and a 90 percent confidence interval to determine the sample size. FEMA sampled 97 of these applicants and found that 74 (76 percent) met the definition of a small entity based on the population size of local governments (less than 50,000 population),<sup>41</sup> or PNPs based on size standards set by the SBA.<sup>42</sup> The remaining 23 entities were not found to be considered small entities. Eligible small entities included 67 small government agencies and seven PNP organizations. Based on information presented in the Executive Orders 12866 and 13563 section, FEMA estimates 15 arbitration cases per year. If 76 percent of these are small entities, FEMA estimates 11 arbitration requests per year from small entities with an average cost of between \$13,211 and \$22,651 per case. Eleven small entities do not represent a substantial number of small entities impacted by this final rule and the costs imposed to these small entities are not significant.

*5. Description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.*

*Arbitration*—As an alternative to the appeal process, applicants may request arbitration of the disputed determination. To be eligible for Section 423 arbitration, a PA applicant's request

must meet all three of the following conditions: (1) The amount in dispute arises from a disaster declared after January 1, 2016; (2) the disputed amount exceeds \$500,000 (or \$100,000 if the applicant is in a "rural area," defined as having a population of less than 200,000 living outside an urbanized area); and (3) the applicant submitted a first appeal with FEMA pursuant to the requirements established in 44 CFR 206.206.

The applicant must submit a Request for Arbitration to the recipient, CBCA, and FEMA. The Request for Arbitration must contain a written statement, which specifies the amount in dispute, all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel. FEMA estimates that it will take an applicant 2 hours to complete the Request for Arbitration (these 2 hours are accounted for in the economic analysis through the 47 hours of hearing preparation time for applicants) with a wage rate of \$86.36 for a general and operations manager. FEMA estimates the opportunity cost of time for completing the request will be \$172.72 per applicant. With an estimated 11 cases per year, FEMA estimates the total burden for completing the request is \$1,900 per year. The person completing the request would need to be familiar with PA regulations and policies.

*6. Description of the steps the agency has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.*

The alternatives included: (1) Using another definition for "rural" and (2) not requiring electronic submission.

FEMA considered using OMB's nonmetropolitan area definition as an alternate definition of the term "rural." OMB's nonmetropolitan area is defined as areas outside the boundaries of metropolitan areas and are further subdivided into two types:

1. Micropolitan (micro) areas, which are nonmetro labor-market areas centered on urban clusters of 10,000–49,999 persons and defined with the same criteria used to define metro areas.
2. All remaining counties, often labeled "noncore" counties because they are not part of "core-based" metro or micro areas.

OMB defines metropolitan areas to include:

1. Central counties with one or more urbanized areas; urbanized areas are densely-settled urban entities with 50,000 or more people.

2. Outlying counties that are economically tied to the core counties as measured by labor-force commuting. Outlying counties are included if 25 percent of workers living in the county commute to the central counties, or if 25 percent of the employment in the county consists of workers coming out from the central counties—the so-called "reverse" commuting pattern.

FEMA did not recommend using the OMB's definition as it combines rural area populations into Metropolitan counties. The OMB definition would also result in some rural areas, such as the Grand Canyon, being considered a metropolitan county. This alternative would not result in reducing the impact on small entities while accomplishing the stated objective of the rule.

FEMA considered not requiring electronic submission. Current practices allow FEMA to accept physical mail for appeals. In addition, FEMA currently accepts electronic submissions for requests for arbitration under 44 CFR 206.209. As CBCA provided an electronic address for applicants to submit their request for arbitration and documentation, applicants must use electronic method if they choose the arbitration process. Thus, electronic submission will not pose an additional undue burden on applicants that are considered small entities.

## Conclusion

This rule codifies legislative requirements included in the DRRR, which adds arbitration as a permanent alternative to a second appeal under the PA Program. Additionally, applicants that have had a first appeal pending with FEMA for more than 180 calendar days may withdraw such appeal and submit a request for arbitration. On December 18, 2018, FEMA implemented section 1219 of DRRR by posting a Fact Sheet on its website. On June 21, 2019, CBCA published a final rule (see 84 FR 29085) and FEMA has published a corresponding fact sheet. PA arbitration has been available for disasters declared after January 1, 2016. FEMA certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

## C. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, 2 U.S.C. 658, 1501–1504, 1531–1536, 1571 (the Act), pertains to any final rulemaking which implements any

<sup>39</sup> FEMA reported 3,778 applicants in the NPRM to this rule. The number of applicants has since been adjusted to account for more recent data and new timeframe for analysis. The NPRM contained data from 2009–2017 due to the limited data available at that time. This final rule contains data from 2010–2019.

<sup>40</sup> Slovin's formula is  $n = N / (1 + N * e - 2)$ .  $3,478 / (1 + 3,478 * 0.1 - 2) = 97$  (rounded).

<sup>41</sup> Information on population sizes was obtained using the U.S. Census Bureau's City and Town Population Totals 2010–2018. Available at <https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html>.

<sup>42</sup> Small Business Administration. "Table of Size Standards" (.xlsx). Available at <https://www.sba.gov/document/support-table-size-standards>. Revenue and employment information for individual PNP's was obtained from PNP websites.

rule that includes a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of \$100 million (adjusted annually for inflation) or more in any one year. If the rulemaking includes a Federal mandate, the Act requires an agency to prepare an assessment of the anticipated costs and benefits of the Federal mandate. The Act also pertains to any regulatory requirements that might significantly or uniquely affect small governments. Before establishing any such requirements, an agency must develop a plan allowing for input from the affected governments regarding the requirements. Exemptions from the Act are found at 2 U.S.C. 1503, they include any regulation or final regulation that “provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government.” Thus, FEMA finds this rule to be exempt from the Act.

Additionally, FEMA has determined that this rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, nor by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year because of a Federal mandate, and it would not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

#### D. Paperwork Reduction Act of 1995

As required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, 109 Stat. 163, (May 22, 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 the collection of information displays a valid control number.

This proposed information collection previously published in the **Federal Register** on August 31, 2020 at 85 FR 53725 as part of the NPRM. Since the proposed information collection published on August 31, 2020, FEMA completed an emergency revision of information collection 1660–0017. In the emergency information collection for 1660–0017 FEMA added the FEMA Template 104–FY–21–100 Equitable COVID–19 Response and Recovery: Vaccine Administration Information which resulted in 51,016 new Total No. of Responses with an .5 Average Burden per response of (in hours) which resulted in 25,508 Total Annual Burden (in hours) totaling \$1,445,028 in additional Total Annual Respondent

Cost. Also, FEMA is correcting the wage rate used to calculate the *Estimated Total Annual Respondent Cost* in the NPRM, which resulted in a decrease of the *Estimated Total Annual Respondent Cost* from \$29,601,921 to \$27,845,344. FEMA incorrectly used the wage rate for the whole industry, instead of the State government industry wage rate.<sup>43</sup> Additionally, the NPRM incorrectly listed the proposed decrease to the *Estimated Total Annual Cost to the Federal Government* as \$29,976, an error of \$2,498. Rather, the NPRM should have listed a proposed decrease of \$27,478 in arbitration travel costs; as, we do not have to include them per the PRA exceptions for civil & administrative actions. See 44 U.S.C. 3518(c). Additionally, the Staff Salaries changed as the wage rate multiplier changed from 1.6 to 1.45. Finally, the NPRM incorrectly listed the *Estimated Total Annual Costs to the Federal Government*, as \$1,890,650, when the NPRM should have listed it as \$1,930,187, due to the previously mentioned changes. No comments were received regarding the proposed information collection. The purpose of this section is to notify the public that FEMA will submit the information collection abstracted below to OMB for review and clearance. This final rule serves as the 30-day comment period pursuant to 5 CFR 1320.12. FEMA invites the public to comment on this collection of information.

#### Collection of Information

*Title:* PA Program.

*Type of information collection:* Revision of a currently approved collection.

*OMB Number:* 1660–0017.

*Form Forms:* FEMA Form 009–0–49 Request for Public Assistance; FEMA Form 009–0–91 Project Worksheet (PW); FEMA Form 009–0–91A Project Worksheet (PW)—Damage Description and Scope of Work; FEMA Form 009–0–91B Project Worksheet (PW)—Cost Estimate Continuation Sheet; FEMA Form 009–0–91C Project Worksheet (PW)—Maps and Sketches Sheet; FEMA Form 009–0–91D Project Worksheet (PW)—Photo Sheet; FEMA Form 009–0–120 Special Considerations Questions; FEMA Form 009–0–121 PNP Facility Questionnaire; FEMA Form 009–0–123 Force Account Labor Summary Record; FEMA Form 009–0–124 Materials Summary Record; FEMA Form 009–0–125 Rented Equipment Summary Record; FEMA Form 009–0–126

Contract Work Summary Record; FEMA Form 009–0–127 Force Account Equipment Summary Record; FEMA Form 009–0–128 Applicant’s Benefits Calculation Worksheet; FEMA Form 009–0–111, Quarterly Progress Report; FEMA Form 009–0–141, FAC–TRAX System, FEMA Template 104–FY–21–100 Equitable COVID–19 Response and Recovery: Vaccine Administration Information.

*Abstract:* The information collected is utilized by FEMA to make determinations for PA grants based on the information supplied by the respondents.

*Affected Public:* State, local, or Tribal Government.

*Estimated Number of Respondents:* 1,068.

*Estimated Number of Responses:* 449,084.

*Estimated Total Annual Burden Hours:* 491,533.

The final regulation would provide applicants an additional choice in FEMA’s appeals and arbitration processes: Applicants must choose either submitting a second appeal or submitting a request for arbitration. Or, an applicant may select arbitration if the Regional Administrator has received a first appeal but has not rendered a decision within 180 calendar days of receipt. There is no change to the number of responses due to the final rule, as applicants can only choose one option. The final rule’s implementation would not impact the total number of responses or burden hours.

FEMA estimated it will take approximately 2 hours to prepare an electronic appeal or arbitration. This estimate is based on the assumption that most of the information necessary for preparing the appeal or arbitration request is found in the existing Project Worksheet.

Recipients will also provide a recommendation per each applicant request for an appeal or arbitration. The total number of recommendations would not change because of the final rule. FEMA estimates it will take approximately 1 hour to prepare a recommendation.

Currently, the estimated time to complete a request and submit a letter of recommendation for an appeal is three hours. FEMA also estimates the time to complete a request and submit an electronic recommendation for arbitration would also be three hours. The applicant could re-use the same information from the request for an appeal or arbitration and the recipient would review similar information in providing its recommendation. The final

<sup>43</sup> Bureau of Labor Statistics, Occupational Employment and Wage Statistics. <https://www.bls.gov/oes/>. Last accessed: June 10, 2021.

rule would not impact the estimate of the burden hours.

Table 15 provides estimates of annualized cost to respondents for the

hour burdens for the collection of information.

TABLE 15—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/form No.	Number of respondents	Number of responses per respondent	Total number of responses	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, Local or Tribal Government.	FEMA Form 009–0–49, Request for PA	56	129	7,224	0.25	1,806	\$56.65	\$102,310
State, Local or Tribal Government.	FEMA Form 009–0–91, Project Worksheet (PW) and a Request for Time Extension.	56	840	47,040	1.5	70,560	56.65	3,997,224
State, Local or Tribal Government.	FEMA Form 009–0–91A Project Worksheet (PW) Damage Description and Scope of Work.	56	784	43,904	1.5	65,856	56.65	3,730,742
State, Local or Tribal Government.	FEMA Form 009–0–91B, Project Worksheet (PW) Cost Estimate Continuation Sheet and Request for additional funding for Cost Overruns.	56	784	43,904	1.3333	58,537	56.65	3,316,121
State, Local or Tribal Government.	FEMA Form 009–0–91C Project Worksheet (PW) Maps and Sketches Sheet.	56	728	40,768	1.5	61,152	56.65	3,464,261
State Local or Tribal Government.	FEMA Form 009–0–91D Project Worksheet (PW) Photo Sheet.	56	728	40,768	1.5	61,152	56.65	3,464,261
State, Local or Tribal Government.	FEMA Form 009–0–120, Special Considerations Questions/.	56	840	47,040	0.5	23,520	56.65	1,332,408
State, Local or Tribal Government.	FEMA Form 009–0–128, Applicant's Benefits Calculation Worksheet/.	56	784	43,904	0.5	21,952	56.65	1,243,581
State, Local or Tribal Government.	FEMA Form 009–0–121, PNP Facility Questionnaire.	56	94	5,264	0.5	2,632	56.65	149,103
State, Local or Tribal Government.	FEMA Form 009–0–123, Force Account Labor Summary Record.	56	94	5,264	0.5	2,632	56.65	149,103
State, Local or Tribal Government.	FEMA Form 009–0–124, Materials Summary Record/.	56	94	5,264	0.25	1,316	56.65	74,551
State, Local or Tribal Government.	FEMA Form 009–0–125, Rented Equipment Summary Record.	56	94	5,264	0.5	2,632	56.65	149,103
State, Local or Tribal Government.	FEMA Form 009–0–126, Contract Work Summary Record/.	56	94	5,264	0.5	2,632	56.65	149,103
State, Local or Tribal Government.	FEMA Form 009–0–127, Force Account Equipment Summary Record/.	56	94	5,264	0.25	1,316	56.65	74,551
State, Local or Tribal Government.	State Administrative Plan and State Plan Amendments/No Form.	56	1	56	8	448	56.65	25,379
State, Local or Tribal Government.	FEMA Form 009–0–111, Quarterly Progress Report.	56	4	224	100	22,400	56.65	1,268,960
State, Local or Tribal Government.	Request for Appeals or Arbitrations & Recommendation/No Forms.	56	9	504	3	1,512	56.65	85,655
State, Local or Tribal Government.	Request for Arbitration & Recommendation resulting from Hurricanes Katrina or Rita/No Form.	4	5	20	3	60	56.65	3,399
State, Local or Tribal Government.	FEMA Form 009–0–141, FAC-TRAX System.	56	913	51,128	1.25	63,910	56.65	3,620,502
State, Local or Tribal Government.	FEMA Template 104–FY–21–100 Equitable COVID–19 Response and Recovery.	56	911	51,016	0.5	25,508	56.65	1,445,028
Total .....	.....	1,068	.....	449,084	.....	491,533	.....	27,845,344

Note: The "Avg. Hourly Wage Rate" for each respondent includes a 1.62 multiplier to reflect a fully-loaded wage rate.

Estimated Total Annual Respondent Cost: \$27,845,344.

Estimated Respondents' Operation and Maintenance Costs: N/A.

Estimated Respondents' Capital and Start-Up Costs: N/A.

Estimated Total Annual Costs to the Federal Government: \$1,930,187.

E. Privacy Act

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a final regulation will result in a system of records. A "record" is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited

to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph. See 5 U.S.C. 552a(a)(4). A "system of records" is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record which is contained

in a system of records except by following specific procedures.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis (PTA) for this final rule. DHS has determined that this final rule does not affect the 1660–0017 OMB Control Number's current compliance with the E-Government Act of 2002 or the Privacy Act of 1974, as amended. As a result, DHS has concluded that the 1660–0017 OMB Control Number is covered by the DHS/FEMA/PIA–013 Grants Management Programs Privacy Impact Assessment (PIA). Additionally, DHS has decided that the 1660–0017 OMB Control Number is covered by the DHS/FEMA–009 Hazard Mitigation,

Disaster Public Assistance, and Disaster Loan Programs System of Records, 79 FR 16015, Mar. 24, 2014 System of Records Notice (SORN).

*F. National Environmental Policy Act of 1969 (NEPA)*

Section 102 of the National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970) (42 U.S.C. 4321 *et seq.*) requires Federal agencies to consider the impacts of their proposed actions on the quality of the human environment. Each agency can develop categorical exclusions (catexes) to cover actions that have been demonstrated to not typically trigger significant impacts to the human environment individually or cumulatively. If an action does not qualify for a catex and has the potential to significantly affect the environment, agencies develop environmental assessments (EAs) to evaluate those actions. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR parts 1500 through 1508, require Federal agencies to prepare Environmental Impact Statements (EISs) for major Federal actions significantly affecting the quality of the human environment. At the end of the EA process, the agency will determine whether to make a Finding of No Significant Impact or whether to initiate the EIS process.

Rulemaking is a major Federal action subject to NEPA. The list of catexes at DHS Instruction Manual 023-01-001-01 (Revision 01), "Implementation of the National Environmental Policy Act (NEPA)," Appendix A, includes a catex for the promulgation of certain types of rules, including rules that implement, without substantive change, statutory or regulatory requirements and rules that interpret or amend an existing regulation without changing its environmental effect. (Catex A3(b) and (d)).

The purpose of this rule is to finalize the proposed regulations to implement the new right of arbitration authorized by the DRRRA, and to revise FEMA's regulations regarding first and second PA appeals. Additionally, in response to a public comment, FEMA is adding a definition of *Regional Administrator*. Plus, FEMA made changes to the regulatory text regarding first appeals and second appeals at 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A) as a result of the 60-day appeals deadline comments. Finally, FEMA is making two technical revisions at 206.206(b) and 206.206(b)(3)(i)(A) to align the regulatory text with the dispute of the eligibility for assistance or repayment of assistance language of Section 423(d)(1)

of the Stafford Act. These changes are to implement statutory requirements and to amend existing regulation without changing its environmental effect, consistent with Catex A3(b) and (d), as defined in DHS Instruction Manual 023-01-001-01 (Rev. 01), Appendix A. No extraordinary circumstances exist that will trigger the need to develop an EA or EIS. See DHS Instruction Manual 023-01-001-01 V(B)(2).

*G. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, "Consultation and Coordination With Indian Tribal Governments," 65 FR 67249, Nov. 9, 2000, applies to agency regulations that have Tribal implications, that is, regulations that 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. Under this Executive Order, to the extent practicable and permitted by law, no agency will promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the Tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

The purpose of this rule is to finalize the proposed regulations to implement the new right of arbitration authorized by the DRRRA, and to revise FEMA's regulations regarding first and second PA appeals. Additionally, in response to a public comment, FEMA is adding a definition of *Regional Administrator*. Plus, FEMA made changes to the regulatory text regarding first appeals and second appeals at 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A) as a result of the 60-day appeals deadline comments. Finally, FEMA is making two technical revisions at 206.206(b) and 206.206(b)(3)(i)(A) to align the regulatory text with the dispute of the eligibility for assistance or repayment of assistance language of Section 423(d)(1) of the Stafford Act.

Under the final rule, Indian Tribal Governments have the same opportunity to participate in arbitrations as other eligible applicants; however, given the participation criteria required under 42 U.S.C. 5189a(d) and its voluntary nature, FEMA anticipates a very small number, if any Indian Tribal Governments, will participate in the

new permanent right of arbitration. FEMA also anticipates a very small number of Indian Tribal Governments will be affected by the other major revisions to 44 CFR 206.206. As a result, FEMA does not expect this final rule to have a substantial direct effect on one or more Indian Tribal Governments or impose direct compliance costs on Indian Tribal Governments. Additionally, since FEMA anticipates a very small number, if any Indian Tribal Governments will participate in the arbitration portion of the final rule nor will be affected by the rest of the finalized revisions to 44 CFR 206.206, FEMA does not expect the regulations to have substantial direct effects on the relationship between the Federal Government and Indian Tribal Governments or on the distribution of power and responsibilities between the Federal Government and Indian Tribal Governments.

*H. Executive Order 13132, Federalism*

A rule has implications for federalism under Executive Order 13132 "Federalism" (64 FR 43255, Aug. 10, 1999), 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. FEMA has analyzed this final rule under Executive Order 13132 and determined that it does not have implications for federalism.

*I. Executive Order 12630, Taking of Private Property*

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, "Governmental Actions and Interference With Constitutionally Protected Property Rights" (53 FR 8859, Mar. 18, 1988).

*J. Executive Order 12898, Environmental Justice*

Executive Order 12898 "Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations" (59 FR 7629, Feb. 16, 1994), as amended by Executive Order 12948 (60 FR 6381, Feb. 1, 1995) mandates that Federal agencies identify and address, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority and low-income populations. It requires each Federal agency to conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that those programs, policies, and activities do not

have the effect of excluding persons from participation in, denying persons the benefit of, or subjecting persons to discrimination because of their race, color, or national origin or income level. The purpose of this rule is to finalize the proposed regulations to implement the new right of arbitration authorized by the DRRRA, and to revise FEMA's regulations regarding first and second PA appeals. Additionally, in response to a public comment, FEMA is adding a definition of *Regional Administrator*. Plus, FEMA made changes to the regulatory text regarding first appeals and second appeals at 206.206(b)(1)(ii)(A) and (b)(2)(ii)(A) as a result of the 60-day appeals deadline comments. Finally, FEMA is making two technical revisions at 206.206(b) and 206.206(b)(3)(i)(A) to align the regulatory text with the dispute of the eligibility for assistance or repayment of assistance language of Section 423(d)(1) of the Stafford Act. There are no adverse effects and no disproportionate effects on minority or low-income populations.

#### *K. Executive Order 12988, Civil Justice Reform*

This final rule meets applicable standards in Sections 3(a) and 3(b)(2) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, Feb. 7, 1996), to minimize litigation, eliminate ambiguity, and reduce burden.

#### *L. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks*

This final rule will not create environmental health risks or safety risks for children under Executive Order 13045, "Protection of Children From Environmental Health Risks and Safety Risks" (62 FR 19885, Apr. 23, 1997).

#### *M. Congressional Review of Agency Rulemaking*

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule; a concise general statement relating to the rule, including whether it is a major rule; the proposed effective date of the rule; a copy of any cost-benefit analysis; descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act; and any other information or statements required by relevant executive orders.

FEMA has submitted this final rule to the Congress and to GAO pursuant to the CRA. OMB has determined that this

rule is not a "major rule" within the meaning of the CRA.

#### **List of Subjects in 44 CFR Part 206**

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Emergency Management Agency amends 44 CFR part 206 as follows:

#### **PART 206—FEDERAL DISASTER ASSISTANCE**

■ 1. The authority citation for part 206 continues to read as follows:

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.*; Department of Homeland Security Delegation 9001.1.

■ 2. Revise § 206.206 to read as follows:

#### **§ 206.206 Appeals and arbitrations.**

(a) *Definitions.* The following definitions apply to this section:

*Administrator* means the Administrator of the Federal Emergency Management Agency.

*Amount in dispute* means the difference between the amount of financial assistance sought for a Public Assistance project and the amount of financial assistance for which FEMA has determined such Public Assistance project is eligible.

*Applicant* has the same meaning as the definition at § 206.201(a).

*Final agency determination means:* (1) The decision of FEMA, if the applicant or recipient does not submit a first appeal within the time limits provided for in paragraph (b)(1)(ii)(A) of this section; or

(2) The decision of FEMA, if the applicant or recipient withdraws the pending appeal and does not file a request for arbitration within 30 calendar days of the withdrawal of the pending appeal; or

(3) The decision of the FEMA Regional Administrator, if the applicant or recipient does not submit a second appeal within the time limits provided for in paragraph (b)(2)(ii)(A) of this section.

*Recipient* has the same meaning as the definition at § 206.201(m).

*Regional Administrator* means an administrator of a regional office of

FEMA, or his/her designated representative.

*Rural area* means an area with a population of less than 200,000 outside an urbanized area.

*Urbanized area* means an area that consists of densely settled territory that contains 50,000 or more people.

(b) *Appeals and Arbitrations.* An eligible applicant or recipient may appeal any determination previously made related to an application for or the provision of Public Assistance according to the procedures of this section. An eligible applicant may request arbitration to dispute the eligibility for assistance or repayment of assistance.

(1) *First Appeal.* The applicant must make a first appeal in writing and submit it electronically through the recipient to the Regional Administrator. The recipient must include a written recommendation on the applicant's appeal with the electronic submission of the applicant's first appeal to the Regional Administrator. The recipient may make recipient-related appeals to the Regional Administrator.

(i) *Content.* A first appeal must:

(A) Contain all documented justification supporting the applicant or recipient's position;

(B) Specify the amount in dispute, as applicable; and

(C) Specify the provisions in Federal law, regulation, or policy with which the applicant or recipient believes the FEMA determination was inconsistent.

(ii) *Time Limits.* (A) The applicant may make a first appeal through the recipient within 60 calendar days from the date of the FEMA determination that is the subject of the appeal and the recipient must electronically forward to the Regional Administrator the applicant's first appeal with a recommendation within 120 calendar days from the date of the FEMA determination that is the subject of the appeal. If the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal. A recipient may make a recipient-related first appeal within 60 calendar days from the date of the FEMA determination that is the subject of the appeal and must electronically submit their first appeal to the Regional Administrator.

(B) Within 90 calendar days following receipt of a first appeal, if there is a need for additional information, the Regional Administrator will provide electronic notice to the recipient and applicant. If there is no need for additional information, then FEMA will not provide notification. The Regional Administrator will generally allow the

recipient 30 calendar days to provide any additional information.

(C) The Regional Administrator will provide electronic notice of the disposition of the appeal to the applicant and recipient within 90 calendar days of receipt of the appeal or within 90 calendar days following the receipt of additional information or following expiration of the period for providing the information.

(iii) *Technical Advice.* In appeals involving highly technical issues, the Regional Administrator may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to other allotted time periods. Within 90 calendar days of receipt of the report, the Regional Administrator will provide electronic notice of the disposition of the appeal to the recipient and applicant.

(iv) *Effect of an Appeal.* (A) FEMA will take no action to implement any determination pending an appeal decision from the Regional Administrator, subject to the exceptions in paragraph (b)(1)(iv)(B) of this section.

(B) Notwithstanding paragraph (b)(1)(iv)(A) of this section, FEMA may:

(1) Suspend funding (see 2 CFR 200.339);

(2) Defer or disallow other claims questioned for reasons also disputed in the pending appeal; or

(3) Take other action to recover, withhold, or offset funds if specifically authorized by statute or regulation.

(v) *Implementation.* If the Regional Administrator grants an appeal, the Regional Administrator will take appropriate implementing action(s).

(vi) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(1) of this section.

(2) *Second Appeal.* If the Regional Administrator denies a first appeal in whole or in part, the applicant may make a second appeal in writing and submit it electronically through the recipient to the Assistant Administrator for the Recovery Directorate. The recipient must include a written recommendation on the applicant's appeal with the electronic submission of the applicant's second appeal to the Assistant Administrator for the Recovery Directorate. The recipient may make recipient-related second appeals to the Assistant Administrator for the Recovery Directorate.

(i) *Content.* A second appeal must:

(A) Contain all documented justification supporting the applicant or recipient's position;

(B) Specify the amount in dispute, as applicable; and

(C) Specify the provisions in Federal law, regulation, or policy with which the applicant or recipient believes the FEMA determination was inconsistent.

(ii) *Time Limits.* (A) If the Regional Administrator denies a first appeal in whole or in part, the applicant may make a second appeal through the recipient within 60 calendar days from the date of the Regional Administrator's first appeal decision and the recipient must electronically forward to the Assistant Administrator for the Recovery Directorate the applicant's second appeal with a recommendation within 120 calendar days from the date of the Regional Administrator's first appeal decision. If the applicant or the recipient do not meet their respective 60-calendar day and 120-calendar day deadlines, FEMA will deny the appeal. If the Regional Administrator denies a recipient-related first appeal in whole or in part, the recipient may make a recipient-related second appeal within 60 calendar days from the date of the Regional Administrator's first appeal decision and the recipient must electronically submit their second appeal to the Assistant Administrator for the Recovery Directorate.

(B) Within 90 calendar days following receipt of a second appeal, if there is a need for additional information, the Assistant Administrator for the Recovery Directorate will provide electronic notice to the recipient and applicant. If there is no need for additional information, then FEMA will not provide notification. The Assistant Administrator for the Recovery Directorate will generally allow the recipient 30 calendar days to provide any additional information.

(C) The Assistant Administrator for the Recovery Directorate will provide electronic notice of the disposition of the appeal to the recipient and applicant within 90 calendar days of receipt of the appeal or within 90 calendar days following the receipt of additional information or following expiration of the period for providing the information.

(iii) *Technical Advice.* In appeals involving highly technical issues, the Assistant Administrator for the Recovery Directorate may, at his or her discretion, submit the appeal to an independent scientific or technical person or group having expertise in the subject matter of the appeal for advice or recommendation. The period for this technical review may be in addition to

other allotted time periods. Within 90 calendar days of receipt of the report, the Assistant Administrator for the Recovery Directorate will provide electronic notice of the disposition of the appeal to the recipient and applicant.

(iv) *Effect of an Appeal.* (A) FEMA will take no action to implement any determination pending an appeal decision from the Assistant Administrator for the Recovery Directorate, subject to the exceptions in paragraph (b)(2)(iv)(B) of this section.

(B) Notwithstanding paragraph (b)(2)(iv)(A) of this section, FEMA may:

(1) Suspend funding (see 2 CFR 200.339);

(2) Defer or disallow other claims questioned for reasons also disputed in the pending appeal; or

(3) Take other action to recover, withhold, or offset funds if specifically authorized by statute or regulation.

(v) *Implementation.* If the Assistant Administrator for the Recovery Directorate grants an appeal, the Assistant Administrator for the Recovery Directorate will direct the Regional Administrator to take appropriate implementing action(s).

(vi) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(2) of this section.

(3) *Arbitration.* (i) *Applicability.* An applicant may request arbitration from the Civilian Board of Contract Appeals (CBCA) if:

(A) There is a dispute of the eligibility for assistance or of the repayment of assistance arising from a major disaster declared on or after January 1, 2016; and

(B) The amount in dispute is greater than \$500,000, or greater than \$100,000 for an applicant for assistance in a rural area; and

(C) The Regional Administrator has denied a first appeal decision or received a first appeal but not rendered a decision within 180 calendar days of receipt.

(ii) *Limitations.* A request for arbitration is in lieu of a second appeal.

(iii) *Request for Arbitration.* (A) An applicant may initiate arbitration by submitting an electronic request simultaneously to the recipient, the CBCA, and FEMA. See 48 CFR part 6106.

(B) *Time Limits.* (1) An applicant must submit a request for arbitration within 60 calendar days from the date of the Regional Administrator's first appeal decision; or

(2) If the first appeal was timely submitted, and the Regional Administrator has not rendered a decision within 180 calendar days of



receiving the appeal, an applicant may arbitrate the decision of FEMA. To request arbitration, the applicant must first electronically submit a withdrawal of the pending appeal simultaneously to the recipient and the FEMA Regional Administrator. The applicant must then submit a request for arbitration to the recipient, the CBCA, and FEMA within 30 calendar days from the date of the withdrawal of the pending appeal.

(C) *Content of request.* The request for arbitration must contain a written statement that specifies the amount in dispute, all documentation supporting the position of the applicant, the disaster number, and the name and address of the applicant's authorized representative or counsel.

(iv) *Expenses.* Expenses for each party will be paid by the party who incurred the expense.

(v) *Guidance.* FEMA may issue separate guidance as necessary to supplement paragraph (b)(3) of this section.

(c) *Finality of decision.* (1) A FEMA final agency determination or a decision of the Assistant Administrator for the Recovery Directorate on a second appeal constitutes a final decision of FEMA. Final decisions are not subject to further administrative review.

(2) In the alternative, a decision of the majority of the CBCA panel constitutes a final decision, binding on all parties. See 48 CFR 6106.613. Final decisions are not subject to further administrative review.

**Deanne B. Criswell,**  
Administrator, Federal Emergency  
Management Agency.

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 17

[Docket No. FWS-R4-ES-2019-0080;  
FXES1113090000-212-FF09E22000]

RIN 1018-BD82

#### **Endangered and Threatened Wildlife and Plants; Removing *Arenaria cumberlandensis* (Cumberland Sandwort) From the Federal List of Endangered and Threatened Plants**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), are removing Cumberland sandwort (*Arenaria*

*cumberlandensis*) from the Federal List of Endangered and Threatened Plants (List). This determination is based on a thorough review of the best available scientific and commercial data, which indicate that Cumberland sandwort has recovered and no longer meets the definition of an endangered or a threatened species under the Endangered Species Act of 1973, as amended (Act). Our review shows that threats to the species identified at the time of listing (*i.e.*, timber harvesting, trampling from recreational uses, and digging for archaeological artifacts) have been reduced to the point that they no longer pose a threat to the species, and the known range and abundance of Cumberland sandwort have increased. Our review also indicates that potential effects of projected climate change are not expected to cause the species to become endangered in the foreseeable future. Accordingly, the prohibitions and conservation measures provided by the Act will no longer apply to this species.

**DATES:** This rule is effective September 15, 2021.

**ADDRESSES:** The proposed rule and this final rule, supporting documents, the post-delisting monitoring plan, and the comments received on the proposed rule are available at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2019-0080.

**FOR FURTHER INFORMATION CONTACT:** Daniel Elbert, Field Supervisor, U.S. Fish and Wildlife Service, Tennessee Ecological Services Field Office, 446 Neal Street, Cookeville, TN 38501; telephone (931) 528-6481. Individuals who use a telecommunications device for the deaf (TDD), may call the Federal Relay Service at (800) 877-8339.

#### **SUPPLEMENTARY INFORMATION:**

##### **Executive Summary**

*Why we need to publish a rule.* Under the Act, a species may be removed from the Federal List of Endangered and Threatened Plants (List) ("delisted") if it is determined that the species has recovered and no longer meets the definition of an endangered or threatened species. Removing a species from the List can only be completed by issuing a rule.

*What this document does.* This rule delists Cumberland sandwort from the Federal List of Endangered and Threatened Plants based on the species' recovery.

*The basis for our action.* Under the Act, we may determine that a species is an endangered or threatened species because of one or more of the five factors described in section 4(a)(1) of the

Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. We must consider these same factors in delisting a species.

We have determined that Cumberland sandwort is not in danger of extinction now nor likely to become so in the foreseeable future based on a comprehensive review of its status and listing factors. Specifically, our recent review indicated: (1) An increase in the known number of occurrences of the species within its geographically restricted range, and increased abundance in some occurrences; (2) resiliency to existing and potential threats; (3) the protection of 66 extant occurrences located on Federal and State conservation lands by regulations or management plans to prevent habitat destruction or removal of plants; and (4) the implementation of beneficial management practices. Accordingly, Cumberland sandwort no longer meets the definition of an endangered or threatened species under the Act.

*Peer review and public comment.* In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought peer review of our April 27, 2020, proposed rule to delist the species (85 FR 23302). The Service sent the proposed rule to five independent peer reviewers and received three responses. The purpose of peer review is to ensure that our determination is based on scientifically sound data, assumptions, and analyses. The peer reviewers have expertise in the biology, habitat, and threats to the species.

#### **Previous Federal Actions**

On April 27, 2020, we published in the **Federal Register** (85 FR 23302) a proposed rule to remove Cumberland sandwort from the Federal List of Endangered and Threatened Plants (*i.e.*, to delist the species). Please refer to that proposed rule for a detailed description of previous Federal actions concerning this species. The proposed rule and supplemental documents are provided at <http://www.regulations.gov> under Docket No. FWS-R4-ES-2019-0080.



### Summary of Changes From the Proposed Rule

We made no substantive changes to the proposed rule in this final rule. We made minor editorial changes in this rule in response to comments we received on the proposed rule.

### Summary of Comments and Recommendations

In our April 27, 2020, proposed rule to delist Cumberland sandwort (85 FR 23302), we requested that all interested parties submit written comments on the proposed delisting and our draft post-delisting monitoring (PDM) plan by June 26, 2020. We also contacted appropriate Federal and State agencies, scientific experts and organizations, and other interested parties and invited them to comment on the proposed delisting and draft PDM plan. A newspaper notice inviting general public comments was published in the *Fentress Courier* (major local newspaper) and also announced using online and social media sources. We received one substantive comment from the public, which is discussed below under (1) *Comment*, and no requests for a public hearing.

In addition, we reviewed all comments we received from the peer reviewers for substantive issues and new information regarding the proposed delisting rule and PDM plan for Cumberland sandwort. The peer reviewers generally concurred with our methods and conclusions, and they provided additional information, clarifications, and suggestions to improve the final delisting rule. Peer reviewer comments are summarized below under (2) *Comment* through (4) *Comment*, and incorporated into this final rule as appropriate.

(1) *Comment*: One commenter expressed concern that the unique habitat of the species would be less protected if the species were delisted.

*Our response*: Cumberland sandwort habitats on both State and Federal conservation lands will remain protected by rules, regulations, or plans governing the establishment or management of those lands. The species is also still State-protected where it occurs. At this time, Cumberland sandwort meets the standard for delisting under the Act: It no longer meets the Act's definitions of an "endangered species" or a "threatened species." We will continue to work with recovery partners to maintain the species' recovered state and conduct post-delisting monitoring, as well.

(2) *Comment*: One peer reviewer requested clarification concerning whether abundance estimates, in

addition to hand drawn maps and the numbers of patches depicted on the maps, were used in determining population resiliency indices and evaluating population trends. The reviewer also asked how estimates of abundance were determined.

*Our response*: We explain below under *Framework for Monitoring and Evaluating Trends* that we used visual estimates of abundance or discrete counts of individuals, where available, to supplement data provided on hand drawn maps when determining population resiliency indices and evaluating population trends.

(3) *Comment*: One peer reviewer informed us that data on global forest loss (<https://earthenginepartners.appspot.com/science-2013-global-forest>) were available to use in quantifying forest loss in portions of the watersheds where Cumberland sandwort is found.

*Our response*: We used the data available at the reference provided by the peer reviewer to provide an objective basis for evaluating whether we correctly identified evidence of logging activity in forests near Cumberland sandwort occurrences. Based on this evaluation, we correctly identified locations where logging activities had taken place in the vicinity of Cumberland sandwort occurrences when preparing the April 27, 2020, proposed rule to delist Cumberland sandwort (85 FR 23302).

(4) *Comment*: One peer reviewer asked whether disturbance from recreational use was likely to increase in proportion to human population growth and increased participation in outdoor activities. The reviewer also asked how Cumberland sandwort population trends in sites where management had occurred to reduce the threat of inadvertent trampling by recreationists compared to population trends in unmanaged sites where the threat of trampling existed.

*Our response*: We address this comment below under *Habitat Loss and Curtailment of Range* where we discuss the lack of a clear trend in available data regarding visitation rates to lands where Cumberland sandwort occurs. We also added a discussion comparing population trends in sites where protective measures have been installed to reduce the threat of trampling to trends that have been observed in other sites where the risk of trampling has been previously recorded but no protective measures have been installed.

### Final Delisting Determination Species Information

Below, we present a thorough review of the taxonomy, life history, ecology, and overall status of this plant, referencing data from the 2013 5-year review (Service 2013) where appropriate.

#### Taxonomy

Cumberland sandwort (*Arenaria cumberlandensis*), a member of the Pink family (Caryophyllaceae), was first recognized and described as a species in 1979 (Wofford and Kral 1979, entire). This species, along with several other species of *Arenaria*, was transferred to the genus *Minuartia* while retaining the specific epithet (McNeill 1980, entire). The species is listed as *Minuartia cumberlandensis* (Wofford and Kral McNeill in A Fifth Checklist of Tennessee Vascular Plants (Chester et al. 2009, p. 43), the Integrated Taxonomic Information System (ITIS) (2019), and *Flora of North America* (2019). However, an examination of the taxonomy of *Minuartia* using DNA sequences determined that all species in *Minuartia* section *Uninerviae* should be elevated to genus *Mononeuria*, along with *Geocarpon minimum* (Dillenberger and Kadereit 2014, p. 79). The *Flora of the Southern and Mid-Atlantic States* accepted this recommendation, assigning the name *Mononeuria cumberlandensis* (B.E. Wofford & Kral) Dillenberger & Kadereit to Cumberland sandwort (Weakley 2015, p. 820). Although changes have been made to the species' taxonomy since the time of listing, we are removing the species from the List of Endangered and Threatened Plants using the name by which it was initially listed, *Arenaria cumberlandensis* (= *Mononeuria cumberlandensis*).

#### Species Description

The following description of Cumberland sandwort is modified from Wofford and Kral (1979, pp. 257–259) and Kral (1983, pp. 363–364). This species is a delicate perennial that occurs in small cushionlike clumps, with upright stems 10 to 15 centimeters (cm) (4 to 6 inches (in)) tall that are slender and triangular in shape. Leaves are opposite, 2 to 3 cm (0.8 to 1.2 in) long and 1 to 3 millimeters (mm) (0.04 to 0.12 in) wide, and are thin and bright green in color, with glassy margins. Basal leaves are longer and wider than those at the top of the stems. The flowers are symmetrical, five-parted, and usually solitary at the end of the stems. The sepals (a part of the flower that provides protection for the flower

in bud and sometimes provides support for petals when in bloom) are green and inconspicuously three-veined, and the white petals usually have five green veins. The fruit is a 3- to 3.5-mm-long (0.12- to 0.14-in) ovoid capsule containing numerous reddish-brown reticulated (having the form or appearance of a net) seeds that are 0.5 to 0.7 mm (0.02 to 0.03 in) long.

The mild conditions of the sheltered habitat where Cumberland sandwort occurs allow rosettes (circular arrangement of leaves) to persist through winter and produce abundant, leafy stems in the spring (Winder 2004, p. 5). The species flowers from May through August, with some flowers persisting as late as November (Wofford and Kral 1979, p. 259; Winder 2004, p. 5).

#### Habitat

Cumberland sandwort inhabits fine-grained, sandy soils that comprise the floors of the interior of “rockhouses” (cave-like recesses produced by differential weathering of sandstone). These habitats are typically behind the dripline of overlying cliffs, ledges, and solution pockets of cliffs, where these features are found in Pennsylvanian sandstones on the Cumberland Plateau in southern Kentucky and northern Tennessee (Horton 2017, entire). The species occupies sites that generally share characteristics of high levels of shade, moisture, and humidity, and relatively constant, cool temperatures (Wofford and Smith 1980, p. 7), although some smaller occurrences occupy drier and warmer sites. Few other species are directly associated with Cumberland sandwort microsites, but the following species are important indicators that suitable habitat conditions are present within a given rockhouse or bluff site: *Silene rotundifolia* (round-leaved catchfly); *Thalictrum clavatum* (mountain meadow-rue); *Heuchera parviflora* (little-flowered alumroot); *Ageratina luciae-brauniae* (Lucy Braun’s snakeroot); *Stenanthium diffusum* (diffuse feather-bells); and the bryophytes *Vittaria appalachiana* (Appalachian shoestring fern), *Bryoxiphium norvegicum* (Norway bryoxiphium moss), and *Scopelophila cataractae* (cataract scopelophila moss) (Tennessee Department of Environment and Conservation (TDEC) 2011b, p. 5).

#### Distribution

When Cumberland sandwort was listed as endangered (53 FR 23745; June 23, 1988), the species was known from 11 occurrences (Wofford and Smith 1980, pp. 9–18), which were treated as

5 populations. Of these occurrences, 1 was in McCreary County, Kentucky, and 10 were distributed among four Tennessee counties (Fentress, Morgan, Pickett, and Scott). The species recovery plan (Service 1996, pp. 6–8) reported that 28 occurrences were extant (including the 11 from the June 23, 1988, listing rule), 27 of which were partly or entirely located on publicly owned conservation lands. One of these 28 occurrences was in McCreary County, Kentucky, and the remaining 27 were distributed among the four Tennessee counties reported in the listing rule. All occurrences reported in the listing rule and species recovery plan were located in the South Fork Cumberland River drainage. Of these 28 occurrences, all but 3 were extant as of 2017 (TNHID 2018).

As explained below, documentation to verify past or present existence is lacking for two of the three occurrences we did not determine to be extant as of 2017, raising questions regarding their validity. The “Middle Creek 2” occurrence reported in the recovery plan was apparently based on an observation reported by a National Park Service (NPS) archaeologist, but staff of the TDEC Division of Natural Areas (TDNA) were unable to confirm the presence of Cumberland sandwort at the mapped location, which they attribute to a mapping error when the occurrence was reported. The Morgan County, Tennessee, occurrence reported in the recovery plan, with only the site name “Sunbright” given for location information, also cannot be verified. No citation was provided in the recovery plan for this record, and no record existed for this site in the Tennessee Natural Heritage Inventory Database (TNHID) (2018), maintained by the Natural Heritage Program at TDNA. A search of herbarium records for Cumberland sandwort from Morgan County, Tennessee, produced no specimens from the vicinity of Sunbright (SERNEC Data Portal 2018). However, a new extant occurrence record was documented in TNHID for Scott County, based on the label for a specimen collected in 2002 from a site not previously known to be occupied by Cumberland sandwort.

The Big Branch occurrence reported in the recovery plan was not recorded in the TNHID (2018), so no attempts have been made to relocate this occurrence. Staff from NPS reported the occurrence in comments provided after reviewing the draft recovery plan (NPS 1995). We provided information to TDNA on the Big Branch occurrence reported by NPS, and there is now a

historical record for this occurrence in the TNHID.

In order to evaluate the current status of Cumberland sandwort, we used data from Natural Heritage Programs in Kentucky (KNHP 2018) and Tennessee (TNHID 2018) to determine the location and condition of mapped element occurrences. An element occurrence (E.O.) is a fundamental unit of information in the NatureServe Natural Heritage methodology, and is defined as “an area of land and/or water in which a species . . . is, or was present” (NatureServe 2004). There were 64 extant occurrences of Cumberland sandwort reported in the 2013 5-year review. As of 2018, there were 71 extant occurrences, distributed among the five counties where the species was reported to be extant when the recovery plan was published: 1 in McCreary County, Kentucky (Kentucky Natural Heritage Program (KNHP) 2018); 1 in Morgan County, 26 in Fentress County, 38 in Pickett County, and 5 in Scott County, Tennessee (TNHID 2018). Of these occurrences, 12 occur within the Obey River drainage in Tennessee; 11 of these occurrences have been discovered since 2005 on recently acquired, State-owned conservation lands, and 1 on privately owned lands in 2016. The remaining 59 occurrences lie within the South Fork Cumberland River drainage, and all but 1 of these occurrences is in Tennessee. Four of the occurrences in the South Fork Cumberland River drainage are located on privately owned lands in Tennessee; the remainder are located on State or Federal conservation lands. In addition to these 71 natural occurrences of Cumberland sandwort, one introduced occurrence has been established in McCreary County, Kentucky, on the Daniel Boone National Forest (DBNF) (Pence *et al.* 2011, entire).

#### Population Genetics

In a study of populations in Tennessee, Cumberland sandwort was found to possess “fairly high” levels of genetic variation (Winder 2004, pp. 16–19). Observed levels of heterozygosity were consistent with expected effects of frequent mating among closely related individuals, or inbreeding (Winder 2004, p. 19), a common phenomenon in small populations due to the greater likelihood that most or all individuals in the population will be closely related (Allendorf and Luikart 2007, p. 306). Greater genetic similarity was found among populations within about 4 kilometers (km) (2.5 miles (mi)) of one another, but a wide range of values were observed at distances of 4 to 25 kilometers (2.5 to 15.5 mi), beyond

which populations were consistently dissimilar (Winder 2004, p. 27). Thus, Cumberland sandwort populations generally are genetically independent of one another and have been for a significant period of time, with possible exceptions where gene flow could occur among densely clustered populations in close geographic proximity to one another (Winder 2004, p. 28). The majority of the genetic variation found in the species is retained within a central cluster of populations located in Pickett County, Tennessee, and in Laurel Fork (Fentress County), Tennessee (Winder 2004, p. 37). The genetic structure of the sole Kentucky population and its relation to sites sampled in Tennessee are unknown.

#### *Framework for Monitoring and Evaluating Trends*

The TDEC Natural Heritage Program began monitoring Cumberland sandwort in Tennessee during 2000, visually estimating abundance in 34 sites as part of a project to conduct surveys for new locations and update records for previously known occurrences of the species (TDEC 2000, entire). The number of occurrences monitored has increased to 55, and TDEC has categorized sites into three tiers of differing priority, with the highest priority sites (*i.e.*, Tier 1) being the most frequently monitored (TDEC 2007, p. 5):

- Tier 1 sites have a history of site disturbance related to recreational use or illicit digging of Native American artifacts.
- Tier 2 sites face fewer immediate threats in the less frequently visited sites they occupy.
- Tier 3 sites faced no imminent threats at the time of categorization.

Designating tiers provides for more frequent monitoring of sites with a greater likelihood of being adversely affected by known threats that could warrant management intervention. Tier 1 sites are monitored every 1 to 3 years, Tier 2 sites every 3 to 6 years, and Tier 3 sites every 6 to 10 years (TDEC 2007, p. 5). In addition to monitoring during 2000 and 2006 (before the tier system was developed), TDEC monitored Tier 1 sites during 2010 and 2011 (TDEC 2011a, entire), 2014 (TDEC 2014, entire), and 2017 (TDEC unpublished data). Tier 2 sites were monitored during 2011 through 2012 (TDEC 2012, entire), and Tier 3 sites were monitored during 2016 and 2017 (TDEC unpublished data).

The Service receives monitoring data in the form of written reports and occurrence-level summary data provided in the TNHID (2018). We used these summary data to determine which sites in each tier had been monitored in

2 or more years, making it possible to assess whether Cumberland sandwort had declined, remained stable, or increased either in estimated abundance or area occupied. Available abundance data were typically produced by visually estimating numbers of plants, although precise count data were available in some instances. Based on data provided in the TNHID, 18 occurrences are in Tier 1, 24 in Tier 2, and 13 in Tier 3 for which such data were available. Tier 1 occurrences have been monitored an average of 4.7 times, with time between initial and the most recent monitoring events averaging 15.8 years. Tier 2 occurrences have been monitored an average of 2.4 times over an average timespan of 8.4 years. Tier 3 occurrences have been monitored an average of 2.4 times over an average timespan of 12.1 years. Fifteen occurrences in Tennessee have been monitored only once or have not, as yet, been assigned to a monitoring tier.

After reviewing all available monitoring data, TDEC assessed whether individual occurrences had declined, remained stable, or increased over the time that they have been monitored (McCoy 2018, pers. comm.). However, statistical trend analysis of Cumberland sandwort monitoring data from Tennessee is not feasible for two reasons: first, estimates of abundance generated in 2000 and in later monitoring events lack adequate precision for statistically analyzing change in abundance over time, and second, visual estimates of area occupied by the species can introduce potential for observer bias because these areas are not precisely measured. However, the preparation of hand-drawn maps by TDEC botanists, beginning with the initial monitoring effort in 2000, allows tracking persistence and stability of individual patches within occupied sites and detecting substantial changes in their estimated size. Maps are also updated to depict new patches that might form due to recruitment of individuals in previously unoccupied habitat. Estimates of abundance, where available, provided supplemental data for qualitatively evaluating trends within mapped patches of habitat. Based on the best available data, of the 18 Tier 1 occurrences, 2 demonstrate evidence of decline, 13 are stable, and 3 have increased. Of the 24 Tier 2 occurrences that have been monitored on two or more occasions, 5 demonstrate evidence of decline, 18 are stable, and 1 has increased. Of the 13 Tier 3 occurrences, 2 have declined, 10

are stable, and 1 has increased (McCoy 2018, pers. comm.).

#### **Recovery**

Section 4(f) of the Act (16 U.S.C. 1531 *et seq.*) directs us to develop and implement recovery plans for the conservation and survival of endangered and threatened species unless we determine that such a plan will not promote the conservation of the species. Recovery plans must, to the maximum extent practicable, include objective, measurable criteria which, when met, would result in a determination, in accordance with the provisions of section 4 of the Act, that the species be removed from the list.

Recovery plans provide a roadmap for us and our partners on methods of enhancing conservation and minimizing threats to listed species, as well as measurable criteria against which to evaluate progress towards recovery and assess the species' likely future condition. However, they are not regulatory documents and do not substitute for the determinations and promulgation of regulations required under section 4(a)(1) of the Act. A decision to revise the status of a species, or to delist a species is ultimately based on an analysis of the best scientific and commercial data available to determine whether a species is no longer an endangered species or a threatened species, regardless of whether that information differs from the recovery plan.

There are many paths to accomplishing recovery of a species, and recovery may be achieved without all criteria being fully met. For example, one or more criteria may have been exceeded while other criteria may not yet be accomplished. In that instance, we may determine that the threats are minimized sufficiently and that the species is robust enough that it no longer meets the definition of an endangered species or a threatened species. In other cases, we may discover new recovery opportunities after having finalized the recovery plan. Parties seeking to conserve the species may use these opportunities instead of methods identified in the recovery plan. Likewise, we may learn new information about the species after we finalize the recovery plan. The new information may change the extent to which existing criteria are appropriate for identifying recovery of the species. The recovery of a species is a dynamic process requiring adaptive management that may, or may not, follow all of the guidance provided in a recovery plan.

The Cumberland Sandwort Recovery Plan (Service 1996, pp. iv, 10) included

recovery criteria to indicate when threats to the species have been adequately addressed and prescribed actions that were thought to be necessary for achieving those criteria. Below we discuss our analysis of available data and our determination as to whether recovery criteria for Cumberland sandwort have been achieved.

#### Recovery Criteria

The objective of the recovery plan is to delist the Cumberland sandwort. Recovery criteria in the plan state that *Arenaria cumberlandensis* (Cumberland sandwort) will be considered for reclassification from endangered to threatened status when 30 geographically distinct, self-sustaining occurrences are protected in four counties in Tennessee and Kentucky and have maintained stable or increasing numbers for 5 consecutive years. The species will be considered for delisting when 40 geographically distinct, self-sustaining occurrences are protected and have maintained statistically stable or increasing numbers for 5 consecutive years. At least 12 of these occurrences must be in counties other than Pickett County, Tennessee.

Methods were chosen for monitoring that minimize trampling of Cumberland sandwort and disturbance of the sandy soil substrate the species occupies. The tradeoff of using this method to minimize disturbance is the inability to statistically analyze trends for individual occurrences or Cumberland sandwort as a species. To address this limitation, we developed a framework for using available distribution and monitoring data, aerial photography, and qualitative assessment of trends for each occurrence to evaluate whether recovery criteria for Cumberland sandwort have been achieved.

Using this framework, we assessed the species' viability based on the three conservation biology principles of resiliency, representation, and redundancy (Shaffer and Stein 2000, entire). Resiliency is the ability to sustain populations in the face of environmental variation and transient perturbations. To be resilient, a species must have healthy populations that are able to sustain themselves through the range of possible environmental conditions. The greater the number of healthier populations, the more resiliency a species possesses. Representation is the range of variation or adaptive diversity found in a species, and is the source of a species' ability to adapt to near- and long-term changes in the environment. Maintaining adaptive

diversity requires conserving both ecological and genetic diversity, which enable a species to be more responsive and adaptive to change and, therefore, more viable. Finally, redundancy protects species against the unpredictable and highly consequential events for which adaptation is unlikely, allowing them to withstand catastrophic events. Redundancy spreads risk and is best achieved by having multiple populations widely distributed across a species' range.

We characterized the resiliency of 69 of the 71 extant Cumberland sandwort occurrences using available data on three factors (complete data were not available for two of the extant occurrences): Occurrence size expressed as estimated abundance or areal coverage, recorded observations of threats causing disturbance to plants or the substrates in which they were rooted, and assessment of general forest conditions from recorded observations or evaluation of aerial photography, for the reasons that follow. Occurrence size influences resiliency because smaller populations are at greater risk of (1) losing genetic variation due to drift (change in the frequency of alleles in a population due to random, stochastic events), and (2) inbreeding, which decreases the likelihood that an individual will receive pollen from a compatible mate and produce viable offspring (Allendorf and Luikart 2007, pp. 122–123). Small populations also may face higher risks of extinction due to diminished resiliency to demographic and environmental stochasticity (Münzbergová 2006, p. 143). Demographic stochasticity is the variation in vital rates (*i.e.*, probabilities of survival and reproduction) among individuals of a given age or life-cycle stage, at a given point in time, while environmental stochasticity is variation in vital rates over time, affecting all individuals of a given age or stage similarly (Lande 1988, p. 1457). Incorporating available data regarding disturbance to Cumberland sandwort plants or the substrates where they occur into the resiliency assessment serves as a proxy indicating whether physical conditions are appropriate to support multiple life stages. Undisturbed substrates contribute to Cumberland sandwort resiliency by providing suitable sites for germination, growth, and reproduction to occur. Similarly, evaluating forest condition in the vicinity of Cumberland sandwort occurrences is a proxy indicating whether ecological conditions are likely to support resiliency to environmental variation. The presence of contiguous

forest vegetation in the vicinity of Cumberland sandwort occurrences helps to maintain suitable hydrology and microclimate, potentially buffering severity of stress resulting from environmental perturbations, such as drought. We evaluated representation by considering the distribution of resilient occurrences among the counties and watersheds from which the species is known. Finally, we evaluated redundancy based on the overall number of resilient occurrences distributed throughout its range.

In evaluating resiliency, we used estimates of abundance, where available, combined with estimates of areal coverage to provide a basis for categorizing occurrences into groups of low, medium, or high abundance. Occurrences with fewer than 100 individuals (Heschel and Page 1995, pp. 128–131; Münzbergová 2006, p. 148) or with areal coverage less than 1 square meter ( $m^2$ ) were ranked “low”; occurrences with 100–1,000 individuals or with areal coverage ranging from 1 to 5  $m^2$  were ranked “medium”; and occurrences with more than 1,000 individuals or areal coverage greater than 5  $m^2$  were ranked “high.” We ranked substrate conditions at each occurrence based on recorded observations of threats (TDEC 2011b, pp. 37–44). Substrate conditions were ranked “high” for sites with no record of disturbance; “medium” for sites with moderate risk of exposure to the threat based on limited historical evidence of digging for archeological artifacts (*i.e.*, relic digging) or trampling by humans or wildlife in limited areas within available habitat; and “low” for sites with high risk of exposure as indicated by recent evidence of relic digging or trampling throughout available habitat. We used aerial imagery available through Google Earth Pro™ to determine whether forests in the general vicinity of Cumberland sandwort occurrences exhibited signs of timber harvest, as indicated by substantially reduced tree densities; presence of logging equipment trails; or conversion to nonnative, evergreen forest types. We used available data on global forest loss to provide an objective basis for confirming our determination of locations where timber harvest was suspected to have taken place (Hansen *et al.* 2013, entire). Forest conditions were ranked “high” in locations where late seral forest was present upslope and downslope of occupied sites and in adjacent areas; “medium” in locations where risk of exposure to the threat was moderate based on evidence of logging having occurred within the prior 15

years in the vicinity of, but not immediately upslope, downslope, or adjacent to, occurrences; and “low” in sites where risk of exposure was high based on evidence of logging within the prior 15 years in the forest immediately surrounding the occupied habitat.

Of the 69 occurrences that we could evaluate for all three resiliency factors, 12 were ranked as low in abundance, 27 ranked medium, and 30 ranked high. Substrate conditions ranked low at 12, medium at 25, and high at 32 occurrences. We were able to evaluate forest conditions at all 71 extant occurrences, with the following results: 8 occurrences ranked low, 3 ranked medium, and 60 ranked high.

Using the ranks for the three resiliency factors (abundance, substrate condition, and forest condition), we calculated an overall resiliency index for 68 of the 70 Tennessee occurrences (see Table 1, below) and the sole

Kentucky occurrence. We assigned numerical scores of one for factor ranks of “low,” two for “medium” ranks, and three for “high” ranks. Using these scores, we calculated a weighted average, wherein factor ranks for abundance were given twice the weight of factor ranks for substrate and forest condition, due to the importance of population size in maintaining genetic variation and determining resilience to demographic and environmental stochasticity (Sgrò *et al.* 2011, p. 329). The resulting resiliency index for an occurrence ranges from one to three and is categorized as follows:

- Low rank for scores of 1.5 or less;
- Low-medium rank for scores greater than 1.5 and less than 2.0;
- Medium rank for scores greater than 2.0 and less than 2.5;
- Medium-high rank for scores greater than 2.5 and less than 3.0;
- High rank for scores of 3.0.

Available data for the Kentucky occurrence indicate that the species abundance rank is medium at that location and that the occurrence is not exposed to threats from trampling or relic digging. This location, in Big South Fork National Scenic River and Recreation Area (BSF), is protected from timber harvesting, and available data indicate that surrounding forests are undisturbed. These factors produced an overall resiliency rank of medium for this occurrence.

In Tennessee, 56 occurrences had overall resiliency ranks of medium or higher. Table 1 shows the resiliency ranks for 68 of the 70 Tennessee occurrences. All of the stable and increasing trends in the medium, medium-high, and high resiliency ranks represent counts of occurrences considered self-sustaining, as required by recovery criteria.

TABLE 1—RESILIENCY INDEX RANKS FOR CUMBERLAND SANDWORT OCCURRENCES IN TENNESSEE

Monitoring tier	Trend	Low	Low-medium	Medium	Medium-high	High
One	Decline	2				
	Stable	1	1	7	4	
	Increase				2	1
Two	Decline	3		2		
	Stable	2		10	3	2
	Increase				1	
Three	Decline	1		1		
	Stable			4	3	3
	Increase			1		
Other	n/a	1	1	7		5
Total		10	2	32	13	11

For the purpose of evaluating Cumberland sandwort’s status with respect to recovery criteria, we define self-sustaining to include those populations that had an overall resiliency index rank of medium or higher and that TDEC determined were stable or increasing (see Table 1, above) based on available monitoring data, as described above in Species Information. For the Kentucky occurrence, available data indicate that the occurrence is

stable. We consider 66 occurrences on Federal or State conservation lands (see Table 2, below), as well as 2 occurrences located on private lands where land use is restricted by conservation easements, to be protected. Using these definitions, 42 protected occurrences (including the 1 in Kentucky) are self-sustaining (Table 1, above, presents data for Tennessee). These occurrences have been known to exist for an average of 21 years, with a range of 7 to 44 years spanning the first

and most recent observations recorded for the species in these sites. These data support the conclusion that one criterion for removing Cumberland sandwort from the List has been exceeded, *i.e.*, that there be at least 40 geographically distinct, protected, and self-sustaining occurrences that have been stable or increasing for at least 5 years.

TABLE 2—LAND OWNERSHIP FOR 66\* CUMBERLAND SANDWORT OCCURRENCES ON FEDERAL AND STATE CONSERVATION LANDS

Agency	Land unit	Number of occurrences *
National Park Service	Big South Fork National Scenic River and Recreation Area (BSF).	27.
Tennessee Division of Forestry (TDF)	Pickett State Forest (PSF)	29 (4 partially on TSP lands).
Tennessee Division of Natural Areas	Pogue Creek Canyon State Natural Area (PCNA)	7.
Tennessee State Parks (TSP)	Pickett CCC Memorial State Park (PSP)	7 (4 partially on TDF lands).

\* Number of occurrences in this table sums to 70, but 4 occurrences occupy habitats spanning adjacent lands owned by TDF and TSP and are counted only once for the total.

The recovery criteria in the recovery plan also require that at least 12 of the protected, self-sustaining occurrences be located outside of Pickett County, Tennessee, which provides for redundancy across areas of representation within the species' geographic range. Of the 42 occurrences meeting the criterion of being protected and self-sustaining, 28 are located in Pickett County, Tennessee; 13 are located elsewhere in Tennessee (9 in Pentress County, 4 in Scott County); and 1 is located in McCreary County, Kentucky. Thus, this delisting criterion is also exceeded.

Another measure of representation for the species is its distribution among major watersheds in which it is found. The recovery plan reported in 1996 that the species was known only from the South Fork Cumberland watershed, but it is now also known from 12 occurrences in the Obey River watershed in Tennessee. Of the 42 occurrences meeting the recovery criterion that there be at least 40 geographically distinct, protected, and self-sustaining occurrences, 2 are located in the Obey River watershed. The low number of occurrences in this watershed meeting this criterion is primarily due to the recent discovery of many of the occurrences in this watershed and the consequent lack of repeat observations. In addition to the two occurrences in the Obey River watershed meeting the recovery criterion above, nine occurrences on protected lands have resiliency indices of medium or higher.

Our assessment of the viability of Cumberland sandwort supports the determination that the recovery criteria for delisting the species have been satisfied. The discussion above demonstrates that there are more than 40 protected and self-sustaining occurrences of the species, distributed among four counties in Tennessee and one in Kentucky.

#### **Summary of Factors Affecting the Species**

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, or removing species from listed status. We may determine that a species is an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of

existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

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

We use the term "threat" to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term "threat" includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term "threat" may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an "endangered species" or a "threatened species." In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an "endangered species" or a "threatened species" only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term "foreseeable future," which appears in the statutory definition of "threatened species." Our implementing regulations at 50 CFR 424.11(d) set forth a framework for evaluating the foreseeable future on a case-by-case basis. The term foreseeable future extends only so far into the future as we can reasonably determine that both the future threats and the species' responses to those

threats are likely. In other words, the foreseeable future is the period of time in which we can make reliable predictions. "Reliable" does not mean "certain"; it means sufficient to provide a reasonable degree of confidence in the prediction. Thus, a prediction is reliable if it is reasonable to depend on it when making decisions.

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

A recovered species is one that no longer meets the Act's definition of endangered or threatened. Determining whether the status of a species has improved to the point that it can be delisted or downlisted requires consideration of the same five factors identified above for listing a species. When Cumberland sandwort was listed as endangered in 1988, the identified threats (factors) influencing its status were the modification and loss of habitat and curtailment of range (Factor A), the inadequacy of State or Federal mechanisms to protect its habitat at that time (Factor D), and its limited distribution and low abundance in some populations (Factor E). The following analysis evaluates these previously identified threats, any other threats currently facing the species, as well as any other threats that are reasonably likely to affect the species in the foreseeable future following the delisting and the removal of the Act's protections.

To establish the foreseeable future for the purpose of determining whether Cumberland sandwort meets the definition of an endangered or threatened species, we evaluated trends from historical data on distribution and abundance, ongoing conservation efforts, factors currently affecting the species, and predictions of future climate change. Structured monitoring of Cumberland sandwort populations began in 2000, but records of initial observations for occurrences range from 1973 to 2017, with an average of 18 years between the earliest and most recent recorded observations for a given occurrence. The period of observation is 30 or more years for 16 occurrences,

which vary in population size and threat exposure. These historical data provide insight into Cumberland sandwort's exposure and response to potential threats under varying conditions. When combined with our knowledge of factors affecting the species, available data allow us to reasonably predict future conditions, albeit with diminishing precision over time. Given our understanding of the best available data, we consider the foreseeable future for Cumberland sandwort to be approximately 30 years for the purposes of this rule.

In assessing threats to Cumberland sandwort, we consider the exposure of individual occurrences to suspected stressors, available data on the species' response to those stressors where they have been observed, and efforts undertaken to reduce exposure into the future. As noted above in *Recovery Criteria*, available data indicate that the Kentucky occurrence is not exposed to threats that would result in modification or destruction of habitat.

#### *Habitat Loss and Curtailment of Range*

In the rule listing the Cumberland sandwort (53 FR 23745; June 23, 1988), the primary threats identified for the species were the destruction and modification of habitat due to trampling by recreational users of the rockhouse and bluff habitats where the species occurs, trampling and soil disturbance from looting of archeological artifacts (*i.e.*, relic digging), and timber harvesting in or adjacent to occupied sites.

In Tennessee, the potential for trampling or soil disturbance from recreational use, wildlife, or relic digging has been noted at 38 sites where Cumberland sandwort occurs, with varying degrees of exposure and actual risk for adversely affecting the species (TDEC 2011b, pp. 40–44; TNHID 2018). In one of these sites (E.O. 78), signs of trampling and a fire pit were observed on the rockhouse floor in 2007 (TNHID 2018), but Cumberland sandwort plants are located on ledges and solution pockets on the bluff where they are not exposed to trampling. Additionally, no fire pit was observed during a site visit by the Service in February 2019. Of the other 37 sites where risk of trampling or soil disturbance has been recorded during monitoring or other site visits, available data indicate that Cumberland sandwort faces high risk of exposure in 12 of them and moderate risk in the other 25. Cumberland sandwort abundance has declined at 6 of the 12 sites with high exposure risk, while 6 have remained stable. Declines in abundance have been observed at only

three of the sites with moderate risk of exposure, while increases have been observed at three others. The remaining 19 sites with moderate risk of exposure to the threat of trampling or soil disturbance have remained stable. Thus, while the potential threat of trampling or soil disturbance has been noted at many sites, Cumberland sandwort faces a high risk of actual exposure in less than 20 percent of occurrences. Under conditions of moderate exposure risk, the species has demonstrated low vulnerability to being adversely affected, having maintained stable populations in most instances. Regardless of the level of exposure risk, no occurrences are known to have been extirpated as a result of trampling or soil disturbance from recreational use, wildlife, or relic digging.

Protective features, including fences, boardwalks, barricades, rerouted trails, or informational signs, have been installed at 8 of the 37 occurrences discussed above, protecting specific habitats occupied by Cumberland sandwort (Service 2013, pp. 13–14; TDEC 2016, p. 3). Seven of these sites where management has occurred to reduce the threat of trampling have remained stable or seen increases in Cumberland sandwort, whereas 20 of the 30 sites where the risk of trampling has been noted but not managed have remained stable. This information indicates that management efforts have been effective at reducing adverse effects, especially when considering that such management was provided in sites where the greatest threats were present. The seven occurrences at PCNA are protected from recreational activities by the State's efforts to survey proposed alignments for new trails and route them away from sites with Cumberland sandwort. Measures such as these reduce or preclude the species' exposure to the threat of trampling from recreationists using trails on public lands where the species occurs.

Available data reveal the lack of a clear trend in visitation rates to recreational lands where Cumberland sandwort occurs. The BSF experienced an overall decline in annual visitation levels from 892,322, in 1995, to 643,135 in 2015 (*NPS 2020*). Conversely, PSP, saw an overall increase from 223,397 to 271,889 annual visitors between 2009 and 2013 (Tennessee State Parks, no date). We are not aware of data regarding predicted trends in future visitation for these parks, nor are data available to estimate what proportion of visitors use trails where Cumberland sandwort is located.

Timber harvest occurs at PSF, but does not occur at BSF, PSP, or PCNA,

limiting the potential magnitude of this activity, determined at the time of listing to be a threat to Cumberland sandwort, to less than half of the sites on conservation lands. During the course of evaluating forest conditions in the vicinity of Cumberland sandwort occurrences, we observed that timber harvests had been conducted in the general vicinity of 10 occurrences at PSF, during the period between approximately 2008 and 2017. Timber harvests occurred upslope or downslope of seven of these occurrences, creating a high risk for exposure to potential effects of this threat, and in the general vicinity of three occurrences, where exposure risk was moderate. Sometime prior to 1999, the forest was converted to pasture on the plateau top above an eleventh occurrence, located on privately owned lands. Based on these data, timber harvests or forest conversion to pasture have taken place near approximately 15 percent of Cumberland sandwort sites. Data were available to evaluate trends for 10 of these 11 occurrences, showing that 3 have declined and 7 have remained stable. Monitoring data collected by TDEC since 2016 at three of these declining occurrences revealed no adverse effects from logging activities. These data support the conclusion that timber harvests in the vicinity of Cumberland sandwort occurrences that do not directly impact the species or its habitat may pose little threat in terms of indirect effects. This conclusion is also supported by observations from visits we conducted in February 2019 to four occurrences with nearby timber harvests, in which no adverse effects from off-site timber removal were detectable. Based on these observations, we conclude that our estimates of forest condition ranks, discussed above in *Recovery Criteria*, likely underestimate the resiliency of occurrences in those instances where forest condition ranks were reduced due to evidence of nearby logging activities.

While some Cumberland sandwort occurrences are exposed to potential habitat-related stressors that might, in certain situations, adversely affect the species, available monitoring data indicate that the species is less vulnerable to these threats than was determined at the time of listing. When Cumberland sandwort is removed from the List (see **DATES**, above), our post-delisting monitoring plan (see Post-delisting Monitoring, below) identifies 50 occurrences that will be monitored over a period of at least 5 years following delisting, including 27 occurrences where risks of exposure to



soil disturbance or trampling, effects of nearby timber harvests, or the two combined have been moderate to high. Continuing to monitor sites where Cumberland sandwort is or could be exposed to potential threats that were previously determined to place the species at risk of extinction will provide an opportunity to work with land managers to avoid or minimize adverse effects should the threats increase in severity or extent.

In our analysis of Cumberland sandwort's resiliency, discussed above in *Recovery Criteria*, we incorporated available data regarding threats that could potentially modify habitat or curtail the species' range. We determined that 42 occurrences currently meet the criterion of being protected and self-sustaining. These occurrences have been known to exist for an average of 21 years, with a range of 7 to 44 years from the first to the most recent observations recorded for the species in these sites. In addition to these 42 occurrences, 9 occurrences are protected in the Obey River watershed and 2 in the South Fork Cumberland watershed in Tennessee for which sufficient monitoring data for evaluating trends in abundance or threats is lacking. However, seven of these occurrences in the Obey River drainage have no evidence of substrate or forest disturbance and are located in PCNA, where TDEC (no date, pp. 10–11) surveys potential trail routes to prevent new trail construction that would expose occurrences to threats from recreational uses. No other potential threats to the habitats at PCNA have been documented. The two occurrences in the South Fork Cumberland drainage are located in BSF and are not affected by any known threats because they are remotely located from trail access and protected from timber harvest.

Thus, available data indicate that Cumberland sandwort is resilient to the factors discussed above that were determined at the time of listing to constitute a threat of habitat modification or curtailment of the species' range. Additionally, management actions have been effective at reducing potential adverse effects of disturbance associated with recreational activities at sites where those activities are most prevalent.

#### *Limited Distribution and Small Population Sizes*

The listing rule for Cumberland sandwort (53 FR 23745; June 23, 1988) identified the species' restricted distribution, limited to a small portion of the Cumberland Plateau in northern Tennessee and southern Kentucky, and

the small size of many populations, as factors increasing the risks of population loss and potential extinction of the species. The species is still restricted to a small portion of the Cumberland Plateau, but the number of known occurrences has increased from 11 at the time of listing (Wofford and Smith 1980, pp. 9–18; 53 FR 23745, June 23, 1988) to 71 currently (TNHID 2018). Three projects have been funded to support searches for new Cumberland sandwort occurrences (Kentucky State Nature Preserves Commission (KSNPC) 1991, entire; TDEC 2000, entire; TDEC 2008, entire). The single search effort that occurred in Kentucky, only in McCreary County, did not expand the known range of Cumberland sandwort, but confirmed the known occurrence located in Big Spring Hollow and documented that thousands of plants were present at two sites mapped at the occurrence (KSNPC 1991, entire). Searches conducted in Tennessee in 2000 (TDEC 2000, entire) and 2006–2007 (TDEC 2008, entire) produced records for 30 new occurrences on conservation lands in Fentress, Pickett, and Scott Counties, Tennessee. In addition to these three Cumberland sandwort survey projects, surveys at PCNA for prospective trail routes have produced records for six additional occurrences on conservation lands in Fentress County (TNHID 2018). These survey efforts, funded in part by the Service via the Act's section 6 grants to State agencies for endangered species recovery, contributed greatly to increasing the species' distribution to the 71 extant occurrences known today.

Fourteen protected and self-sustaining occurrences are located outside of Pickett County, satisfying the recovery criterion concerning geographic distribution. Also, 12 of the 71 occurrences are located in the Obey River watershed in Tennessee, increasing the species' distribution beyond the South Fork Cumberland watershed, to which the species was thought to be restricted at the time of listing.

The 1988 listing rule discussed small population size as a threat to many occurrences, but did not include information on population sizes known at the time or specify the number of individuals or the size of habitat area occupied that would be necessary to buffer against extinction risk. As discussed above in *Recovery Criteria*, we used available data to evaluate the species' abundance at known occurrences. We consider populations consisting of fewer than 100 individuals or occupying less than 1 m<sup>2</sup> of habitat to be at heightened risk of (1) losing

genetic variation due to drift (change in the frequency of alleles in a population due to random, stochastic events), and (2) inbreeding, which decreases the likelihood that an individual will receive pollen from a compatible mate and produce viable offspring (Allendorf and Luikart 2007, pp. 122–123). However, we note that the risk of inbreeding depression due to unavailability of incompatible mates might be low for Cumberland sandwort, as self-compatibility apparently evolved twice in geographically distant populations of the closely related congener *Mononeuria* (= *Arenaria*) *glabra* at the edges of that species' range (Wyatt 1984, p. 815). Based on available data, 12 populations consist of fewer than 100 individuals or occupy less than 1 m<sup>2</sup> of habitat. Six of these 12 have been known to persist as small populations for lengths of time ranging from 24 to 41 years, indicating that even small populations are likely to persist when threats are minimized (TNHID 2018). The remaining six were discovered in 2000 or later. In contrast, 27 occurrences contain 100–1,000 individuals or occupy 1 to 5 m<sup>2</sup> of habitat, and 30 occurrences contain more than 1,000 individuals or occupy greater than 5 m<sup>2</sup> of habitat. Estimates of abundance available for 24 of the largest occurrences indicate that they collectively hold at least 67,000 Cumberland sandwort individuals. These data demonstrate that risks associated with small population size are a potential threat likely affecting less than 20 percent of the 71 extant Cumberland sandwort occurrences. Despite the potential risks associated with small population sizes, available data demonstrate long-term persistence of Cumberland sandwort at all sites where abundance is low and stable or increasing trends at more than 60 percent of the small populations for which trend data are available. Thus, available data support the conclusion that small population size is neither a widespread threat to Cumberland sandwort nor has it been demonstrated to place populations at high risk of decline or extirpation.

Techniques for micropropagating, cryopreserving, and outplanting Cumberland sandwort have been developed and successfully applied to establish an introduced population at DBNF (Pence *et al.* 2011, entire), which is not counted among the 71 extant occurrences discussed above. This introduced population has grown from an initial outplanting of 63 individuals to 255 individuals, representing multiple life stages, as of 2017 (Taylor



2018, pers. comm.). Eight years after initial outplanting, the genetic variation in this population, which was established in 2005 from seven genetic lines, was approaching levels of genetic diversity comparable to the source population (Philpott *et al.* 2014, entire). The Missouri Botanical Garden (MBG) has seeds in storage from BSF and PSP that were collected in 1991, 1994, 2005, and 2014 (Dell 2018, pers. comm.). Collections were made at multiple points in time to maintain seed viability in storage. While a cultivated source of plants is not currently maintained *ex situ*, the need for doing so is mitigated by the development of methods to micropropagate the species from cuttings and by availability of seeds in *ex situ* collections, providing two potential methods for propagating the species should it become necessary to do so.

Available data support the determination that Cumberland sandwort is not likely to become endangered in the foreseeable future due to limited distribution or small population sizes.

#### *Effects of Climate Change*

Our analyses under the Act include consideration of ongoing and projected changes in climate. The terms “climate” and “climate change” are defined by the Intergovernmental Panel on Climate Change (IPCC). The term “climate change” thus refers to a change in the mean or variability of one or more measures of climate (*e.g.*, temperature or precipitation) that persists for an extended period, typically decades or longer, whether the change is due to natural variability, human activity, or both (IPCC 2014, pp. 119–120). A recent compilation of climate change and its effects is available from reports of the IPCC (IPCC 2014, entire).

The IPCC concluded that evidence of warming of the climate system is unequivocal (IPCC 2014, pp. 2, 40). Numerous long-term climate changes have been observed including changes in arctic temperatures and ice, widespread changes in precipitation amounts, changes in ocean salinity, and aspects of extreme weather including heavy precipitation and heat waves (IPCC 2014, pp. 40–44). Since 1970, the average annual temperature across the Southeast has increased by about 2 degrees Fahrenheit (°F), with the greatest increases occurring during winter months. The geographic extent of areas in the Southeast region affected by moderate to severe spring and summer drought has increased over the past three decades by 12 and 14 percent, respectively (Karl *et al.* 2009, p. 111).

These trends are expected to increase. Rates of warming are predicted to more than double in comparison to what the Southeast has experienced since 1975, with the greatest increases projected for summer months. Depending on the emissions scenario used for modeling change (IPCC 2000, entire), average temperatures are expected to increase by 2.5 degrees Celsius (°C) (4.5 °F) (scenario B1) to 5 °C (9 °F) (scenario A2) by the 2080s (Karl *et al.* 2009, p. 111). While there is considerable variability in rainfall predictions throughout the region, increases in evaporation of moisture from soils and loss of water by plants in response to warmer temperatures are expected to contribute to increased frequency, intensity, and duration of drought events (Karl *et al.* 2009, p. 112).

We used the National Climate Change Viewer (NCCV), a climate-visualization tool developed by the U.S. Geological Survey (USGS), to generate future climate projections across the range of Cumberland sandwort. The NCCV is a web-based tool for visualizing projected changes in climate and water balance at watershed, State, and county scales (USGS 2017). This tool uses air temperature and precipitation data from 30 downscaled climate models for two Representative Concentration Pathway (RCP) scenarios, RCP 4.5 and RCP 8.5, as input to a simple water-balance model to simulate changes in the surface water balance over historical and future time periods, providing insight into potential for climate-driven changes in water resources. To evaluate the maximum effects of climate change in the future, we used projections from RCP 8.5, which is the most aggressive emissions scenario wherein greenhouse gases (GHGs) rise unchecked through the end of the century, to characterize projected future changes in climate and water resources, averaged across the five counties encompassing the range of Cumberland sandwort. The projections estimate change in mean annual values, comparing the period 1981 through 2010 with 2050 through 2074, for maximum and minimum temperature, monthly precipitation and runoff, snowfall, soil water storage, and evaporative deficit.

Within the range of Cumberland sandwort, the NCCV projects that, under the more extreme RCP 8.5 scenario, maximum temperature will increase by 3.2 °C (5.7 °F), minimum temperature will increase by 3.1 °C (5.6 °F), precipitation will increase by 5.36 mm (0.2 in) per month, soil water storage will decrease by 12.2 mm (0.5 in) annually, and evaporative deficit will increase by 4.6 mm (0.2 in) per month.

Projected changes in snowfall are negligible. These estimates indicate that, despite projected minimal increases in annual precipitation, anticipated increases in maximum and minimum temperatures will offset those gains, leading to a net loss in projected runoff and soil water storage. The most notable change with respect to water balance between the two time periods is that soil storage projections are projected to be significantly reduced during the months of June through November for the period 2050 through 2074. Based on these projections, Cumberland sandwort will on average be exposed to increased temperatures across its range, which, despite limited increases in precipitation, are expected to decrease soil water available during the growing season.

Assessments of vulnerability of federally listed plants in Tennessee to projected climate change have been conducted by two different groups (Glick *et al.* 2015, entire; Kwit 2018, pers. comm.) using version 2.1 of NatureServe’s Climate Change Vulnerability Index (CCVI) (Young *et al.* 2015, entire). The CCVI is an assessment tool that combines results of downscaled climate predictions, characterizing direct exposure to projected climate change, with readily available information about a species’ natural history, distribution, and landscape circumstances, which together influence sensitivity to change, to predict whether it will likely suffer a range contraction and/or population reductions due to the effects of climate change. For these assessments using the CCVI, climate change projections were based on ensemble climate predictions, representing a median of 16 major global circulation models and using a “middle of the road” scenario (*i.e.*, emission scenario A1B of the IPCC (IPCC 2000, entire)) for GHG emissions (Young *et al.* 2015, p. 14) instead of the more extreme scenario that we used in the NCCV to project the climate and water balance changes reported above. From these two assessments, Cumberland sandwort was ranked as either “presumed stable” (Glick *et al.* 2015, p. 40) or “moderately vulnerable” (Kwit 2018, pers. comm.), the latter indicating the species’ abundance and/or range extent within the geographical area assessed would likely decrease by 2050 (Young *et al.* 2015, p. 45).

The disparate results between these two assessments conducted using the same tool illustrate that there is some subjectivity involved in evaluating aspects of a species’ biology and ecology as they relate to CCVI sensitivity factors used to model potential vulnerability to

projected climate change. In the case of Cumberland sandwort, differing judgements of the species' physiological dependence on specific thermal and hydrological niches, restriction to uncommon geological features, and potential for phenological response to changing climate resulted in different outcomes with respect to predicted vulnerability to climate change. In the assessment that ranked Cumberland sandwort as moderately vulnerable, each of these factors were individually ranked as being more likely to increase the species' overall vulnerability than in the contrasting assessment that produced a rank of presumed stable.

Despite having produced different vulnerability ranks, both assessments ranked Cumberland sandwort among the least vulnerable to projected climate change of the federally listed plant species evaluated in Tennessee (Glick *et al.* 2015, p. 40; Kwit 2018, pers. comm.). While the rank of moderately vulnerable indicates that Cumberland sandwort would likely decrease in abundance and/or range extent by 2050, neither assessment using the CCVI predicted that the species would decrease significantly in abundance and/or range extent. Factors contributing to potential resilience of the species to projected climate change include the topographic complexity of the landscape it occupies, general lack of fragmentation among habitats where the species occurs, high abundance at some occurrences, and the fact that most occurrences are located on conservation lands where known threats can be monitored and managed.

Evidence of Cumberland sandwort's potential resilience to the threat of increased drought frequency and intensity is provided by examining available monitoring data in relation to drought records available from 2000 through present. We acquired data from the U.S. Drought Monitor (USDM) summarizing the number of weeks that the geographic area where Cumberland sandwort occurs experienced "extreme" or "exceptional" droughts for periods of more than 2 consecutive weeks (USDM 2019). Since 2000, the four Tennessee counties, where all but one Cumberland sandwort occurrence are located, have experienced periods of such drought during 2007, 2008, and 2016. Prolonged drought conditions began during the last half of June 2007, and extended into late winter or spring of 2008, depending on the county. "Extreme" or "exceptional" drought conditions in these counties started again sometime between August and October 2008, ending in early December. During June 2007 through the end of 2008, these counties experienced between 26 and 53

cumulative weeks of "extreme" or "exceptional" drought conditions for periods that lasted 2 or more consecutive weeks. These counties did not experience such drought conditions again until a 3-week period during November 2016.

To determine whether any population declines recorded through monitoring corresponded with documented periods of local drought, we examined available data (TNHID 2018) for all sites where monitoring has encompassed the two drought periods discussed above. There were 20 occurrences with data spanning this time range, only one (Tennessee E.O. 7) of which was judged to have declined. More than 450 plants were estimated to have been present at this site in November 2007, and 351 plants were counted at the site in September 2017. Cumberland sandwort was estimated to have occupied approximately 4 m<sup>2</sup> of habitat in both years. This site's medium rank for abundance did not change over this time period. The other 19 sites remained stable over the time period encompassing the drought conditions discussed above, with the exception of three that increased. Available monitoring data, when considered in conjunction with data documenting droughts of extreme or exceptional severity within the range of Cumberland sandwort, indicate that the species is resilient to this climate phenomenon. Small populations are likely the most vulnerable to reductions or loss due to climate change. Monitoring data spanning the time period of the droughts discussed above were available for three occurrences with fewer than 100 individuals or that were less than 1 m<sup>2</sup> in size, all of which remained stable. Thus, we conclude that climate change will not pose a threat to the viability of the species into the foreseeable future.

#### *Cumulative Effects*

The stressors discussed in the analysis above could work in concert with each other and result in a cumulative adverse effect to Cumberland sandwort; that is, one stressor may make the species more vulnerable to other threats. For example, stressors discussed under Factor A that individually do not rise to the level of a threat could together result in habitat degradation or loss. In instances where multiple habitat stressors act in concert with small population sizes, occurrences might lack resilience needed for population stability or growth. However, the potential stressors we identified either have not occurred to the extent originally anticipated at the time of listing, or appear to be either

well-tolerated by the species or adequately managed as described in this final rule to delist the species. Our analysis has identified no rangewide threats or stressors with significant effects to all occurrences. We characterized the presence and relative severity of threats resulting from disturbances of substrates or altered forest conditions. Only 7 of the 71 extant occurrences were found to be potentially exposed to both substrate disturbance and altered forest condition. For reasons discussed below in *Inadequacy of Existing Regulatory Mechanisms*, we do not anticipate stressors to increase on conservation lands where nearly all of the occurrences are located. Furthermore, the increases documented in the number and size of many occurrences since the species was listed do not indicate that cumulative effects of various activities and stressors are affecting the viability of the species at this time or into the future.

#### *Existing Regulatory Mechanisms*

The Commonwealth of Kentucky and the State of Tennessee both list Cumberland sandwort as an endangered species. Conservation efforts are directed towards such species by the Office of Kentucky Nature Preserves (OKNP, formerly KSNPC) and TDEC, using funding and authorities provided through cooperative agreements with the Service under section 6 of the Act for endangered species recovery. When Cumberland sandwort is delisted (see **DATES**, above), these agencies will no longer receive such funding specifically for Cumberland sandwort conservation efforts, but could allocate a portion of overall funds they receive for post-delisting monitoring of the species.

The Kentucky Rare Plants Recognition Act, Kentucky Revised Statutes (KRS), chapter 146, sections 600–619, directs the OKNP to identify plants native to Kentucky that are in danger of extirpation within Kentucky and report every 4 years to the Governor and General Assembly on the conditions and needs of these endangered or threatened plants. The list of endangered or threatened plants in Kentucky is found in the Kentucky Administrative Regulations, title 400, chapter 3:040. The statute also recognizes the need to develop and maintain information regarding distribution, population, habitat needs, limiting factors, other biological data, and requirements for the survival of plants native to Kentucky. However, this statute does not include any regulatory prohibitions of activities or direct protections for any species included in the list. It is expressly stated

in KRS 146.615 that this list of endangered or threatened plants shall not obstruct or hinder any development or use of public or private land. Furthermore, the intent of this statute is not to ameliorate the threats identified for the species, but to provide information on the species.

The Tennessee Rare Plant Protection and Conservation Act of 1985 (see Tennessee Code, title 70, chapter 8, part 3) authorizes the TDEC to, among other things, conduct investigations on species of rare plants throughout the State of Tennessee; maintain a listing of species of plants determined to be endangered, threatened, or of special concern within the State; and regulate the sale or export of endangered species via a licensing system. This statute forbids persons from knowingly uprooting, digging, taking, removing, damaging, destroying, possessing, or otherwise disturbing for any purpose, any endangered species from private or public lands without the written permission of the landowner, lessee, or other person entitled to possession and prescribes penalties for violations. The TDEC may use the list of threatened and special concern species when commenting on proposed public works projects in Tennessee, and the department shall encourage voluntary efforts to prevent the plants on this list from becoming endangered species. It may not, however, be used to interfere with, delay, or impede any public works project.

Cumberland sandwort listing under these State laws may continue following Federal delisting, although Federal delisting may prompt changes in the species' status in Kentucky or Tennessee. However, we are unaware of any planned changes to State protections at this time.

Cumberland sandwort habitats on both State and Federal conservation lands will remain protected by rules, regulations, or plans governing the establishment or management of those lands, relevant sections of which are summarized below. As noted above in Table 2, 66 of the 71 extant Cumberland sandwort occurrences are located on Federal or State conservation lands at BSF, PSF, PCNA, and PSP.

Establishment of the BSF was authorized by section 108 of the Water Resources Development Act of 1974 (Pub. L. 93-251, March 7, 1974). The NPS manages the 125,000-acre (ac) BSF according to prescriptions established for eight management zones in Alternative D of the Final General Management Plan/Environmental Impact Statement for Big South Fork National River and Recreation Area,

Kentucky and Tennessee (NPS 2005, entire). Under this management framework, habitats occupied by Cumberland sandwort and those that are potentially suitable for the species fall within the Sensitive Resource Protection Zone, which is managed to reflect natural processes and for careful protection from unnatural degradation (NPS 2005, pp. 31-40). As a result, this designation provides adequate protection to the 27 occurrences within the BSF.

The 20,887-ac PSF was established in 1935, on lands donated to the State of Tennessee by Stearns Coal and Lumber Company (Tennessee Department of Agriculture 2019). The rules of the Tennessee Department of Agriculture Division of Forestry (Tennessee Administrative Code (TAC), chapter 0080-7-1, Protection of State Forests) prohibit destruction or damaging of any natural resource or collection of plants or botanical specimens, unless authorized by permit from the district forester. Pickett Civilian Conservation Corps (CCC) Memorial State Park is situated within the PSF, but as a State park is managed under separate rules from the State forest lands surrounding it. The rules of the Tennessee Department of Environment and Conservation (TAC, chapter 0400-02-02, Public Use and Recreation) prohibit users of State parks from destroying, digging, cutting, removing, or possessing any tree, shrub, or other plant, except as permitted by the Assistant Commissioner of Parks and Recreation (see TAC 0400-02-02-.18). Permits may only be issued for scientific or educational purposes (see TAC 0400-02-02-.23). The 3,000-ac PCNA is contiguous to PSF and very near PSP, the latter of which provides local management of the natural area, albeit according to more protective regulations applicable to designated State natural areas. The Tennessee Natural Areas Preservation Act of 1971 forbids the unauthorized removal or destruction of any rare, threatened, or endangered species of plants in any natural areas, with civil penalties of up to \$10,000 per day for each day during which the prohibited act occurs (see Tennessee Code, title 11, chapter 14, part 1, section 11-14-115). Thus, we do not anticipate stressors to increase on conservation lands where nearly all of the occurrences are located. For the reasons discussed above, we conclude that regulatory mechanisms are adequate to address threats that could result in habitat loss or curtailment of the species range into the foreseeable future.

### Determination of Cumberland Sandwort's Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of endangered species or threatened species. The Act defines an "endangered species" as a species that is in danger of extinction throughout all or a significant portion of its range, and a "threatened species" as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of "endangered species" or "threatened species" because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

#### *Status Throughout All of Its Range*

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, and considering the comments we received, we have found that since listing under the Act, Cumberland sandwort representation has increased with the discovery of occurrences in the Obey River watershed. Redundancy also has increased from 11 occurrences at the time of listing to 71 occurrences known to be extant, including 25 of the 28 occurrences that were included in the species recovery plan (Service 1996, pp. 6-8). An assessment of resiliency of these occurrences, taking into account estimated abundance, substrate condition, and forest condition, indicates that 57 occurrences ranked medium or higher, which we consider to be resilient. Of these resilient occurrences, 42 meeting and exceeding recovery criteria because they are self-sustaining and located on protected land. Of the 15 resilient occurrences that are not counted towards meeting recovery criteria, 10 are located on protected lands but lack a sufficient number of observations over time to judge trends in their abundance and evaluate whether they are self-sustaining; thus, we expect they will also contribute to the species' overall resiliency and redundancy, ensuring its ability to withstand future catastrophic events (but we are not relying upon these 10 to make this final

determination). Because Cumberland sandwort has increased in representation and redundancy, generally, and in particular with respect to numbers of resilient, self-sustaining, and protected occurrences, we have determined that the species is currently viable and expect this species to be viable into the foreseeable future.

We have carefully assessed the best scientific and commercial information available regarding the threats faced by Cumberland sandwort in developing the April 27, 2020, proposed rule (85 FR 23302) and this final rule. Threats reported at the time of listing related to habitat loss and curtailment of range (Factor A) have been managed in many locations, and available data indicate the species possesses greater resilience to effects of substrate disturbance from trampling and various activities and to effects of timber harvesting in nearby areas than was determined at the time of listing. We have analyzed or evaluated potential effects of climate change and low population size (Factor E) and determined that they are not significant threats to the species now nor are they likely to be in the foreseeable future (as defined above). Although the Cumberland sandwort will no longer receive the protections of the Act once it is delisted (see **DATES**, above), the remaining regulatory mechanisms (Factor D) are adequate to protect Cumberland sandwort from threats to its habitat, given the fact that 66 of the 71 extant occurrences are located on Federal or State conservation lands. Considering the effect of current and future stressors to the species, and taking into account applicable conservation measures and the existing regulatory mechanisms, the species is not currently in danger of extinction, nor is it likely to become so in the foreseeable future, throughout all of its range.

#### *Status Throughout a Significant Portion of Its Range*

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. Having determined that Cumberland sandwort is not in danger of extinction or likely to become so in the foreseeable future throughout all of its range, we now consider whether it may be in danger of extinction or likely to become so in the foreseeable future in a significant portion of its range—that is, whether there is any portion of the species' range for which it is true that both (1) the portion is significant; and (2) the species

is in danger of extinction now or likely to become so in the foreseeable future in that portion. Depending on the case, it might be more efficient for us to address the “significance” question or the “status” question first. We can choose to address either question first. Regardless of which question we address first, if we reach a negative answer with respect to the first question that we address, we do not need to evaluate the other question for that portion of the species' range.

In undertaking this analysis for Cumberland sandwort, we choose to address the status question first—we consider information pertaining to the geographic distribution of both the species and the threats that the species faces to identify any portions of the range where the species is endangered or threatened. For Cumberland sandwort, we considered whether the threats are geographically concentrated in any portion of the species' range at a biologically meaningful scale. We examined the following threats: Habitat modification and curtailment of range, including cumulative effects.

The range of Cumberland sandwort is restricted to a small geographic area in portions of five counties, with high similarity in geological and ecological conditions among occupied sites. Within this geographic area, the species is known from two watersheds, South Fork Cumberland and Obey River, where there are 59 and 12 extant occurrences, respectively. Therefore, applying the process described above, we first evaluated the status of Cumberland sandwort to determine if any threats or population declines were concentrated in any specific portion of the range. Threats related to habitat modification or curtailment of range primarily affect occurrences in the South Fork Cumberland drainage. Our analysis of the species' resilience (see above, **Recovery**), which integrated information on abundance and threats, determined that 45 of the occurrences within the South Fork Cumberland and all of the occurrences within the Obey River drainages had resiliency indices of medium or higher. We have determined that 40 of these resilient occurrences in the South Fork Cumberland and 2 in the Obey River drainages are protected and contribute towards achieving the recovery criteria. The presence of 40 protected and self-sustaining occurrences in the South Fork Cumberland indicates that threats are not concentrated in this drainage so as to affect the representation, redundancy, or resiliency of Cumberland sandwort. Nine protected occurrences in the Obey River watershed have resiliency indices of medium or higher, but lack sufficient

monitoring data to evaluate trends in abundance and determine whether they are self-sustaining. Due to their locations on protected lands, primarily within PCNA where proposed trail routes are surveyed to minimize adverse effects to Cumberland sandwort (TDEC no date, pp. 10–11), we expect that these nine occurrences will remain stable for the foreseeable future, adding to the resilience, representation, and redundancy afforded by the 42 occurrences currently considered to contribute to achieving recovery criteria. Based on the distribution of 42 protected and self-sustaining occurrences among the two watersheds, all located on conservation lands managed according to rules, regulations, or management plans (NPS 2005, pp. 31–39; TDEC no date, entire) that protect Cumberland sandwort, we have determined that threats related to habitat modification or curtailment of range are not concentrated in any portion of the species' range so as to affect its representation, redundancy, or resiliency.

We found no concentration of threats in any portion of Cumberland sandwort's range at a biologically meaningful scale. Therefore, no portion of the species' range can provide a basis for determining that the species is in danger of extinction now or likely to become so in the foreseeable future in a significant portion of its range, and we find the species is not in danger of extinction now or likely to become so in the foreseeable future in any significant portion of its range. This is consistent with the courts' holdings in *Desert Survivors v. Department of the Interior*, No. 16-cv-01165–JCS, 2018 WL 4053447 (N.D. Cal. Aug. 24, 2018), and *Center for Biological Diversity v. Jewell*, 248 F. Supp. 3d, 946, 959 (D. Ariz. 2017).

#### *Determination of Status*

Our review of the best available scientific and commercial information indicates that Cumberland sandwort is not in danger of extinction nor likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Therefore, we find that Cumberland sandwort does not meet the definition of an endangered species or a threatened species in accordance with sections 3(6) and 3(20) of the Act. Therefore, we are removing the species from the List of Endangered and Threatened Plants.

#### **Effects of This Rule**

This final rule revises 50 CFR 17.12(h) to remove Cumberland sandwort from the Federal List of Endangered and Threatened Plants. The prohibitions and

conservation measures provided by the Act, particularly through sections 7 and 9, will no longer apply to Cumberland sandwort. Federal agencies will no longer be required to consult with us under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect Cumberland sandwort. There is no critical habitat designated for Cumberland sandwort; therefore, this rule does not affect 50 CFR 17.96.

This rule will not affect Cumberland sandwort's status as an endangered or threatened species under State laws or suspend any other legal protections provided by those laws. States may have more restrictive laws protecting wildlife and plants, and these will not be affected by this Federal action. However, this final rule may prompt either Kentucky or Tennessee to remove protection for Cumberland sandwort under their endangered species laws, although we are not aware of any such intention at this time.

#### Post-Delisting Monitoring

Section 4(g)(1) of the Act requires us, in cooperation with the States, to implement a monitoring program for not less than 5 years for all species that have been delisted due to recovery. Post-delisting monitoring (PDM) refers to activities undertaken to verify that a species delisted due to recovery remains secure from the risk of extinction after the protections of the Act no longer apply. The primary goal of PDM is to monitor the species to ensure that its status does not deteriorate, and if a decline is detected, to take measures to halt the decline so that proposing it as endangered or threatened is not again needed. If at any time during the monitoring period, data indicate that protective status under the Act should be reinstated, we can initiate listing procedures, including, if appropriate, emergency listing. At the conclusion of the monitoring period, we will review all available information to determine if re-listing, the continuation of monitoring, or the termination of monitoring is appropriate.

Section 4(g) of the Act explicitly requires that we cooperate with the States in development and implementation of PDM programs. However, we remain ultimately responsible for compliance with section

4(g) and, therefore, must remain actively engaged in all phases of PDM. We also seek active participation of other entities that are expected to assume responsibilities for the species' conservation after delisting.

We prepared a PDM plan for Cumberland sandwort (Service 2020). The plan describes:

- (1) The Cumberland sandwort's condition at the time of delisting;
- (2) Thresholds or triggers for potential monitoring outcomes and conclusions;
- (3) Frequency and duration of monitoring;
- (4) Monitoring methods, including sampling considerations;
- (5) Data compilation and reporting procedures and responsibilities; and
- (6) A proposed PDM implementation schedule, including timing and responsible parties.

It is our intent to work with our partners to maintain the recovered status of the Cumberland sandwort.

#### Required Determinations

##### *National Environmental Policy Act*

We have determined that we do not need to prepare an environmental assessment or environmental impact statement, as defined in the National Environmental Policy Act (42 U.S.C 4321 *et seq.*), in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

##### *Government-to-Government Relationship With Tribes*

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge

our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that no Tribes will be affected by this rule because no Tribal lands, sacred sites, or resources will be affected by the removal of Cumberland sandwort from the List of Endangered and Threatened Plants.

#### References Cited

A complete list of references cited is available at <http://www.regulations.gov> under Docket Number FWS-R4-ES-2019-0080, or upon request from the Tennessee Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

#### Author

The primary authors of this rule are the staff members of the Tennessee Ecological Services Field Office.

#### List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

#### Regulation Promulgation

Accordingly, we 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; 4201–4245, unless otherwise noted.

#### § 17.12 [Amended]

- 2. Amend § 17.12 in paragraph (h) by removing the entry for "Arenaria cumberlandensis" under "FLOWERING PLANTS" 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. 2021–17468 Filed 8–13–21; 8:45 am]

**BILLING CODE 4333–15–P**

# Proposed Rules

Federal Register

Vol. 86, No. 155

Monday, August 16, 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 HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2021–0497]

RIN 1625–AA00

#### Safety Zone; Potomac River, Prince William County, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain waters of the Potomac River. This action is necessary to provide for the safety of life on these navigable waters near Cherry Hill, in Prince William County, VA, during a fireworks display on September 18, 2021 (with alternate date of September 19, 2021). This proposed rulemaking would prohibit persons and vessels from being in the safety zone unless authorized by the Captain of the Port Maryland-National Capital Region or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before August 31, 2021.

**ADDRESSES:** You may submit comments identified by docket number USCG–2021–0497 using the Federal Decision Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the

**SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Mr. Ron Houck, Sector Maryland-National Capital Region Waterways Management Division, U.S. Coast Guard; telephone 410–576–2674, email [DO5-DG-SectorMD-NCR-MarineEvents@uscg.mil](mailto:DO5-DG-SectorMD-NCR-MarineEvents@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## I. Table of Abbreviations

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

## II. Background, Purpose, and Legal Basis

On June 16, 2021, Tim’s Rivershore Restaurant and Crabhouse of Dumfries, VA, notified the Coast Guard that it will be conducting a fireworks display from 9:30 p.m. to 10 p.m. on September 18, 2021, to commemorate the permanent closing of the restaurant after operating for many years. Details of the fireworks event were provided to the Coast Guard on August 5, 2021. The fireworks are to be launched from a barge in the Potomac River in approximate position latitude 38°34′07.97″ N, longitude 077°15′37.39″ W, located near Cherry Hill, in Prince William County, VA. In the event of inclement weather, the fireworks display will be scheduled for September 19, 2021. The COTP Maryland-National Capital Region has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within 500 feet of the barge.

The Coast Guard is requesting that interested parties provide comments within a shortened comment period of 15 days instead of the typical 30 days for this notice of proposed rulemaking. The Coast Guard believes the 15-day comment period still provides for a reasonable amount of time for interested parties to review the proposal and provide informed comments on it while also ensuring that the Coast Guard has time to review and respond to any significant comments and have a final rule in effect in time for the scheduled event.

The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231).

## III. Discussion of Proposed Rule

The COTP is proposing to establish a temporary safety zone from 8:30 p.m. on September 18, 2021, to 11 p.m. on September 19, 2021. The safety zone would be enforced from 8:30 p.m. to 11 p.m. on September 18, 2021, or, if necessary due to inclement weather on September 18, 2021, from 8:30 p.m. to

11 p.m. on September 19, 2021. The safety zone would cover all navigable waters of the Potomac River within 500 feet of the fireworks barge in approximate position latitude 38°34′07.97″ N, longitude 077°15′37.39″ W, located near Cherry Hill, in Prince William County, VA. The size of the zone and duration of the regulation are intended to ensure the safety of vessels and these navigable waters before, during, and after the fireworks display.

No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.

## IV. Regulatory Analyses

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

### A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, duration, and time-of-day of the safety zone, which would impact small designated area of the Potomac River for a total no more than 2.5 total enforcement-hours during the evening when vessel traffic is normally low. This portion of the waterway supports mainly recreational vessel traffic, which at its peak, occurs during the summer season. Moreover, the Coast Guard will issue Local Notices to Mariners and a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The

term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

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

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

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

#### C. Collection of Information

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

#### D. Federalism and Indian Tribal Governments

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

Also, this proposed rule does not have tribal implications under Executive Order 13175 (Consultation and Coordination with Indian Tribal

Governments) because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### E. Unfunded Mandates Reform Act

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

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting 2.5 total enforcement hours that would prohibit entry within a portion of the Potomac River. Normally such actions are categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A preliminary Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places, or vessels.

#### V. Public Participation and Request for Comments

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

*Submitting comments.* We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2021–0497 in the “SEARCH” box and click “SEARCH.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

*Viewing material in docket.* To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

*Personal information.* We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

#### List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard is proposing to amend 33 CFR part 165 as follows:

**PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

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

**Authority:** 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T05–0497 to read as follows:

**§ 165.T05–0497 Safety Zone; Potomac River, Prince William County, VA.**

(a) *Location.* The following area is a safety zone: All navigable waters of the Potomac River, within 500 feet of the fireworks barge in approximate position latitude 38°34′07.97″ N, longitude 077°15′37.39″ W, located near Cherry Hill, in Prince William County, VA. These coordinates are based on datum NAD 83.

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

*Captain of the Port (COTP)* means the Commander, U.S. Coast Guard Sector Maryland-National Capital Region.

*Designated representative* means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Maryland-National Capital Region (COTP) in the enforcement of the safety zone.

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

(2) To seek permission to enter, contact the COTP or the COTP's representative by telephone at 410–576–2693 or on Marine Band Radio VHF–FM

channel 16 (156.8 MHz). Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement officials.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by Federal, State, and local agencies.

(e) *Enforcement period.* This section will be enforced from 8:30 p.m. to 11 p.m. on September 18, 2021. If necessary due to inclement weather on September 18, 2021, it will be enforced from 8:30 p.m. to 11 p.m. on September 19, 2021.

Dated: August 10, 2021.

**David E. O'Connell,**

*Captain, U.S. Coast Guard, Captain of the Port Maryland-National Capital Region.*

[FR Doc. 2021–17441 Filed 8–13–21; 8:45 am]

**BILLING CODE 9110–04–P**



# Notices

Federal Register

Vol. 86, No. 155

Monday, August 16, 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.

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meetings of the Missouri Advisory Committee

**AGENCY:** U.S. Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a meeting via web conference on, August 17, 2021 at 12:00 p.m. Central Time. The purpose of the meeting is for the committee to review and approve a memorandum to submit to the United States Commission on Civil Rights.

**DATES:** The meetings will be held on:

- Tuesday, August 17, 2021, at 12:00 p.m. Central Time, <https://civilrights.webex.com/civilrights/j.php?MTID=me523e8f88e0ad3af4b305fdfac043015>, or Join by phone: 800-360-9505 USA Toll Free, Access code: 199 936 1364.

**FOR FURTHER INFORMATION CONTACT:** David Barreras, Designated Federal Officer, at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov) or (202) 656-8937.

**SUPPLEMENTARY INFORMATION:** Members of the public may listen to this discussion through the above call-in number. An open comment period will be provided to allow members of the public to make a statement as time allows. Callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the conference call number and conference ID number.

Members of the public are entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to David Barreras at [dbarreras@usccr.gov](mailto:dbarreras@usccr.gov).

Records generated from this meeting may be inspected and reproduced at the Regional Programs Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via [www.facadatabase.gov](http://www.facadatabase.gov) under the Commission on Civil Rights, Missouri Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, <http://www.usccr.gov>, or may contact the Regional Programs Unit at the above email or street address.

#### Agenda

- I. Welcome & Roll Call
- II. Chair's Comments
- IV. Committee Discussion
- V. Memorandum Approval
- VI. Public Comment
- VII. Adjournment

*Exceptional Circumstance:* Pursuant to 41 CFR 102-3.150, the notice for this meeting is given fewer than 15 calendar days prior to the meeting because of the exceptional circumstances of pending expiration of Committee member appointment terms.

Dated: August 10, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021-17427 Filed 8-13-21; 8:45 am]

**BILLING CODE P**

## COMMISSION ON CIVIL RIGHTS

### Notice of Public Meeting of the Massachusetts Advisory Committee

**AGENCY:** Commission on Civil Rights.

**ACTION:** Announcement of meeting.

**SUMMARY:** Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Massachusetts Advisory Committee to the Commission will convene by conference call on Wednesday, August 25, 2021, at 2:00 p.m. (ET). The purpose of the meeting is to review and vote on

its report on Asian American Pacific Island hate crimes in Massachusetts.

**DATES:** Wednesday, August 25, 2021, at 2:00 p.m. (ET)

*Public WebEx Conference Registration Link (video and audio):* <https://bit.ly/3yFDeCA>.

*To Join By Phone Only:* Dial 1-800-360-9505; Access code: 199 250 1960#.

**FOR FURTHER INFORMATION CONTACT:** Evelyn Bohor at [ero@usccr.gov](mailto:ero@usccr.gov) or by phone at 202-921-2212.

**SUPPLEMENTARY INFORMATION:** This meeting is available to the public through the WebEx link above. If joining only via phone, callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Individuals who are deaf, deafblind and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at 1-800-877-8339 and providing the Service with the call-in number found through registering at the web link provided above for the meeting.

Members of the public are entitled to make comments during the open period at the end of the meeting. Members of the public may also submit written comments; the comments must be received in the Regional Programs Unit within 30 days following the respective meeting. Written comments may be emailed to Barbara Delaviez at [ero@usccr.gov](mailto:ero@usccr.gov). Persons who desire additional information may contact the Regional Programs Unit at (202) 809-9618. Records and documents discussed during the meeting will be available for public viewing as they become available at the [www.facadatabase.gov](http://www.facadatabase.gov). Persons interested in the work of this advisory committee are advised to go to the Commission's website, [www.usccr.gov](http://www.usccr.gov), or to contact the Regional Programs Unit at the above phone number or email address.

*Agenda:* Wednesday, August 25, 2021; 2:00 p.m. (ET).

1. Roll call
2. Review/edit AAPI Report
3. Vote on Report
4. Public Comment
5. Other Business/Next Steps
6. Adjourn

Dated: August 10, 2021.

**David Mussatt,**

*Supervisory Chief, Regional Programs Unit.*

[FR Doc. 2021-17423 Filed 8-13-21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[S-120-2021]

**Foreign-Trade Zone 98—Birmingham, Alabama; Application for Subzone; Mercedes Benz USA, LLC, Vance, Alabama**

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of Birmingham, Alabama, grantee of FTZ 98, requesting subzone status for the facility of Mercedes Benz USA, LLC (MBUSA), located in Vance, Alabama. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 10, 2021.

The proposed subzone (42.23 acres) is located at 11146 Will Walker Road, Vance, Alabama. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 98.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The closing period for their receipt is September 27, 2021. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 12, 2021.

A copy of the application will be available for public inspection in the "Reading Room" section of the FTZ Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Christopher Kemp at [Christopher.Kemp@trade.gov](mailto:Christopher.Kemp@trade.gov).

Dated: August 10, 2021.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2021-17467 Filed 8-13-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

[S-121-2021]

**Foreign-Trade Zone 18—San Jose, California; Application for Expansion of Subzone 18G; Tesla, Inc., Lathrop, California**

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the City of San Jose, grantee of FTZ 18, requesting an expansion of Subzone 18G on behalf of Tesla, Inc., in Lathrop, California. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on August 10, 2021.

Subzone 18G currently consists of the following sites: Site 1 (25.28 acres)—3500 Deer Creek Road, Palo Alto; Site 2 (265.88 acres)—45500 Fremont Boulevard, Fremont; Site 3 (10 acres)—2875 Prune Avenue, Fremont; Site 4 (39.21 acres)—901 and 1055 Page Avenue and 47700 Kato Road, Fremont; Site 5 (15.79)—47400 Kato Road, Fremont; Site 6 (31.91 acres)—6800 and 6900 Dumbarton Circle, Fremont; Site 7 (0.67 acres)—3777 and 3785 Spinnaker Court, Fremont; Site 8 (14.93 acres)—31353 Huntwood Avenue, Hayward; Site 11 (10.60 acres)—1710 Little Orchard Street, San Jose; Site 12 (18.8 acres)—800 Atlantis Street, Livermore; Site 13 (32.85 acres)—201 Discovery Drive, Livermore; Site 14 (7.76 acres)—1050 77th Avenue, Oakland; and, Site 15 (2.181 acres)—55 Admiral Robert Toney Way, Oakland.

The applicant is now requesting authority to expand the subzone to include the following additional sites in Lathrop, San Joaquin County: Site 16 (29.11 acres)—18260 South Harlan Road; Site 17 (12.5 acres)—18250 Murphy Parkway; Site 18 (48.64 acres)—17100 Murphy Parkway; Site 19 (23.07 acres)—701 D'Arcy Parkway; Site 20 (28.02 acres)—700 D'Arcy Parkway; Site 21 (13.2 acres)—401/501 Tesla Drive; and, Site 22 (4.86 acres)—500 Louise Avenue. The expanded subzone would be subject to the existing activation limit of FTZ 18.

In accordance with the FTZ Board's regulations, Qahira El-Amin of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: [ftz@trade.gov](mailto:ftz@trade.gov). The

closing period for their receipt is September 27, 2021. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to October 12, 2021.

A copy of the application will be available for public inspection in the "Reading Room" section of the FTZ Board's website, which is accessible via [www.trade.gov/ftz](http://www.trade.gov/ftz).

For further information, contact Qahira El-Amin at [Qahira.El-Amin@trade.gov](mailto:Qahira.El-Amin@trade.gov).

Dated: August 10, 2021.

**Andrew McGilvray,**  
Executive Secretary.

[FR Doc. 2021-17466 Filed 8-13-21; 8:45 am]

**BILLING CODE 3510-DS-P**

## DEPARTMENT OF COMMERCE

## Bureau of Industry and Security

**In the Matter of: Roger Sobrado; Inmate Number: 71907-050; USP Lewisburg, U.S. Penitentiary, P.O. Box 1000, Lewisburg, PA 17837; Order Denying Export Privileges**

On September 5, 2019, in the U.S. District Court for the District of New Jersey, Roger Sobrado ("Sobrado"), was convicted of violating 18 U.S.C. 371. Specifically, Sobrado was convicted of knowingly and intentionally conspiring and agreeing with others to export and causing to be exported ITAR-controlled technical data, designated as defense articles on the United States Munitions List, to one or more foreign nationals, without having first obtained from the United States Department of State, a license or other written approval for such export. Sobrado was sentenced to 36 months in prison, three years of supervised release, \$300 special assessment and restitution of \$8,043,977.

Pursuant to Section 1760(e) of the Export Control Reform Act ("ECRA"),<sup>1</sup> the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an

<sup>1</sup> ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Sobrado's conviction post-dates ECRA's enactment on August 13, 2018.

interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Sobrado's conviction for violating 18 U.S.C. 371, and has provided notice and opportunity for Sobrado to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations ("EAR" or the "Regulations"). 15 CFR 766.25.<sup>2</sup> BIS has not received a written submission from Sobrado.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Sobrado's export privileges under the Regulations for a period of 10 years from the date of Sobrado's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Sobrado had an interest at the time of his conviction.<sup>3</sup>

Accordingly, it is hereby *ordered*:

*First*, from the date of this Order until September 5, 2029, Roger Sobrado, with a last known address of Inmate Number: 71907-050, USP Lewisburg, U.S. Penitentiary, P.O. Box 1000, Lewisburg, PA 17837, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives ("the Denied Person"), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Second*, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third*, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Sobrado by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth*, in accordance with Part 756 of the Regulations, Sobrado may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

*Fifth*, a copy of this Order shall be delivered to Sobrado and shall be published in the **Federal Register**.

*Sixth*, this Order is effective immediately and shall remain in effect until September 5, 2029.

**John Sonderman,**

*Director, Office of Export Enforcement.*

[FR Doc. 2021-17455 Filed 8-13-21; 8:45 am]

**BILLING CODE 3510-DT-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**In the Matter of: Oben Cabalceta, Inmate Number: 72454-050, FCI Oakdale, Federal Correctional Institution, P.O. Box 5010, Oakdale, LA 71463; Order Denying Export Privileges**

On September 18, 2019, in the U.S. District Court for the District of New Jersey, Oben Cabalceta ("Cabalceta"), was convicted of violating 18 U.S.C. 371. Specifically, Cabalceta was convicted of knowingly and intentionally conspiring and agreeing with others to export and causing to be exported ITAR-controlled technical data, designated as defense articles on the United States Munitions List, to one or more foreign nationals, without having first obtained from the United States Department of State, a license or other written approval for such export. Cabalceta was sentenced to 42 months in prison, two years of supervised release, \$200 special assessment and restitution of \$1,890,939.

Pursuant to Section 1760(e) of the Export Control Reform Act ("ECRA"),<sup>1</sup> the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 371, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Cabalceta's conviction for violating 18 U.S.C. 371, and has provided notice and opportunity for Cabalceta to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations ("EAR" or the "Regulations"). 15 CFR 66.25.<sup>2</sup> BIS

<sup>1</sup> ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801-4852. Cabalceta's conviction post-dates ECRA's enactment on August 13, 2018.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730-774 (2021).

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730-774 (2021).

<sup>3</sup> The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 73411, November 18, 2020).

has not received a written submission from Cabalceta.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Cabalceta's export privileges under the Regulations for a period of 10 years from the date of Cabalceta's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Cabalceta had an interest at the time of his conviction.<sup>3</sup>

Accordingly, it is hereby *ordered*:

*First*, from the date of this Order until September 18, 2029, Oben Cabalceta, with a last known address of Inmate Number: 72454-050, FCI Oakdale II, Federal Correctional Institution, P.O. Box 5010, Oakdale, LA 71463, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives ("the Denied Person"), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Second*, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United

States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third*, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Cabalceta by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth*, in accordance with Part 756 of the Regulations, Cabalceta may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

*Fifth*, a copy of this Order shall be delivered to Cabalceta and shall be published in the **Federal Register**.

*Sixth*, this Order is effective immediately and shall remain in effect until September 18, 2029.

**John Sonderman**,

*Director, Office of Export Enforcement.*

[FR Doc. 2021-17457 Filed 8-13-21; 8:45 am]

**BILLING CODE 3510-DT-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

**In the Matter of: Armando Antonio Perez Cepeda, Jr., 1861 NW South River Drive, Apt 2501, Miami, FL 33128; Order Denying Export Privileges**

On January 10, 2019, in the U.S. District Court for the Middle District of Florida, Armando Antonio Perez Cepeda, Jr. ("Cepeda"), was convicted of violating 18 U.S.C. 554. Specifically, Cepeda was convicted of fraudulently and knowingly buying, selling, and facilitating the transportation and sale of a defense article without a license contrary to 22 U.S.C. 2278 and 22 CFR 127.1(a)(1), knowing the same to be intended for exportation, in violation of 18 U.S.C. 554. Cepeda was sentenced to 48 months on probation and a \$100 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act ("ECRA"),<sup>1</sup> the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Cepeda's conviction for violating 18 U.S.C. 554, and has provided notice and opportunity for Cepeda to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations ("EAR" or the "Regulations"). 15 CFR 766.25.<sup>2</sup> BIS has not received a written submission from Cepeda.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Cepeda's export privileges under the Regulations for a period of three years from the date of Cepeda's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which

<sup>1</sup> ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801-4852. Cepeda's conviction post-dates ECRA's enactment on August 13, 2018.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730-774 (2021).

<sup>3</sup> The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).

Cepeda had an interest at the time of his conviction.<sup>3</sup>

Accordingly, it is hereby *ordered*:

*First*, from the date of this Order until January 10, 2022, Armando Antonio Perez Cepeda, Jr, with a last known address of 1861 NW South River Drive, #2501, Miami, FL 33128, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Second*, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the

Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third*, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Cepeda by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth*, in accordance with Part 756 of the Regulations, Cepeda may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

*Fifth*, a copy of this Order shall be delivered to Cepeda and shall be published in the **Federal Register**.

*Sixth*, this Order is effective immediately and shall remain in effect until January 10, 2022.

**John Sonderman,**

*Director, Office of Export Enforcement.*

[FR Doc. 2021-17456 Filed 8-13-21; 8:45 am]

**BILLING CODE 3510-DT-P**

## DEPARTMENT OF COMMERCE

### Bureau of Industry and Security

#### Washington, DC 20230; In the Matter of: Matteo Taerri, a/k/a Majid Taheri; 705 Town Blvd. #433, Atlanta, GA 30319; Order Denying Export Privileges

On June 4, 2020, in the U.S. District Court for the Northern District of Georgia Matteo Taerri, a/k/a Majid Taheri (“Taerri”), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C § 1701, *et seq.* (2012)) (“IEEPA”).

Specifically, Taerri was convicted of knowingly and willfully attempting to export a United States origin item from the United States to the Islamic Republic of Iran, that being a Prostack Filter Module, without having first obtained the required authorization from the United States Department of Treasury’s Office of Foreign Assets Control. Taerri was sentenced to time served, supervised release for three years, and a \$200 assessment.

Pursuant to Section 1760(e) of the Export Control Reform Act (“ECRA”),<sup>1</sup> the export privileges of any person who has been convicted of certain offenses, including, but not limited to, IEEPA, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e) (Prior Convictions). In addition, any Bureau of Industry and Security (BIS) licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Taerri’s conviction for violating IEEPA, and has provided notice and opportunity for Taerri to make a written submission to BIS, as provided in Section 766.25 of the Export Administration Regulations (“EAR” or the “Regulations”). 15 CFR 766.25.<sup>2</sup> BIS has not received a written submission from Taerri.

Based upon my review of the record and consultations with BIS’s Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Taerri’s export privileges under the Regulations for a period of 10 years from the date of Taerri’s conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Taerri had an interest at the time of his conviction.<sup>3</sup>

Accordingly, it is hereby *ordered*:

*First*, from the date of this Order until June 4, 2030, Matteo Taerri, a/k/a Majid Teheri, with a last known address of 705 Town Blvd. #433, Atlanta, GA 30319, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (“the Denied Person”), may not directly or indirectly participate in any way in any transaction involving any commodity,

<sup>1</sup> ECRA was enacted as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852. Taerri’s conviction post-dates ECRA’s enactment on August 13, 2018.

<sup>2</sup> The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2021).

<sup>3</sup> The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).

<sup>3</sup> The Director, Office of Export Enforcement, is now the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 FR 73411, November 18, 2020).

software or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

*Second*, no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

*Third*, pursuant to Section 1760(e) of the Export Control Reform Act (50 U.S.C. 4819(e)) and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Taerri by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

*Fourth*, in accordance with Part 756 of the Regulations, Taerri may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

*Fifth*, a copy of this Order shall be delivered to Taerri and shall be published in the **Federal Register**.

*Sixth*, this Order is effective immediately and shall remain in effect until June 4, 2030.

**John Sonderman**,

*Director, Office of Export Enforcement.*

[FR Doc. 2021-17454 Filed 8-13-21; 8:45 am]

BILLING CODE 3510-DT-P

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A-469-823]

#### Utility Scale Wind Towers From Spain: Antidumping Duty Order

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**SUMMARY:** Based on affirmative final determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC), Commerce is issuing an antidumping duty order on utility scale wind towers (wind towers) from Spain.

**DATES:** Applicable August 16, 2021.

**FOR FURTHER INFORMATION CONTACT:** Benito Ballesteros or Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482-7425 or (202) 482-0413.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 25, 2021, Commerce published its affirmative final determination in the less-than-fair-value (LTFV) investigation of wind towers

from Spain.<sup>1</sup> On August 9, 2021, the ITC notified Commerce of its final affirmative determination that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (the Act), by reason of imports of wind towers from Spain that are sold in the United States at LTFV.<sup>2</sup>

#### Scope of the Order

The products covered by this order are wind towers. For a complete description of the scope of the order, see the appendix to this notice.

#### Antidumping Duty Order

On August 9, 2021, in accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC notified Commerce of its final determination that an industry in the United States is materially injured by reason of imports of wind towers from Spain. Therefore, in accordance with sections 735(c)(2) of the Act, Commerce is issuing this antidumping duty order. Because the ITC determined that imports of wind towers from Spain are materially injuring a U.S. industry, unliquidated entries of such merchandise from Spain, which are entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

In accordance with section 736(b)(1) of the Act, Commerce will instruct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of wind towers from Spain. Antidumping duties will be assessed on unliquidated entries of wind towers from Spain which are entered, or withdrawn from warehouse, for consumption on or after April 2, 2021, the date of publication of the *Preliminary Determination*.<sup>3</sup>

#### Suspension of Liquidation and Cash Deposits

In accordance with section 736 of the Act, Commerce will instruct CBP to reinstitute the suspension of liquidation of all relevant entries of wind towers from Spain as described in the

<sup>1</sup> See *Utility Scale Wind Towers from Spain: Final Determination of Sales at Less Than Fair Value*, 86 FR 33656 (June 25, 2021) (*Final Determination*).

<sup>2</sup> See ITC Letter, “Notification of ITC Final Determinations,” dated August 9, 2021.

<sup>3</sup> See *Utility Scale Wind Towers from Spain: Preliminary Affirmative Determination of Sales at Less Than Fair Value*, 86 FR 17354 (April 2, 2021) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

Appendix to this notice which are entered, or withdrawn from warehouse for consumption, on or after the date of publication of the ITC's notice of final determination in the **Federal Register**. These instructions suspending liquidation will remain in effect until further notice.

We will also instruct CBP to require cash deposits for estimated antidumping duties equal to the rates listed below. Accordingly, effective on the date of publication in the **Federal Register** of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the cash deposit rates listed below.<sup>4</sup> The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

**Estimated Weighted-Average Dumping Margins**

The weighted-average dumping margins for the antidumping duty order are as follows:

Exporter/producer	Dumping margin (percent)
Vestas Eolica S.A.U .....	73.00
Acciona Windpower S.A .....	73.00
Gamesa Energy Trans- mission .....	73.00
Haizea Wind Group .....	73.00
Kuzar Systems, S.L .....	73.00
Windar Renovables .....	73.00
All Others .....	73.00

**Provisional Measures**

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request Commerce extended the four-month period to no more than six months. Commerce published the *Preliminary Determination* on April 2, 2021. The four-month period beginning on the date of publication of the *Preliminary Determination* ended on July 30, 2021. Furthermore, section 737(b) of the Act states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of wind towers

from Spain entered, or withdrawn from warehouse, for consumption after July 30, 2021, the date on which the provisional measures expired, until and through the day preceding the date of publication of the ITC's final injury determinations in the **Federal Register**. Suspension of liquidation will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

**Notifications to Interested Parties**

This notice constitutes the antidumping duty order with respect to wind towers from Spain pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at <http://enforcement.trade.gov/stats/iastats1.html>.

This order is published in accordance with section 736(a) of the Act and 19 CFR 351.211(b).

Dated: August 10, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

**Appendix**

**Scope of the Order**

The merchandise covered by this order consists of certain wind towers, whether or not tapered, and sections thereof. Certain wind towers support the nacelle and rotor blades in a wind turbine with a minimum rated electrical power generation capacity in excess of 100 kilowatts and with a minimum height of 50 meters measured from the base of the tower to the bottom of the nacelle (*i.e.*, where the top of the tower and nacelle are joined) when fully assembled.

A wind tower section consists of, at a minimum, multiple steel plates rolled into cylindrical or conical shapes and welded together (or otherwise attached) to form a steel shell, regardless of coating, end-finish, painting, treatment, or method of manufacture, and with or without flanges, doors, or internal or external components (*e.g.*, flooring/decking, ladders, lifts, electrical buss boxes, electrical cabling, conduit, cable harness for nacelle generator, interior lighting, tool and storage lockers) attached to the wind tower section. Several wind tower sections are normally required to form a completed wind tower.

Wind towers and sections thereof are included within the scope whether or not they are joined with non-subject merchandise, such as nacelles or rotor blades, and whether or not they have internal or external components attached to the subject merchandise.

Specifically excluded from the scope are nacelles and rotor blades, regardless of whether they are attached to the wind tower. Also excluded are any internal or external components which are not attached to the wind towers or sections thereof, unless those components are shipped with the tower sections.

Merchandise covered by this order is currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under subheading 7308.20.0020 or 8502.31.0000. Wind towers of iron or steel are classified under HTSUS 7308.20.0020 when imported separately as a tower or tower section(s). Wind towers may be classified under HTSUS 8502.31.0000 when imported as combination goods with a wind turbine (*i.e.*, accompanying nacelles and/or rotor blades). While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

[FR Doc. 2021-17406 Filed 8-13-21; 8:45 am]

BILLING CODE 3510-DS-P

**DEPARTMENT OF COMMERCE**

**International Trade Administration**

**Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Application for Export Trade Certificate of Review**

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 June 8, 2021 (86 FR 3048) during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* International Trade Administration, Commerce.

*Title:* Export Trade Certificate of Review.

*OMB Control Number:* 0625-0125.

*Form Number(s):* ITA-4093P.

*Type of Request:* Extension of a current information collection.

*Number of Respondents:* 9.

*Average Hours per Response:* 32 hours (application); 2 hours (annual report).

*Burden Hours:* 440 hours.

*Needs and Uses:* The collection of information is necessary for both the Departments of Commerce and Justice to conduct an analysis, in order to determine whether the applicant and its members are eligible to receive the protection of an Export Trade Certificate of Review and whether the applicant's proposed export-related conduct meets

<sup>4</sup> See section 736(a)(3) of the Act.



the standards in Section 303(a) of the Act. The collection of information constitutes the essential basis of the statutory determinations to be made by the Secretary of Commerce and the Attorney General.

**Affected Public:** Business or other for-profit organizations; not-for-profit institutions, and state, local or tribal government.

**Frequency:** Application for an Export Trade Certificate of Review is voluntary, and submission of an application form is required each time an entity of the affected public applies for a new or amended Export Trade Certificate of Review. Completion of an annual report is required one time per year from existing Certificate holders.

**Respondent's Obligation:** Voluntary.

**Legal Authority:** Title III of the Export Trading Company Act of 1982, 15 U.S.C. 4011–4021.

This information collection request may be viewed at [www.reginfo.gov](http://www.reginfo.gov). Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website [www.reginfo.gov/public/do/PRAMain](http://www.reginfo.gov/public/do/PRAMain). Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function and entering either the title of the collection or the OMB Control Number 0625–0125.

**Sheleen Dumas,**

*Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.*

[FR Doc. 2021–17439 Filed 8–13–21; 8:45 am]

**BILLING CODE 3510–DR–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

[A–201–853]

#### Standard Steel Welded Wire Mesh From Mexico: Antidumping Duty Order; Correction

**AGENCY:** Enforcement and Compliance, International Trade Administration, Department of Commerce.

**ACTION:** Notice; correction.

**SUMMARY:** The Department of Commerce (Commerce) published notice in the *Federal Register* of August 9, 2021, in which Commerce published the antidumping duty order on standard steel welded wire mesh from Mexico.

This notice incorrectly described the scope of the investigation rather than the scope of the order.

**FOR FURTHER INFORMATION CONTACT:** Melissa Kinter or Alice Maldonado, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1413 or (202) 482–4682, respectively.

#### SUPPLEMENTARY INFORMATION:

##### Correction

In the *Federal Register* of August 9, 2021, in FR Doc 2021–16982, on page 43526 in the second column, correct the section titled, “Appendix—Scope of the Investigation,” to state, “Appendix—Scope of the Order” and “The merchandise covered by this order . . .” and on page 43527 in the second column, correct the following language to state, “Merchandise subject to this order . . . the written description of the scope of this order is dispositive.”

##### Background

On August 9, 2021, Commerce published in the *Federal Register* Standard Steel Welded Wire Mesh from Mexico: Antidumping Duty Order.<sup>1</sup> We incorrectly described the scope of the investigation rather than the scope of the order.

##### Notification to Interested Parties

This notice is issued and published in accordance with section 736(a) of the Tariff Act of 1930, as amended, and 19 CFR 351.211(b).

Dated: August 10, 2021.

**James Maeder,**

*Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.*

[FR Doc. 2021–17465 Filed 8–13–21; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648–XB324]

#### North Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of web conference.

<sup>1</sup> See *Standard Steel Welded Wire Mesh from Mexico: Antidumping Duty Order*, 86 FR 43525 (August 9, 2021).

**SUMMARY:** The North Pacific Fishery Management Council (Council) Bering Sea Fishery Ecosystem Plan (BS FEP) Team will meet September 1, 2021, and on September 2, 2021.

**DATES:** The meeting will be held on Wednesday, September 1, 2021, from 12:30 p.m. to 3 p.m. and on Thursday, September 2, 2021, from 12:30 p.m. to 4 p.m. Alaska Time.

**ADDRESSES:** The meeting will be a webconference. Join online through the link at <https://meetings.npfmc.org/Meeting/Details/2393>.

**Council address:** North Pacific Fishery Management Council, 1007 W 3rd Ave., Anchorage, AK 99501–2252; telephone: (907) 271–2809. Instructions for attending the meeting are given under **SUPPLEMENTARY INFORMATION** below.

**FOR FURTHER INFORMATION CONTACT:** Diana Evans, Council staff; phone: (907) 271–2809 and email: [diana.evans@noaa.gov](mailto:diana.evans@noaa.gov). For technical support, please contact administrative Council staff, email: [npfmc.admin@noaa.gov](mailto:npfmc.admin@noaa.gov).

#### SUPPLEMENTARY INFORMATION:

##### Agenda

*Wednesday and Thursday, September 1 and 2, 2021*

The BS FEP team will hold a workshop to develop the Bering Sea Ecosystem Health Report. The agenda is subject to change, and the latest version will be posted at <https://meetings.npfmc.org/Meeting/Details/2393> prior to the meeting, along with

##### Connection Information

You can attend the meeting online using a computer, tablet, or smartphone; or by phone only. Connection information will be posted online at: <https://meetings.npfmc.org/Meeting/Details/2393>.

##### Public Comment

Public comment letters will be accepted and should be submitted electronically to <https://meetings.npfmc.org/Meeting/Details/2393>.

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

Dated: August 11, 2021.

**Tracey L. Thompson,**

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

[FR Doc. 2021–17449 Filed 8–13–21; 8:45 am]

**BILLING CODE 3510–22–P**



**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration**

[RTID 0648–XB331]

**Western Pacific Fishery Management Council; Public Meeting**

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

**ACTION:** Notice of public meetings.

**SUMMARY:** The Western Pacific Fishery Management Council (Council) will hold meetings of its Non-commercial Fisheries Advisory Committee (NCFAC), Hawaii Archipelago Fishery Ecosystem Plan (FEP) Advisory Panel (AP), American Samoa Archipelago FEP AP, Mariana Archipelago FEP-Guam AP, Fishing Industry Advisory Committee (FIAC), and Mariana Archipelago FEP-Commonwealth of the Northern Mariana Islands (CNMI) AP to discuss and make recommendations on fishery management issues in the Western Pacific Region.

**DATES:** The meetings will be held from Wednesday, September 1, 2021 through Saturday, September 11, 2021. For specific dates, times and agendas, see **SUPPLEMENTARY INFORMATION**.

**ADDRESSES:** Each of the meetings will be held by web conference via Webex. Instructions for connecting to the web conference and providing oral public comments will be posted on the Council website at [www.wpcouncil.org](http://www.wpcouncil.org). For assistance with the web conference connection, contact the Council office at (808) 522–8220.

**FOR FURTHER INFORMATION CONTACT:** Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council; telephone: (808) 522–8220.

**SUPPLEMENTARY INFORMATION:** The NCFAC will meet on Wednesday, September 1, 2021, from 1 p.m. to 3:30 p.m.; The Hawaii Archipelago FEP AP will meet on Friday, September 3, 2021, from 9 a.m. to 12 noon; the American Samoa Archipelago FEP AP will meet on Tuesday, September 7, 2021, from 5 p.m. to 7 p.m.; the FIAC will meet on Thursday, September 9, 2021, from 1 p.m. to 4 p.m.; the Mariana Archipelago FEP-Guam AP will meet on Thursday, September 9, 2021, from 6:30 p.m. to 8:30 p.m.; and the Mariana Archipelago FEP–CNMI AP will meet on Saturday, September 11, 2021, from 9 a.m. to 12 noon. All times listed are local island times except for the NCFAC and FIAC are Hawaii Standard Time.

Public comment periods will be provided in the agendas. The order in which agenda items are addressed may change. The meetings will run as late as necessary to complete scheduled business.

**Schedule and Agenda for the NCFAC Meeting**

*Wednesday, September 1, 2021, 1 p.m.–3:30 p.m. (Hawaii Standard Time)*

1. Welcome and Introductions
2. Review of Last NCFAC Meeting
3. Council Issues
  - A. Main Hawaiian Islands (MHI) Uku Fishery Annual Catch Limits (ACLs)
  - B. Northwestern Hawaiian Islands (NWHI) Sanctuary Designation
  - C. Proposed Magnuson-Stevens Act (MSA) Changes
  - D. Regional Research Priorities
4. Review of U.S. Support to the Pacific Nations
5. Fishermen Observations
6. Non-commercial Fishing Activities, Issues, and Efforts
7. Public Comment
8. Discussion and Recommendations
9. Other Business

**Schedule and Agenda for the Hawaii Archipelago FEP AP Meeting**

*Friday, September 3, 2021, 9 a.m.–12 noon (Hawaii Standard Time)*

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
  - A. Revising Seabird Mitigation Measures in the Hawaii Deep-set Longline Fishery
  - B. NWHI Sanctuary Designation
  - C. Specifying ACLs for the MHI Uku Fishery
  - D. Proposed MSA Changes
  - E. Regional Research Priorities
  - F. Potential Cultural Honu Take
4. Review of U.S. Support to the Pacific Nations
5. Report on Bottomfish Restricted Fishing Areas
6. Hawaii Fishermen Observations Update
7. Report on Hawaii Archipelago FEP AP Plan Activities
  - A. Hawaii Fishing Spots Mapping
  - B. Education and Outreach Activities
8. Fishery Issues and Activities
9. Public Comment
10. Discussion and Recommendations
11. Other Business

**Schedule and Agenda for the American Samoa FEP AP Meeting**

*Tuesday, September 7, 2021, 5 p.m.–7 p.m. (American Samoa Standard Time)*

1. Welcome and Introductions

2. Review of the Last AP Meeting and Recommendations
3. Council Issues

**A. American Samoa Bottomfish**

- i. Bottomfish Management Unit Species (BMUS) Rebuilding Plan
  - ii. Territorial Bottomfish Fishery Management Plan (FMP)
  - iii. Proposed Bottomfish Community Development Program Plan
- B. American Samoa Large Vessel Prohibited Area (LVPA) Update
  - C. Proposed MSA Changes
  - D. Regional Research Priorities
4. Review of U.S. Support to the Pacific Nations
  5. American Samoa Fishermen Observations Update
  6. Report on American Samoa Archipelago FEP AP Plan Activities
    - A. Sustainable Fisheries Fund Projects
    - B. Catch It, Log It Update and Report
  7. Fishery Issues and Activities
  8. Public Comment
  9. Discussion and Recommendations
  10. Other Business

**Schedule and Agenda for the FIAC Meeting**

*Thursday, September 9, 2021, 1 p.m.–4 p.m. (Hawaii Standard Time)*

1. Welcome and Introductions
2. Status Report on June 2021 FIAC Recommendations
3. MSA Reauthorization
4. Mariana Archipelago
  - A. Military Impacts on Guam Fisheries
  - B. Federated States of Micronesia Citizen Fishing Activities in Guam Exclusive Economic Zone (EEZ)
5. Impacts of Imports on Hawaii Seafood Markets
6. Papahānaumokuākea Marine National Monument
  - A. Impacts on Hawaii Longline Fishery
  - B. Sanctuary Designation
7. Council Actions for 187th Meeting
  - A. American Samoa BMUS Rebuilding Plan
  - B. MHI Uku ACL
  - C. Seabird Mitigation in Hawaii Deep-set Longline Fishery
  - D. Cooperative Research Priorities
8. Review of U.S. Support to Pacific Island Nations
9. Other Issues
10. Public Comment
11. Discussion and Recommendations

**Schedule and Agenda for the Mariana Archipelago FEP-Guam AP Meeting**

*Thursday, September 9, 2021, 6:30 p.m.–8:30 p.m. (Marianas Standard Time)*

1. Welcome and Introductions

2. Review of the Last AP Meeting and Recommendations
3. Council Issues
  - A. Proposed MSA Changes
  - B. Regional Research Priorities
4. Review of U.S. Support to the Pacific Nations
5. Tuna Quota Transfer Review and Options
6. Guam Fishermen Observations Update
7. Report on Mariana Archipelago-Guam FEP AP Plan Activities
  - A. Catch It, Log It Update and Report
8. Fishery Issues and Activities
9. Public Comment
10. Discussion and Recommendations
11. Other Business

#### Schedule and Agenda for the Mariana Archipelago FEP-CNMI AP Meeting

Saturday, September 11, 2021, 9 a.m.–12 noon (Marianas Standard Time)

1. Welcome and Introductions
2. Review of the Last AP Meeting and Recommendations
3. Council Issues
  - A. Proposed MSA Changes
  - B. Regional Research Priorities
4. Review of U.S. Support to the Pacific Nations
5. CNMI Fishermen Observations Update
6. Report on Mariana Archipelago-CNMI FEP AP Plan Activities
  - A. Catch It, Log It Update and Report
  - B. Sustainable Fisheries Fund Projects
7. Fishery Issues and Activities
8. Public Comment
9. Discussion and Recommendations
10. Other Business

#### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, (808) 522-8220 (voice) or (808) 522-8226 (fax), at least 5 days prior to the meeting date.

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

Dated: August 11, 2021.

**Tracey L. Thompson,**

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

[FR Doc. 2021-17448 Filed 8-13-21; 8:45 am]

**BILLING CODE 3510-22-P**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[RTID 0648-XB322]

##### 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 Monkfish 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, September 1, 2021, at 9:30 a.m. Webinar registration URL information: <https://attendee.gotowebinar.com/register/5823477991354445582>.

**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 Monkfish Committee will receive a presentation on analyses related to the Council's 2021 Monkfish Priority to "Complete work recommended by the Council in June 2020 for including the 2019 discard information in the analysis of discard estimation methods undertaken in 2020". They will discuss and make recommendations for 2022 Council monkfish management priorities. 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: August 11, 2021.

**Tracey L. Thompson,**

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

[FR Doc. 2021-17447 Filed 8-13-21; 8:45 am]

**BILLING CODE 3510-22-P**

#### DEPARTMENT OF COMMERCE

##### National Oceanic and Atmospheric Administration

[RTID 0648-XB319]

##### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Pacific Fishery Management Council's (Pacific Council) Ad Hoc Ecosystem Workgroup (EWG) is holding an online meeting and briefing for members of other Council advisory bodies. This meeting is open to the public.

**DATES:** The online meeting will be held Thursday, September 2, 2021, from 1:30 p.m. to 4:30 p.m.

**ADDRESSES:** This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see [www.pcouncil.org](http://www.pcouncil.org)). You may send an email to Mr. Kris Kleinschmidt ([kris.kleinschmidt@noaa.gov](mailto:kris.kleinschmidt@noaa.gov)) or contact him at (503) 820-2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820-2422.

**SUPPLEMENTARY INFORMATION:** At its March 2021 meeting the Pacific Council directed the EWG to prepare a final draft

of the revised Fishery Ecosystem Plan (FEP) for review by the Council at its September 2021 meeting. The EWG will submit the final draft in the advance briefing book for the September meeting. As part of this online meeting the EWG Chair will provide a briefing for other advisory body members and members of the public to learn about updated sections in the final draft document. This should help to focus recommendations and comments on the revised FEP for Council consideration in providing further guidance to the EWG.

The EWG will then discuss potential recommendations for the FEP Climate and Communities Initiative, which the Council is scheduled to discuss at its September meeting.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

#### Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt ([kris.kleinschmidt@noaa.gov](mailto:kris.kleinschmidt@noaa.gov); (503) 820-2412) at least 10 days prior to the meeting date.

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

Dated: August 11, 2021.

**Tracey L. Thompson,**

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

[FR Doc. 2021-17446 Filed 8-13-21; 8:45 am]

**BILLING CODE 3510-22-P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

[RTID 0648-XB318]

#### Pacific Fishery Management Council; Public Meeting

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

**ACTION:** Notice of public meeting.

**SUMMARY:** The Co-Chairs of the Pacific Fishery Management Council's (Pacific Council) Ad Hoc Climate and Communities Core Team (CCCT) are

holding an online briefing for members of other Council advisory bodies. This meeting is open to the public.

**DATES:** The online meeting will be held Thursday, September 2, 2021, from 12 p.m. to 1:30 p.m.

**ADDRESSES:** This meeting will be held online. Specific meeting information, including directions on how to join the meeting and system requirements will be provided in the meeting announcement on the Pacific Council's website (see [www.pcouncil.org](http://www.pcouncil.org)). You may send an email to Mr. Kris Kleinschmidt ([kris.kleinschmidt@noaa.gov](mailto:kris.kleinschmidt@noaa.gov)) or contact him at (503) 820-2412 for technical assistance.

*Council address:* Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220-1384.

**FOR FURTHER INFORMATION CONTACT:** Kit Dahl, Staff Officer, Pacific Council; telephone: (503) 820-2422.

**SUPPLEMENTARY INFORMATION:** In March 2021, the Pacific Council directed the CCCT to brief Pacific Council advisory body members in advance of the September 2021 Pacific Council meeting on its findings and recommendations from the outcomes of the Fishery Ecosystem Plan Climate and Communities Initiative. The CCCT is preparing a report on Initiative outcomes, which will be included in the advance briefing materials for the September Pacific Council meeting. The CCCT Co-Chairs will provide an overview of the results of the Initiative and the Team's recommendations for potential follow-on activities. The Pacific Council is expected to review the report and provide guidance on any continuing activities. Other Pacific Council advisory bodies are encouraged to develop their own recommendations; this briefing will provide background information to help in the development of such recommendations by Pacific Council advisory bodies and the public.

Although non-emergency issues not contained in the meeting agenda may be discussed, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

#### Special Accommodations

Requests for sign language interpretation or other auxiliary aids

should be directed to Mr. Kris Kleinschmidt ([kris.kleinschmidt@noaa.gov](mailto:kris.kleinschmidt@noaa.gov); (503) 820-2412) at least 10 days prior to the meeting date.

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

Dated: August 11, 2021.

**Tracey L. Thompson,**

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

[FR Doc. 2021-17451 Filed 8-13-21; 8:45 am]

**BILLING CODE 3510-22-P**

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## DEPARTMENT OF DEFENSE

### Department of the Air Force

#### Public Interface Control Working Group for the NAVSTAR GPS Public Documents; Correction

**AGENCY:** Global Positioning System (GPS), Department of the Air Force, Department of Defense (DOD).

**ACTION:** Notice; correction.

**SUMMARY:** The Department of the Air Force published a document in the **Federal Register** of August 2, 2021, concerning an open public forum to discuss GPS public documents revisions and collection comments. The document contained incorrect dates.

**FOR FURTHER INFORMATION CONTACT:** Lt. Adam Barnette, (310) 653-9518 (Voice), [SMCGPER@us.af.mil](mailto:SMCGPER@us.af.mil) (Email), SMC/ZACS, 483 North Aviation Blvd., El Segundo, CA 90245-2807.

#### SUPPLEMENTARY INFORMATION:

##### *Correction*

In the **Federal Register** of August 2, 2021, in FR Doc. 2021-16360, on page 41453, in the first column, correct the **DATES** caption to read:

Open to the public in person and virtually Wednesday, September 29, 2021 from 8:30 a.m. to 4:00 p.m. (Pacific Time).

**Adriane Paris,**

*Acting Air Force Federal Register Liaison Officer.*

[FR Doc. 2021-17506 Filed 8-13-21; 8:45 am]

**BILLING CODE 5001-10-P**

**DEPARTMENT OF EDUCATION**

[Docket No.: ED–2021–SCC–0125]

**Agency Information Collection Activities; Comment Request; Foreign Language and Area Studies (FLAS) Fellowship Program Survey on Postgraduate Employment Outcomes****AGENCY:** Office of Postsecondary Education (OPE), Department of Education (ED).**ACTION:** Notice.**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a reinstatement without change of a previously approved collection.**DATES:** Interested persons are invited to submit comments on or October 15, 2021.**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2021–SCC–0125. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, ED will temporarily accept comments at [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W208D, Washington, DC 20202–8240.**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Charles Jenkins, 202–453–5994.**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information

collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Foreign Language and Area Studies (FLAS) Fellowship Program Survey on Postgraduate Employment Outcomes.*OMB Control Number:* 1840–0829.*Type of Review:* A reinstatement without change of a previously approved collection.*Respondents/Affected Public:* Individuals and Households.*Total Estimated Number of Annual Responses:* 2,400.*Total Estimated Number of Annual Burden Hours:* 600.*Abstract:* The Foreign Language and Area Studies (FLAS) Fellowships program is authorized by 20 U.S.C. 1121(b), and provides allocations of academic year and summer fellowships to institutions of higher education or consortia of institutions of higher education to assist meritorious undergraduate students and graduate students undergoing training in modern foreign languages and related area or international studies. This information collection is a survey for FLAS fellows required by 20 U.S.C. 1121(d) which states “The Secretary shall assist grantees in developing a survey to administer to students who have completed programs under this subchapter to determine postgraduate employment, education, or training. All grantees, where applicable, shall administer such survey once every two years and report survey results to the Secretary.”

This package is a reinstatement without change.

Dated: August 11, 2021.

**Kate Mullan,***PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021–17484 Filed 8–13–21; 8:45 am]

**BILLING CODE 4000–01–P****DEPARTMENT OF EDUCATION**

[Docket No.: ED–2021–SCC–0124]

**Agency Information Collection Activities; Comment Request; Impact Evaluation of Training in Multi-Tiered Systems of Support for Reading in Early Elementary School****AGENCY:** Institute of Educational Science (IES), Department of Education (ED).**ACTION:** Notice.**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, ED is proposing a revision of a currently approved collection.**DATES:** Interested persons are invited to submit comments on or before October 15, 2021.**ADDRESSES:** To access and review all the documents related to the information collection listed in this notice, please use <http://www.regulations.gov> by searching the Docket ID number ED–2021–SCC–0124. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the [regulations.gov](http://www.regulations.gov) site is not available to the public for any reason, ED will temporarily accept comments at [ICDocketMgr@ed.gov](mailto:ICDocketMgr@ed.gov). Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W208C, Washington, DC 20202–8240.**FOR FURTHER INFORMATION CONTACT:** For specific questions related to collection activities, please contact Lauren Angelo, 202–245–7474.**SUPPLEMENTARY INFORMATION:** The Department of Education (ED), in

accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

*Title of Collection:* Impact Evaluation of Training in Multi-Tiered Systems of Support for Reading in Early Elementary School.

*OMB Control Number:* 1850-0953.

*Type of Review:* A revision of a currently approved collection.

*Respondents/Affected Public:* Individuals and Households; State, Local, and Tribal Governments *Total Estimated Number of Annual Responses:* 24,480.

*Total Estimated Number of Annual Burden Hours:* 5,413.

*Abstract:* This study will provide much needed evidence on strategies to support US students' development of foundational reading skills, essential to later learning.

A third of US students fail to develop foundational reading skills by 4th grade that are necessary to succeed academically. In addition, the achievement gap is growing as demonstrated by The Nation's Report Card. To address this, the Every Student Succeeds Act (ESSA) promotes the use of evidence-based literacy interventions. And, the Department of Education (ED) has made supporting educators with the knowledge, skills, professional development, or materials necessary to improve reading instruction a key priority. The Individuals with Disabilities Education Act (IDEA)

similarly encourages high quality instruction along with better identification of students needing extra support to prevent or mitigate student reading issues.

This study will provide much needed evidence by evaluating two professional development strategies for bolstering core reading instruction and supplemental supports, guided by data, within a MTSS-R framework. MTSS-R is a widely used framework for providing high-quality reading instruction for all students, identifying students needing supplemental or more intensive supports, and providing these additional supports for those who need it.

Dated: August 11, 2021.

**Juliana Pearson,**

*PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.*

[FR Doc. 2021-17500 Filed 8-13-21; 8:45 am]

**BILLING CODE 4000-01-P**

## DEPARTMENT OF ENERGY

### Notice of Inquiry on Preparation of Report to Congress on the Price-Anderson Act

**AGENCY:** Office of General Counsel, DOE.

**ACTION:** Extension of public comment period.

**SUMMARY:** On July 26, 2021, the Department of Energy (the "Department" or "DOE") published in the **Federal Register** a notice of inquiry ("NOI") and request for comment from the public concerning the need for continuation or modification of the provisions of the Price-Anderson Act ("PAA") as administered by DOE. The PAA establishes a system of financial protection that encourages the safe and secure operation of nuclear power and other nuclear activities and assures equitable compensation of victims in the event of a nuclear incident. Comments from the public will assist the Department in the preparation of its report on the PAA to be submitted to Congress, as required by the Atomic Energy Act of 1954 (AEA), as amended. The NOI provided an August 25, 2021, deadline for comments. This notice announces a 60-day extension of the comment period to October 25, 2021.

**DATES:** The comment period for the NOI published on July 26, 2021 (86 FR 40032) is extended. DOE will accept written comments regarding the NOI

submitted no later than October 25, 2021.

**ADDRESSES:** You may submit comments to: [paareportnoi@hq.doe.gov](mailto:paareportnoi@hq.doe.gov). Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process in light of the ongoing Covid-19 pandemic. DOE is currently suspending receipt of public comments via postal mail and hand delivery/courier. If a commenter finds that this change poses undue hardship, please contact the Office of the General Counsel staff at (202) 586-2177 to discuss the need for alternative arrangements. Once the Covid-19 pandemic health emergency is resolved, DOE anticipates resuming all of its regular options for public comment submission, including postal mail and hand delivery/courier.

#### FOR FURTHER INFORMATION CONTACT:

Stewart Forbes, Office of the Assistant General Counsel for Civilian Nuclear Programs, U.S. Department of Energy, Room 6A-167, 1000 Independence Ave SW, Washington, DC 20585; Email: [stewart.forbes@hq.doe.gov](mailto:stewart.forbes@hq.doe.gov); and Phone: (202) 586-2177.

**SUPPLEMENTARY INFORMATION:** The PAA was enacted in 1957 as an amendment to the AEA to encourage the development of nuclear power and nuclear activities by establishing a system of financial protection for persons who may be liable for and persons who may be injured by a nuclear incident.<sup>1</sup> Since enactment, the PAA has been amended several times, most recently in 2005 as part of the Energy Policy Act of 2005 (Title VI, Subtitle A).<sup>2</sup> The recent amendments extended the authority of DOE to grant the DOE Price-Anderson indemnification until December 31, 2025<sup>3</sup> and amended section 170p. of the AEA<sup>4</sup> to mandate, as it had done with a prior extension, that DOE submit a report to Congress by December 31, 2021 ("2021 Report") on whether

<sup>1</sup> Price-Anderson Act, Public Law 85-256, 71 Stat. 576 (amending Atomic Energy Act of 1954, Pub. L. 83-703, codified as amended at 42 U.S.C. 2011 *et seq.*). The pertinent sections of the PAA amended AEA § 11 and created AEA § 170, which are codified respectively at 42 U.S.C. 2014 and 2210.

<sup>2</sup> Price-Anderson Amendments Act of 2005, Public Law 109-58, tit. VI, 119 Stat. 779 (amending Atomic Energy Act § 170, codified as amended at 42 U.S.C. 2210 *et seq.*).

<sup>3</sup> *Id.* at tit. VI, § 602(b) (amending Atomic Energy Act § 170d.(1)(A), codified as amended at 42 U.S.C. 2210(d)(1)(A)).

<sup>4</sup> *Id.* at tit. VI, § 606 (amending Atomic Energy Act § 170p., codified as amended at 42 U.S.C. 2210(p)).

provisions of the PAA should be continued, modified, or eliminated. DOE issued a prior report to Congress pursuant to section 170p. in 1998<sup>5</sup> (“1998 Report”) recommending renewal of the PAA, which was developed and informed by a public comment process.

On July 26, 2021, DOE published a NOI in the **Federal Register** (86 FR 40032) requesting public comment to assist with its preparation of a report to Congress on the need for continuation or modification of the provisions of the PAA as administered by DOE. In the NOI, DOE provided an update on significant changes in law or circumstances since the 1998 Report, included a non-exhaustive list of questions and topics to be considered by commenters, and requested public comment to assist with preparation of the 2021 Report. The NOI requested public comment from interested persons to be submitted by August 25, 2021.

On July 29, 2021, DOE received comments from the Nuclear Energy Institute (“NEI”) expressing appreciation for the opportunity for public participation in the development of the 2021 Report while requesting additional time, a 30-day extension, to provide comments. NEI stated the additional time is necessary to collect views and comments from its members on the future of the PAA and to enable those comments to reflect meaningful and substantive responses to the specific enumerated questions and topics posed by DOE in the NOI. NEI also noted that granting the additional time is consistent with the extensions in the public comment deadlines provided by DOE in connection with the 1998 Report, resulting in a public comment period equal to 56 calendar days.

DOE also received comments and a request for a 60-day extension on August 6, 2021, from the Natural Resources Defense Council (“NRDC”), on behalf of the combined membership of NRDC, Nuclear Information and Resources Service, Beyond Nuclear, and Savannah River Site Watch. NRDC stated that given the significance of the PAA to the framework of the nuclear industry and the range of economic, technical, policy and legal considerations raised in the NOI, an extension of the public period is warranted to provide its members and other stakeholders sufficient time to consider, deliberate and formulate comments in response to the NOI. NRDC particularly noted the need for a

meaningful review period in order to evaluate and address impacts of the PAA in regard to the vital topic of environmental justice, equity, and inclusion, and the evolving and developing technologies in the nuclear industry, such as small modular reactors and potential as-yet unused nuclear fuels.

DOE has determined that extension of the comment period is appropriate based on the foregoing reasons and is hereby extending the comment period to October 25, 2021. Given the importance of proceeding in a timely manner toward development of the 2021 Report that is due to Congress by December 31, 2021, DOE does not intend to grant any further extensions. Accordingly, DOE will consider any comments received by October 25, 2021.

#### Signing Authority

This document of the Department of Energy was signed on August 10, 2021, by John T. Lucas, Acting General Counsel, Office of the General Counsel, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE **Federal Register** Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC on August 11, 2021.

**Treena V. Garrett,**

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

[FR Doc. 2021-17440 Filed 8-13-21; 8:45 am]

**BILLING CODE 6450-01-P**

## DEPARTMENT OF ENERGY

### Request for Information: Access to Quantum Systems

**AGENCY:** Office of Science, Department of Energy (DOE).

**ACTION:** Request for information (RFI).

**SUMMARY:** Congress has requested DOE to develop a roadmap to provide researchers access to quantum systems so as to enhance the U.S. quantum research enterprise, stimulate the fledgling U.S. quantum computing industry, educate the future quantum computing workforce, and accelerate advancement of quantum computer

capabilities. In collaboration with private sector stakeholders, the research facility user community, and interagency partners, the Department of Energy (DOE), through the Office of Science, intends to develop such a roadmap. DOE invites interested parties to provide input on the quantum systems that DOE should include in the roadmap; how the current access models can meet the needs of quantum researchers; and the appropriate timeline and sequencing for components of the roadmap.

**DATES:** Written comments and information are requested on or before September 30, 2021.

**ADDRESSES:** DOE is using the <https://www.regulations.gov> system for the submission and posting of public comments in this proceeding. All comments in response to this RFI are therefore to be submitted electronically through <https://www.regulations.gov>, via the web form accessed by following the “Submit a Formal Comment” link near the top right of the **Federal Register** web page for this document.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information may be submitted to [Quantum-Systems-Access-RFI@science.doe.gov](mailto:Quantum-Systems-Access-RFI@science.doe.gov) or Dr. Ceren Susut, (301) 903-0366.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Quantum information science (QIS) is a potentially transformative emerging field, with resulting quantum technologies having significant implications for scientific discovery as well as for our Nation’s economic prosperity and security.<sup>1</sup> Widespread access to a variety of quantum systems for research, development, testing, and evaluation is critical to continued rapid progress and competitiveness in this field and to accelerate QIS research and development. Congress, in the Joint Explanatory Statement accompanying the Energy and Water Development and Related Agencies Appropriations Act of 2021, requested DOE to “develop a roadmap to provide researchers access to quantum systems so as to enhance the U.S. quantum research enterprise, stimulate the fledgling U.S. quantum computing industry, educate the future quantum computing workforce, and accelerate advancement of quantum computer capabilities.”<sup>2</sup>

*Types of quantum systems under consideration:* DOE may consider access models for research and development

<sup>5</sup> U.S. Dep’t of Energy, Report to Congress on the Price-Anderson Act (1998), <https://www.energy.gov/sites/prod/files/gcproad/documents/paa-rep.pdf> (to be referenced as “1998 Report”).

<sup>1</sup> See <https://www.quantum.gov/>.

<sup>2</sup> <https://docs.house.gov/billssthisweek/20201221/BILLS-116RCP68-JES-DIVISION-D.pdf>.

(R&D) on a wide range of quantum systems. For simplicity, these systems are broadly categorized here, but many real facilities or capabilities will bridge across these flexible groups. The scope of quantum systems to be addressed in response to this RFI includes, but is not limited to:

(1) Systems for synthesis, characterization, and fabrication—including foundries and testbeds.

(2) Sensors and measurement systems—including light-matter sensors, atomic sensors, magnetometers, clocks, detectors, and imaging systems.

(3) Networking and communication systems—including interconnects, transducers, repeaters, switches, routers, entangled nodes, encrypted systems, and network testbeds.

(4) Computers, processors, annealers, and analog simulators—including noisy intermediate-scale quantum (NISQ) and beyond-NISQ computers, emulators, conventional computing systems, hybrid systems, and computing testbeds.

*Existing access models and approaches, and DOE resources and programs that support R&D activities on quantum systems:* DOE utilizes a range of approaches for access to R&D systems and facilities that it supports, depending on the nature of the capability, the scope of the desired interaction, the extent and composition of the community that is interested in access, and other factors.<sup>3</sup> (Other federal agencies may employ similar and/or additional models.) Direct collaboration with DOE-supported researchers (including but not exclusively at DOE National Laboratories), which may involve indirect or direct usage of their systems and instruments, is one frequent method, and may not require specific agreements or obligations other than those applying generally to laboratory requirements. For instance, the Microsystems Engineering, Science, and Applications (MESA) facility<sup>4</sup> at Sandia National Laboratories offers advanced fabrication capabilities relevant to QIS, and Los Alamos National Laboratory provides a variety of quantum computing technologies to scientists and engineers.<sup>5</sup>

Technology transfer and collaboration mechanisms include Cooperative Research and Development Agreements (CRADAs) that formalize joint R&D efforts between federal laboratories and external-to-government partners; Strategic Partnership Projects (SPPs), in which work is done for businesses and

other non-federal entities using specialized or unique facilities and/or expertise; as well as Agreements for Commercializing Technology (ACTs) and Technology Licensing Agreements, among others. Another approach used primarily for major facilities that host substantial numbers of external researchers is the user facility model, in which access is typically provided competitively via merit- and feasibility-based review.<sup>6</sup> Current and next-generation systems at DOE user facilities that enable breakthrough scientific discoveries in QIS include but are not limited to Nanoscale Science Research Centers,<sup>7</sup> High-Performance Computing and Networking Facilities,<sup>8</sup> X-Ray Light Sources,<sup>9</sup> and Neutron Scattering Facilities.<sup>10</sup> Other programs, such as Oak Ridge National Laboratory's Quantum Computing User Program,<sup>11</sup> facilitate access to commercial quantum computing resources via merit-based review and user agreements. Additionally, DOE supports the development of quantum computing and quantum network testbeds for science. For instance, DOE quantum computing testbeds provide the research community with fully transparent access to novel quantum computing hardware.<sup>12</sup>

## II. Questions

Input is requested on information the Department should consider as it develops a roadmap to provide researchers access to quantum systems to enhance the U.S. quantum research enterprise, stimulate the fledgling U.S. quantum computing industry, educate the future quantum computing workforce, and accelerate advancement of quantum computer capabilities. Any information that may be business proprietary and exempt by law from public disclosure should be submitted as described in Section III. Please provide data, analysis, and/or other justification for all responses to this RFI, where applicable. DOE is interested in receiving input on the following questions:

<sup>6</sup> <https://science.osti.gov/User-Facilities>.

<sup>7</sup> <https://science.osti.gov/User-Facilities/User-Facilities-at-a-Glance/BES/Nanoscale-Science-Research-Centers>.

<sup>8</sup> <https://science.osti.gov/User-Facilities/User-Facilities-at-a-Glance/ASCR>.

<sup>9</sup> <https://science.osti.gov/User-Facilities/User-Facilities-at-a-Glance/BES/X-Ray-Light-Sources>.

<sup>10</sup> <https://science.osti.gov/User-Facilities/User-Facilities-at-a-Glance/BES/Neutron-Scattering-Facilities>.

<sup>11</sup> <https://www.olcf.ornl.gov/olcf-resources/compute-systems/quantum-computing-user-program/>.

<sup>12</sup> <https://qscout.sandia.gov> and <https://aqt.lbl.gov>.

(i) What role, if any, should Federal agencies play in mediating, facilitating, or coordinating access to non-Federal quantum systems?

(ii) What special considerations, if any, should be taken into account in accommodating the scientific communities served by these quantum systems?

(iii) What quantum systems should be included in this roadmap?

(iv) What mechanisms should be considered to assure access to quantum systems to the broadest possible user base including under-represented institutions and populations?

(v) What are the needs for user support to make effective use of access to quantum systems?

(vi) What should be the metrics for success in an access model?

(vii) How should software access be provided in conjunction with hardware access?

(viii) For competitive proposals requesting access to quantum systems, what should be the criteria in the merit review process?

(ix) What factors should be considered in adding, expanding, or reducing access to specific quantum systems as the field evolves or matures?

(x) With respect to access to various types of quantum systems, how do near-term and longer-term priorities differ?

(xi) What standard intellectual property (IP) provisions are needed to facilitate broad access to quantum systems for the public benefit?

(xii) Are there other factors, issues, or opportunities, not addressed by the questions above, which should be considered in the development of such a roadmap?

Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Note that comments will be made publicly available as submitted. Any information that may be confidential and exempt by law from public disclosure should be submitted as described below.

## III. Request for Information

The Department seeks input from stakeholders to assist DOE in developing a roadmap for access to quantum systems, including the nature of quantum systems that should be considered; how the current access models can meet the needs of quantum researchers; and the appropriate timeline and sequencing for components of this roadmap. The input received will be considered by DOE in its development of the roadmap and for QIS program planning and

<sup>3</sup> <https://www.labpartnering.org/partnering>.

<sup>4</sup> <https://www.sandia.gov/mesa/>.

<sup>5</sup> <https://www.lanl.gov>.



development. Please be aware that this RFI is not a Funding Opportunity Announcement, a Request for Proposal, or other form of solicitation, or bid for DOE to fund potential research, development, planning, centers, or other activity.

*Confidential Business Information:*

Pursuant to 10 CFR 1004.11, any person submitting information he or she believes to be confidential and exempt by law from public disclosure should submit via email: One copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination. Factors of interest to DOE when evaluating requests to treat submitted information as confidential include: (1) A description of the items, (2) whether and why such items are customarily treated as confidential within the industry, (3) whether the information is generally known by or available from other sources, (4) whether the information has previously been made available to others without obligation concerning confidentiality, (5) an explanation of the competitive injury to the submitting person which would result from public disclosure, (6) when such information might lose its confidential character due to the passage of time, and (7) why disclosure of the information would be contrary to the public interest.

**Signing Authority**

This document of the Department of Energy was signed on August 11, 2021, by Harriet Kung, Deputy Director for Science Programs, Office of Science, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on August 11, 2021.

**Treana V. Garrett,**

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

[FR Doc. 2021-17520 Filed 8-13-21; 8:45 am]

**BILLING CODE 6450-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Project Nos. 2572-133 2458-247]

**Great Lakes Hydro America, LLC; Notice of Intent To File License Applications, Filing of Pre-Application Document, Commencement of Pre-Filing Process, and Scoping; Request for Comments on the Pad and Scoping Document, Identification of Issues and Associated Study Requests, and Virtual Public Scoping Meetings and Virtual Environmental Site Review**

a. *Type of Filing:* Notices of Intent to File License Applications for New License and Commencing Pre-filing Process.

b. *Project Nos.:* 2572-133 and 2458-247.

c. *Date Filed:* June 11, 2021.

d. *Submitted By:* Great Lakes Hydro America, LLC.

e. *Name of Projects:* Ripogenus Hydroelectric Project and Penobscot Mills Hydroelectric Project.

f. *Location:* On the West Branch of the Penobscot River and Millinocket Stream in Piscataquis and Penobscot Counties, Maine.

g. *Filed Pursuant to:* 18 CFR part 5 of the Commission’s Regulations.

h. *Licensee Contact:* Randall Dorman, Licensing Manager, Brookfield Renewable, 150 Main Street, Lewiston, ME 04240; (207) 755-5605; [randy.dorman@brookfieldrenewable.com](mailto:randy.dorman@brookfieldrenewable.com).

i. *FERC Contact:* Allan Creamer at (202) 502-8365, or email at [allan.creamer@ferc.gov](mailto:allan.creamer@ferc.gov).

j. *Cooperating agencies:* Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues that wish to cooperate in the preparation of the environmental document should follow the instructions for filing such requests described in item o below. Cooperating agencies should note the Commission’s policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See 94 FERC 61,076 (2001).

k. *With this notice, we are initiating informal consultation with:* (a) The U.S.

Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402; and (b) the State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Great Lakes Hydro America, LLC as the Commission’s non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Great Lakes Hydro America, LLC filed with the Commission a Pre-Application Document (PAD; including a proposed process plan and schedule), pursuant to 18 CFR 5.6 of the Commission’s regulations.

n. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents via the internet through the Commission’s Home Page (<http://www.ferc.gov>), using the “eLibrary” link. Enter the docket number(s), excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission’s Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or call toll-free, (866) 208-3676 or TTY, (202) 502-8659.

Register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to these or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Commission staff’s Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential applications must be filed with the Commission.

The Commission strongly encourages electronic filing. Please file all documents 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). 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.

All filings with the Commission must bear the appropriate heading: "Comments on Pre-Application Document," "Study Requests," "Comments on Scoping Document 1," "Request for Cooperating Agency Status," or "Communications to and from Commission Staff." Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by October 9, 2021.

p. *Scoping Process:* The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission prepares an environmental assessment or Environmental Impact Statement. Due to on-going concerns with large gatherings related to COVID-19, we do not intend to hold in-person public scoping meetings or an in-person environmental site review. Rather, we will hold virtual public scoping meetings and a virtual environmental site review.

### Scoping Meetings

Commission staff will hold two virtual public scoping meetings. A daytime meeting will focus on concerns of resource agencies, Native American tribes, and NGOs while an evening meeting will focus on receiving input from the public. We invite all interested agencies, Native American tribes, NGOs, and individuals to attend one of these meetings to assist us in identifying the scope of environmental issues that should be analyzed in the NEPA document. The scoping meetings will be recorded by a court reporter. All oral and written comments will become part of the Commission's public record. Oral

comments will be limited to 5 minutes in duration.

### Date and Time

*Meeting for resource agencies, Tribes, and NGOs:* Thursday, September 9, 2021, 9:00–11:00 am EDT, Call in number: 888–604–9359, Participant passcode: 8998724.

*Meeting for the general public:* Thursday, September 9, 2021, 6:30–8:30 pm EDT, Call in number: 888–604–9359, Participant passcode: 8998724.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list and Great Lakes Hydro America, LLC's mailing list. Copies of SD1 may be viewed on the web at <http://www.ferc.gov>, using the "eLibrary" link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

### Environmental Site Review

Great Lakes Hydro America, LLC and Commission staff will hold a virtual Environmental Site Review of the Ripogenus Project and the Penobscot Mills Projects on September 9, 2021, starting at 1:30 p.m. Please contact Cate Russell of HDR, Inc. at (207) 239–3792, or [cate.russell@hdrinc.com](mailto:cate.russell@hdrinc.com), by September 3, 2021, if you plan to attend the environmental site review. WebEx meeting details will be provided by HDR staff once attendance is confirmed.

### Meeting Objectives

At the scoping meetings, staff will: (1) Briefly describe the relicensing process, as well as the projects and their operation; (2) initiate scoping of the issues; (3) review existing information and identify preliminary information and study needs; and (4) review the process plan and schedule for pre-filing activities. Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n of this notice.

Dated: August 10, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021–17513 Filed 8–13–21; 8:45 am]

**BILLING CODE 6717-01-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:

#### Filings Instituting Proceedings

*Docket Numbers:* RP21–1021–000.

*Applicants:* Texas Eastern Transmission, LP.

*Description:* Compliance filing: Middlesex Extension Project (CP20–30) In-Service Compliance Filing to be effective 9/15/2021.

*Filed Date:* 8/6/21.

*Accession Number:* 20210806–5031.

*Comment Date:* 5 p.m. ET 8/18/21.

*Docket Numbers:* RP21–1022–000.

*Applicants:* Columbia Gas Transmission, LLC.

*Description:* § 4(d) Rate Filing: COH Neg Rate Agreement to be effective 4/1/2021.

*Filed Date:* 8/6/21.

*Accession Number:* 20210806–5220.

*Comment Date:* 5 p.m. ET 8/18/21.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: August 10, 2021.

**Debbie-Anne A. Reese,**  
Deputy Secretary.

[FR Doc. 2021–17489 Filed 8–13–21; 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:* EG21–212–000.  
*Applicants:* Quinebaug Solar, LLC.  
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Quinebaug Solar, LLC.  
*Filed Date:* 8/9/21.  
*Accession Number:* 20210809–5201.  
*Comment Date:* 5 pm ET 8/30/21.  
*Docket Numbers:* EG21–213–000.  
*Applicants:* Borderlands Wind, LLC.  
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Borderlands Wind, LLC.  
*Filed Date:* 8/9/21.  
*Accession Number:* 20210809–5202.  
*Comment Date:* 5 pm ET 8/30/21.  
*Docket Numbers:* EG21–214–000.  
*Applicants:* Hecate Energy Johanna Facility LLC.  
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of Hecate Energy Johanna Facility LLC.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5094.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* EG21–215–000.  
*Applicants:* SR Perry, LLC.  
*Description:* Notice of Self-Certification of Exempt Wholesale Generator Status of SR Perry, LLC.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5098.  
*Comment Date:* 5 pm ET 8/31/21.
- Take notice that the Commission received the following electric rate filings:
- Docket Numbers:* ER10–3193–014; ER10–3195–008; ER17–580–003; ER19–2707–003.  
*Applicants:* Poseidon Wind, LLC, Axium Modesto Solar, LLC, MATEP Limited Partnership, Brooklyn Navy Yard Cogeneration Partners, L.P.  
*Description:* Notice of Change in Status of Brooklyn Navy Yard Cogeneration Partners, L.P., et al.  
*Filed Date:* 8/6/21.  
*Accession Number:* 20210806–5255.  
*Comment Date:* 5 pm ET 8/27/21.  
*Docket Numbers:* ER21–2344–001.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* Tariff Amendment: Errata to Filing: Original ISA, SA No. 6092; Queue No. AD1–061/AF2–184 to be effective 6/2/2021.

- Filed Date:* 8/9/21.  
*Accession Number:* 20210809–5157.  
*Comment Date:* 5 pm ET 8/30/21.  
*Docket Numbers:* ER21–2441–000.  
*Applicants:* In Commodities US LLC.  
*Description:* Supplement to July 16, 2021 In Commodities US LLC tariff filing.  
*Filed Date:* 8/9/21.  
*Accession Number:* 20210809–5173.  
*Comment Date:* 5 pm ET 8/30/21.  
*Docket Numbers:* ER21–2626–000.  
*Applicants:* Midcontinent Independent System Operator, Inc.  
*Description:* § 205(d) Rate Filing: 2021–08–09\_SA 2110 GRE–GRE 1st Rev GIA (G876 G877) to be effective 8/5/2021.  
*Filed Date:* 8/9/21.  
*Accession Number:* 20210809–5174.  
*Comment Date:* 5 pm ET 8/30/21.  
*Docket Numbers:* ER21–2627–000.  
*Applicants:* Vermont Transco LLC.  
*Description:* Request for Authorization of Deferred Cost Recovery of Vermont Transco, LLC.  
*Filed Date:* 8/5/21.  
*Accession Number:* 20210805–5159.  
*Comment Date:* 5 pm ET 8/26/21.  
*Docket Numbers:* ER21–2628–000.  
*Applicants:* PacifiCorp.  
*Description:* § 205(d) Rate Filing: NTUA Const Agmt Red Mesa Affected System Aug 2021 to be effective 8/10/2021.  
*Filed Date:* 8/9/21.  
*Accession Number:* 20210809–5184.  
*Comment Date:* 5 pm ET 8/30/21.  
*Docket Numbers:* ER21–2629–000.  
*Applicants:* Maven Energy, LLC.  
*Description:* Baseline eTariff Filing: Application For Market Based Rate Authority to be effective 8/15/2021.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5001.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2630–000.  
*Applicants:* AEP Oklahoma Transmission Company, Inc.  
*Description:* § 205(d) Rate Filing: AEPOTC–Seven Cowboy Wind Preliminary Development Agreement to be effective 8/3/2021.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5011.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2631–000.  
*Applicants:* Wisconsin Power and Light Company.  
*Description:* § 205(d) Rate Filing: WPL Letter of Concurrence to be effective 10/4/2021.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5028.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2633–000.  
*Applicants:* Tri-State Generation and Transmission Association, Inc.

- Description:* § 205(d) Rate Filing: Amendment to Service Agreement No. 609 to be effective 7/27/2021.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5058.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2634–000.  
*Applicants:* Solar Star Lost Hills, LLC.  
*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 8/11/2021.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5081.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2635–000.  
*Applicants:* Hecate Energy Johanna Facility LLC.  
*Description:* Baseline eTariff Filing: Application for Market-Based Rate Authority to be effective 8/27/2021.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5084.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2636–000.  
*Applicants:* Puget Sound Energy, Inc.  
*Description:* Tariff Amendment: Cancellation of Powerex Agreements to be effective 10/11/2021.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5099.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2637–000.  
*Applicants:* Puget Sound Energy, Inc.  
*Description:* § 205(d) Rate Filing: Powerex Transmission Service Agreement to be effective 9/1/2019.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5100.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2638–000.  
*Applicants:* SR Perry, LLC.  
*Description:* Baseline eTariff Filing: Market-Based Rate Application to be effective 10/10/2021.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5102.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2639–000.  
*Applicants:* New York Independent System Operator, Inc., Niagara Mohawk Power Corporation.  
*Description:* § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii): 205: Joint NYISO NMPC Amended Restated SGIA 2591—SunEast Watkins Road to be effective 7/30/2021.  
*Filed Date:* 8/10/21.  
*Accession Number:* 20210810–5104.  
*Comment Date:* 5 pm ET 8/31/21.  
*Docket Numbers:* ER21–2640–000.  
*Applicants:* PJM Interconnection, L.L.C.  
*Description:* § 205(d) Rate Filing: Revisions to OA re: Termination of Ozark International Inc. and Krayn Wind, LLC to be effective 10/11/2021.

Filed Date: 8/10/21.  
 Accession Number: 20210810-5109.  
 Comment Date: 5 pm ET 8/31/21.  
 Docket Numbers: ER21-2641-000.  
 Applicants: Quinebaug Solar, LLC.  
 Description: Baseline eTariff Filing: Quinebaug Solar, LLC Application for Market-Based Rate Authorization to be effective 8/11/2021.

Filed Date: 8/10/21.  
 Accession Number: 20210810-5110.  
 Comment Date: 5 pm ET 8/31/21.  
 Docket Numbers: ER21-2642-000.  
 Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6116; Queue No. AE1-129 to be effective 7/12/2021.

Filed Date: 8/10/21.  
 Accession Number: 20210810-5126.  
 Comment Date: 5 pm ET 8/31/21.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF21-1117-000.  
 Applicants: Tillamook Biogas, LLC.  
 Description: Form 556 of Tillamook Biogas, LLC.

Filed Date: 8/9/21.

Accession Number: 20210809-5195.  
 Comment Date: 5 pm ET 8/31/21.  
 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: August 10, 2021.  
**Debbie-Anne A. Reese,**  
 Deputy Secretary.  
 [FR Doc. 2021-17488 Filed 8-13-21; 8:45 am]  
**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

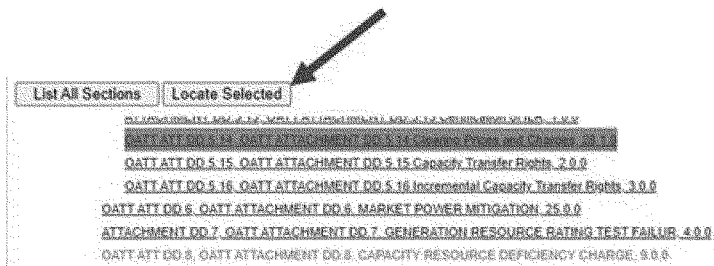
**Federal Energy Regulatory Commission**

[Docket No. RM01-5-000]

**Electronic Tariff Filings; Notice of Updates to the Commission's E-Tariff Public Viewer**

Take notice that effective August 13, 2021, the Commission's electronic tariff (eTariff) public viewer (<https://etariff.ferc.gov/>) will be improved in several respects.

First, when the user selects a tariff record title from the list at the left of the screen, the browser will no longer reset to the top of the page, requiring the user to scroll down to the selected tariff record. Instead, the tariff record and the tariff record version table for that record will appear in two separate panels with the versions of the tariff record next to the selected tariff record. This will enable users to move more quickly from tariff record to tariff record in the same section of the tariff. A new Locate Selected button also will enable users to move back to the selected tariff record.



Second, the tariff record version numbers have been added to the table, so users can locate the specific version of the tariff record.

Third, the tariff record version table will default to listing the tariff record versions by effective date in ascending order. Also, the Column Headings for Effective Date, Superseded, Status, Change Type, Docket #, and Version can be resorted (toggling between ascending and descending) by clicking on the column heading on the tariff record version table. This will enable users to locate more easily the tariff record version for which they are looking.

For more information, contact the eTariff Advisory Staff at 202-502-6501 or [etariffresponse@ferc.gov](mailto:etariffresponse@ferc.gov).

Dated: August 10, 2021.  
**Kimberly D. Bose,**  
 Secretary.  
 [FR Doc. 2021-17514 Filed 8-13-21; 8:45 am]  
**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

[Project No. 3253-015]

**Mad River Power Associates LP; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests**

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

- b. Project No.: 3253-015.
  - c. *Date Filed:* November 3, 2020.
  - d. *Applicant:* Mad River Power Associates (MRPA).
  - e. *Name of Project:* Campton Hydroelectric Project (project).
  - f. *Location:* On the Mad River in Grafton County, New Hampshire. The project occupies approximately 0.05 acre of federal land administered by the U.S. Forest Service.
  - g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
  - h. *Applicant Contact:* Mr. Ian Clark, Mad River Power Associates, 1 Pepsi Way, Suite 6n75, Katonah, NY 10536; Phone at (914) 297-7645, or email at [info@dichotomycapital.com](mailto:info@dichotomycapital.com).
  - i. *FERC Contact:* Amanda Gill, (202) 502-6773 or [amanda.gill@ferc.gov](mailto:amanda.gill@ferc.gov).
  - j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.
- The Commission strongly encourages electronic filing. Please file motions to

intervene and protests using the Commission's eFiling system at <https://ferconline.ferc.gov/FERCONline.aspx>. 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 number P-3253-015.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis.

l. **Project Description:** The project consists of: (1) A 22-foot-wide, 24-foot-high concrete intake structure located approximately 60 feet upstream of the U.S. Forest Service's Campton Dam on the east shoreline of the U.S. Forest Service's Campton Pond, that includes a 25-foot-long, 13-foot-high trashrack with 1.75-inch clear bar spacing; (2) a 600-foot-long, 78-inch-diameter underground steel penstock that trifurcates into three 48-inch-diameter sections measuring 20 feet, 30 feet, and 43 feet in length, respectively; (3) a 43-foot-long, 30-foot-wide powerhouse located on the east side of the Mad River that contains a 167-kW Francis turbine-generator unit; (4) two 236-kW submersible Flygt turbine-generator units located outside of the powerhouse; (5) an approximately 55-foot-long, 40-foot-wide tailrace; (6) a 200-foot-long transmission line and a 33.5-kilovolt transformer that connects the generators to the electric grid; (7) an Atlantic salmon smolt bypass facility consisting of an 85-foot-long, 20-inch diameter cast iron pipe that empties into an 3.5-foot-deep plunge pool approximately 15 feet downstream of the dam; and (8) appurtenant facilities. The project creates an approximately 600-foot-long bypassed reach of the Mad River.

The current license requires: (1) Inflow to be discharged over the spillway to the bypassed reach during periods of non-generation or when inflow is less than 25 cfs; (2) a minimum flow of 4.5 cfs through the Atlantic salmon smolt bypass facility during periods of generation or when inflow is greater than 25 cfs; and (3) operation of the smolt bypass facility from mid-April to mid-June. The average annual generation of the project is currently approximately 1,170 megawatt-hours (MWh).

MRPA proposes to: (1) Continue operating the project in a run-of-release mode; (2) replace one of the 236-kW Flygt turbine-generator units with a new 340-kW Flygt turbine-generator unit, for a total installed capacity of 743 kW at the project; (2) release a minimum flow of 29 cfs or inflow, whichever is less, over the dam to the bypassed reach; and (3) close the existing smolt bypass facility. MRPA estimates that the average annual generation of the proposed project will be approximately 1,900 MWh.

m. A copy of the application is available for review via 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 (P-3253). For assistance, contact FERC at [FERCONlineSupport@ferc.gov](mailto:FERCONlineSupport@ferc.gov) or call toll-free, (866) 208-3676 or (202) 502-8659 (TTY).

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, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (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 protesting or intervening; and (4)

otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 10, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-17515 Filed 8-13-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 12711-018]

#### Ocean Renewable Power Company Maine, LLC; Notice of Application for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Application Type:* Application for non-capacity amendment of license.
- b. *Project No:* P-12711-018.
- c. *Date Filed:* July 30, 2021.
- d. *Applicant:* Ocean Renewable Power Company Maine, LLC.
- e. *Name of Project:* Cobscook Bay Tidal Energy Project.
- f. *Location:* The tidal project is located in Cobscook Bay in Washington County, Maine.
- g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact:* Nathan Johnson, Vice President Development, Ocean Renewable Power Company Maine, LLC, 254 Commercial St., Suite 1198, Portland, ME 04101, [njohnson@orpc.co](mailto:njohnson@orpc.co), phone (207) 772-7707.
- i. *FERC Contact:* Diana Shannon, (202) 502-6136, [diana.shannon@ferc.gov](mailto:diana.shannon@ferc.gov).
- j. *Deadline for filing comments, motions to intervene, and protests:* September 9, 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 the docket number P-12711-018. 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: The pilot project license expires January 31, 2022. The license requires decommissioning and removal of most project features consistent with its project removal and site restoration plan approved by article 401 of the license. The applicant seeks approval to retain the bottom support frame in place to facilitate ongoing research in Cobscook Bay and to align its removal with its state land lease expiration date of December 31, 2025.

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: August 10, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-17511 Filed 8-13-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 13213-018]

#### Lock 14 Hydro Partners, LLC; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application:* Non-capacity amendment to the license.
- b. *Project No.:* 13213-018.
- c. *Date Filed:* July 29, 2021.
- d. *Applicant:* Lock 14 Hydro Partners, LLC.
- e. *Name of Project:* Heidelberg Hydroelectric Project.
- f. *Location:* This unconstructed project is located at the Kentucky River

Authority's Lock and Dam No. 14 on the Kentucky River, near the Town of Heidelberg, in Lee County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Mr. David Brown Kinloch, Lock 14 Hydro Partners, LLC, 414 S. Wenzel Street, Louisville, KY 40204, (502) 589-0975.

i. *FERC Contact:* Zeena Aljibury, (202) 502-6065, [zeena.aljibury@ferc.gov](mailto:zeena.aljibury@ferc.gov).

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance date of this notice by the Commission.

The Commission strongly encourages electronic filing. Please file motions to intervene, protests, or comments using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), (866) 208-3676 (toll free), or (202) 502-8659 (TTY). 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 the docket number P-13213-018.

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:* Lock 14 Hydro Partners, LLC requests approval for an amendment to the license for the Heidelberg Hydroelectric Project. Lock 14 Hydro Partners, LLC is proposing to use 6 Voith StreamDivers (submersible turbine-generators) with a total generating capacity of 3.03 megawatts

(MW) as opposed to the authorized 5 Voith submersible turbine-generators with a total generating capacity of 2.64 MW. The proposed 6 units would have a total hydraulic capacity of approximately 2,636 cubic feet per second (cfs), as opposed to the total hydraulic capacity authorized for the 5 units of 2,295 cfs. The applicant states that this slight increase in the maximum hydraulic capacity should have no impact on fish entrainment since the inlet speed at the trashrack would still be well below the maximum inlet speed of 1.5 feet per second in the project license.

l. *Locations of the Application:* The Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's website at <http://www.ferc.gov/docs-filing/elibrary.asp>. 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. Agencies may obtain copies of the application directly from the applicant. At this time, the Commission has suspended access to the Commission's Public Reference Room due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll free, (866) 208-3676 or TTY, (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, 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. 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 Responsive 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: August 10, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-17512 Filed 8-13-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Project No. 6731-015]

#### Coneross Power Corporation; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for a subsequent license for the Coneross Hydroelectric Project No. 6731, located on Coneross Creek, in Oconee County, South Carolina, and has prepared an Environmental Assessment (EA) for the project. No federal land would be occupied by project works or located within the project boundary.

The EA contains staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (<http://www.ferc.gov/>), using the "eLibrary" link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room,

due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), in a Presidential proclamation issued on March 13, 2020. For assistance, contact FERC Online Support at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov), or toll-free at (866) 208-3676, or for TTY, (202) 502-8659.

You may also register online at <https://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 45 days from the date of this notice.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at <https://ferconline.ferc.gov/eFiling.aspx>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <https://ferconline.ferc.gov/QuickComment.aspx>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. 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 number P-6731-015.

For further information, contact Jeanne Edwards at (202) 502-6181, or by email at [jeanne.edwards@ferc.gov](mailto:jeanne.edwards@ferc.gov).

Dated: August 10, 2021.

**Kimberly D. Bose,**  
Secretary.

[FR Doc. 2021-17517 Filed 8-13-21; 8:45 am]

**BILLING CODE 6717-01-P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

[Docket No. ER21-2629-000]

#### Maven Energy, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Maven

Energy, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is August 30, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at <http://www.ferc.gov>. To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at [FERCOnlineSupport@ferc.gov](mailto:FERCOnlineSupport@ferc.gov) or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Dated: August 10, 2021.  
**Debbie-Anne A. Reese,**  
*Deputy Secretary.*  
 [FR Doc. 2021-17487 Filed 8-13-21; 8:45 am]  
**BILLING CODE 6717-01-P**

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**Notice of Effectiveness of Exempt Wholesale Generator Status**

Rayos del Sol Solar Project, LLC	EG21-137-000
Guemsey Power Station LLC .....	EG21-138-000
Stony Creek Energy LLC .....	EG21-139-000
Orangeville Energy Storage LLC	EG21-140-000
Farmington Solar, LLC .....	EG21-141-000
Bluestone Wind, LLC .....	EG21-142-000
Ball Hill Wind Energy, LLC .....	EG21-143-000
White Mesa Wind, LLC .....	EG21-144-000
Rockhaven Wind Project, LLC .....	EG21-145-000
Wheatridge Solar Energy Center, LLC.	EG21-146-000
Black Rock Wind Force, LLC .....	EG21-147-000
BRP Ranchtown Bess LLC .....	EG21-148-000
Hickory Park Solar, LLC .....	EG21-149-000
Priddy Wind Project, LLC .....	EG21-150-000
Iron Star Wind Project, LLC .....	EG21-151-000
Blackwell Wind Energy, LLC .....	EG21-152-000
Fort Bend Solar LLC .....	EG21-153-000
Big River Solar, LLC .....	EG21-154-000
Mulberry BESS LLC .....	EG21-155-000
Ranchland Wind Project, LLC .....	EG21-156-000
BT Coniglio Solar, LLC .....	EG21-157-000
Assembly Solar III, LLC .....	EG21-158-000
Point Beach Solar, LLC .....	EG21-159-000
TG East Wind Project LLC .....	EG21-160-000
Hubbard Wind, LLC .....	EG21-161-000
Phoenix 500, LLC .....	EG21-162-000
Phoenix 820, LLC .....	EG21-163-000

Take notice that during the month of July 2021, the status of the above-captioned entities as Exempt Wholesale Generators became effective by operation of the Commission's regulations. 18 CFR 366.7(a) (2020).

Dated: August 10, 2021.  
**Debbie-Anne A. Reese,**  
*Deputy Secretary.*  
 [FR Doc. 2021-17486 Filed 8-13-21; 8:45 am]  
**BILLING CODE 6717-01-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**[EPA-HQ-OAR-2021-0327; FRL-8869-01-OAR]**

**California State Nonroad Engine Pollution Control Standards; Large Spark-Ignition Engines Fleets Regulation; Request for Authorization; Opportunity for Public Hearing and Comment**

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

**SUMMARY:** The California Air Resources Board (CARB) has notified EPA that it has adopted amendments to its large spark-ignition engines fleets regulation (LSI amendments). By letter dated March 15, 2021, CARB asked that EPA issue a full authorization for the accompanying enforcement provisions contained in their LSI amendments adopted in 2016. This notice announces that EPA has tentatively scheduled a public hearing to consider California's authorization request for the LSI amendments, and that EPA is now accepting written comment on the request.

**DATES:** EPA has tentatively scheduled a public hearing concerning CARB's request on September 9, 2021, at 10 a.m. ET. EPA will hold a hearing only if any party notifies EPA by September 1, 2021, to express interest in presenting the agency with oral testimony at a virtual public hearing. Parties that wish to present oral testimony at a virtual public hearing should provide written notice to David Dickinson at the email address noted below. If EPA receives a request for a public hearing, an announcement of the virtual public hearing along with instructions to testify or attend the hearing will be posted at: <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>. If EPA does not receive a request for a public hearing, then EPA will not hold a hearing, and instead will consider CARB's request based on written submissions to the docket. Any party may submit written comments until October 12, 2021.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-HQ-OAR-2021-0327, by one of the following methods:

- *Online at <http://www.regulations.gov>:* Follow the Online Instructions for Submitting Comments.
- *Email: [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov).*
- *Fax: (202) 566-9744.*
- *Mail: Air and Radiation Docket, Docket ID No. EPA-HQ-OAR-2021-0327, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue NW, Washington, DC 20460. Please include a total of two copies.*
  - *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.



*Instructions:* All submissions received must include the Docket ID No. for this action. Comments received may be posted without change to <https://www.regulations.gov>, including any personal information provided. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www.epa.gov/dockets/commenting-epa-dockets>.

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID-19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via <https://www.regulations.gov> or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at <https://www.epa.gov/dockets>. EPA continues to monitor information carefully and continuously from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID-19.

EPA's Office of Transportation and Air Quality also maintains a web page that contains general information on its review of California waiver and authorization requests. Included on that page are links to prior waiver and authorization **Federal Register** notices. The page can be accessed at <https://www.epa.gov/state-and-local-transportation/vehicle-emissions-california-waivers-and-authorizations>.

**FOR FURTHER INFORMATION CONTACT:** David Dickinson, Attorney-Advisor, Transportation Climate Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue (6405A) NW, Washington, DC 20460. Telephone: (202) 343-9256. Fax: (202) 343-2804. Email: [Dickinson.david@epa.gov](mailto:Dickinson.david@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. California's LSI Regulations

CARB promulgated its first LSI regulations, applicable to new LSI engines, in 1999 and they remained unchanged until the 2008 amendments.<sup>1</sup> EPA authorized the LSI regulations, on

May 15, 2006.<sup>2</sup> CARB adopted its initial off-road LSI fleet operator regulations on May 25, 2006 (Fleet Operator Regulations).<sup>3</sup> The Fleet Operator Regulations are designed to address the hydrocarbon (HC) and nitrogen oxide (NO<sub>x</sub>) emissions from existing LSI engines operating in California and require fleets to meet certain fleet average emission level (FAEL) standards.

CARB adopted its 2008 LSI amendments on November 21, 2008. The 2008 LSI amendments created two new engine categories below one-liter displacement, with new more stringent exhaust and evaporative emission standards applicable to new engines. These amendments also provided clarification as to when CARB's off-road sport or utility regulations apply to certain LSI engines. CARB adopted its 2010 LSI amendments on December 17, 2010. These amendments were designed to provide compliance flexibility which will allow operators to reduce their compliance costs while retaining the emission benefits associated with the original regulations.<sup>4</sup>

At its July 21, 2016 public hearing, the Board approved for adoption the 2016 LSI Fleet Amendments.<sup>5</sup> CARB's Executive Officer formally adopted the 2016 LSI Fleet Amendments on May 5 2017, and became operative under state law by the approval of California's Office of Administrative Law on June 20, 2017.<sup>6</sup> By letter dated March 15, 2021, CARB submitted a request to EPA for an authorization to enforce the 2016 LSI Fleet Amendments and CARB asks that EPA consider its amendments as accompanying enforcement procedures for standards that have already been authorized by EPA in a prior decision as noted above.<sup>7</sup> The 2016 LSI Fleet Amendments include reporting requirements (e.g., initial and annual reports, equipment transfer and sales reports, and an extension of existing reporting requirements for fleet operators subject to fleet average emission limits). The 2016 LSI Fleet Amendments also include new labeling requirements wherein, based on operator provided information, CARB will issue the operators a unique EIN for

each item of equipment reported and become the basis of a manufacturer's equipment labels with a number of associated requirements.

### II. Clean Air Act Nonroad Engine and Vehicle Authorizations

Section 209(e)(1) of the CAA prohibits states and local governments from adopting or attempting to enforce any standard or requirement relating to the control of emissions from certain new nonroad vehicles or engines. The Act also preempts states from adopting and enforcing standards and other requirements related to the control of emissions from non-new nonroad engines or vehicles.<sup>8</sup> Section 209(e)(2), however, requires the Administrator, after notice and opportunity for public hearing, to authorize California to adopt and enforce standards and other requirements relating to the control of emissions from such vehicles or engines not preempted by section 209(e)(1) if California determines that California standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. However, EPA shall not grant such authorization if it finds that (1) the determination of California is arbitrary and capricious; (2) California does not need such California standards to meet compelling and extraordinary conditions; or (3) California standards and accompanying enforcement procedures are not consistent with [CAA section 209]. In addition, other states with air quality attainment plans may adopt and enforce such regulations if the standards, and implementation and enforcement procedures, are identical to California's standards.

On July 20, 1994, EPA promulgated a rule that sets forth, among other things, regulations providing the criteria, as found in section 209(e)(2), which EPA must consider before granting any California authorization request for new nonroad engine or vehicle emission standards.<sup>9</sup> EPA revised these regulations in 1997.<sup>10</sup> As stated in the

<sup>8</sup> See 40 CFR 1074.10.

<sup>9</sup> 59 FR 36969 (July 20, 1994).

<sup>10</sup> 62 FR 67733 (December 30, 1997). The applicable regulations, now in 40 CFR part 1074, subpart B, § 1074.105, provide:

(a) The Administrator will grant the authorization if California determines that its standards will be, in the aggregate, at least as protective of public health and welfare as otherwise applicable federal standards.

(b) The authorization will not be granted if the Administrator finds that any of the following are true:

(1) California's determination is arbitrary and capricious.

(2) California does not need such standards to meet compelling and extraordinary conditions.

<sup>1</sup> Title 13, California Code of Regulations, sections 2430-2439.

<sup>2</sup> 71 FR 29623 (May 15, 2006).

<sup>3</sup> EPA granted an authorization for these regulations at 77 FR 20388 (April 4, 2012).

<sup>4</sup> EPA granted a full authorization for the 2008 amendments and a within-the-scope confirmation for the 2010 amendments at 80 FR. 76468 (Dec. 9, 2015).

<sup>5</sup> See CARB Resolution 06-10 at EPA-HQ-OAR-2021-0327.

<sup>6</sup> See Executive Order R-17-002 at EPA-HQ-OAR-2021-0327.

<sup>7</sup> See EPA-HQ-OAR-2021-0327.



preamble to the 1994 rule, EPA has historically interpreted the section 209(e)(2)(iii) “consistency” inquiry to require, at minimum, that California standards and enforcement procedures be consistent with section 209(a), section 209(e)(1), and section 209(b)(1)(C) (as EPA has interpreted that subsection in the context of section 209(b) motor vehicle waivers).<sup>11</sup>

In order to be consistent with section 209(a), California’s nonroad standards and enforcement procedures must not apply to new motor vehicles or new motor vehicle engines. To be consistent with section 209(e)(1), California’s nonroad standards and enforcement procedures must not attempt to regulate engine categories that are permanently preempted from state regulation. To determine consistency with section 209(b)(1)(C), EPA typically reviews nonroad authorization requests under the same “consistency” criteria that are applied to motor vehicle waiver requests. Pursuant to section 209(b)(1)(C), the Administrator shall not grant California a motor vehicle waiver if he finds that California “standards and accompanying enforcement procedures are not consistent with section 202(a)” of the Act. Previous decisions granting waivers and authorizations have noted that state standards and enforcement procedures are inconsistent with section 202(a) if: (1) There is inadequate lead time to permit the development of the necessary technology giving appropriate consideration to the cost of compliance within that time, or (2) the federal and state testing procedures impose inconsistent certification requirements.<sup>12</sup>

When considering whether to grant authorizations for accompanying enforcement procedures tied to standards (such as record keeping and labeling requirements) for which an authorization has already been granted, EPA has evaluated (1) whether the enforcement procedures are so lax that they threaten the validity of California’s determination that its standards are as protective of public health and welfare

(3) The California standards and accompanying enforcement procedures are not consistent with section 209 of the Act.

(c) In considering any request to authorize California to adopt or enforce standards or other requirements relating to the control of emissions from new nonroad spark-ignition engines smaller than 50 horsepower, the Administrator will give appropriate consideration to safety factors (including the potential increased risk of burn or fire) associated with compliance with the California standard.

<sup>11</sup> 59 FR 36969 (July 20, 1994).

<sup>12</sup> *Id.* See also 78 FR 58090, 58092 (September 20, 2013).

as applicable federal standards, and (2) whether the federal and California enforcement procedures are consistent.<sup>13</sup>

### III. EPA’s Request for Comments

As stated above, EPA is offering the opportunity for a public hearing, and is requesting written comment on issues relevant to EPA’s consideration of the accompanying enforcement procedures established within the 2016 LSI Fleet Amendments. Specifically, we request comment on whether California’s 2016 LSI Fleet Amendments: (a) Undermine California’s previous determination that its standards, in the aggregate, are at least as protective of public health and welfare as comparable federal standards; (b) affect the consistency of California’s requirements with section 209 of the Act; or (c) raise any other new issues affecting EPA’s previous waiver or authorization determinations.

### IV. Procedures for Public Participation

If a hearing is held, the Agency will make a verbatim record of the proceedings. Interested parties may arrange with the reporter at the hearing to obtain a copy of the transcript at their own expense. Regardless of whether a public hearing is held, EPA will keep the record open until October 12, 2021. Upon expiration of the comment period, the Administrator will render a decision on CARB’s request based on the record from the public hearing, if any, all relevant written submissions, and other information that he deems pertinent. All information will be available for inspection at the EPA Air Docket No. EPA-HQ-OAR-2021-0327.

Persons with comments containing proprietary information must distinguish such information from other comments to the greatest extent possible and label it as “Confidential Business Information” (“CBI”). If a person making comments wants EPA to base its decision on a submission labeled as CBI, then a non-confidential version of the document that summarizes the key data or information should be submitted to the public docket. To ensure that proprietary information is not inadvertently placed in the public docket, submissions containing such information should be sent directly to the contact person listed above and not to the public docket. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent allowed, and according to the procedures set forth in 40 CFR part 2.

<sup>13</sup> See *Motor and Equipment Manufacturers Association v Environmental Protection Agency*, 627 F.2d 1095 (D.C. Cir. 1979).

If no claim of confidentiality accompanies the submission when EPA receives it, EPA will make it available to the public without further notice to the person making comments.

Dated: August 11, 2021.

**Karl Simon,**

*Director, Transportation and Climate Division, Office of Transportation and Air Quality, Office of Air and Radiation.*

[FR Doc. 2021–17497 Filed 8–13–21; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OAR-2012-0103; FRL 8840-01-OAR]

**Proposed Information Collection Request; Comment Request; Diesel Emissions Reduction Act (DERA) Rebate Program; EPA ICR No. 2461.04, OMB Control No. 2060–0686 Renewal**

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

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “Diesel Emissions Reduction Act (DERA) Rebate Program” (EPA ICR No. 2461.04, OMB Control No. 2060–0686) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through April 30, 2022. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before October 15, 2021.

**ADDRESSES:** Submit your comments, referencing Docket ID No. EPA-HQ-OAR-2012-0103, online using [www.regulations.gov](http://www.regulations.gov) (our preferred method), by email to [a-and-r-docket@epa.gov](mailto:a-and-r-docket@epa.gov), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other

information whose disclosure is restricted by statute.

**FOR FURTHER INFORMATION CONTACT:**

Jason Wilcox, Office of Transportation and Air Quality, (6406A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202-343-9571; fax number: 202-343-2803; email address: [wilcox.jason@epa.gov](mailto:wilcox.jason@epa.gov).

**SUPPLEMENTARY INFORMATION:**

Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at [www.regulations.gov](http://www.regulations.gov) or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202-566-1744. For additional information about EPA's public docket, visit <http://www.epa.gov/dockets>.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

**Abstract:** This is an extension of the current Information Collection Request (ICR) for the Diesel Emissions Reduction Act program (DERA) authorized by Title VII, Subtitle G (Sections 791 to 797) of the Energy Policy Act of 2005 (Pub. L. 109-58), as amended by the Diesel Emissions Reduction Act of 2010 (Pub. L. 111-364) and Division S (Section 101) of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), codified at 42 U.S.C. 16131 *et seq.* DERA provides

the Environmental Protection Agency (EPA) with the authority to award grants, rebates or low-cost revolving loans on a competitive basis to eligible entities to fund the costs of projects that significantly reduce diesel emissions from mobile sources through implementation of a certified engine configuration, verified technology, or emerging technology. Eligible mobile sources include buses (including school buses), medium heavy-duty or heavy heavy-duty diesel trucks, marine engines, locomotives, or nonroad engines or diesel vehicles or equipment used in construction, handling of cargo (including at ports or airports), agriculture, mining, or energy production. In addition, eligible entities may also use funds awarded for programs or projects to reduce long-duration idling using verified technology involving a vehicle or equipment described above. The objective of the assistance under this program is to achieve significant reductions in diesel emissions in terms of tons of pollution produced and reductions in diesel emissions exposure, particularly from fleets operating in areas designated by the Administrator as poor air quality areas.

EPA uses approved procedures and forms to collect necessary information to operate its grant and rebate programs. EPA has been providing rebates under DERA since Fiscal Year 2012. EPA is requesting an extension of the current ICR, which is currently approved through April 30, 2022, for forms needed to collect necessary information to operate a rebate program as authorized by Congress under the DERA program.

EPA collects information from applicants to the DERA rebate program. Information collected is used to ensure eligibility of applicants and engines to receive funds under DERA, and to calculate estimated and actual emissions benefits that result from activities funded with rebates as required in DERA's authorizing legislation.

**Form Numbers:** 2060-0686.

**Respondents/affected entities:** Entities potentially affected by this action are those interested in applying for a rebate under EPA's Diesel Emission Reduction Act (DERA) Rebate Program and include but are not limited to the following NAICS (North American Industry Classification System) codes: 23 Construction; 482 Rail Transportation; 483 Water Transportation; 484 Truck Transportation; 485 Transit and Ground Passenger Transportation; 4854 School and Employee Bus Transportation; 48831 Port and Harbor Operations;

61111 Elementary and Secondary Schools; 61131 Colleges, Universities, and Professional Schools; 9211 Executive, Legislative, and Other Government Support; and 9221 Justice, Public Order, and Safety Activities.

**Respondent's obligation to respond:** Voluntary.

**Estimated number of respondents:** 564 (total).

**Frequency of response:** Voluntary as needed.

**Total estimated burden:** 2903 hours (per year). Burden is defined at 5 CFR 1320.03(b).

**Total estimated cost:** \$121,421.59 (per year), includes \$0 annualized capital or operation & maintenance costs.

**Changes in Estimates:** There is decrease of 42 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This decrease is the result of a reduction in annual responses in the program in 2018 and 2019 which offset a small increase in hours per response resulting from new estimates provided in the respondent consultation.

Dated: August 9, 2021.

**Michael Moltzen,**

*Acting Director, Transportation and Climate Division, Office of Air and Radiation.*

[FR Doc. 2021-17405 Filed 8-13-21; 8:45 am]

**BILLING CODE 6560-50-P**

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## FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92-237; FR ID 42991]

### Next Meeting of the North American Numbering Council

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission released a public notice announcing the meeting of the North American Numbering Council (NANC), which will be held via video conference and available to the public via live internet feed.

**DATES:** Wednesday, October 13, 2021. The meeting will come to order at 2:00 p.m.

**ADDRESSES:** The meeting will be conducted via video conference and available to the public via the internet at <http://www.fcc.gov/live>.

**FOR FURTHER INFORMATION CONTACT:** Christi Shewman, Designated Federal Officer, at [christi.shewman@fcc.gov](mailto:christi.shewman@fcc.gov) or 202-418-0646. More information about the NANC is available at <https://www.fcc.gov/about-fcc/advisory->

*committees/general/north-american-numbering-council.*

**SUPPLEMENTARY INFORMATION:** The NANC meeting is open to the public on the internet via live feed from the FCC's web page at <http://www.fcc.gov/live>. Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY). Such requests should include a detailed description of the accommodation needed. In addition, please include a way for the FCC to contact the requester if more information is needed to fill the request. Please allow at least five days' advance notice for accommodation requests; last minute requests will be accepted but may not be possible to accommodate. Members of the public may submit comments to the NANC in the FCC's Electronic Comment Filing System, ECFS, at [www.fcc.gov/ecfs](http://www.fcc.gov/ecfs). Comments to the NANC should be filed in CC Docket No. 92-237. This is a summary of the Commission's document in CC Docket No. 92-237, DA 21-928, released July 29, 2021.

*Proposed Agenda:* At the October 13 meeting, the NANC members will introduce themselves, hear an overview of the working groups, and receive guidance from the Commission's Offices of General Counsel and Managing Director concerning federal advisory committee best practices. The NANC will also consider and vote on recommendations from the Call Authentication Trust Anchor working group on the deployment of STIR/SHAKEN by small voice service providers during the pendency of their extension from the STIR/SHAKEN implementation deadline. This agenda may be modified at the discretion of the NANC Chair and the Designated Federal Officers (DFO).

(5 U.S.C. App 2 § 10(a)(2))

Federal Communications Commission.

**Daniel Kahn,**

*Associate Bureau Chief, Wireline Competition Bureau.*

[FR Doc. 2021-17503 Filed 8-13-21; 8:45 am]

**BILLING CODE 6712-01-P**

## FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060-1290; FR ID 41660]

### Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

**DATES:** Written PRA comments should be submitted on or before October 15, 2021. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all PRA comments to Cathy Williams, FCC, via email to [PRA@fcc.gov](mailto:PRA@fcc.gov) and to [Cathy.Williams@fcc.gov](mailto:Cathy.Williams@fcc.gov).

**FOR FURTHER INFORMATION CONTACT:** For additional information about the information collection, contact Cathy Williams at (202) 418-2918.

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060-1290.

*Title:* Application for Voluntary Assignment of Transfers and Controls, 47 CFR 73.3540.

*Form No.:* FCC Forms 314-IBFS, 315-IBFS, and 316-IBFS.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit entities; Individuals and Households.

*Number of Respondents/Responses:* 2 respondents; 2 responses.

*Estimated Time per Response:* 10 hours.

*Frequency of Response:*

Recordkeeping requirement; On occasion reporting requirement.

*Obligation To Respond:* The statutory authority for this information collection is contained in Sections 1, 4(i), 301, 303, 307, and 308(b) 334, 336, 554 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 301, 303, 307, 308(b), 334, 336, 554, and Part 73 of the Commission's rules.

*Total Annual Burden:* 20 hours.

*Annual Cost Burden:* \$790.

*Privacy Act Impact Assessment:* The Commission is preparing a system of records notice, FCC/IB-1 "International Bureau Filing System," to cover any PII that will be added to IBFS as part of this collection. The Commission is also preparing a Privacy Impact Assessment for the system.

*Nature and Extent of Confidentiality:* In general, there is no need for confidentiality with this collection of information.

*Needs and Uses:* The Federal Communications Commission ("Commission") is requesting that the Office of Management and Budget (OMB) approve a three year extension of the information collection titled "Application for Voluntary Assignment of Transfers and Controls, 47 CFR 73.3540" under OMB Control Number 3060-1290.

On July 13, 2021, the Commission released an Order titled, "In the Matter of Mandatory Electronic Filing of Section 325(c) Applications, International Broadcast Applications, and Dominant Carrier Section 63.10(c) Quarterly Reports." The purpose of this Order is to require that any remaining applications and reports administered by the International Bureau and filed on paper or through an alternative filing process be filed only electronically through the Commission's International Bureau Filing System (IBFS).

In July 2021, OMB approved this information collection under OMB Control No 3060-1290 to implement mandatory electronic filing of International Broadcast station applications in the International Bureau

Filing System (IBFS). The versions of FCC Forms 314, 315, and 316 to be used by International Bureau licensees were renamed as FCC Form 314–IBFS, FCC Form 315–IBFS and FCC Form 316–IBFS. These forms will only be used by the International Broadcast stations in IBFS.

Under 47 CFR 73.3540, the filings of the FCC Forms 314–IBFS, 315–IBFS, and 316–IBFS are required when applying for consent for assignment of a broadcast station construction permit or license. In addition, the applicant must notify the Commission when an approved assignment or transfer of control of a broadcast station construction permit or license has been consummated.

The FCC Forms 314, 315, and 316 were previously shared between the Media Bureau and the International Bureau. The forms were used by the International Bureau for International Broadcast stations and by the Media Bureau for other broadcast licenses. These FCC Forms were previously approved by Office of Management and Budget (OMB) for use by Media Bureau licensees under OMB 3060–0031 and OMB 3060–0009. Due to an administrative error, however, the information collections in 47 CFR 73.3540 did not have a current OMB approval with a control number that explicitly includes International Broadcast stations in the collection.

The obligations in 47 CFR 73.3540 (Application for voluntary assignment or transfer of control) were initially promulgated as a Part 1 rule, 47 CFR 1.540, prior to PRA, and in 1979, the Commission redesignated that provision as 47 CFR 73.3540 in an effort to restructure and consolidate all broadcast rules into Part 73 rules (44 FR 38496)).

On April 1, 1981, the collections in 47 CFR 73.3540 for transfers of control and assignments of broadcast stations (OMB 3060–0009, OMB 3060–0031) were approved. These approved collections cover the use of FCC Forms 314, 315, and 316. Due to an administrative error, however, currently, these OMB approved information collections do not explicitly include International Broadcast stations' applications and their use of these FCC forms.

Specifically, the Commission modified its rules to mandate the electronic filing of, among other things, applications for International Broadcast Stations, including applications for voluntary assignments and transfers of control. These mandatory electronic filing requirements will reduce costs and administrative burdens, result in greater efficiencies, facilitate faster and more efficient communications, and

improve transparency to the public. The changes to section 73.3540 (c) and (d) state that “[f]or International Broadcast Stations, the application shall be filed electronically in the International Bureau Filing System (IBFS).” There are currently fewer than 20 International Broadcast stations subject to obligations in section 73.3540, and the International Bureau receives an average of one application involving voluntary transactions per year pursuant to section 73.3540.

#### **§ 73.3540 Application for Voluntary Assignment or Transfer of Control**

(a) Prior consent of the FCC must be obtained for a voluntary assignment or transfer of control.

(b) Application should be filed with the FCC at least 45 days prior to the contemplated effective date of assignment or transfer of control.

(c) Application for consent to the assignment of construction permit or license must be filed on FCC Form 314 “Assignment of license” or FCC Form 316 “Short form” (See paragraph (f) of this section). For International Broadcast Stations, the application shall be filed electronically in the International Bureau Filing System (IBFS).

(d) Application for consent to the transfer of control of a corporation holding a construction permit or license must be filed on FCC Form 315 “Transfer of Control” or FCC Form 316 “Short form” (see paragraph (f) of this section). For International Broadcast Stations, the application shall be filed electronically in the IBFS.

(e) Application for consent to the assignment of construction permit or license or to the transfer of control of a corporate licensee or permittee for an FM or TV translator station, a low power TV station and any associated auxiliary station, such as translator microwave relay stations and UHF translator booster stations, only must be filed on FCC Form 345 “Application for Transfer of Control of Corporate Licensee or Permittee, or Assignment of License or Permit for an FM or TV translator Station, or a Low Power TV Station.”

(f) The following assignment or transfer applications may be filed on FCC “Short form” 316:

(1) Assignment from an individual or individuals (including partnerships) to a corporation owned and controlled by such individuals or partnerships without any substantial change in their relative interests;

(2) Assignment from a corporation to its individual stockholders without

effecting any substantial change in the disposition of their interests;

(3) Assignment or transfer by which certain stockholders retire and the interest transferred is not a controlling one;

(4) Corporate reorganization which involves no substantial change in the beneficial ownership of the corporation;

(5) Assignment or transfer from a corporation to a wholly owned subsidiary thereof or vice versa, or where there is an assignment from a corporation to a corporation owned or controlled by the assignor stockholders without substantial change in their interests; or

(6) Assignment of less than a controlling interest in a partnership.

Federal Communications Commission.

**Katura Jackson,**

*Federal Register Liaison Officer.*

[FR Doc. 2021–17414 Filed 8–13–21; 8:45 am]

**BILLING CODE 6712–01–P**

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

[OMB No. 3064–0018; –0165]

### **Agency Information Collection Activities: Proposed Collection Renewal; Comment Request**

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0018; and –0165).

**DATES:** Comments must be submitted on or before October 15, 2021.

**ADDRESSES:** Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website:* <https://www.fdic.gov/resources/regulations/federal-register-publications/>.
- *Email:* [comments@fdic.gov](mailto:comments@fdic.gov). Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street building

(located on F Street), on business days between 7:00 a.m. and 5:00 p.m.  
 All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Manny Cabeza, Regulatory Counsel, 202–898–3767, [mcabeza@fdic.gov](mailto:mcabeza@fdic.gov), MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.  
**SUPPLEMENTARY INFORMATION:** Proposal to renew the following currently approved collections of information:

1. *Title:* Application Pursuant to Section 19 of the Federal Deposit Insurance Act.  
*OMB Number:* 3064–0018.  
*Form Number:* 6710–07.  
*Affected Public:* Individuals and FDIC-insured depository institutions.  
*Burden Estimate:*

**SUMMARY OF ANNUAL BURDEN**

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated average frequency of response	Estimated time per response (hours)	Estimated annual burden (hours)
Application Pursuant to Section 19 of the Federal Deposit Insurance Act.	Reporting .....	Mandatory .....	73	1	16 hours	1,168 hours

*Total Estimated Annual Burden:* 1,168 hours.  
*General Description of Collection:* Section 19 of the Federal Deposit Insurance Act (FDI), 12 U.S.C. Section 1829, requires the FDIC’s consent prior to any participation in the affairs of an insured depository institution by an

individual who has been convicted of crimes involving dishonesty or breach of trust, and included drug-related convictions. To obtain that consent, certain individuals and insured depository institutions must submit an application to the FDIC for approval on Form FDIC 6710/07.

2. *Title:* Pillar 2 Guidance—Advanced Capital Framework.  
*OMB Number:* 3064–0165.  
*Form Number:* None.  
*Affected Public:* Insured state nonmember banks and certain subsidiaries of these entities.  
*Burden Estimate:*

**SUMMARY OF ANNUAL BURDEN**

Information collection description	Type of burden	Obligation to respond	Estimated number of respondents	Estimated frequency of responses	Estimated time per response (hours)	Estimated annual burden (hours)
Pillar 2 Guidance .....	Recordkeeping .....	Voluntary .....	1	4	105 hours	420 hours

*Total Estimated Annual Burden:* 420 hours.  
*General Description of Collection:* There has been no change in the method or substance of this information collection. The number of institutions subject to the record keeping requirements has decreased from eight (8) to two (2). In 2008 the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the FDIC issued a supervisory guidance document related to the supervisory review process of capital adequacy (Pillar 2) in connection with the implementation of the Basel II Advanced Capital Framework.1 Sections 37, 41, 43 and 46 of the guidance include possible information collections. Section 37 provides that banks should state clearly the definition of capital used in any aspect of its internal capital adequacy assessment process (ICAAP) and document any changes in the internal definition of capital. Section 41 provides that banks should maintain thorough documentation of its ICAAP. Section 43 specifies that the board of directors

should approve the bank’s ICAAP, review it on a regular basis and approve any changes. Section 46 recommends that boards of directors periodically review the assessment of overall capital adequacy and analyze how measures of internal capital adequacy compare with other capital measures such as regulatory or accounting.

**Request for Comment**

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC’s functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, 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 respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.  
 Dated at Washington, DC, on August 10, 2021.

**James P. Sheesley,**  
*Assistant Executive Secretary.*  
 [FR Doc. 2021–17408 Filed 8–13–21; 8:45 am]  
**BILLING CODE 6714–01–P**

**FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION**

**Sending Case Issuances Through Electronic Mail**

**AGENCY:** Federal Mine Safety and Health Review Commission.  
**ACTION:** Notice.

**SUMMARY:** On a temporary basis, the Federal Mine Safety and Health Review Commission will be sending most issuances through electronic mail and will not be monitoring incoming physical mail or facsimile transmissions.

**DATES:** Applicable: August 10, 2021.  
**FOR FURTHER INFORMATION CONTACT:** Sarah Stewart, Deputy General Counsel,

Office of the General Counsel, Federal Mine Safety and Health Review Commission, at (202) 434-9935; [sstewart@fmshrc.gov](mailto:sstewart@fmshrc.gov).

**SUPPLEMENTARY INFORMATION:** Until January 3, 2022, most case issuances of the Federal Mine Safety and Health Review Commission (FMSHRC), including inter alia notices, decisions, and orders, will be sent only through electronic mail. Further, FMSHRC will not be monitoring incoming physical mail or facsimile described in 29 CFR 2700.5(c)(2). If possible, all filings should be e-filed as described in 29 CFR 2700.5(c)(1).

*Authority:* 30 U.S.C. 823.

Dated: August 10, 2021.

**Sarah L. Stewart,**

*Deputy General Counsel, Federal Mine Safety and Health Review Commission.*

[FR Doc. 2021-17409 Filed 8-13-21; 8:45 am]

**BILLING CODE 6735-01-P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

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 paragraph 7 of the Act.

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 31, 2021.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *The CAOS Family Irrevocable Trust, Bradley D. Simington, individually and as co-trustees with Teresa J. Simington, all of Milford, Iowa;* to form the CAOS Family Irrevocable Trust control group, a group acting in concert, to retain voting shares of Fostoria Bankshares, Inc., and thereby indirectly retain voting shares of Farm Savings Bank, both of Fostoria, Iowa.

Board of Governors of the Federal Reserve System, August 11, 2021.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2021-17501 Filed 8-13-21; 8:45 am]

**BILLING CODE 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 September 15, 2021.

*A. Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *Bank Michigan Financial, Brooklyn, Michigan;* to become a bank holding

company by acquiring Bank Michigan, Brooklyn, Michigan.

Board of Governors of the Federal Reserve System, August 11, 2021.

**Ann Misback,**

*Secretary of the Board.*

[FR Doc. 2021-17502 Filed 8-13-21; 8:45 am]

**BILLING CODE P**

## GENERAL SERVICES ADMINISTRATION

[Notice-MA-2021-03; Docket No. 2021-0002; Sequence No. 15]

### Maximum Per Diem Reimbursement Rates for the Continental United States (CONUS)

**AGENCY:** Office of Government-wide Policy (OGP), General Services Administration (GSA).

**ACTION:** Notice of GSA Per Diem Bulletin FTR 22-01, Fiscal Year (FY) 2022 CONUS per diem reimbursement rates.

**SUMMARY:** The GSA FY 2022 per diem reimbursement rates review has resulted in meal allowance changes for certain locations within CONUS to provide for reimbursement of Federal employees' subsistence expenses while on official travel. The FY 2022 maximum lodging allowance rates will remain unchanged at the FY 2021 levels.

**DATES:** *Applicability Date:* This notice applies to travel performed on or after October 1, 2021, through September 30, 2022.

**FOR FURTHER INFORMATION CONTACT:** For clarification of content, contact Sarah Selenich, Office of Government-wide Policy, Office of Asset and Transportation Management, at 202-969-7798, or by email at [travelpolicy@gsa.gov](mailto:travelpolicy@gsa.gov). Please cite Notice of GSA Per Diem Bulletin FTR 22-01.

### SUPPLEMENTARY INFORMATION:

#### Background

The CONUS per diem reimbursement rates prescribed in Bulletin 22-01 may be found at <https://www.gsa.gov/perdiem>. GSA bases the maximum lodging allowance rates on average daily rate, a widely accepted lodging industry measure. If a maximum lodging allowance rate and/or a meals and incidental expenses (M&IE) per diem reimbursement rate is insufficient to meet necessary expenses in any given location, Federal executive agencies can request that GSA review that location. Please review questions six and seven of GSA's per diem Frequently Asked Questions page at <https://www.gsa.gov/perdiem> for more information on the

special review process. In addition, the Federal Travel Regulation (FTR) allows for actual expense reimbursement as provided in §§ 301–11.300 through 301–11.306.

For FY 2022, all current non-standard area (NSA) maximum lodging allowance rates will remain at FY 2021 levels. The standard lodging rate will also remain unchanged at \$96. The M&IE reimbursement rates were revised for FY 2022; they were last revised in FY 2019. The M&IE NSA tiers are revised from \$56–\$76 to \$59–\$79, and the standard M&IE rate is revised from \$55 to \$59.

Notices published periodically in the **Federal Register** now constitute the only notification of revisions in CONUS per diem reimbursement rates to agencies, other than the changes posted on the GSA website.

**Krystal J. Brumfield,**

*Associate Administrator, Office of Government-wide Policy.*

[FR Doc. 2021–17491 Filed 8–13–21; 8:45 am]

**BILLING CODE 6820–14–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Needs and Challenges in Personal Protective Equipment (PPE) Use for Underserved User Populations; Extension of Comment Period

**AGENCY:** National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Extension of comment period.

**SUMMARY:** On June 24, 2021, NIOSH opened a notice to request information on the Needs and Challenges in Personal Protective Equipment (PPE) Use for Underserved User Populations. Written comments were to be received by August 23, 2021. NIOSH is extending the public comment period to October 15, 2021.

**DATES:** The comment period for the document published on June 24, 2021 (86 FR 33296), is extended. Comments must be received by October 15, 2021.

**ADDRESSES:** Interested parties should submit information to: NIOSH, Attn: Sherri Diana, National Institute for Occupational Safety and Health, NIOSH Docket Office, 1090 Tusculum Avenue, MS C–34, Cincinnati, Ohio 45226–1998, Email address: [ppeconcerns@cdc.gov](mailto:ppeconcerns@cdc.gov).

**FOR FURTHER INFORMATION CONTACT:** N. Katherine Yoon, Ph.D., National Institute for Occupational Safety and Health Centers for Disease Control and Prevention Email Address: [NYoon@cdc.gov](mailto:NYoon@cdc.gov), Phone number: 412–386–6752 [non-toll-free number].

**SUPPLEMENTARY INFORMATION:** NIOSH published a notice and request for information in the **Federal Register** on June 24, 2021 (86 FR 33296) regarding the *Needs and Challenges in Personal Protective Equipment (PPE) Use for Underserved User Populations*. This notice announces the extension of the comment period until October 15, 2021.

**Frank J. Hearl,**

*Chief of Staff, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.*

[FR Doc. 2021–17485 Filed 8–13–21; 8:45 am]

**BILLING CODE 4163–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA–2021–N–0709]

#### Prescription Drug User Fee Rates for Fiscal Year 2022

**AGENCY:** Food and Drug Administration, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the rates for prescription drug user fees for fiscal year (FY) 2022. The Federal Food, Drug, and Cosmetic Act (FD&C Act), as amended by the Prescription Drug User Fee Amendments of 2017 (PDUFA VI), authorizes FDA to collect application fees for certain applications for the review of human drug and biological products, and prescription drug program fees for certain approved products. This notice establishes the fee rates for FY 2022.

**FOR FURTHER INFORMATION CONTACT:** Misbah Tareen, Office of Financial Management, Food and Drug Administration, 4041 Powder Mill Rd., Rm. 61077A, Beltsville, MD 20705–4304, 301–796–3997.

**SUPPLEMENTARY INFORMATION:**

#### I. Background

Sections 735 and 736 of the FD&C Act (21 U.S.C. 379g and 379h, respectively) establish two different kinds of user fees. Fees are assessed as follows: (1) Application fees are assessed on certain types of applications for the review of human drug and biological products and (2) prescription drug program fees

are assessed on certain approved products (section 736(a) of the FD&C Act). When specific conditions are met, FDA may waive or reduce fees (section 736(d) of the FD&C Act) or exempt certain prescription drug products from fees (section 736(k) of the FD&C Act).

For FY 2018 through FY 2022, the base revenue amounts for the total revenues from all PDUFA fees are established by PDUFA VI. The base revenue amount for FY 2022 is \$1,098,077,960. The FY 2022 base revenue amount is adjusted for inflation and for the resource capacity needs for the process for the review of human drug applications (the capacity planning adjustment (CPA)). An additional dollar amount specified in the statute (see section 736(b)(1)(F) of the FD&C Act) is then added to provide for additional full-time equivalent (FTE) positions to support PDUFA VI initiatives. The FY 2022 revenue amount may be adjusted further, if necessary, to provide for sufficient operating reserves of carryover user fees. Finally, the amount is adjusted to provide for additional direct costs to fund PDUFA VI initiatives. Fee amounts are to be established each year so that revenues from application fees provide 20 percent of the total revenue, and prescription drug program fees provide 80 percent of the total revenue.

This document provides fee rates for FY 2022 for an application requiring clinical data (\$3,117,218), for an application not requiring clinical data (\$1,558,609), and for the prescription drug program fee (\$369,413). These fees are effective on October 1, 2021, and will remain in effect through September 30, 2022. For applications that are submitted on or after October 1, 2021, the new fee schedule must be used.

#### II. Fee Revenue Amount for FY 2022

The base revenue amount for FY 2022 is \$1,098,077,960 prior to adjustments for inflation, capacity planning, additional FTE, operating reserve, and additional direct costs (see section 736(b)(1) of the FD&C Act).

##### A. FY 2022 Statutory Fee Revenue Adjustments for Inflation

PDUFA VI specifies that the \$1,098,077,960 is to be adjusted for inflation increases for FY 2022 using two separate adjustments—one for personnel compensation and benefits (PC&B) and one for non-PC&B costs (see section 736(c)(1) of the FD&C Act).

The component of the inflation adjustment for payroll costs shall be one plus the average annual percent change in the cost of all PC&B paid per FTE positions at FDA for the first 3 of the



preceding 4 fiscal years, multiplied by the proportion of PC&B costs to total FDA costs of the process for the review of human drug applications for the first 3 of the preceding 4 fiscal years (see

section 736(c)(1)(A) and (B) of the FD&C Act).

Table 1 summarizes the actual cost and FTE data for the specified fiscal years and provides the percent changes

from the previous fiscal years and the average percent changes over the first 3 of the 4 fiscal years preceding FY 2022. The 3-year average is 2.7383 percent.

TABLE 1—FDA PERSONNEL COMPENSATION AND BENEFITS (PC&B) EACH YEAR AND PERCENT CHANGES

Fiscal year	2018	2019	2020	3-Year average
Total PC&B .....	\$2,690,678,000	\$2,620,052,000	\$2,875,592,000	.....
Total FTE .....	17,023	17,144	17,535	.....
PC&B per FTE .....	\$158,061	\$152,826	\$163,992	.....
Percent Change From Previous Year .....	4.2206	-3.3120	7.3063	2.7383

The statute specifies that this 2.7383 percent be multiplied by the proportion of PC&B costs to the total FDA costs of

the process for the review of human drug applications. Table 2 shows the PC&B and the total obligations for the

process for the review of human drug applications for the first 3 of the preceding 4 fiscal years.

TABLE 2—PC&B AS A PERCENT OF TOTAL COST OF THE PROCESS FOR THE REVIEW OF HUMAN DRUG APPLICATIONS

Fiscal year	2018	2019	2020	3-Year average
Total PC&B .....	\$792,900,647	\$872,087,636	\$891,395,106	.....
Total Costs .....	\$1,374,508,527	\$1,430,338,888	\$1,471,144,928	.....
PC&B Percent .....	57.6861	60.9707	60.5919	59.7496

The payroll adjustment is 2.7383 percent from table 1 multiplied by 59.7496 percent (or 1.6361 percent).

The statute specifies that the portion of the inflation adjustment for non-payroll costs is the average annual percent change that occurred in the Consumer Price Index (CPI) for urban consumers (Washington-Baltimore, DC-MD-VA-WV; not seasonally adjusted; all items; annual index) for the first 3 years of the preceding 4 years of available data multiplied by the proportion of all costs other than PC&B costs to total costs of the process for the review of

human drug applications for the first 3 years of the preceding 4 fiscal years (see section 736(c)(1)(B) of the FD&C Act).

As a result of a geographical revision made by the Bureau of Labor and Statistics in January 2018<sup>1</sup>, the Washington-Baltimore, DC-MD-VA-WV index was discontinued and replaced with two separate indices (*i.e.*, Washington-Arlington-Alexandria, DC-VA-MD-WV and Baltimore-Columbia-Towson, MD). In order to continue applying a CPI that best reflects the geographic region in which FDA is headquartered and that provides the

most current data available, the Washington-Arlington-Alexandria index will be used in calculating the relevant adjustment factors for FY 2020 and subsequent years. Table 3 provides the summary data for the percent changes in the specified CPI for the Washington-Arlington-Alexandria area. The data are published by the Bureau of Labor Statistics and can be found on its website at: [https://data.bls.gov/pdq/SurveyOutputServlet?data\\_tool=dropmap&series\\_id=CUURS35ASA0,CUUSS35ASA0](https://data.bls.gov/pdq/SurveyOutputServlet?data_tool=dropmap&series_id=CUURS35ASA0,CUUSS35ASA0).

TABLE 3—ANNUAL AND 3-YEAR AVERAGE PERCENT CHANGE IN CPI FOR WASHINGTON-ARLINGTON-ALEXANDRIA AREA

Year	2018	2019	2020	3-Year average
Annual CPI .....	261.445	264.777	267.157	.....
Annual Percent Change .....	2.0389	1.2745	0.8989	1.4041

The statute specifies that this 1.4041 percent be multiplied by the proportion of all costs other than PC&B to total costs of the process for the review of human drug applications obligated. Because 59.7496 percent was obligated for PC&B (as shown in table 2), 40.2504 percent is the portion of costs other than PC&B (100 percent minus 59.7496 percent equals 40.2504 percent). The non-payroll adjustment is 1.4041

percent times 40.2504 percent, or 0.5652 percent.

Next, we add the payroll adjustment (1.6361 percent) to the non-payroll adjustment (0.5652 percent), for a total inflation adjustment of 2.2013 percent (rounded) for FY 2022.

We then multiply the base revenue amount for FY 2022 (\$1,098,077,960) by 1.022013, yielding an inflation-adjusted amount of \$1,122,249,950.

#### B. FY 2022 Statutory Fee Revenue Adjustments for Capacity Planning

The statute specifies that after \$1,098,077,960 has been adjusted for inflation, the inflation-adjusted amount shall be further adjusted to reflect changes in the resource capacity needs for the process of human drug application reviews (see section 736(c)(2) of the FD&C Act). Following a process required in statute, the FDA

<sup>1</sup> The Bureau of Labor Statistics' announcement of the geographical revision can be viewed at [https://](https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm)

[www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm](https://www.bls.gov/cpi/additional-resources/geographic-revision-2018.htm).



established a new capacity planning adjustment methodology and first applied it in the setting of FY 2021 fees. The establishment of this new methodology is described in the **Federal Register** at 85 FR 46651.

The CPA methodology includes four steps:

1. Forecast workload volumes: Predictive models estimate the volume of workload for the upcoming fiscal year.

2. Forecast the resource needs: Forecast algorithms are generated utilizing time reporting data. These algorithms estimate the required demand in FTEs<sup>2</sup> for direct review-

related effort. This is then compared to current available resources for the direct review-related workload.

3. Assess the resource forecast in the context of additional internal factors: Program leadership examines operational, financial, and resourcing data to assess whether FDA will be able to utilize additional funds during the fiscal year, and the funds are required to support additional review capacity. FTE amounts are adjusted, if needed.

4. Convert the FTE need to dollars: Utilizing the FDA’s fully loaded FTE cost model, the final feasible FTEs are converted to an equivalent dollar amount.

To determine the FY 2022 capacity planning adjustment, FDA calculated a PDUFA CPA for the Center for Drug Evaluation and Research (CDER) and the Center for Biologics Evaluation and Research (CBER) individually. The final Center-level results were then combined to determine the total FY 2022 PDUFA CPA. The following section outlines the major components of each Center’s FY 2022 PDUFA CPA.

Table 4 summarizes the forecasted workload volumes for CDER in FY 2022 based on predictive models, as well as historical actuals from FY 2020 for comparison.

TABLE 4—CDER ACTUAL FY 2020 WORKLOAD VOLUMES AND PREDICTED FY 2022 WORKLOAD VOLUMES

Workload category	FY 2020 actuals	FY 2022 predictions
Efficacy Supplements .....	293	316
Labeling Supplements .....	1,122	1,043
Manufacturing Supplements .....	2,350	2,388
NDA/BLA <sup>1</sup> Original .....	150	161
PDUFA Industry Meetings (including WROs <sup>2</sup> ) .....	3,950	4,534
Active Commercial INDs <sup>3</sup> .....	8,243	9,549

<sup>1</sup> New drug applications (NDA)/biological license applications (BLA).

<sup>2</sup> Written responses only (WRO).

<sup>3</sup> For purpose of the capacity planning adjustment, this is defined as an active commercial investigational new drugs (IND) for which a document has been received in the past 18 months.

Utilizing the resource forecast algorithms, the forecasted workload volumes for FY 2022 were then converted into estimated FTE needs for

CDER’s PDUFA direct review-related work. The resulting expected FY 2022 FTE need for CDER was compared to current onboard capacity for direct

review related work to determine the FY 2022 resource delta, as summarized in table 5.

TABLE 5—CDER FY22 PDUFA RESOURCE DELTA

Center	Current resource capacity	FY 2022 resource forecast	Predicted FY 2022 FTE delta
CDER .....	1,686	1,861	175

The projected 175 FTE delta was then assessed by FDA in the context of additional operational and internal factors to ensure that a fee adjustment is only made for resources that can be utilized in the fiscal year and for which funds are required to support additional review capacity. With recent enhancements to its hiring capability, CDER’s ability to net gain PDUFA FTEs moving forward is expected to outpace recent years’ net gains. As such, hiring capacity is not expected to be a significant impediment to onboarding the needed net gains for the PDUFA program.

After assessing current hiring capacity and existing funded vacancies, CDER adjusted the 175 FTE delta to 78 FTEs. The FY 2022 PDUFA CPA for CDER is therefore \$24,350,430, as summarized in table 6.

FDA recognizes that this adjustment for CDER is significantly larger than in the previous year’s capacity planning adjustment. A relatively small adjustment of 13 FTEs was made for CDER in the capacity planning adjustment in FY 2021 fee-setting. FDA took a conservative approach to the capacity planning adjustment for CDER in FY 2021 until the pace of net gains

increased and was sustained. CDER is now experiencing a sustained increase in its ability to increase its staffing. In addition, the capacity planning adjustment has now demonstrated a sustained gap in the number of CDER staff needed to deliver on the expected forecasted workload. CDER has been performing its mission with a staffing level less than that required of its increasing submission workload. The FTEs enabled through this adjustment should significantly reduce this gap, once fully onboarded.

<sup>2</sup> Full-time equivalents refers to a paid staff year, rather than a count of individual employees.

TABLE 6—CDER FY 2022 PDUFA CPA

Center	Additional FTEs for FY 2022	Cost for each additional FTE	CDER FY22 PDUFA CPA
CDER .....	78	\$312,185	\$24,350,430

To calculate the FY 2022 PDUFA CPA for CBER, FDA followed the same approach outlined above. Table 7 summarizes the forecasted workload volumes for CBER in FY 2022 as well as the corresponding historical actuals from FY 2020 for comparison.

TABLE 7—CBER ACTUAL FY 2020 WORKLOAD VOLUMES AND PREDICTED FY 2022 WORKLOAD VOLUMES

Workload category	FY 2020 actuals	FY 2022 predictions
Efficacy Supplements .....	29	16
Labeling Supplements .....	57	63
Manufacturing Supplements .....	677	647
NDA/BLA Original .....	8	9
PDUFA Industry Meetings (including WROs) .....	701	657
Active Commercial INDs <sup>1</sup> .....	1,436	1,770

<sup>1</sup> For purpose of the capacity planning adjustment, this is defined as an active commercial IND for which a document has been received in the past 18 months.

The forecasted CBER PDUFA workload for FY 2022 was then converted into expected FTE resources and compared to current onboard capacity for PDUFA direct review work, as summarized in table 8.

TABLE 8—CBER FY 2022 PDUFA RESOURCE DELTA

Center	Current resource capacity	FY 2022 resource forecast	Predicted FY 2022 FTE delta
CBER .....	334	394	60

The projected 60 FTE delta for CBER was also assessed in the context of other operational and financial factors that may impact the need and/or feasibility of obtaining the additional resources. After accounting for historical net FTE gains within CBER and subtracting previously funded PDUFA vacancies, an adjustment of 7 additional FTEs within CBER for FY 2022 was determined to be needed. The FY 2022 PDUFA CPA for CBER is therefore \$2,152,969, as summarized in table 9.

TABLE 9—CBER FY 2022 PDUFA CPA

Center	Additional FTEs for FY 2022	Cost for each additional FTE	CBER FY 2022 PDUFA CPA
CBER .....	7	\$307,567	\$2,152,969

The CDER and CBER CPA amounts were then added together to determine the PDUFA CPA for FY 2022 of \$26,503,399, as outlined in table 10. FDA will track the utilization of the CPA funds to ensure they are supporting the organizational review components engaged in PDUFA direct review work to enhance resources and expand staff capacity and capability. Should FDA be unable to utilize any amounts of the CPA funds during the fiscal year, it will not spend those funds and the unspent

funds will be transferred to the carryover balance at the end of the fiscal year.

TABLE 10—FY 2022 PDUFA CPA

Center	FY 2022 PDUFA CPA
CDER .....	\$24,350,430
CBER .....	\$2,152,969
<b>Total .....</b>	<b>\$26,503,399</b>

Table 11 shows the calculation of the inflation and capacity planning adjusted amount for FY 2022. The FY 2022 base revenue amount, \$1,098,077,960, shown on line 1 is multiplied by the inflation adjustment factor of 1.022013, resulting in the inflation-adjusted amount of \$1,122,249,950 shown on line 3. The FY 2022 CPA of \$26,503,399 is then added on line 4, resulting in the inflation and capacity planning adjusted amount of \$1,148,753,349 shown on line 5.

TABLE 11—PDUFA INFLATION AND CAPACITY PLANNING ADJUSTED AMOUNT FOR FY 2022, SUMMARY CALCULATION

FY 2021 Revenue Amount .....	\$1,098,077,960	Line 1.
Inflation Adjustment Factor for FY 2022 (1 plus 1.022013 percent) .....	1.022013	Line 2.
Inflation-Adjusted Amount .....	\$1,122,249,950	Line 3.
Capacity Planning Adjustment for FY 2022 .....	\$26,503,399	Line 4.
Inflation and Capacity Planning Adjusted Amount .....	\$1,148,753,349	Line 5.

Per the commitments made in PDUFA VI, this increase in the revenue amount will be allocated to and used by organizational review components engaged in direct review work to enhance resources and expand staff capacity and capability (see II.A.4 on p. 37 of the PDUFA VI commitment letter<sup>3</sup>).

*C. FY 2022 Statutory Fee Revenue Adjustments for Additional Dollar Amounts*

PDUFA VI provides an additional dollar amount for each of the 5 fiscal years covered by PDUFA VI for additional FTE to support enhancements outlined in the PDUFA VI commitment letter. The amount for FY 2022 is \$2,769,609 (see section 736(b)(1)(F) of the FD&C Act). Adding this amount to the inflation and capacity planning adjusted revenue amount, \$1,148,753,349, equals \$1,151,522,958.

*D. FY 2022 Statutory Fee Revenue Adjustments for Operating Reserve*

PDUFA VI provides for an operating reserve adjustment to allow FDA to increase the fee revenue and fees for any given fiscal year during PDUFA VI to maintain up to 14 weeks of operating reserve of carryover user fees. If the carryover balance exceeds 14 weeks of operating reserves, FDA is required to decrease fees to provide for not more than 14 weeks of operating reserves of carryover user fees.

To determine the 14-week operating reserve amount, the FY 2022 annual base revenue adjusted for inflation, capacity planning, and additional dollar amounts, \$1,151,522,958 is divided by 52, and then multiplied by 14. The 14-week operating reserve amount for FY 2022 is \$310,025,412.

To determine the end of year operating reserve amount, the Agency must assess the operating reserve at the end of the third quarter of FY 2021 and forecast collections and obligations in the fourth quarter of FY 2021. The estimated end of year FY 2021 operating reserve of carryover user fees is \$225,724,631. Note that under PDUFA

VI, this amount includes both user fee funds available for obligation \$126,873,636 and funds that are considered unavailable due to a lack of appropriations \$98,850,995.<sup>4</sup>

Because the estimated end of year FY 2021 PDUFA operating reserve does not exceed the 14-week operating reserve for FY 2022, FDA will not reduce the FY 2022 PDUFA fee revenue in FY 2022. However, FDA will apply an operating reserve adjustment to increase the fee revenue and fees for FY 2022. The statute authorizes FDA to raise the fee revenue by up to \$84,300,781 (\$310,025,412 minus \$225,724,631) for the operating reserve adjustment. FDA has decided to exercise its discretion to make a smaller operating reserve adjustment, of \$39,402,923.

In making this decision, FDA focused on the amount of available operating reserves. Maintaining an appropriate level of available operating reserves enables FDA to mitigate financial risks to the program, including for example, the risk of under collecting fees and the risk of a lapse in appropriations. FDA considers maintaining an operating reserve balance of between 8–10 weeks of available funds as a reasonable range to mitigate these risks. FDA has decided to make an available operating reserve adjustment that is intended to increase the amount of available funds to approximately 7 weeks by the end of FY 2022 as an incremental step toward the 8–10 week range while mitigating the impact on fee amounts. FDA estimates the cost of operations per week is \$22,144,672. Before the operating adjustment, the estimated end of year FY 2022 available operating reserve is \$125,677,240, which equates to just over 5 weeks of available operating reserves. Adding the FY 2022 operating reserve adjustment of \$39,402,923 to this amount is expected to provide approximately 7 weeks of available operating reserve, or \$165,080,162, and an operating reserve (including unavailable funds) of \$263,931,157.

With respect to target revenue for FY 2022, adding the operating reserve adjustment amount of \$39,402,923 to

the inflation, capacity planning adjustment and additional dollar amount, \$1,151,522,958 equals \$1,190,925,881.

*E. FY 2022 Statutory Fee Revenue Adjustments for Additional Direct Cost*

PDUFA VI specifies that \$8,730,000, adjusted for inflation, be added after the operating reserve adjustment to account for additional direct costs in FY 2022. This additional direct cost adjustment is adjusted for inflation by multiplying \$8,730,000 by the CPI for urban consumers (Washington-Baltimore, DC-MD-VA-WV; Not Seasonally Adjusted; All Items; Annual Index) for the most recent year of available data, divided by such index for 2016 (see section 736(c)(4)(B) of the FD&C Act). Because of the geographical revision made by the Bureau of Labor and Statistics, the Washington-Arlington-Alexandria index will be used in calculating the direct cost adjustment inflation factor for FY 2021 and subsequent years. The annual index for 2020, 267.157, divided by such index for 2016, 253.422, results in an adjustment factor of 1.054198, making the additional direct cost adjustment equal to \$9,203,149.

The final FY 2022 PDUFA target revenue is \$1,200,129,000 (rounded to the nearest thousand dollars).

**III. Application Fee Calculations**

*A. Application Fee Revenues and Application Fees*

Application fees will be set to generate 20 percent of the total target revenue amount, or \$240,025,800 in FY 2022.

*B. Estimate of the Number of Fee-Paying Applications and Setting the Application Fees*

Historically, FDA has estimated the total number of fee-paying full application equivalents (FAEs) it expects to receive during the next fiscal year by averaging the number of fee-paying FAEs received in the 3 most recently completed fiscal years. For estimating the FY 2022 FAEs, FDA decided to average the number of FAEs from FY 2017 through FY 2019 instead of FY 2018 through FY 2020. FDA made this adjustment because the FY 2020 FAE count (62.77) is abnormally low,

<sup>3</sup> The PDUFA VI commitment letter can be viewed at <https://www.fda.gov/downloads/forindustry/userfees/prescriptiondruguserfee/ucm511438.pdf>.

<sup>4</sup> Please refer to the PDUFA Financial Reports for details on unavailable carryover amounts at <https://www.fda.gov/about-fda/user-fee-financial-reports/pdufa-financial-reports>.

potentially due to the impact of the COVID-19 pandemic on sponsor submissions. Thus, FDA changed the estimate for FY 2022 to remove this potential outlier from the 3-year moving average forecast method. FDA believes that this change will result in a more realistic FAE estimate for FY 2022. Prior year FAE totals are updated annually to reflect refunds and waivers processed after the close of the fiscal year.

In estimating the number of fee-paying FAEs, a full application requiring clinical data counts as one FAE. An application not requiring clinical data counts as one-half of an FAE. An application that is withdrawn before filing, or refused for filing, counts as one-fourth of an FAE if the applicant initially paid a full application fee, or one-eighth of an FAE if the applicant initially paid one-half of the full application fee amount. Prior to PDUFA

VI, the FAE amount also included supplements; supplements have been removed from the FAE calculation as the supplement fee has been discontinued in PDUFA VI.

As table 12 shows, the average number of fee-paying FAEs received annually in FY 2017 through FY 2019 is 77.00. FDA will set fees for FY 2022 based on this estimate as the number of full application equivalents that will be subject to fees.

TABLE 12—FEE-PAYING FAES

FY	2017	2018	2019	3-Year average
Fee-Paying FAEs .....	79.75	68.87	82.38	77.00

**Note:** Prior year FAE totals are updated annually to reflect refunds and waivers processed after the close of the fiscal year.

The FY 2022 application fee is estimated by dividing the average number of full applications that paid fees from FY 2017 through FY 2019, 77.00, into the fee revenue amount to be derived from application fees in FY 2022, \$240,025,800. The result is a fee of \$3,117,218 per full application requiring clinical data, and \$1,558,609 per application not requiring clinical data.

**IV. Fee Calculations for Prescription Drug Program Fees**

PDUFA VI assesses prescription drug program fees for certain prescription drug products. An applicant will not be assessed more than five program fees for a fiscal year for prescription drug products identified in a single approved NDA or BLA (see section 736(a)(2)(C) of the FD&C Act). Applicants are assessed a program fee for a fiscal year only for user fee eligible prescription drug products identified in a human drug application approved as of October 1 of such fiscal year.

FDA estimates 2,806 program fees will be invoiced in FY 2022 before factoring in waivers, refunds, and exemptions. FDA approximates that there will be 161 waivers and refunds granted. In addition, FDA approximates that another 46 program fees will be exempted in FY 2022 based on the orphan drug exemption in section 736(k) of the FD&C Act. FDA estimates 2,599 program fees in FY 2022, after allowing for an estimated 207 waivers and reductions, including the orphan drug exemptions. The FY 2022 prescription drug program fee rate is calculated by dividing the adjusted total revenue from program fees (\$960,103,200) by the estimated 2,599 program fees, for a FY 2022 program fee

of \$369,413 (rounded to the nearest dollar).

**V. Fee Schedule for FY 2022**

The fee rates for FY 2022 are displayed in table 13.

TABLE 13—FEE SCHEDULE FOR FY 2022

Fee category	Fee rates for FY 2022
Application:	
Requiring clinical data .....	\$3,117,218
Not requiring clinical data .....	1,558,609
Program .....	369,413

**VI. Fee Payment Options and Procedures**

*A. Application Fees*

The appropriate application fee established in the new fee schedule must be paid for any application subject to fees under PDUFA that is submitted on or after October 1, 2021. Payment must be made in U.S. currency by electronic check, check, bank draft, wire transfer, or U.S. postal money order payable to the order of the Food and Drug Administration. The preferred payment method is online using electronic check (Automated Clearing House (ACH) also known as eCheck) or credit card (Discover, VISA, MasterCard, American Express).

FDA has partnered with the U.S. Department of the Treasury to use *Pay.gov*, a web-based payment application, for online electronic payment. The *Pay.gov* feature is available on the FDA website after completing the Prescription Drug User Fee Cover Sheet and generating the user fee ID number. Secure electronic payments can be submitted using the User Fees Payment Portal at [https://](https://userfees.fda.gov/pay)

[userfees.fda.gov/pay](https://userfees.fda.gov/pay) (Note: Only full payments are accepted. No partial payments can be made online). Once an invoice is located, “Pay Now” should be selected to be redirected to *Pay.gov*. Electronic payment options are based on the balance due. Payment by credit card is available for balances that are less than \$25,000. If the balance exceeds this amount, only the ACH option is available. Payments must be made using U.S. bank accounts as well as U.S. credit cards.

If a check, bank draft, or postal money order is submitted, make it payable to the order of the Food and Drug Administration and include the user fee ID number to ensure that the payment is applied to the correct fee(s). Payments can be mailed to: Food and Drug Administration, P.O. Box 979107, St. Louis, MO 63197-9000. If a check, bank draft, or money order is to be sent by a courier that requests a street address, the courier should deliver your payment to: U.S. Bank, Attention: Government Lockbox 979107, 1005 Convention Plaza, St. Louis, MO 63101. (Note: This U.S. Bank address is for courier delivery only. If you have any questions concerning courier delivery, contact the U.S. Bank at 314-418-4013. This telephone number is only for questions about courier delivery). Please make sure that the FDA post office box number (P.O. Box 979107) is written on the check, bank draft, or postal money order.

For payments made by wire transfer, include the unique user fee ID number to ensure that the payment is applied to the correct fee(s). Without the unique user fee ID number, the payment may not be applied, which could result in FDA not filing an application and other penalties. Note: The originating financial institution may charge a wire

transfer fee, especially for international wire transfers. Applicable wire transfer fees must be included with payment to ensure fees are paid in full. Questions about wire transfer fees should be addressed to the financial institution. The account information for wire transfers is as follows: U.S. Department of the Treasury, TREAS NYC, 33 Liberty St., New York, NY 10045, Acct. No.: 75060099, Routing No.: 021030004, SWIFT: FRNYUS33. If needed, FDA's tax identification number is 53-0196965.

#### B. Prescription Drug Program Fees

FDA will issue invoices and payment instructions for FY 2022 program fees under the new fee schedule in August 2021. Payment will be due on October 1, 2021. FDA will issue invoices in December 2021 for products that qualify for FY 2022 program fee assessments after the August 2021 billing.

Dated: August 11, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021-17505 Filed 8-13-21; 8:45 am]

**BILLING CODE 4164-01-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. FDA-2021-N-0739]

#### International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; 4F-MDMB-BICA (4F-MDMB-BUTICA); Brorphine; Metonitazene; Eutylone (bk-EBDB); BMDP (3,4-Methylenedioxy-N-benzylcathinone); Kratom (mitragynine, 7-hydroxymitragynine); Phenibut; Reopening Comment Period

**AGENCY:** Food and Drug Administration, Department of Health and Human Services (HHS).

**ACTION:** Notice; reopening comment period.

**SUMMARY:** The Food and Drug Administration (FDA or Agency) is reopening the comment period for the notice entitled "International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; 4F-MDMB-BICA (4F-MDMB-BUTICA); Brorphine; Metonitazene; Eutylone (bk-EBDB); BMDP (3,4-Methylenedioxy-N-benzylcathinone); Kratom (mitragynine, 7-hydroxymitragynine); Phenibut" that appeared in the **Federal Register** of July 23, 2021. The Agency is taking this

action to allow interested persons additional time to submit comments. These comments will be considered in preparing a response from the United States to the World Health Organization (WHO) regarding the abuse liability and diversion of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drug substances.

**DATES:** FDA is reopening the comment period for the notice published July 23, 2021 (86 FR 39038). Submit either electronic or written comments by August 24, 2021.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before August 24, 2021. The <https://www.regulations.gov> electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of August 24, 2021. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

#### Electronic Submissions

Submit electronic comments in the following way:

- **Federal eRulemaking Portal:** <https://www.regulations.gov>. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to <https://www.regulations.gov> will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on <https://www.regulations.gov>.

- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see "Written/Paper Submissions" and "Instructions").

#### Written/Paper Submissions

Submit written/paper submissions as follows:

- **Mail/Hand Delivery/Courier (for written/paper submissions):** Dockets

Management Staff (HFA-305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in "Instructions."

**Instructions:** All submissions received must include the Docket No. FDA-2021-N-0739 for "International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; 4F-MDMB-BICA (4F-MDMB-BUTICA); Brorphine; Metonitazene; Eutylone (bk-EBDB); BMDP (3,4-Methylenedioxy-N-benzylcathinone); Kratom (mitragynine, 7-hydroxymitragynine); Phenibut; Request for Comments." Received comments, those filed in a timely manner (see **ADDRESSES**), will be placed in the docket and, except for those submitted as "Confidential Submissions," publicly viewable at <https://www.regulations.gov> or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240-402-7500.

- **Confidential Submissions—**To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states "THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION." The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on <https://www.regulations.gov>. Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as "confidential." Any information marked as "confidential" will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: <https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf>.

**Docket:** For access to the docket to read background documents or the

electronic and written/paper comments received, go to <https://www.regulations.gov> and insert the docket number, found in brackets in the heading of this document, into the "Search" box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240-402-7500.

**FOR FURTHER INFORMATION CONTACT:** James R. Hunter, Center for Drug Evaluation and Research, Controlled Substance Staff, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 5150, Silver Spring, MD 20993-0002, 301-796-3156, [james.hunter@fda.hhs.gov](mailto:james.hunter@fda.hhs.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

In the **Federal Register** of July 23, 2021 (86 FR 39038), FDA published a notice entitled "International Drug Scheduling; Convention on Psychotropic Substances; Single Convention on Narcotic Drugs; 4F-MDMB-BICA (4F-MDMB-BUTICA); Brorphine; Metonitazene; Eutylone (bk-EBDB); BMDP (3,4-Methylenedioxy-N-benzylcathinone); Kratom (mitragynine, 7-hydroxymitragynine); Phenibut" that requested comments for consideration in preparing a response from the United States to the WHO regarding the abuse liability and diversion of these drugs. WHO will use this information to consider whether to recommend that certain international restrictions be placed on these drug substances. To allow interested persons additional time to submit comments, FDA is reopening the comment period until August 24, 2021.

Dated: August 11, 2021.

**Lauren K. Roth,**

*Acting Principal Associate Commissioner for Policy.*

[FR Doc. 2021-17498 Filed 8-11-21; 4:15 pm]

**BILLING CODE 4164-01-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Health Resources and Services Administration**

**Agency Information Collection Activities: Proposed Collection: Public Comment Request Information**  
**Collection Request Title: The HRSA Community-Based Outreach Reporting Module, OMB # 0906-0064, Extension**

**AGENCY:** Health Resources and Services Administration (HRSA), Department of Health and Human Services.

**ACTION:** Notice.

**SUMMARY:** HRSA requests an extension to continue data collection for the Community-Based Workforce for COVID-19 Vaccine Outreach Programs (CBO Programs) (OMB # 0906-0064). In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

**DATES:** Comments on this ICR should be received no later than October 15, 2021.

**ADDRESSES:** Submit your comments to [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email [paperwork@hrsa.gov](mailto:paperwork@hrsa.gov) or call Lisa Wright-Solomon, the HRSA Information Collection Clearance Officer, at (301) 443-1984.

**SUPPLEMENTARY INFORMATION:** When submitting comments or requesting information, please include the information collection request title for reference.

*Information Collection Request Title:* The HRSA Community-Based Outreach Reporting Module, OMB # 0906-0064, Extension.

*Abstract:* HRSA requests approval of an extension of the current emergency ICR to continue data collection for the Community-Based Workforce for COVID-19 Vaccine Outreach Programs (CBO Programs), which support nonprofit private or public organizations to establish, expand, and sustain a public health workforce to prevent, prepare for, and respond to COVID-19. This data is needed to comply with requirements to monitor funds distributed under the American Rescue Plan Act of 2021 and in accordance with OMB Memorandum M-21-20.

*Need and Proposed Use of the Information:* HRSA is requesting approval from OMB for an extension of the current emergency data collection module to support HRSA's Healthcare Systems Bureau and Office of Planning, Analysis, and Evaluation requirements to monitor and report on funds distributed. As part of the American Rescue Plan Act of 2021, signed into law on March 11, 2021 (Pub. L. 117-2),

HRSA has awarded nearly \$250 million to develop and support a community-based workforce that will engage in locally tailored efforts to build vaccine confidence and bolster COVID-19 vaccinations in underserved communities. In June and July, under the CBO Programs, HRSA awarded funding to over 140 local and national organizations. These organizations are responsible for educating and assisting individuals in accessing and receiving COVID-19 vaccinations. This includes activities such as conducting direct face-to-face outreach and other forms of direct outreach to community members to educate them about the vaccine, assisting individuals in making a vaccine appointment, providing resources to find convenient vaccine locations, and assisting individuals with transportation or other needs to get to a vaccination site. The program will address persistent health disparities by offering support and resources to vulnerable and medically underserved communities, including racial and ethnic minority groups and individuals living in areas of high social vulnerability.

HRSA is proposing a new data reporting module—the Community-Based Vaccine Outreach Program Reporting Module—to collect information on CBO Program-funded activities. The CBO Program will collect monthly progress report data from funded organizations. This data will be related to the public health workforce, the vaccine outreach activities performed by this workforce, and the individuals who received vaccinations by this workforce in a manner that assesses equitable access to vaccine services and that the most vulnerable populations and communities are reached. This data will allow HRSA to clearly identify how the funds are being used and monitored throughout the period of performance and to ensure that high-need populations are being reached and vaccinated. Responses to some data requirements are only reported during the initial reporting cycle (e.g., the name, location, affiliation, etc. of the individual supporting community outreach), though respondents may update the data should any of that change during the duration of the reporting period.

*Likely Respondents:* Respondents are community outreach workers employed by entities supported by HRSA grant funding over a period of either 6 months (HRSA-21-136) or 12 months (HRSA-21-140).

*Burden Statement:* Burden in this context means the time expended by persons to generate, maintain, retain,

disclose or provide the information requested. This includes the time needed to review instructions; to develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and

maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the

information. The total annual burden hours estimated for this ICR are summarized in the table below.

Total Estimated Annualized Burden Hours:

Form name	Number of unique organizations funded through the two programs	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Community outreach worker profile form.	14 cooperative agreement awards for HRSA-21-136 and 127 grant awards for HRSA-21-136.	Total number of Community outreach workers deployed through the work of the two programs.	One response per respondent.	Reported once across the duration of the programs (the period of performance for HRSA-21-136 is 6 months, and for HRSA-21-140 is 12 months).	Sampled response times of approximately 15 minutes per response.	Total hours spent on responses for all funded organizations over a 2-year period.
	131 (est.)	3,000 (est.)	1	3,000	0.27 hours	800.
Form name	Number of community outreach workers	Number of respondents over the period of the programs	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Vaccine-site data—outreach to community members form.	Number of community outreach workers deployed for 6 months (HRSA-21-136) or 12 months (HRSA-21-140) of support.	Number of community members in contact with community outreach workers.	One response per respondent or less (e.g., one response from the audience of a group outreach event).	Reported once across the duration of the programs (the period of performance for HRSA-21-136 is 6 months, and for HRSA-21-140 is 12 months).	Sampled response times of approximately 6 minutes per response.	Total hours spent on responses for all funded organizations over a 2-year period.
	3,000 (est.)	4,000,000 (est.)	1	4,000,000	0.12 hours	466,667.
General outreach activities for community members form.	Number of community outreach workers deployed for 6 months (HRSA-21-136) or 12 months (HRSA-21-140) of support.	Number of community members in contact with community outreach workers.	One response per respondent or less (e.g., one response from the audience of a group outreach event).	Reported once across the duration of the programs (the period of performance for HRSA-21-136 is 6 months, and for HRSA-21-140 is 12 months).	Sampled response times of approximately 6 minutes per response.	Total hours spent on responses for all funded organizations over a 2-year period.
	3,000 (est.)	4,000,000 (est.)	1	4,000,000	0.12 hours	466,667.
Grand Total	8,003,000 (est.)			8,003,000 (est.)		934,134.

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**Maria G. Button,**  
Director, Executive Secretariat.

[FR Doc. 2021-17495 Filed 8-13-21; 8:45 am]

BILLING CODE 4165-15-P

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

[Document Identifier: OS-0990-0430, 0431, 0432, 0433, 0434]

**Agency Information Collection Request; 60-Day Public Comment Request**

**AGENCY:** Office of the Secretary, HHS.  
**ACTION:** Notice.

**SUMMARY:** In compliance with the requirement of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of proposed extensions of collections for public comment.

**DATES:** Comments on the ICR must be received on or before October 15, 2021.

**ADDRESSES:** Submit your comments to [Sherrette.Funn@hhs.gov](mailto:Sherrette.Funn@hhs.gov) or by calling (202) 795-7714.

**FOR FURTHER INFORMATION CONTACT:**

When submitting comments or requesting information, please include the document identifier 0990-New-60D and project title for reference, to Sherrette A. Funn, email: [Sherrette.Funn@hhs.gov](mailto:Sherrette.Funn@hhs.gov), or call (202) 795-7714 the Reports Clearance Officer.

**SUPPLEMENTARY INFORMATION:** Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

*Title of the Collection:* Crime Control Act—Requirement for Background Checks.

*Type of Collection:* Extension.  
OMB No. 0990–0430—Office of the Assistant Secretary for Financial Resources, Office of Acquisitions.

*Abstract:* Crime Control Act—Requirement for Background Checks: Performance of HHS mission requires the support of contractors. In some

circumstances, depending on the requirements of the specific contract, the contractor is tasked to provide personnel who will be dealing with children under the age of 18. After contract award contractor personnel must undergo a background check as required by HHS Acquisition Regulation (HHSAR) 337.103(d)(3) and the clause at HHSAR 352.237–72 Crime Control Act—Requirement for Background

Checks before working on the contract as required by federal law (Crime Control Act of 1990). The contractor is therefore required to provide information on the individual so that a proper background check can be performed.

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor) .....	160	1	1	160
Total .....	160	1	1	160

*Title of the Collection:* Acquisitions Involving Human Subjects.

*Type of Collection:* Extension.  
OMB No. 0990–0431—Office of the Assistant Secretary for Financial Resources, Office of Acquisitions.

*Abstract:* Acquisitions Involving Human Subjects: Performance of HHS mission requires the support of contractors involving human subjects. Before awarding a contract to any contractor that will need to use human

subjects, the Contracting Officer is required to verify that, the contractor holds a valid Federal Wide Assurance (FWA) approved by the Office for Human Research Protections (OHRP). The provisions are implemented via contract clauses found at HHSAR 352.270–4a (Protection of Human Subjects), the clause at HHSAR 352.270–4b (Protection of Human Subjects), the provision at HHSAR 352.270–10 (Notice to Offerors—

Protection of Human Subjects, Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required), and the clause at HHSAR 352.270–11 (Protection of Human Subjects—Research Involving Human Subjects Committee (RIHSC) Approval of Research Protocols Required).

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor) .....	90	4	5	1,800
Total .....	90	4	5	1,800

*Title of the Collection:* Acquisitions Involving the Use of Laboratory Animals.

*Type of Collection:* Extension.  
OMB No. 0990–0432—Office of the Assistant Secretary for Financial Resources, Office of Acquisitions.

*Abstract:* Acquisitions Involving the Use of Laboratory Animals: Performance of HHS mission requires the use of live

vertebrate animals. Before awarding a contract to any contractor, which will need to use live vertebrate animals, the Contracting Officer is required to verify that the contractor holds a valid Animal Welfare Assurance from the Office of Laboratory Animal Welfare (OLAW) within NIH. Contractors are required to file the appropriate forms to obtain this approval. The applicable clauses are

found at HHSAR 352.270–5a (Notice to Offerors of Requirement for Compliance with the Public Health Service Policy on Humane Care and Use of Laboratory Animals), and the clause at HHSAR 352.270–5b (Care of Live Vertebrate Animals).

The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor) .....	36	1	3	108
Total .....	36	1	3	108



*Title of the Collection:* Indian Child Protection and Family Violence Act.  
*Type of Collection:* Extension.  
 OMB No. 0990-0433—Office of the Assistant Secretary for Financial Resources, Office of Acquisitions.  
*Abstract:* Indian Child Protection and Family Violence Act: Performance of IHS mission requires the support of contractors. In some circumstances, depending on the requirements of the

specific contract, the contractor is tasked to provide personnel who will be dealing with Indian children under the age of 18. After contract award contractor personnel must undergo a background check as required by HHSAR 337.103(d)(4) and the clause at HHSAR 352.237-73 Indian Child Protection and Family Violence Act before working on the contract as

required by federal law (Indian Child Protection and Family Violence Act (ICPFVA)). The contractor is therefore required to provide information on the individual so that a proper background check can be performed, as stated in the HHS Acquisition Regulation.  
 The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor) .....	40	4	1	160
Total .....	40	4	1	160

*Title of the Collection:* Meetings, Conferences, and Seminars—Public Accommodations and Commercial Facilities—Funding and Sponsorship.  
*Type of Collection:* Extension.  
 OMB No. 0990-0434—Office of the Assistant Secretary for Financial Resources, Office of Acquisitions.  
*Abstract:* Meetings, Conferences, and Seminars—Public Accommodations and Commercial Facilities—Funding and Sponsorship: Performance of HHS mission requires the support of contractors. In some circumstances, depending on the requirements of the

specific contract, the contractor is tasked to conduct meetings, conferences, and seminars. HHSAR 311.7101(a) (Responsibilities) and the clause at HHSAR 352.211-1 (Accessibility of meetings, conferences, and seminars to persons with disabilities) require contractors to provide a plan describing the contractor’s ability to meet the accessibility standards in 28 CFR part 36. HHSAR 311.7202(b) (Responsibilities) and the clause at HHSAR 352.211-2 (Conference

sponsorship request and conference materials disclaimer) require contractors to provide funding disclosure and a content disclaimer statement on conference materials. As a result of these clauses, HHS contractors providing conference, meeting, or seminars services are required to provide specific information to HHS as stated in the HHS Acquisition Regulation.  
 The Agency is requesting a 3-year extension to collect this information from public or private businesses.

ESTIMATED ANNUALIZED BURDEN HOUR TABLE

Type of respondent	Number of respondents	Number responses per respondent	Average burden per response (in hours)	Total burden hours
Business (contractor) .....	1,604	1	1	1,604
Total .....	1,604	1	1	1,604

**Sherrette A. Funn,**  
*Paperwork Reduction Act Reports Clearance Officer, Office of the Secretary.*  
 [FR Doc. 2021-17494 Filed 8-13-21; 8:45 am]  
**BILLING CODE 4150-04-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**National Institutes of Health**

**National Institute of Environmental Health Sciences; 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 Environmental Health Sciences Council.

The meeting will be open to the public as indicated below via videocast. The URL link to this meeting is <https://www.niehs.nih.gov/news/webcasts/>. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the 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 Advisory Environmental Health Sciences Council.  
*Date:* September 13–14, 2021.  
*Closed:* September 13, 2021, 11:00 p.m. to 11:45 p.m.  
*Agenda:* To review and evaluate grant applications and/or proposals.  
*Place:* National Institute of Environmental Health Science, Durham, NC 27709 (Virtual Meeting).  
*Open:* September 14, 2021, 12:00 p.m. to 4:45 p.m.  
*Agenda:* To Discuss Program Policies and Issues.  
*Place:* National Institute of Environmental Health Science, Durham, NC 27709, <https://>

[www.niehs.nih.gov/news/webcasts/](http://www.niehs.nih.gov/news/webcasts/) (Virtual Meeting).

**Contact Person:** Gary L. Ellison, Ph.D., MPH, Acting Division Director, Division of Extramural Research and Training, National Institute of Environmental Health Science, Research Triangle Park, NC 27709, (240) 276-6783, [ellisong@mail.nih.gov](mailto:ellisong@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.niehs.nih.gov/about/boards/naehsc/index.cfm>, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: August 10, 2021.

**David W Freeman,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2021-17410 Filed 8-13-21; 8:45 am]

**BILLING CODE 4140-01-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2021-0626]

#### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0094

**AGENCY:** Coast Guard, Homeland Security (DHS).

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0094, Ships Carrying Bulk Hazardous Liquids; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast

Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before October 15, 2021.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2021-0626] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG-6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202-475-3528, or fax 202-372-8405, for questions on these documents.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all

comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2021-0626], and must be received by October 15, 2021.

#### **Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

#### **Information Collection Request**

*Title:* Ships Carrying Bulk Hazardous Liquids.

*OMB Control Number:* 1625-0094.

*Summary:* This information is needed to ensure the safe transport of bulk hazardous liquids on chemical tank vessels and to protect the environment from pollution.

*Need:* Under 46 U.S.C. 3703, the Coast Guard is authorized to prescribe regulations for protection against hazards to life, property, and navigation and vessel safety, and protection of the marine environment. The regulations for the safe transport by vessel of certain bulk dangerous cargoes are contained in 46 CFR part 153.

##### *Forms:*

- CG-4602B, Cargo Record Book.
- CG-5148, International Certificate of Fitness for the Carriage of Liquefied Gases in Bulk.
- CG-5148A, Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.
- CG-5148B, Certificate of Fitness for the Carriage of Dangerous Chemicals in Bulk.
- CG-5148C, Certificate of Fitness.

- CG-5461, International Pollution Prevention Certificate for the Carriage of Noxious Liquid Substances in Bulk.

*Respondents:* Owners and operators of chemical tank vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has increased from 7,611 hours to 9,310 hours a year due to an increase in the estimated annual number of respondents.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: August 10, 2021.

**Kathleen Claffie,**

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021-17480 Filed 8-13-21; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

[Docket No. USCG-2021-0625]

#### Information Collection Request to Office of Management and Budget; OMB Control Number: 1625-0060

**AGENCY:** Coast Guard, Homeland Security (DHS).

**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625-0060, Vapor Control Systems for Facilities and Tank Vessels; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before October 15, 2021.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG-2021-0625] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the "Public participation and request for comments" portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally,

copies are available from: COMMANDANT (CG-6P), Attn: Paperwork Reduction Act Manager, U.S. Coast Guard, 2703 Martin Luther King Jr. Ave. SE, Stop 7710, Washington, DC 20593-7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202-475-3528, or fax 202-372-8405, for questions on these documents.

#### SUPPLEMENTARY INFORMATION:

##### Public Participation and Request for Comments

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information (Collection). The ICR contains information describing the Collection's purpose, the Collection's likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG-2021-0625], and must be received by October 15, 2021.

##### Submitting Comments

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION**

**CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

##### Information Collection Request

*Title:* Vapor Control Systems for Facilities and Tank Vessels.

*OMB Control Number:* 1625-0060.

*Summary:* The information is needed to ensure compliance with U.S. regulations for the design of facility and tank vessel vapor control systems (VCS). The information is also needed to determine the qualifications of a certifying entity.

*Need:* Title 46 U.S. Code 3703 and 70011 authorizes the Coast Guard to establish regulations to promote the safety of life and property of facilities and vessels. Title 33 CFR part 154 subpart P and 46 CFR part 39 contains the Coast Guard regulations for VCS and certifying entities.

*Forms:* None.

*Respondents:* Owners and operators of facilities and tank vessels, and certifying entities.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has decreased from 8,870 hours to 4,409 hours a year due to a decrease in the number of respondents.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: August 10, 2021.

**Kathleen Claffie,**

Chief, Office of Privacy Management, U.S. Coast Guard.

[FR Doc. 2021-17479 Filed 8-13-21; 8:45 am]

**BILLING CODE 9110-04-P**

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard**

[Docket No. USCG–2021–0624]

**Information Collection Request to Office of Management and Budget; OMB Control Number: 1625–0045****AGENCY:** Coast Guard, DHS.**ACTION:** Sixty-day notice requesting comments.

**SUMMARY:** In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB), Office of Information and Regulatory Affairs (OIRA), requesting an extension of its approval for the following collection of information: 1625–0045, Adequacy Certification for Reception Facilities and Advance Notice; without change. Our ICR describes the information we seek to collect from the public. Before submitting this ICR to OIRA, the Coast Guard is inviting comments as described below.

**DATES:** Comments must reach the Coast Guard on or before October 15, 2021.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number [USCG–2021–0624] to the Coast Guard using the Federal eRulemaking Portal at <https://www.regulations.gov>. See the “Public participation and request for comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

A copy of the ICR is available through the docket on the internet at <https://www.regulations.gov>. Additionally, copies are available from: COMMANDANT (CG–6P), ATTN: PAPERWORK REDUCTION ACT MANAGER, U.S. COAST GUARD, 2703 MARTIN LUTHER KING JR. AVE. SE, STOP 7710, WASHINGTON, DC 20593–7710.

**FOR FURTHER INFORMATION CONTACT:** A.L. Craig, Office of Privacy Management, telephone 202–475–3528, or fax 202–372–8405, for questions on these documents.

**SUPPLEMENTARY INFORMATION:****Public Participation and Request for Comments**

This notice relies on the authority of the Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended. An ICR is an application to OIRA seeking the approval, extension, or renewal of a Coast Guard collection of information

(Collection). The ICR contains information describing the Collection’s purpose, the Collection’s likely burden on the affected public, an explanation of the necessity of the Collection, and other important information describing the Collection. There is one ICR for each Collection.

The Coast Guard invites comments on whether this ICR should be granted based on the Collection being necessary for the proper performance of Departmental functions. In particular, the Coast Guard would appreciate comments addressing: (1) The practical utility of the Collection; (2) the accuracy of the estimated burden of the Collection; (3) ways to enhance the quality, utility, and clarity of information subject to the Collection; and (4) ways to minimize the burden of the Collection on respondents, including the use of automated collection techniques or other forms of information technology.

In response to your comments, we may revise this ICR or decide not to seek an extension of approval for the Collection. We will consider all comments and material received during the comment period.

We encourage you to respond to this request by submitting comments and related materials. Comments must contain the OMB Control Number of the ICR and the docket number of this request, [USCG–2021–0624], and must be received by October 15, 2021.

**Submitting Comments**

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. Documents mentioned in this notice, and all public comments, are in our online docket at <https://www.regulations.gov> and can be viewed by following that website’s instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

**Information Collection Request**

*Title:* Adequacy Certification for Reception Facilities and Advance Notice—33 CFR part 158.

*OMB Control Number:* 1625–0045.

*Summary:* This information helps ensure that waterfront facilities are in compliance with reception facility standards. Advance notice information from vessels ensure effective management of reception facilities.

*Need:* Section 1905 of Title 33 U.S.C. gives the Coast Guard the authority to certify the adequacy of reception facilities in ports. Reception facilities are needed to receive waste from ships which may not discharge at sea. Under these regulations in 33 CFR part 158 there are discharge limitations for oil and oily waste, noxious liquid substances, plastics and other garbage.

*Forms:*

- CG–5401, Certificate of Adequacy for Reception Facility.
- CG–5401A, Application for a Reception Facility Certificate of Adequacy (COA) for Oil, Form A.
- CG–5401B, Application for a Reception Facility Certificate of Adequacy (COA) for Noxious Liquid Substance (NLS) Residues and Mixtures Containing NLS Residues, Form B.
- CG–5401C, Application for a Reception Facility Certificate of Adequacy for Garbage, Form C
- CG–5401D, Application for a Reception Facility Certificate of Adequacy for Ozone Depletion Substances and Exhaust Gas Cleaning System Residue, Form D

*Respondents:* Owners and operators of reception facilities, and owners and operators of vessels.

*Frequency:* On occasion.

*Hour Burden Estimate:* The estimated burden has decreased from 4,825 hours to 4,167 hours a year due to a decrease in the estimated annual number of respondents.

*Authority:* The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended.

Dated: August 10, 2021.

**Kathleen Claffie,**

*Chief, Office of Privacy Management, U.S. Coast Guard.*

[FR Doc. 2021–17478 Filed 8–13–21; 8:45 am]

**BILLING CODE 9110–04–P**

**DEPARTMENT OF HOMELAND SECURITY**

**U.S. Customs and Border Protection**  
[1651–0007]

**Application for Allowance in Duties**

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 30-Day Notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted (no later than September 15, 2021) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice 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:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177, Telephone number 202–325–0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 86 FR Page 30325) on June 07, 2021, allowing

for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

**Overview of This Information Collection**

*Title:* Application for Allowance in Duties.

*OMB Number:* 1651–0007.

*Form Number:* CBP Form 4315.

*Current Actions:* Extension.

*Type of Review:* Extension (without change).

*Affected Public:* Businesses.

*Abstract:* CBP Form 4315,

“*Application for Allowance in Duties*,” is submitted to CBP in instances of claims of damaged or defective imported merchandise on which an allowance in duty is made in the liquidation of the entry. The information on this form is used to substantiate an importer’s claim for such duty allowances. CBP Form 4315 is authorized by 19 U.S.C. 1506 and provided for by 19 CFR 158.11, 158.13, and 158.23. This form is accessible at: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Mar/CBP%20Form%204315.pdf>.

This collection of information applies to the importing and trade community who are familiar with import procedures and with the CBP regulations.

19 CFR 158.11—Merchandise completely worthless at time of importation.

The allowance in duties may be made to nonperishable merchandise if found

without commercial value at the time of the importation by reason of damage or deterioration. For perishable merchandise an allowance in duties may be made if an application, on Customs Form 4315, or its electronic equivalent, is filed within 96 hours after the unloading of the merchandise and before any of the shipment involved has been removed from the pier, and only on such of the merchandise as is found by the port director to be entirely without commercial value by reason of damage or deterioration. If an application is withdrawn, the merchandise involved shall thereafter be released upon presentation of an appropriate permit.

19 CFR 158.13—Allowance for moisture and impurities.

An application for an allowance in duties is made by the importer on Customs Form 4315, or its electronic equivalent, for all detectable moisture and impurities present in or upon imported petroleum or petroleum products. For products, other than petroleum or petroleum products, with excessive moisture or other impurities, not usually found in or upon such or similar merchandise, an application for an allowance in duties shall be made by the importer on Customs Form 4315, or its electronic equivalent. If the port director is satisfied after any necessary investigation that the merchandise contains moisture or impurities, the Center director will make allowance for the amount thereof in the liquidation of the entry.

19 CFR 158.23—Filing of application and evidence by importer. Within 30 days from the date of his discovery of the loss, theft, injury, or destruction, the importer shall file an application on Customs Form 4315, or its electronic equivalent and within 90 days from the date of discovery shall file any evidence required by § 158.26 or § 158.27.

*Type of Information Collection:* Application for Allowance in Duties (CBP Form 4315).

*Estimated Number of Respondents:* 12,000.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 12,000.

*Estimated Time per Response:* 0.1333 hours.

*Estimated Total Annual Burden Hours:* 1,600.

Dated: August 10, 2021.

**Seth D. Renkema,**  
Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2021–17404 Filed 8–13–21; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

[1651-0009]

#### U.S. Customs Declaration (CBP Form 6059B)

**AGENCY:** U.S. Customs and Border Protection (CBP), Department of Homeland Security.

**ACTION:** 30-Day Notice and request for comments; Extension of an existing collection of information.

**SUMMARY:** The Department of Homeland Security, U.S. Customs and Border Protection will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). The information collection is published in the **Federal Register** to obtain comments from the public and affected agencies.

**DATES:** Comments are encouraged and must be submitted (no later than September 15, 2021) to be assured of consideration.

**ADDRESSES:** Written comments and/or suggestions regarding the item(s) contained in this notice 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:** Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229-1177, Telephone number 202-325-0056 or via email [CBP\\_PRA@cbp.dhs.gov](mailto:CBP_PRA@cbp.dhs.gov). Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877-227-5511, (TTY) 1-800-877-8339, or CBP website at <https://www.cbp.gov/>.

**SUPPLEMENTARY INFORMATION:** CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This proposed information collection was previously published in the **Federal Register** (Volume 86 FR

Page 29273) on June 01, 2021, allowing for a 60-day comment period. This notice allows for an additional 30 days for public comments. This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

#### Overview of This Information Collection

*Title:* U.S. Customs Declaration.

*OMB Number:* 1651-0009.

*Form Number:* CBP Form 6059B.

*Current Actions:* Extension.

*Type of Review:* Extension (without change).

*Affected Public:* Individuals.

*Abstract:* CBP Form 6059B, Customs Declaration, is used as a standard report of the identity and residence of each person arriving in the United States. This form is also used to declare imported articles to U.S. Customs and Border Protection (CBP) in accordance with 19 CFR 122.27, 148.12, 148.13, 148.110, 148.111; 31 U.S.C. 5316 and Section 498 of the Tariff Act of 1930, as amended (19 U.S.C. 1498).

Section 148.13 of the CBP regulations prescribes the use of the CBP Form 6059B when a written declaration is required of a traveler entering the United States. Generally, written declarations are required from travelers arriving by air or sea. Section 148.12 requires verbal declarations from travelers entering the United States, unless an inspecting officer requires a written declaration on CBP Form 6059B. Generally, verbal declarations are required from travelers arriving by land.

CBP continues to find ways to improve the entry process through the

use of mobile technology to ensure it is safe and efficient. To that end, CBP is testing the operational effectiveness of a process which allows travelers to use a mobile app to submit information to CBP prior to arrival. This process, called Mobile Passport Control (MPC) which is a mobile app that allows travelers to self-segment upon arrival into the United States—a process also known as intelligent queuing. The submission of information in advance using MPC allows CBP to direct travelers to the appropriate queue in primary or self-segment directly to secondary if additional inspection is necessary. The continued testing also helps determine under what circumstances CBP should require a written customs declaration (CBP Form 6059B) and when it is beneficial to admit travelers who make an oral customs declaration during the primary inspection. MPC eliminates the administrative tasks performed by the officer during a traditional inspection and in most cases will eliminate the need for respondents/travelers to fill out a paper declaration. MPC provides a more efficient and secure in person inspection between the CBP Officer and the traveler.

Another electronic process that CBP is testing in lieu of the paper CBP Form 6059B is the Automated Passport Control (APC). This is a CBP program that facilitates the entry process for travelers by providing self-service kiosks in CBP’s Primary Inspection area that travelers can use to make their declaration.

Both APC and MPC allow an electronic method for travelers to answer the questions that appear on CBP Form 6059B without filling out a paper form.

A sample of CBP Form 6059B can be found at <https://www.cbp.gov/newsroom/publications/forms?title=6059>. This collection is available in the following languages: English, French, Vietnamese, German, Italian, Japanese, Korean, Polish, Portuguese, Russian, Chinese, Hebrew, Spanish, Dutch, Arabic, Farsi, and Punjabi.

*Type of Information Collection:* Customs Declaration (Form 3059B).

*Estimated Number of Respondents:* 34,006,000.

*Estimated Number of Annual Responses per Respondent:* 1.

*Estimated Number of Total Annual Responses:* 34,006,000.

*Estimated Time per Response:* 4 minutes or 0.067 hours.

*Estimated Total Annual Burden Hours:* 2,278,402.

*Type of Information Collection:* Verbal Declarations.

*Estimated Number of Respondents:* 233,000,000.  
*Estimated Number of Annual Responses per Respondent:* 1.  
*Estimated Number of Total Annual Responses:* 233,000,000.  
*Estimated Time per Response:* 10 seconds or 0.003 hours.  
*Estimated Total Annual Burden Hours:* 699,000.  
*Type of Information Collection:* APC Terminals.  
*Estimated Number of Respondents:* 70,000,000.  
*Estimated Number of Annual Responses per Respondent:* 1.  
*Estimated Number of Total Annual Responses:* 70,000,000.  
*Estimated Time per Response:* 2 minutes or 0.033 hours.  
*Estimated Total Annual Burden Hours:* 2,310,000.  
*Type of Information Collection:* MPC App.  
*Estimated Number of Respondents:* 500,000.  
*Estimated Number of Annual Responses per Respondent:* 1.  
*Estimated Number of Total Annual Responses:* 500,000.  
*Estimated Time per Response:* 2 minutes or 0.033 hours.  
*Estimated Total Annual Burden Hours:* 16,500.  
 Dated: August 10, 2021.

**Seth D. Renkema,**  
 Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.  
 [FR Doc. 2021-17407 Filed 8-13-21; 8:45 am]  
**BILLING CODE 9111-14-P**

**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

[FWS-R2-ES-2021-N177;  
 FXES1113020000-212-FF02ENEH00]

**Endangered and Threatened Wildlife and Plants; Recovery Permit Applications**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of permit applications; request for comments.

**SUMMARY:** We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications for a permit to conduct activities intended to recover and enhance endangered species survival. With some exceptions, the Endangered Species Act of 1973, as amended (ESA), prohibits certain activities that may impact endangered species unless a Federal permit allows such activity. The ESA also requires that we invite public comment before issuing these permits.

**DATES:** To ensure consideration, please submit your written comments by September 15, 2021.

**ADDRESSES:** *Document availability:* Request documents by phone or email: Beth Forbus, 505-248-6681, [beth\\_forbus@fws.gov](mailto:beth_forbus@fws.gov).

*Comment submission:* Submit comments by email to [fw2\\_te\\_permits@fws.gov](mailto:fw2_te_permits@fws.gov). Please specify the permit you are interested in by number (e.g., Application No. ESPER1234567).

**FOR FURTHER INFORMATION CONTACT:** Beth Forbus, Supervisor, Classification and Restoration Division, 505-248-6681. Individuals who are hearing or speech impaired may call the Federal Relay Service at 1-800-877-8339 for TTY assistance.

**SUPPLEMENTARY INFORMATION:**

**Background**

With some exceptions, the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*) prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA’s definition of “take” includes hunting, shooting, harming, wounding, or killing but also such activities as pursuing, harassing, trapping, capturing, or collecting.

The ESA and our implementing regulations in the Code of Federal Regulations (CFR) at title 50, part 17, provide for issuing such permits and

require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit we issue under the ESA, section 10(a)(1)(A), authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or enhance the species’ propagation or survival. These activities often include such prohibited actions as capture and collection. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

**Permit Applications Available for Review and Comment**

Documents and other information submitted with these applications are available for review by any party who submits a request as specified in **ADDRESSES**. Releasing documents is subject to Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552) requirements.

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. We invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Please refer to the application number when submitting comments.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ESPER001318 .....	Wright, Marjorie; Los Alamos, New Mexico.	Jemez Mountains salamander ( <i>Plethodon neomexicanus</i> ).	New Mexico .....	Presence/absence surveys; capture.	Harm, harass .....	Renew.
ESPER001337 .....	Odysea Aquarium, LLC; Scottsdale, Arizona.	Kemp’s ridley sea turtle ( <i>Lepidochelys kempii</i> ).	Arizona .....	Hold, display .....	Harm, harass .....	Renew and Amend.
ESPER001137 .....	Thompson, Brent; White Rock, New Mexico.	Jemez Mountains salamander ( <i>Plethodon neomexicanus</i> ).	New Mexico .....	Presence/absence surveys, capture, biosample.	Harm, harass .....	New.
ESPER001295 .....	Reichenbacher, Frank; Scottsdale, Arizona.	Arizona cliffrose ( <i>Purshia subintegra</i> ) ...	New Mexico .....	Survey/monitor, leaf collection.	Harm, harass .....	New.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ESPER001233 .....	West, Sue; Albuquerque, New Mexico.	Southwestern willow flycatcher ( <i>Empidonax traillii extimus</i> ), Jemez Mountains salamander ( <i>Plethodon neomexicanus</i> ).	New Mexico .....	Presence/absence surveys, capture, biosample.	Harm, harass .....	New.
ESPER001235 .....	Davidson, Zoe (BLM); Santa Fe, NM.	Knowlton's cactus ( <i>Pediocactus knowltonii</i> ), Kuenzler's hedgehog cactus ( <i>Echinocereus fendleri</i> var. <i>kuenzleri</i> ), Sneed's pincushion cactus ( <i>Coryphantha sneedii</i> var. <i>sneedii</i> ), Holy Ghost ipomopsis ( <i>Ipomopsis sancti-spiritus</i> ), Mancos milk-vetch ( <i>Astragalus humillimus</i> ), Todsens pennyroyal ( <i>Hedeoma todsenii</i> ), Sacramento prickly poppy ( <i>Argemone pleiacantha</i> ssp. <i>pinnatisecta</i> ), Lee pincushion cactus ( <i>Coryphantha sneedii</i> var. <i>leei</i> ), Mesa Verde cactus ( <i>Sclerocactus mesae-verdae</i> ), Zuni Fleabane ( <i>Erigeron rhizomatus</i> ), Pecos sunflower ( <i>Helianthus paradoxus</i> ), Sacramento Mountains thistle ( <i>Cirsium vinaceum</i> ), gypsum wild-buckwheat ( <i>Eriogonum gypsophilum</i> ).	New Mexico .....	Survey/monitor, Seed/fruit collection.	Harm, harass .....	New.
ESPER001385 .....	New Mexico State Land Office; Santa Fe, New Mexico.	Southwestern willow flycatcher ( <i>Empidonax traillii extimus</i> ).	New Mexico .....	Presence/absence surveys.	Harm, harass .....	Renew and Amend.

**Authority**

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*).

**Amy Lueders,**

Regional Director, Southwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2021-17522 Filed 8-13-21; 8:45 am]

BILLING CODE 4333-15-P

**DEPARTMENT OF THE INTERIOR****Bureau of Land Management**

[LLORB07000.L17110000.AL0000  
.LXSSH1060000.21X.HAG 21-0066]

**Notice of Subcommittee Meeting for the Steens Mountain Advisory Council, Oregon**

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of public meeting.

**SUMMARY:** In accordance with the Federal Land Policy and Management Act of 1976 and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management's (BLM) Steens Mountain Advisory Council (SMAC) Public Lands Access Subcommittee will meet as indicated below.

**DATES:** The SMAC will hold a field tour on September 23, 2021, from 7 a.m. to 5:30 p.m. Pacific Time to the the Nature's Advocate, LLC, inholding in the Fish Creek area on Steens Mountain, and an in-person meeting on September 24, 2021, from 8:30 a.m. to 12:45 p.m. Pacific Time.

**ADDRESSES:** The meeting will be held and the field tour will commence and conclude at the Frenchglen School, 39235 OR-205, Frenchglen, Oregon, 97736. A virtual meeting may substitute for an in-person meeting depending on local health restrictions at the time of the meeting. Additional information can be found on the SMAC's website at [www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/steens-mac](http://www.blm.gov/get-involved/resource-advisory-council/near-you/oregon-washington/steens-mac).

**FOR FURTHER INFORMATION CONTACT:** Tara Thissell, Public Affairs Specialist, 28910 Highway 20 West, Hines, Oregon 97738; telephone: 541-573-4519; email: [tthissell@blm.gov](mailto:tthissell@blm.gov). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Relay Service (FRS) at 1-800-877-8339 to contact Ms. Thissell during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question. You will receive a reply during normal business hours.

**SUPPLEMENTARY INFORMATION:** The SMAC was established August 14, 2001, pursuant to the Steens Mountain Cooperative Management and Protection Act of 2000 (Steens Act) (Pub. L. 106-399). The SMAC provides recommendations to the BLM regarding new and unique approaches to management of the land within the bounds of the Steens Mountain Cooperative Management and Protection Area (CMPA), recommends cooperative programs and incentives for landscape management that meet human needs, and advises the BLM on potential maintenance and improvement of the

ecological and economic integrity of the area.

The SMAC's Public Lands Access Subcommittee was established in 2015 and serves to research, discuss, and evaluate any access issue in the Steens Mountain CMPA. Issues could relate to parking, hiking, motorized or non-motorized use, public to private land inholding routes and methods of travel, private to public land access by way of easement or other agreement, or purchase or exchange of public and private land for improved access and contiguous landscape. The Subcommittee reviews all aspects of any access issue, formulates suggestions for remedy, and proposes those solutions to the entire SMAC for further discussion and possible recommendation to the BLM.

On September 23, 2021, the Subcommittee will tour the Nature's Advocate, LLC, inholding in the Fish Creek area on Steens Mountain. The field tour will take all day and ATVs and/or UTVs will be utilized for the majority of the time—travel routes cannot support traditional vehicles in many places. Attending public participants must provide their own transportation at all times including traditional vehicles as road conditions allow, and ATVs or UTVs as otherwise needed, and be able to hike moderate distances of 1 to 2 miles each way across varied terrain. Attending council members, agency personnel, and public participants shall provide their own personal amenities for the duration of the field tour, including but not limited



to: Food, water, appropriate hiking footwear, and sunscreen. There are no restrooms available.

Agenda items for the September 24, 2021, session include a recap and discussion of the previous day's field tour; an update from the Designated Federal Official; discussion of the Bridge Creek Area Allotment Management Plan and Environmental Impact Statement; information sharing about the Alvord Allotment Management Plan Environmental Assessment; and, an opportunity for Subcommittee members to share information from their constituents and present research. Any other matters that may reasonably come before the Subcommittee may also be included.

A public comment period is available on September 24 at 11:45 a.m. Depending on the number of people wishing to comment and the time available, the amount of time for oral comments may be limited. Sessions may end early if all business items are accomplished ahead of schedule or may be extended if discussions warrant more time. All meetings, including field tour sessions, are open to the public in their entirety.

**Public Disclosure of Comments:** Before including your address, phone number, email address, or other personal identifying information in your comments, please 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.

(Authority: 43 CFR 1784.4–2)

**Jeffrey Rose,**  
*District Manager.*

[FR Doc. 2021–17508 Filed 8–13–21; 8:45 am]

**BILLING CODE 4310–33–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cooperative Research Group on HEDGE V

Notice is hereby given that, on June 22, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Cooperative Research Group on HEDGE V (“HEDGE V”) has filed written notifications simultaneously with the Attorney

General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Cummins, Inc., Columbus, IN; Convergent Science, Madison, WI; GM Global Technology Operations, LLC (GMGTO), Detroit, MI; Volkswagen Aktiengesellschaft, Wolfsburg, GERMANY; and Robert Bosch LLC, Farmington Hills, MI. The general area of HEDGE V's planned activity is to identify ICE technologies to achieve 50% brake thermal efficiency while maintaining a stoichiometric air/fuel ratio suitable for three-way catalyst operation. Other topics of interest to the consortium include: large-bore s.i. combustion systems; assisted pre-chambers; Hybrid-ICE focus including ICE design for hybrid application; engine geometry changes; advanced combustion modes, SACI & D–EGR, sCO<sub>2</sub> as a cooling medium or WHR system; high-power and voltage systems including microwave enhanced heating, CO<sub>2</sub> Separation Membrane for Octane-on-Demand, and on-board hydrogen generation for combustion enhancement.

**Suzanne Morris,**  
*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–17509 Filed 8–13–21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to The National Cooperative Research and Production Act of 1993—Medical CBRN Defense Consortium

Notice is hereby given that, on July 1, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Medical CBRN Defense Consortium (“MCDC”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Type Culture Collection,

Manassas, VA; Bugworks Research, Inc., Fremont, CA; and Indiana University, Bloomington, IN; Jubilant HollisterStier, Spokane, WA; Lumen Bioscience, Inc., Seattle, WA; MBio Diagnostics, Inc. dba LightDeck Diagnostics, Boulder, CO; UES, Inc., Dayton, OH; Vaxess Technologies, Inc., Cambridge, MA; Vector RX LLC, Elkridge, MD and VitriVax, Inc., Boulder, CO have been added as parties to this venture.

Also, Kestrel Corporation, Albuquerque, NM, has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MCDC intends to file additional written notifications disclosing all changes in membership.

On November 13, 2015, MCDC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 6, 2016 (81 FR 513).

The last notification was filed with the Department on March 29, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 20, 2021 (86 FR 20521).

**Suzanne Morris,**  
*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021–17504 Filed 8–13–21; 8:45 am]

**BILLING CODE 4410–11–P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act of 1993—Pistoia Alliance, Inc.

Notice is hereby given that, on June 23, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. Section 4301 *et seq.* (the “Act”), Pistoia Alliance, Inc. filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Scitara Corporation, Marlboro, MA; QunaSys, Bunkyo, JAPAN; Procter & Gamble, Mason, OH; PHEMI Systems Corp., Vancouver, CANADA; Orbis Labsystems Services, Leopardstown, IRELAND; Nutanix,

Hoofddorp, NETHERLANDS B.V; Maze Therapeutics, San Francisco, CA; Nick Lynch (individual member), Macclesfield, UNITED KINGDOM; Giovanni Nisato (individual member), Riehen, SWITZERLAND; and Emerald Cloud Lab, Inc., San Francisco, CA have been added as parties to this venture. Also, Bowhead Health, Inc., Kanato, CANADA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Pistoia Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On May 28, 2009, Pistoia Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 15, 2009 (74 FR 34364).

The last notification was filed with the Department on April 5, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on May 6, 2021 (86 FR 24415).

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021-17507 Filed 8-13-21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

### Antitrust Division

#### Notice Pursuant to the National Cooperative Research and Production Act Of 1993—Cooperative Research Group on Advanced Fluids for Electrified Vehicles

Notice is hereby given that, on June 16, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (“the Act”), Cooperative Research Group on Advanced Fluids for Electrified Vehicles (“AFEV”) has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act’s provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Chevron Oronite Company

LLC, San Roman, CA; Afton Chemical Corporation, Richmond, VA; Dana Limited, Maumee, OH; Lanxess Corporation, Pittsburgh, PA; Croda Europe Ltd., Cowick, UNITED KINGDOM; Infineum USA L.P., Linden, NJ; and GS Caltex Corporation, Seoul, SOUTH KOREA. The general area of AFEV’s planned activity is to better understand the unique stressors placed on electric vehicle fluids which will enable development and optimization of electric vehicle powertrains.

**Suzanne Morris,**

*Chief, Premerger and Division Statistics, Antitrust Division.*

[FR Doc. 2021-17518 Filed 8-13-21; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF JUSTICE

#### Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On August 10, 2021, the Department of Justice filed a complaint and lodged a proposed consent decree with the United States District Court for the District of Colorado in the lawsuit entitled *United States v. Noble Energy, Inc., Noble Midstream Partners LP, and Noble Midstream Services, LLC*, Civil Action No. 1:21-cv-2165.

This is a civil action for injunctive relief and civil penalties brought against Noble Energy, Inc., Noble Midstream Partners LP, and Noble Midstream Services, LLC under the Clean Water Act. The violations include an unauthorized discharge of oil from a former Noble Energy, Inc. tank battery known as the State M36 into the Cache la Poudre River and its adjoining shorelines in May and/or June 2014 during a flood event in Weld County, Colorado. The violations also include failure to comply with regulations issued to prevent and respond to oil spills at the Noble State M36 facility and at a midstream central gathering facility in Weld County, Colorado, known as the Wells Ranch Facility. The Consent Decree requires Defendants to perform injunctive relief and pay a total civil penalty of \$1,000,000.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *United States v. Noble Energy, Inc., Noble Midstream Partners LP, and Noble Midstream Services, LLC*, D.J. Ref. No. 90-5-1-1-11791. All comments must be submitted no later than thirty (30) days after the publication date of

this notice. Comments may be submitted either by email or by mail:

<i>To submit comments:</i>	<i>Send them to:</i>
By email .....	<i>pubcomment-ees.enrd@usdoj.gov.</i>
By mail .....	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: <https://www.justice.gov/enrd/consent-decrees>. We will provide a paper copy of the consent decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044-7611.

Please enclose a check or money order for \$10.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is \$8.00.

**Susan Akers,**

*Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.*

[FR Doc. 2021-17493 Filed 8-13-21; 8:45 am]

**BILLING CODE 4410-15-P**

## DEPARTMENT OF LABOR

#### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Workforce Recruitment Program (WRP)

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Office of Disability Employment Policy (ODEP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before September 15, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, 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 estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Mara Blumenthal by telephone at 202–693–8538, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** The Workforce Recruitment Program (WRP) is an existing collection in use without an OMB Control Number. The WRP is a recruitment and referral program that connects students with disabilities to an opportunity for employment. Through participating colleges and universities, WRP creates a database for Federal and select private-sector employers nationwide to find highly motivated college students and recent graduates with disabilities who are eager to demonstrate their abilities in the workplace through summer or permanent jobs. Candidates represent all majors, and range from college freshmen to graduate students and law students. Information from these candidates is compiled in a searchable database that is available through this website to Federal Human Resources Specialists, Equal Employment Opportunity Specialists, and other Federal employees and hiring officials in Federal agencies. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on March 24, 2021 (86 FR 15713).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not

display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–ODEP.

*Title of Collection:* Workforce Recruitment Program (WRP).

*OMB Control Number:* 1230–0NEW.

*Affected Public:* Individuals or Households.

*Total Estimated Number of Respondents:* 2,500.

*Total Estimated Number of Responses:* 2,500.

*Total Estimated Annual Time Burden:* 2,500 hours.

*Total Estimated Annual Other Costs Burden:* \$0.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: August 6, 2021.

**Mara Blumenthal,**

*Senior PRA Analyst.*

[FR Doc. 2021–17430 Filed 8–13–21; 8:45 am]

**BILLING CODE 4510–FK–P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; Trade Adjustment Assistance Administrative Collection of States (TAAACS)

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Employment and Training Administration (ETA)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before September 15, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](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.

Comments are invited on: (1) Whether the collection of information is

necessary for the proper performance of the functions of the Department, 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 estimates of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Mara Blumenthal by telephone at 202–693–8538, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** Section 239(c) of Title II, Chapter 2 of the Trade Act of 1974, as amended (19 U.S.C. 2271 *et seq.*), authorizes this information collection. The Office of Trade Adjustment Assistance (OTAA) is seeking to revise the TAAACS, which collects discrete data on how State Workforce Agencies (SWAs) organize the TAA program. These modifications expand collection on TAA worker list metrics, program integration, and technical assistance and improves the information collected across eight (8) distinct categories. The modifications also seeks to minimize the burden by removing unnecessary, increasing the clarity of questions, and modifying previously cumbersome rankings. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 16, 2021 (86 FR 20204).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–ETA.

*Title of Collection:* Trade Adjustment Assistance Administrative Collection of States (TAAACS).

*OMB Control Number:* 1205–0540.

*Affected Public:* State, Local, and Tribal Governments.

*Total Estimated Number of Respondents:* 52.

*Total Estimated Number of Responses:* 52.

*Total Estimated Annual Time Burden:* 312 hours.

*Total Estimated Annual Other Costs Burden:* \$0.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: August 6, 2021.

**Mara Blumenthal,**

*Senior PRA Analyst.*

[FR Doc. 2021–17429 Filed 8–13–21; 8:45 am]

**BILLING CODE 4510-FN-P**

## DEPARTMENT OF LABOR

### Agency Information Collection Activities; Submission for OMB Review; Comment Request; EARN Perspectives of Jobseekers With Disabilities: The Impact of Employer Messaging

**ACTION:** Notice of availability; request for comments.

**SUMMARY:** The Department of Labor (DOL) is submitting this Office of Disability Employment Policy (ODEP)-sponsored information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (PRA). Public comments on the ICR are invited.

**DATES:** The OMB will consider all written comments that agency receives on or before September 15, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](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.

Comments are invited on: (1) Whether the collection of information is necessary for the proper performance of the functions of the Department, 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 estimates of the burden and cost of the collection of information, including the validity of the

methodology and assumptions used; (4) ways to enhance the quality, utility and clarity of the information collection; and (5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

**FOR FURTHER INFORMATION CONTACT:** Mara Blumenthal by telephone at 202–693–8538, or by email at [DOL\\_PRA\\_PUBLIC@dol.gov](mailto:DOL_PRA_PUBLIC@dol.gov).

**SUPPLEMENTARY INFORMATION:** Employer Assistance and Resource Network on Disability Inclusion (EARN) is a resource for employers seeking to recruit, hire, retain, and advance qualified employees with disabilities. EARN assists employers through online support and a range of education and outreach activities, including webinars, a website with employer-focused resources such as toolkits, a monthly e-newsletter, social media posts, and training videos. It is funded by the U.S. Department of Labor’s Office of Disability Employment Policy under a cooperative agreement with Cornell University. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on April 29, 2021 (86 FR 22711).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless the OMB approves it and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid OMB Control Number. See 5 CFR 1320.5(a) and 1320.6.

DOL seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOL notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

*Agency:* DOL–ODEP.

*Title of Collection:* EARN Perspectives of Jobseekers With Disabilities: The Impact of Employer Messaging.

*OMB Control Number:* 1230–ONEW.

*Affected Public:* Individuals or Households.

*Total Estimated Number of Respondents:* 200.

*Total Estimated Number of Responses:* 67.

*Total Estimated Annual Time Burden:* 17 hours.

*Total Estimated Annual Other Costs Burden:* \$0.

*Authority:* 44 U.S.C. 3507(a)(1)(D).

Dated: August 6, 2021.

**Mara Blumenthal,**

*Senior PRA Analyst.*

[FR Doc. 2021–17428 Filed 8–13–21; 8:45 am]

**BILLING CODE 4510-FK-P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA–2007–0042]

#### TUV Rheinland of North America, Inc.: Grant of Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for TUV Rheinland of North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on August 16, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov). OSHA’s web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpca/nrtl/index.html>).

#### SUPPLEMENTARY INFORMATION:

##### I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of TUV Rheinland of North America, Inc. (TUVRNA), as a NRTL. TUVRNA’s expansion covers the addition of eleven test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization

can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL's scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL's scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL,

including TUVRNA, which details the NRTL's scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

TUVRNA submitted an application, dated February 6, 2019 (OSHA-2007-0042-0050), to expand their recognition to include the addition of nine test standards. TUVRNA submitted a second application, dated September 27, 2019 (OSHA-2007-0042-0051), to expand their recognition to include the addition of five test standards. The first application was amended on May 3, 2021, to remove three standards from the original expansion request for nine standards. The expansion applications would add a total of eleven test standards to TUVRNA's NRTL recognition. OSHA staff performed a detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

OSHA published the preliminary notice announcing TUVRNA's expansion applications in the **Federal Register** on June 15, 2021 (86 FR 31713). The agency requested comments by June 30, 2021, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to

grant expansion of TUVRNA's scope of recognition.

To obtain or review copies of all public documents pertaining to TUVRNA's applications, go to [www.regulations.gov](http://www.regulations.gov) or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA-2007-0042 contains all materials in the record concerning TUVRNA's recognition. Please note: Due to the COVID-19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693-2350.

**II. Final Decision and Order**

OSHA staff examined TUVRNA's expansion applications, their capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that TUVRNA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed below. OSHA, therefore, is proceeding with this final notice to grant TUVRNA's scope of recognition. OSHA limits the expansion of TUVRNA's recognition to testing and certification of products for demonstration of conformance to the test standards listed in Table 1 below.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN TUVRNA'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 60745-2-3 .....	Particular Requirements for Grinders, Polishers and Disk-Type Sanders.
UL 60745-2-13 .....	Particular Requirements for Chain Saws.
UL 60745-2-15 .....	Particular Requirements for Hedge Trimmers.
UL 2594 .....	Standard for Electric Vehicle Supply Equipment.
UL 61800-5-1 .....	Adjustable Speed Electrical Power Drive Systems—Part 5-1: Safety Requirements—Electrical, Thermal and Energy.
UL 3703 .....	Standard for Solar Trackers.
UL 943B .....	Appliance Leakage—Current Interrupters.
UL 962A .....	Standard for Furniture Power Distribution Units.
UL 1059 .....	Standard for Terminal Blocks.
UL 1449 .....	Standard for Surge Protective Devices.
UL 60730-2-9 .....	Standard for Automatic Electrical Controls—Part 2-9: Particular Requirements for Temperatures Sensing Controls.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standard listed above as an American National Standard. However, for

convenience, we may use the designation of the standards-developing organization for the standard as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 1-0.3, Appendix C, paragraph XIV), any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

*A. Conditions*

In addition to those conditions already required by 29 CFR 1910.7, TUVRNA must abide by the following conditions of the recognition:

1. TUVRNA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);
2. TUVRNA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. TUVRNA must continue to meet the requirements for recognition, including all previously published conditions on TUVRNA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of TUVRNA, subject to the limitations and conditions specified above.

### III. Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC, on August 6, 2021.

**James S. Frederick,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021-17432 Filed 8-13-21; 8:45 am]

BILLING CODE 4510-26-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA-2013-0012]

#### Proposed Modification to the List of Appropriate NRTL Program Test Standards and the Scope of Recognition of Several NRTLs

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA proposes to: Add new test standards to the Nationally Recognized Testing Laboratories (NRTL) Program's list of appropriate test standards; delete or replace several test standards from the NRTL Program's list of appropriate test standards; and modify the scope of recognition of several NRTLs.

**DATES:** Submit comments, information, and documents in response to this notice, or request for an extension of time to make a submission, on or before August 31, 2021.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* You may submit comments and attachments electronically at: <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the

instructions online for submitting comments.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

*Instructions:* All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA-2013-0012). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Extension of comment period:* Submit requests for an extension of the comment period on or before August 31, 2021 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3653, Washington, DC 20210, or by fax to (202) 693-1644.

#### FOR FURTHER INFORMATION CONTACT:

Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, telephone: (202) 693-2110 or email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The NRTL Program recognizes organizations that provide product-

safety testing and certification services to manufacturers. These organizations perform testing and certification for purposes of the program, to U.S. consensus-based product-safety test standards. The products covered by the NRTL Program consist of those items for which OSHA safety standards require "certification" by a NRTL. The requirements affect electrical products and 36 other types of products. OSHA does not develop or issue these test standards, but generally relies on standards development organizations (SDOs), which develop and maintain the standards using a method that provides for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety field involved.

##### A. Addition of New Test Standards to the NRTL List of Appropriate Test Standards

Periodically, OSHA will add new test standards to the NRTL list of appropriate test standards following an evaluation of the test standard document. To qualify as an appropriate test standard, the agency evaluates the document to (1) verify it represents a product category for which OSHA requires certification by a NRTL, (2) verify the document represents an end product and not a component, and (3) verify the document defines safety test specifications (not installation or operational performance specifications). OSHA becomes aware of new test standards through various avenues. For example, OSHA may become aware of new test standards by: (1) Monitoring notifications issued by certain SDOs; (2) reviewing applications by NRTLs or applicants seeking recognition to include a new test standard in their scope of recognition; and (3) obtaining notification from manufacturers, manufacturing organizations, government agencies, or other parties that a new test standard may be appropriate to add to the list of appropriate standards. OSHA may determine to include a new test standard in the list, for example, if the test standard is for a particular type of product that another test standard also covers, addresses a type of product that no standard previously covered, or is otherwise new to the NRTL Program.

##### B. SDO Deletion and Replacement of Test Standards

The NRTL Program regulations require that appropriate test standards be maintained and current (29 CFR 1910.7(c)). A test standard withdrawn by an SDO is no longer considered an

appropriate test standard (CPL 01–00–004, NRTL Program Policies, Procedures and Guidelines Directive (NRTL Program Directive), Ch. 2.IX.C.1). It is OSHA's policy to remove recognition of withdrawn test standards by issuing a correction notice in the **Federal Register** for all NRTLs recognized for the withdrawn test standards (Id.). However, SDOs frequently will designate a replacement standard for withdrawn standards. OSHA will recognize a NRTL for an appropriate replacement test standard if the NRTL has the requisite testing and evaluation capability for the replacement test standard (NRTL Program Directive, Ch. 2.IX.C.2).

One method that NRTLs may use to show such capability involves an analysis to determine whether any testing and evaluation requirements of existing test standards in a NRTL's scope are comparable (*i.e.*, are completely or substantially identical) to the requirements in the replacement test standard (NRTL Program Directive, Ch. 2.IX.C.3). If OSHA's analysis shows the replacement test standard does not require additional or different technical capability than an existing test standard(s), and the replacement test standard is comparable to the existing test standard(s), then OSHA can add the replacement test standard to affected NRTLs' scope of recognition. If OSHA's analysis shows the replacement test standard requires an additional or different technical capability, or the replacement test standard is not comparable to any existing test standards, each affected NRTL seeking to have OSHA add the replacement test standard to the NRTL's scope of recognition must provide information to OSHA that demonstrates technical capability (NRTL Program Directive, Ch. 2.IX.D).

### *C. Other Reasons for Removal of Test Standards From the NRTL List of Appropriate Test Standards*

OSHA may choose to remove a test standard from the NRTL list of appropriate test standards based on an internal review in which NRTL Program staff review the NRTL list of appropriate test standards to determine if the test standards conform to the definition of an appropriate test standard defined in

NRTL Program regulations and policy. There are several reasons for removing a test standard based on this review. First, a document that provides the methodology for a single test is a test method rather than an appropriate test standard (29 CFR 1910.7(c)). A test standard must specify the safety requirements for a specific type of product(s) (NRTL Program Directive, Ch. 2.VIII.C.1). A test method, however, is a specified technical procedure for performing a test. As such, a test method is not an appropriate test standard. While a NRTL may use a test method to determine if certain safety requirements are met, a test method is not itself a safety requirement for a specific product category.

Second, a document that focuses primarily on usage, installation, or maintenance requirements, and not safety requirements (*i.e.*, features, parts, capabilities, usage limitations, or installation requirements that would create a potential hazard in operating the equipment if not properly used), would also not be considered an appropriate test standard (NRTL Program Directive, Ch. 2.VIII.C.1). In some cases, however, a document may also provide safety test specifications in addition to usage, installation, and maintenance requirements. In such cases, the document would be retained as an appropriate test standard based on the safety test specifications.

Finally, a document may not be considered an appropriate test standard if the document covers products for which OSHA does not require testing and certification (NRTL Program Directive, Ch. 2.VIII.C.2). Similarly, a document that covers electrical product components would not be considered an appropriate test standard. These documents apply to types of components that have limitation(s) or condition(s) on their use, which are not appropriate for use as end-use products. These documents also specify that these types of components are for use only as part of an end-use product. NRTLs, however, evaluate such components only in the context of evaluating whether end-use products requiring NRTL approval are safe for use in the workplace. Accordingly, as a matter of policy, OSHA considers that documents

covering such components are not appropriate test standards under the NRTL Program. OSHA notes, however, that it is not proposing to delete from NRTLs' scope of recognition any test standards covering end-use products that contain such components.

In addition, OSHA notes that, to conform to a test standard covering an end-use product, a NRTL must still determine that the components in the product comply with the components' specific test standards. In making this determination, NRTLs may test the components themselves, or accept the testing of a qualified testing organization that a given component conforms to the particular test standard. OSHA reviews each NRTL's procedures to determine which approach the NRTL will use to address components, and reviews the end-use product testing to verify that the NRTL appropriately addresses that product's components.

## **II. Proposal To Delete Test Standards From the NRTL Program's List of Appropriate Test Standards and Incorporate Into the List of Appropriate Test Standards a Replacement Test Standard For a Withdrawn Test Standard**

In this notice, OSHA proposes to delete several test standards from the NRTL Program's list of appropriate test standards. OSHA also proposes to incorporate into the NRTL Program's list of appropriate test standards a replacement test standard for a withdrawn test standard.

Table 1 lists the test standards that OSHA proposes to delete from the NRTL Program's List of Appropriate Test Standards, as well as an abbreviated rationale for OSHA's proposed action. Additionally, Table 1 lists the replacement test standard that OSHA proposes to incorporate into the NRTL Program's List of Appropriate Test Standards. OSHA seeks comment on this preliminary determination.

OSHA notes that Table 1 lists the subject test standards and the proposed action with regard to each of these test standards without indicating how the proposed action will affect individual NRTLs. Section III of this notice discusses how the proposed action will affect individual NRTLs.

TABLE 1—TEST STANDARDS OSHA IS PROPOSING TO REMOVE FROM NRTL PROGRAM’S LIST OF APPROPRIATE TEST STANDARDS

Proposed deleted test standard	Test standard title	Reason for deletion	Proposed replacement standard(s)
UL 2231–1 .....	Personnel Protection Systems for Electric Vehicle (EV) Supply Circuits: General Requirements.	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 2231–2 .....	Personnel Protection Systems for Electric Vehicle (EV) Supply Circuits: Particular Requirements for Protection Devices for Use in Charging Systems.	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 224 .....	Extruded Insulating Tubing .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 969 .....	Marking and Labeling Systems .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1332 .....	Organic Coatings for Steel Enclosures for Outdoor Use Electrical Equipment.	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1441 .....	Coated Electrical Sleeving .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1446 .....	Systems of Insulating Materials—General.	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 61010A–2–042 .....	Electrical Equipment for Laboratory Use; Part 2: Particular Requirements for Autoclaves and Sterilizers Using Toxic Gas for the Treatment of Medical Materials, and for Laboratory Processes.	Withdrawn and replaced .....	UL 61010–1 (no direct replacement for UL 61010A–2–042).

**III. Proposed Modifications to Affected NRTLs’ Scope of Recognition**

In this notice, OSHA additionally proposes to remove certain test standards (*i.e.*, those listed in Table 1, above) from the scopes of recognition of several NRTLs and to add to the scopes of recognition of some of these NRTLs a replacement test standard, as applicable. The tables in this section (Table 2 through Table 6) list, for each affected NRTL, the test standard(s) that OSHA proposes to remove from the

scope of recognition of the NRTL, along with the proposed replacement test standard (as applicable).

OSHA seeks comment on whether the proposed deletions and replacements are appropriate, and whether individual tables omit any appropriate replacement test standard that is comparable to a withdrawn test standard. If OSHA determines that it omitted any appropriate replacement test standard that is comparable to a withdrawn test standard, it will, in the final determination, incorporate that

replacement test standard into the scope of recognition of each affected NRTL.

Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request, by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified.

TABLE 2—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF THE CSA GROUP TESTING & CERTIFICATION INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 224 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 969 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1441 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1446 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.



TABLE 2—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF THE CSA GROUP TESTING & CERTIFICATION INC.—Continued

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 61010A-2-042 .....	Withdrawn and replaced .....	UL 61010-1 (no direct replacement).

TABLE 3—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF INTERTEK TESTING SERVICES NA, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 224 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 969 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1441 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1446 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 61010A-2-042 .....	Withdrawn and replaced .....	UL 61010-1 (no direct replacement).

TABLE 4—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF TUV RHEINLAND OF NORTH AMERICA, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 224 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.

TABLE 5—TEST STANDARD OSHA PROPOSES TO REMOVE FROM THE SCOPE OF RECOGNITION OF TUV SUD AMERICA, INC.

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 969 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.

TABLE 6—TEST STANDARDS OSHA PROPOSES TO REMOVE FROM/ADD TO THE SCOPE OF RECOGNITION OF UL LLC

Proposed test standard to be removed	Reason for proposed removal	Proposed replacement test standard(s) (if applicable)
UL 2231-1 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 2231-2 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 224 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 969 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1332 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1441 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 1446 .....	Standard is component standard and not an end-product standard. It does not meet the requirements of the NRTL Program.	None.
UL 61010A-2-042 .....	Withdrawn and replaced .....	UL 61010-1 (no direct replacement).

#### IV. Proposal To Add Test Standards to the NRTL Program's List of Appropriate Test Standards

In this notice, OSHA also proposes to add several test standards to the NRTL

Program's list of appropriate test standards. Table 7, below lists the test standards that OSHA proposes to add to the NRTL Program's List of Appropriate

Test Standards. OSHA seeks comment on this preliminary determination.

TABLE 7—TEST STANDARDS OSHA PROPOSES TO ADD TO THE NRTL PROGRAM'S LIST OF APPROPRIATE TEST STANDARDS

Test standard	Test standard title
UL 970 .....	Standard for Retail Fixtures and Merchandise Displays.
UL 62841-2-17 .....	Electric Motor-Operated Hand-Held Tools, Transportable Tools and Lawn and Garden Machinery—Safety—Part 2-17: Particular Requirements for Hand-Held Routers.
UL 62841-4-1 .....	Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Safety—Part 4-1: Particular Requirements For Chain Saws.
UL 62841-4-2. ....	Standard for Electric Motor-Operated Hand-Held Tools, Transportable Tools And Lawn And Garden Machinery—Safety—Part 4-2: Particular Requirements For Hedge Trimmers.
CSA/ANSI C22.2 No. 336 .....	Particular requirements for rechargeable battery-operated commercial robotic floor treatment machines with traction drives.
UL 61730-1 .....	Standard for Photovoltaic (PV) Module Safety Qualification—Part 1: Requirements for Construction.
UL 61730-2 .....	Photovoltaic (PV) Module Safety Qualification—Part 2: Requirements for Testing.

To review copies of comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. These materials will generally be available online at <http://www.regulations.gov> under Docket No. OSHA-2013-0012.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health regarding the removal of recognition of these test standards from the NRTL Program's List of Appropriate Test Standards and to update the scope of recognition of several NRTLs. The Assistant Secretary will make the final decision. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7. OSHA will publish a public notice of this final decision in the **Federal Register**.

#### V. Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on August 6, 2021.

**James S. Frederick,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021-17436 Filed 8-13-21; 8:45 am]

**BILLING CODE 4510-26-P**

#### DEPARTMENT OF LABOR

##### Occupational Safety and Health Administration

[Docket No. OSHA-2010-0046]

##### QPS Evaluation Services, Inc.: Application for Expansion of Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of QPS Evaluation Services, Inc., for expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant the application.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before August 31, 2021.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* You may submit comments and attachments electronically at: <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted

material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693-2350 (TTY (877) 889-5627) for assistance in locating docket submissions.

*Instructions:* All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA-2017-0014). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Extension of comment period:* Submit requests for an extension of the comment period on or before August 31, 2021 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N-3655, Washington, DC 20210, or by fax to (202) 693-1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693-1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and

Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, telephone: (202) 693-2110 or email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Notice of the Application for Expansion**

The Occupational Safety and Health Administration is providing notice that QPS Evaluation Services, Inc., (QPS) is applying for expansion of its current recognition as a NRTL. QPS requests the addition of eleven test standards to its NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition. Each NRTL’s scope of recognition includes (1) the type of products the NRTL may test, with each type specified by its applicable test standard; and (2)

the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL’s scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding. In the second notice, the agency provides its final decision on the application. These notices set forth the NRTL’s scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including QPS, which details the NRTL’s scope of recognition. These pages are available from the

OSHA website at: <https://www.osha.gov/dts/otpca/nrtl/qps.html>.

QPS currently has one facility (site) recognized by OSHA for product testing and certification, with its headquarters located at: QPS Evaluation Services, Inc., 81 Kelfield Street, Unit 8, Toronto, Ontario M9W 5A3 Canada. The scope of QPS NRTL recognition is available at <https://www.osha.gov/dts/otpca/nrtl/qps.html>.

**II. General Background on the Application**

QPS submitted an application dated January 30, 2020 (OSHA-2010-0046-0013), to expand its recognition to include eleven additional test standards. OSHA staff performed a detailed analysis of the application packet and other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

Table 1, below, lists the appropriate test standards found in QPS’s application for expansion for testing and certification of products under the NRTL Program.

TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN QPS’S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL60079-0	Explosive Atmospheres—Part 0: Equipment—General Requirements.
UL60079-1	Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures “d”.
UL60079-2	Explosive atmospheres—Part 2: Equipment protection by pressurized enclosure ‘p’.
UL60079-7	Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety “e”.
UL60079-11	Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety “i”.
UL60079-15	Explosive atmospheres—Part 15: Equipment protection by type of protection ‘n’.
UL60079-18	Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation ‘m’.
UL60079-25	Explosive Atmospheres—Part 25: Intrinsically Safe Electrical Systems.
UL60079-26	Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.
UL60079-28	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
UL60079-31	Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection by Enclosure “t”.

**III. Preliminary Findings on the Application**

QPS submitted an acceptable application for expansion of its scope of recognition. OSHA’s review of the application file and related material indicates preliminarily that QPS can meet the requirements prescribed by 29 CFR 1910.7 for expanding its recognition to include the addition of these eleven test standards for NRTL testing and certification listed above. This preliminary finding does not constitute an interim or temporary approval of QPS’s application.

OSHA welcomes public comment as to whether QPS meets the requirements of 29 CFR 1910.7 for expansion of its recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters

needing more time to comment must submit a request in writing, stating the reasons for the request by the due date for comments. OSHA will limit any extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified. To obtain or review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, listed in **ADDRESSES**. These materials also are available online at <https://www.regulations.gov> under Docket No. OSHA-2010-0046.

OSHA staff will review all comments to the docket submitted in a timely manner and, after addressing the issues raised by these comments, make a

recommendation to the Assistant Secretary for Occupational Safety and Health on whether to grant QPS’s application for expansion of its scope of recognition. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

*Authority and Signature*

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor’s Order No. 8-2020

(85 FR 58393, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC, on August 6, 2021.

**James S. Frederick,**  
Acting Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2021-17435 Filed 8-13-21; 8:45 am]

BILLING CODE 4510-26-P

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

[Docket No. OSHA-2006-0042]

**CSA Group Testing & Certification Inc.: Grant of Expansion of Recognition**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for CSA Group Testing & Certification Inc., as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on August 16, 2021.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone (202) 693-1999 or email [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone (202) 693-2110 or email [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Notice of Final Decision**

OSHA hereby gives notice of the expansion of the scope of recognition of

CSA Group Testing & Certification Inc. (CSA) as a NRTL. CSA’s expansion covers the addition of seven test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition. Each NRTL’s scope of recognition includes (1) the type of products the NRTL may test, with each type specified by the applicable test standard; and (2) the recognized site(s) that has/have the technical capability to perform the product-testing and product-certification activities for test standards within the NRTL’s scope. Recognition is not a delegation or grant of government authority; however, recognition enables employers to use products approved by the NRTL to meet OSHA standards that require product testing and certification.

The agency processes an application by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in Appendix A, 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides the preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL’s scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including CSA, which details the NRTL’s scope of recognition. These pages are available from the OSHA website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

CSA submitted two applications on July 17, 2019, (OSHA-2006-0042-0023) and (OSHA-2006-0042-0024), to expand their recognition to include fifteen additional test standards. The first application was amended on

February 17, 2021, because eight of the standards requested in the application are already in CSA’s NRTL scope of recognition. This expansion will cover seven test standards that OSHA adding to CSA’s recognition. OSHA staff performed detailed analysis of the application packets and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to these applications.

OSHA published the preliminary notice announcing CSA’s expansion applications in the **Federal Register** on June 24, 2021 (86 FR 33326). The agency requested comments by June 9, 2021, but it received no comments in response to this notice. OSHA is now proceeding with this final grant of expansion of CSA’s NRTL recognition.

To obtain or review copies of all public documents pertaining to the CSA’s application, go to <http://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA-2006-0042 contains all materials in the record concerning CSA’s recognition. Please note: Due to the COVID-19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693-2350.

**II. Final Decision and Order**

OSHA staff examined CSA’s expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that CSA meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant CSA’s expanded scope of recognition. OSHA limits the expansion of CSA’s recognition to testing and certification of products for demonstration of conformance to the test standards listed below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN CSA’S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 2108 .....	Low-Voltage Lighting Systems.
UL 4703 .....	Standard for Photovoltaic Wire.
UL 2594 .....	Standard for Electric Vehicle Supply Equipment.
UL 60730-2-8 .....	Automatic Electrical Controls for Household and Similar Use Part 2: Particular Requirements for Electrically Operated Water Valves, Including Mechanical Requirements.
UL 60079-28 .....	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
UL 60079-31 .....	Standard for Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection Enclosure “t”.
NFPA 496 .....	Purged and Pressurized Enclosures for Electrical Equipment.

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

#### A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including, but not limited to, abiding by the following conditions of the recognition:

1. CSA must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. CSA must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. CSA must continue to meet the requirements for recognition, including all previously published conditions on CSA's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of CSA as a NRTL, subject to the limitations and conditions specified above.

#### III. Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to Section 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393; Sept. 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on August 6, 2021.

**James S. Frederick,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021–17433 Filed 8–13–21; 8:45 am]

**BILLING CODE 4510–26–P**

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. OSHA–2021–0005]

#### LabTest Certification Inc.: Application for Recognition

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the application of LabTest Certification, Inc. (LCI), for recognition as a Nationally Recognized Testing Laboratory (NRTL) and presents the agency's preliminary finding to grant this recognition.

**DATES:** Submit comments, information, and documents in response to this notice, or requests for an extension of time to make a submission, on or before September 15, 2021.

**ADDRESSES:** Submit comments by any of the following methods:

*Electronically:* You may submit comments and attachments electronically at: <https://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

*Docket:* To read or download comments or other material in the docket, go to <http://www.regulations.gov>. Documents in the docket are listed in the <http://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

*Instructions:* All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2017–0014). OSHA will place comments and requests to speak, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates. For further information on submitting comments, see the "Public Participation" heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

*Extension of comment period:* Submit requests for an extension of the

comment period on or before September 15, 2021 to the Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210, or by fax to (202) 693–1644.

**FOR FURTHER INFORMATION CONTACT:** Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, telephone: (202) 693–2110; email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov).

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

Many of OSHA's workplace standards require that a NRTL test and certify certain types of equipment as safe for use in the workplace. NRTLs are independent laboratories that meet OSHA's requirements for performing safety testing and certification of products used in the workplace. To obtain and retain OSHA recognition, the NRTLs must meet the requirements in the NRTL Program regulations at 29 CFR 1910.7. More specifically, to be recognized by OSHA, an organization must: (1) Have the appropriate capability to test, evaluate, and approve products to assure their safe use in the workplace; (2) be completely independent of employers subject to the tested equipment requirements, and manufacturers and vendors of products for which OSHA requires certification; (3) have internal programs that ensure proper control of the testing and certification process; and (4) have effective reporting and complaint handling procedures. Recognition is an acknowledgement by OSHA that the NRTL has the capabilities to perform independent safety testing and certification of the specific products covered within the NRTL's scope of recognition and is not a delegation or grant of government authority. Recognition of a NRTL by OSHA also allows employers to use products certified by that NRTL to meet those OSHA standards that require product testing and certification.

The agency processes applications for initial recognition following requirements in Appendix A of 29 CFR 1910.7. This appendix requires OSHA to publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application, provides its preliminary findings, and solicits comments on its preliminary findings. In the second notice, the agency provides its final decision on the application and sets forth the NRTL's scope of recognition.

**II. Notice of the Application for Recognition**

OSHA is providing notice that LabTest Certification, Inc., (LCI) is applying for recognition as a NRTL. According to public information (see <https://labtestcert.com/about-labtest/>) LCI states that it is an internationally accredited testing laboratory. In its

application, LCI lists the current address of its headquarters as: LabTest Certification, Inc., 205—8291 92 Street, Delta, BC Canada V4G 0A4. OSHA has determined preliminarily that LCI has the capability to perform as a NRTL as outlined in 29 CFR 1910.7.

Each NRTL's scope of recognition has two elements: (1) The type(s) of products the NRTL may test, with each type specified by its applicable test standard; and (2) the recognized site(s) that have the technical capability to perform the product-testing and product-certification activities for the applicable test standards within the NRTL's scope of recognition. LCI applied on January 29, 2016, for one recognized site (OSHA-2021-0005-0001). This application was amended on June 10, 2021, to remove three of the eight standards requested in the original

application. LCI's original application also requested that supplemental programs be included in their recognition. However, on October 1, 2019, OSHA published an update to the NRTL Program Policies, Procedures and Guidelines Directive, CPL 01-00-004, which eliminated supplemental programs from the NRTL Program. Therefore, OSHA does not grant recognition to NRTL applicants for supplemental programs. The following sections set forth the requested scope of recognition included in LCI's application that OSHA has considered.

*A. Standards Requested for Recognition*

Table 1 below lists the appropriate test standards included in LCI's amended application for testing and certification of products under the NRTL Program.

**TABLE 1—PROPOSED LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN LCI'S NRTL SCOPE OF RECOGNITION**

Test standard	Test standard title
UL 1598 .....	Luminaires.
UL 60079-0 .....	Explosive Atmospheres—Part 0: Equipment—General Requirements.
UL 60079-1 .....	Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures “d”.
UL 60079-11 .....	Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety “i”.
UL 60079-15 .....	Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection “n”.

*B. Sites Requested for Recognition*

The current address of the LCI site included in its application for recognition as a NRTL is:

1. LabTest Certification, Inc., 205—8291 92 Street, Delta, BC Canada V4G 0A4. The NRTL Program requires that to be a recognized site, the site listed above must have the capability to conduct product testing in accordance with the appropriate test standard for the equipment or material being tested and certified.

**IV. Preliminary Finding on the Application for Recognition as a NRTL**

OSHA's NRTL Program recognition process involves a thorough analysis of a NRTL applicant's policies and procedures, and a comprehensive on-site review of the applicant's testing and certification activities to ensure that the applicant meets the requirements of 29 CFR 1910.7. OSHA staff performed a detailed analysis of LCI's application packet and reviewed other pertinent information. OSHA staff also performed a comprehensive on-site assessment of LCI's testing facility, at LCI Delta Canada on December 11–12, 2018. An overview of OSHA's assessment of the four requirements for recognition (*i.e.*, capability, control procedures,

independence, and credible reports and complaint handling) is provided below.

*A. Capability*

Section 1910.7(b)(1) states that, for each specified item of equipment or material to be listed, labeled, or accepted, the NRTL must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality-control programs) to perform appropriate testing. OSHA staff performed a detailed analysis of LCI's application packet and reviewed other pertinent information to assess its capabilities to perform testing and certification activities. OSHA preliminarily determined that LCI has demonstrated these capabilities through the following:

- LCI's facility has adequate test areas, energy sources, and procedures for controlling incompatible activities.
- LCI provided a detailed list of its testing equipment. Review of the application shows that the equipment listed is available and adequate for the standards for which it seeks recognition.
- LCI has detailed procedures for conducting testing, review, and evaluation, and for capturing the test and other data required by the test standards for which it seeks recognition.

- LCI has detailed procedures addressing the maintenance and calibration of equipment, and the types of records maintained for, or supporting laboratory activities.

- LCI has sufficient qualified personnel to perform the proposed scope of testing based on their education, training, technical knowledge, and experience.

- LCI has an adequate quality-control system in place to conduct internal audits, as well as track and resolve nonconformances.

OSHA's on-site assessment of LCI's facility confirmed the capabilities described in its application packet. The assessors found some nonconformances with the requirements of 29 CFR 1910.7. LCI addressed these issues sufficiently to meet the applicable NRTL requirements.

*B. Control Procedures*

Section 1910.7(b)(2) requires that the NRTL provide controls and services, to the extent necessary, for the particular equipment or material to be listed, labeled, or accepted. These controls and services include procedures for identifying the listed or labeled equipment or materials, inspections of production runs at factories to assure conformance with test standards, and

field inspections to monitor and assure the proper use of identifying marks or labels. OSHA staff performed a detailed analysis of LCI's application packet and reviewed other pertinent information to assess its control procedures. OSHA preliminarily determined that LCI has demonstrated these capabilities through the following:

- LCI has a quality-control manual and detailed procedures to address the steps involved to list and certify products.
- LCI has a registered certification mark.
- LCI has certification procedures to address the authorization of certifications and audits of factory facilities. The audits apply to both the initial evaluations and the follow-up inspections of manufacturers' facilities.

OSHA's on-site assessment of LCI's facility confirmed the capabilities described in its application packet. The assessors found some nonconformances with the requirements of 29 CFR 1910.7. LCI addressed these issues sufficiently to meet the applicable NRTL requirements.

#### C. Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers that are subject to the testing requirements, and of any manufacturers or vendors of equipment or materials tested under the NRTL Program. The revised NRTL Program Policies, Procedures and Guidelines Directive, CPL-01-00-004, allows NRTLs to comply with the requirement in the NRTL Program regulation that NRTLs be "completely independent of employers subject to the tested equipment requirements, and of any manufacturers or vendors of equipment or materials being tested for these purposes" (29 CFR 1910.7(b)(3)) by meeting the minimum performance standards of Annex B of the NRTL Program Directive, CPL-01-00-004, with respect to impartiality. The revised policy focuses on the NRTL's ability to effectively identify, eliminate and control any risk to its impartiality.

This policy provides for the NRTL to identify risks to impartiality on an ongoing basis and when risks to impartiality are identified, and for the NRTL to demonstrate how it eliminates or minimizes such risks. OSHA staff performed a detailed analysis of LCI's application packet and reviewed other pertinent information to assess its independence. OSHA preliminarily determined that LCI has demonstrated independence through the following:

- LCI is a privately-owned organization, and OSHA found no

information regarding ownership that would qualify as a conflict under OSHA's independence policy.

- LCI showed that it has none of the relationships described in OSHA's independence policy or any other relationship that could subject it to undue influence when testing for product safety.
- LCI has policies and procedures in place to identify risks to impartiality and when risks to impartiality are found, LCI has policies and procedures to eliminate or minimize such risks.

#### D. Credible Reports and Complaint Handling

Section 1910.7(b)(4) specifies that a NRTL must maintain effective procedures for producing credible findings and reports that are objective and free of bias. The NRTL must also have procedures for handling complaints and disputes under a fair and reasonable system. OSHA staff performed a detailed analysis of LCI's application packet and reviewed other pertinent information to assess its ability to produce credible results and handle complaints. OSHA preliminarily determined that LCI has demonstrated these capabilities through the following:

- LCI has detailed procedures describing the content of test reports, and other detailed procedures describing the preparation and approval of these reports.
- LCI has procedures for recording, analyzing, and processing complaints from users, manufacturers, and other parties in a fair manner.

OSHA's on-site assessments of LCI's facilities confirmed the capabilities described in its application packet. The assessors found some nonconformances with the requirements of 29 CFR 1910.7. LCI addressed these issues sufficiently to meet the applicable NRTL requirements.

OSHA's review of the application file and pertinent documentation, as well as the results of the on-site assessments, indicate that LCI can meet the requirements prescribed by 29 CFR 1910.7 for recognition as a NRTL for its site located in Delta, BC Canada.

OSHA's preliminary finding does not constitute an interim or temporary approval of LCI's application.

OSHA welcomes public comment as to whether LCI meets the requirements of 29 CFR 1910.7 for recognition as a NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request, for an extension by the due date for comments. OSHA will limit any

extension to 10 days unless the requester justifies a longer time period. OSHA may deny a request for an extension if it is not adequately justified. To review copies of the exhibits identified in this notice, as well as comments submitted to the docket, contact the Docket Office, Room N-3653, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address. *Please note:* Due to the COVID-19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693-2350. These materials also are generally available online at <http://www.regulations.gov> under Docket No. OSHA-2021-0005. All documents in the docket (including this **Federal Register** notice) are listed in the <https://www.regulations.gov> index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office.

OSHA staff will review all comments submitted to the docket in a timely manner and, after addressing the issues raised by these comments, will make a recommendation to the Assistant Secretary for Occupational Safety and Health regarding LCI's application for recognition as a NRTL. The Assistant Secretary will make the final decision on granting the application. In making this decision, the Assistant Secretary may undertake other proceedings prescribed in Appendix A to 29 CFR 1910.7.

OSHA will publish a public notice of this final decision in the **Federal Register**.

#### IV. Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC, on August 6, 2021.

**James S. Frederick,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021-17434 Filed 8-13-21; 8:45 am]

**BILLING CODE 4510-26-P**

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

[Docket No. OSHA–2006–0040]

**SGS North America, Inc.: Grant of Expansion of Recognition**

**AGENCY:** Occupational Safety and Health Administration (OSHA), Labor.

**ACTION:** Notice.

**SUMMARY:** In this notice, OSHA announces the final decision to expand the scope of recognition for SGS North America, Inc., as a Nationally Recognized Testing Laboratory (NRTL).

**DATES:** The expansion of the scope of recognition becomes effective on August 16, 2021.

**FOR FURTHER INFORMATION CONTACT:**

Information regarding this notice is available from the following sources:

*Press inquiries:* Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor; telephone: (202) 693–1999; email: [meilinger.francis2@dol.gov](mailto:meilinger.francis2@dol.gov).

*General and technical information:* Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor; telephone: (202) 693–2110; email: [robinson.kevin@dol.gov](mailto:robinson.kevin@dol.gov). OSHA’s web page includes information about the NRTL Program (see <http://www.osha.gov/dts/otpca/nrtl/index.html>).

**SUPPLEMENTARY INFORMATION:**

**I. Notice of Final Decision**

OSHA hereby gives notice of the expansion of the scope of recognition of

SGS of North America, Inc. (SGS), as a NRTL. SGS’s expansion covers the addition of thirteen test standards to its scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified by 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition, or for expansion or renewal of this recognition, following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding and, in the second notice, the agency provides the final decision on the application. These notices set forth the NRTL’s scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL that details the scope of recognition. These pages are available from the agency’s website at <http://www.osha.gov/dts/otpca/nrtl/index.html>.

SGS submitted an application, dated January 20, 2021 (OSHA–2006–0040–0064), to expand its scope of recognition to include the addition of thirteen test standards. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent

information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing SGS’s expansion application in the **Federal Register** on June 15, 2021 (86 FR 31733). The agency requested comments by July 30, 2021, but it received no comments in response to this notice. OSHA now is proceeding with this final notice to grant expansion of SGS’s scope of recognition.

To obtain or review copies of all public documents pertaining to SGS’s applications, go to <http://www.regulations.gov> or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Room N–3653, Washington, DC 20210. Docket No. OSHA–2006–0040 contains all materials in the record concerning SGS’s recognition. *Please note:* Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350.

**II. Final Decision and Order**

OSHA staff examined SGS’s expansion application, the capability to meet the requirements of the test standards, and other pertinent information. Based on a review of this evidence, OSHA finds that SGS meets the requirements of 29 CFR 1910.7 for expansion of the recognition, subject to the specified limitations and conditions listed. OSHA, therefore, is proceeding with this final notice to grant expansion of SGS’s scope of recognition. OSHA limits the expansion of SGS’s scope of recognition to testing and certification of products for demonstration of conformance to the test standard listed below in Table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN SGS’S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 121201 .....	Nonincendive Electrical Equipment for Use in Class I and II, Division 2 and Class III, Divisions 1 and 2 Hazardous (Classified) Locations.
UL 60079–0 .....	Explosive Atmospheres—Part 0: Equipment—General Requirements.
UL 60079–1 .....	Explosive Atmospheres—Part 1: Equipment Protection by Flameproof Enclosures “d”.
UL 60079–2 .....	Explosive Atmospheres—Part 2: Protection by Pressurized Enclosures “p”.
UL 60079–5 .....	Explosive Atmospheres—Part 5: Equipment Protection by Powder Filling “q”.
UL 60079–6 .....	Explosive Atmospheres—Part 6: Equipment Protection by Oil Immersion “o”.
UL 60079–7 .....	Explosive Atmospheres—Part 7: Equipment Protection by Increased Safety “e”.
UL 60079–11 .....	Explosive Atmospheres—Part 11: Equipment Protection by Intrinsic Safety “i”.
UL 60079–15 .....	Explosive Atmospheres—Part 15: Equipment Protection by Type of Protection “n”.
UL 60079–18 .....	Explosive Atmospheres—Part 18: Equipment Protection by Encapsulation “m”.
UL 60079–26 .....	Explosive Atmospheres—Part 26: Equipment for Use in Class I, Zone 0 Hazardous (Classified) Locations.
UL 60079–28 .....	Standard for Explosive Atmospheres—Part 28: Protection of Equipment and Transmission Systems Using Optical Radiation.
UL 60079–31 .....	Standard for Explosive Atmospheres—Part 31: Equipment Dust Ignition Protection Enclosure “t”.



OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

#### A. Conditions

Recognition is contingent on continued compliance with 29 CFR 1910.7, including, but not limited to, abiding by the following conditions of the recognition:

1. SGS must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in the operations as a NRTL, and provide details of the change(s);

2. SGS must meet all the terms of the recognition and comply with all OSHA policies pertaining to this recognition; and

3. SGS must continue to meet the requirements for recognition, including all previously published conditions on SGS's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of SGS, subject to the limitation and conditions specified above.

### III. Authority and Signature

James S. Frederick, Acting Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8-2020 (85 FR 58393, September 18, 2020), and 29 CFR 1910.7.

Signed at Washington, DC, on August 6, 2021.

**James S. Frederick,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2021-17437 Filed 8-13-21; 8:45 am]

**BILLING CODE 4510-26-P**

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## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA-21-0011; NARA-2021-041]

### 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* 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 30, 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*, 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, Office of the Assistant Secretary for Health, Office for Human Research Protections Records (DAA-0514-2019-0001).
2. Department of State, Bureau of Political-Military Affairs, Consolidated Schedule (DAA-0059-2019-0012).
3. Department of the Treasury, Treasury Inspector General for Tax Administration, Disclosure Section Files (DAA-0056-2018-0013).
4. Federal Communications Commission, Agency-wide, Diversity and Inclusion Programs (DAA-0173-2020-0012).
5. Office of Government Ethics, Agency-wide, General Administrative and Operations Support (DAA-0522-2020-0003).

#### **Laurence Brewer,**

*Chief Records Officer for the U.S. Government.*

[FR Doc. 2021-17426 Filed 8-13-21; 8:45 am]

**BILLING CODE 7515-01-P**

## **NATIONAL CREDIT UNION ADMINISTRATION**

### **Agency Information Collection Activities: Proposed Collection; Comment Request**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice and request for comment.

**SUMMARY:** The National Credit Union Administration (NCUA), as part of a continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to comment on the following extensions of a currently approved collection, as required by the Paperwork Reduction Act of 1995.

**DATES:** Written comments should be received on or before October 15, 2021 to be assured consideration.

**ADDRESSES:** Interested persons are invited to submit written comments on the information collection to Dawn Wolfgang, National Credit Union Administration, 1775 Duke Street, Suite 6032, Alexandria, Virginia 22314; email at [PRAComments@NCUA.gov](mailto:PRAComments@NCUA.gov). Given the limited in-house staff because of the COVID-19 pandemic, email comments are preferred.

#### **FOR FURTHER INFORMATION CONTACT:**

Address requests for additional information to Dawn Wolfgang at the address above or telephone 703-548-2279.

#### **SUPPLEMENTARY INFORMATION:**

*OMB Number:* 3133-0184.

*Title:* Requirements for Insurance-Interest Rate Risk Policy.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Section 741.3(b)(5) of NCUA's rules and regulations requires federally-insured credit unions with assets of more than \$50 million to develop, as a prerequisites for insurability of its member deposits, a written interest rate risk management policy and a program to effectively implement the policy. The need for FICU to have a written policy to establish responsibilities and procedures for identifying, measuring, monitoring, controlling, and reporting, and establishing risk limits are essential components of safe and sound credit union operations and to ensure the security of the National Credit Union Share Insurance Fund (NCUSIF).

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated Number of Respondents:* 2,452.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 2,462.

*Estimated Burden Hours per Response:* 0.31.

*Estimated Total Annual Burden Hours:* 773.

*OMB Number:* 3133-0198.

*Title:* Appeals Procedures, 12 CFR 746, subpart B.

*Type of Review:* Extension of a currently approved collection.

*Abstract:* Part 746, subpart B, will govern most authorized appeals to the Board of adverse determinations made

at program office levels under agency regulations that permit such an appeal. The procedures apply to federal credit unions (FCUs), federally insured, state-chartered credit unions (FISCUs), or certain institution affiliated parties (IAPs) such as officers or directors when appealing an adverse agency determination under one of the rules to which part 746, subpart B, would apply. The procedures are intended to result in greater efficiency, consistency, and better understanding of the way in which matters under covered regulations may be appealed to the Board.

*Affected Public:* Private Sector: Not-for-profit institutions.

*Estimated Number of Respondents:* 34.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Responses:* 34.

*Estimated Burden Hours per Response:* 12.94.

*Estimated Total Annual Burden Hours:* 440.

*Request for Comments:* Comments submitted in response to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit comments concerning: (a) Whether the collection of information is necessary for the proper execution of the function of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the 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 the information on the respondents, including the use of automated collection techniques or other forms of information technology.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on August 9, 2021.

Dated: August 10, 2021.

**Dawn D. Wolfgang,**

*NCUA PRA Clearance Officer.*

[FR Doc. 2021-17415 Filed 8-13-21; 8:45 am]

**BILLING CODE 7535-01-P**

## NATIONAL CREDIT UNION ADMINISTRATION

### Submission for OMB Review; Comment Request

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Notice.

**SUMMARY:** The National Credit Union Administration (NCUA) 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.

**DATES:** Comments should be received on or before September 15, 2021 to be assured of consideration.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](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:

Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548-2279, emailing [PRAComments@ncua.gov](mailto:PRAComments@ncua.gov), or viewing the entire information collection request at [www.reginfo.gov](http://www.reginfo.gov).

#### SUPPLEMENTARY INFORMATION:

*OMB Number:* 3133-0200.

*Type of Review:* Extension of a currently approved collection.

*Title:* Consumer Assistance Center.

*Abstract:* The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) (Pub. L. 111-203) authorizes the National Credit Union Administration (NCUA) to accept and resolve member complaints. NCUA has centralized the intake of consumer inquiries and complaints under the Consumer Assistance Center, via the [MyCreditUnion.gov](http://MyCreditUnion.gov) website. The Consumer Assistance Center assists consumers with information about federal financial consumer protection and share insurance matters and assists in resolving disputes with credit unions. Consumers can make inquiries or submit a complaint electronically through the [MyCreditUnion.gov](http://MyCreditUnion.gov) website. The on-line portal offers a template for consumers to use to aid in identifying their concerns.

*Affected Public:* Individuals and Households; Private Sector: Not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 2,209.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on August 9, 2021.

Dated: August 10, 2021.

**Dawn D. Wolfgang,**

*NCUA PRA Clearance Officer.*

[FR Doc. 2021-17413 Filed 8-13-21; 8:45 am]

**BILLING CODE 7535-01-P**

## NATIONAL SCIENCE FOUNDATION

### Sunshine Act Meetings

The National Science Board's Committee on Strategy's Subcommittee on Technology, Innovation and Partnerships hereby gives notice of the scheduling of a teleconference for the transaction of National Science Board business pursuant to the NSF Act and the Government in the Sunshine Act, as follows:

**TIME AND DATE:** Tuesday, August 17, 2021, from 1:00-2:00 p.m. EDT.

**PLACE:** This meeting will be held by teleconference through the National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** The agenda is: Subcommittee chair's opening remarks; Discussion of planning and strategy for NSF's Technology, Innovation, and Partnerships directorate, including its goals, budget scenarios, plans for staffing the directorate, and potential funding opportunities.

#### CONTACT PERSON FOR MORE INFORMATION:

Point of contact for this meeting is: Chris Blair, [cblair@nsf.gov](mailto:cblair@nsf.gov), 703/292-7000. Meeting information and updates may be found at <http://www.nsf.gov/nsb/meetings/notices.jsp#sunshine>. Please refer to the National Science Board website [www.nsf.gov/nsb](http://www.nsf.gov/nsb) for general information.

**Chris Blair,**

*Executive Assistant to the National Science Board Office.*

[FR Doc. 2021-17550 Filed 8-12-21; 4:15 pm]

**BILLING CODE 7555-01-P**

## NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-335 and 50-389; NRC-2021-0144]

**Florida Power and Light Company;  
NextEra Energy; St. Lucie Plant, Units  
1 and 2**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Subsequent license renewal application; receipt.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) has received an application for the subsequent renewal of Renewed Facility Operating License Nos. DPR-67 and NPF-16, which authorize Florida Power and Light Company (FPL or the applicant) to operate St. Lucie Plant (SLP), Units 1 and 2. The subsequent renewed licenses would authorize the applicant to operate SLP for an additional 20 years beyond the period specified in each of the current renewed licenses. The current renewed operating licenses for SLP expire as follows: Unit 1 on March 1, 2036, and Unit 2 on April 6, 2043.

**DATES:** The subsequent license renewal application referenced in this document became available on August 9, 2021.

**ADDRESSES:** Please refer to Docket ID NRC-2021-0144 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC-2021-0144. Address questions about Docket IDs in [Regulations.gov](http://Regulations.gov) to Stacy Schumann; telephone: 301-415-0624; email: [Stacy.Schumann@nrc.gov](mailto:Stacy.Schumann@nrc.gov). For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at <https://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by email to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *Attention:* The PDR, where you may examine and purchase copies of public documents, is currently closed. You may submit your request to the PDR via email at [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov) or call 1-800-397-4209 or 301-415-4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

- *Public Library:* A copy of the subsequent license renewal application for SLP can be accessed at the following public libraries:

- St. Lucie County Library—Morningside Branch, 2410 SE Morningside Blvd., Port St. Lucie, FL 34952; and

- St. Lucie County Library—Kilmer Branch, 101 Melody Lane, Fort Pierce, FL 34950.

**FOR FURTHER INFORMATION CONTACT:** Lois James, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–3306; email: [Lois.James@nrc.gov](mailto:Lois.James@nrc.gov).

**SUPPLEMENTARY INFORMATION:** The NRC has received an application (ADAMS Package Accession No. ML21215A314) from FPL, dated August 3, 2021, filed pursuant to Section 103 of the Atomic Energy Act of 1954, as amended, and Part 54 of title 10 of the *Code of Federal Regulations*, “Requirements for Renewal of Operating Licenses for Nuclear Power Plants,” to renew the operating licenses for SLP. Subsequent renewal of the licenses would authorize the applicant to operate the facility for an additional 20-year period beyond the period specified in the respective current renewed operating licenses. The current renewed operating licenses for SLP expire as follows: Unit 1 on March 1, 2036, and Unit 2 on April 6, 2043. The SLP units are Pressurized Water Reactors located in St. Lucie County, Florida. The acceptability of the tendered application for docketing, and other matters, including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Dated: August 10, 2021.

For the Nuclear Regulatory Commission.

**Lauren K. Gibson,**

Chief, License Renewal Project Branch, Division of New and Renewed Licenses, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–17416 Filed 8–13–21; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### 688th Meeting of the Advisory Committee on Reactor Safeguards (ACRS)

In accordance with the purposes of Sections 29 and 182b of the Atomic Energy Act (42 U.S.C. 2039, 2232(b)), the Advisory Committee on Reactor Safeguards (ACRS) will hold meetings on September 8–10, 2021. As part of the coordinated government response to combat the COVID–19 public health emergency, the Committee will be conducting meetings that will include some Members being physically present at the NRC while other Members will be

participating remotely. The public will be able to participate in any open sessions via 301–576–2978, passcode 557545013#. A more detailed agenda may be found at the ACRS public website at <https://www.nrc.gov/reading-rm/doc-collections/acrs/agenda/index.html>.

#### Wednesday, September 8, 2021

**8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)**—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

**8:35 a.m.–11:00 a.m.: Kairos Topical Report on Fuel Performance (Open/Closed)**—The Committee will have presentations and discussion with representatives from the NRC and Kairos staff regarding the subject topic. [Note: Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

**11:00 a.m.–12:00 p.m.: Committee Deliberation on the Kairos Topical Report on Fuel Performance (Open/Closed)**—The Committee will deliberate regarding the subject topic. [Note: Pursuant to 5 U.S.C 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.]

**1:30 p.m.–5:00 p.m.: Commission Meeting Preparation (Open)**—The Committee will prepare for the upcoming Commission Meeting.

#### Thursday, September 9, 2021

**8:30 a.m.–11:30 a.m.: Future ACRS Activities/Report of the Planning and Procedures Subcommittee and Reconciliation of ACRS Comments and Recommendations/Preparation of Reports (Open/Closed)**—The Committee will hear discussion of the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the Full Committee during future ACRS meetings, and/or proceed to preparation of reports as determined by the Chairman. [Note: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.] [Note: Pursuant to 5 U.S.C.

552b(c)(2)and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

**1:00 p.m.–6:00 p.m.: Preparation of Reports/Commission Meeting Preparation (Open)**—The Committee

will continue its discussion of proposed ACRS reports and Commission Meeting preparation.

#### Friday, September 10, 2021

**8:30 a.m.–6:00 p.m.: Preparation of Reports/Commission Meeting Preparation/Retreat/Other Committee Business (Open/Closed)**—The Committee will continue its discussion of proposed ACRS reports, Commission Meeting preparation, Retreat and other Committee Business. [Note: Pursuant to 5 U.S.C. 552b(c)(4), a portion of this session may be closed in order to discuss and protect information designated as proprietary.] [Note: Pursuant to 5 U.S.C. 552b(c)(2)and (6), a portion of this meeting may be closed to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of the ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.]

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on June 13, 2019 (84 FR 27662). In accordance with those procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Persons desiring to make oral statements should notify Quynh Nguyen, Cognizant ACRS Staff and the Designated Federal Officer (Telephone: 301–415–5844, Email: [Quynh.Nguyen@nrc.gov](mailto:Quynh.Nguyen@nrc.gov)), 5 days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the Cognizant ACRS staff if such rescheduling would result in major inconvenience.

An electronic copy of each presentation should be emailed to the Cognizant ACRS Staff at least one day before meeting.

In accordance with Subsection 10(d) of Public Law 92–463 and 5 U.S.C. 552b(c), certain portions of this meeting may be closed, as specifically noted above. Use of still, motion picture, and television cameras during the meeting may be limited to selected portions of the meeting as determined by the Chairman. Electronic recordings will be permitted only during the open portions of the meeting.

ACRS meeting agendas, meeting transcripts, and letter reports are available through the NRC Public

Document Room (PDR) at [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov), or by calling the PDR at 1-800-397-4209, or from the Publicly Available Records System component of NRC's Agencywide Documents Access and Management System (ADAMS), which is accessible from the NRC website at <https://www.nrc.gov/reading-rm/adams.html> or <https://www.nrc.gov/reading-rm/doc-collections/#ACRS/>.

Dated: August 11, 2021.

**Russell E. Chazell,**

*Federal Advisory Committee Management Officer, Office of the Secretary.*

[FR Doc. 2021-17444 Filed 8-13-21; 8:45 am]

**BILLING CODE 7590-01-P**

## POSTAL REGULATORY COMMISSION

[Docket Nos. MC2021-125 and CP2021-129]

### 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 18, 2021.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>. Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

**FOR FURTHER INFORMATION CONTACT:** David A. Trissell, General Counsel, at 202-789-6820.

### SUPPLEMENTARY INFORMATION:

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- I. Introduction
- II. Docketed Proceeding(s)

### I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal

Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (<http://www.prc.gov>). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.<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):* MC2021-125 and CP2021-129; *Filing Title:* USPS Request to Add Priority Mail Contract 719 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* August 10, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Christopher C. Mohr; *Comments Due:* August 18, 2021.

This Notice will be published in the **Federal Register**.

**Jennie L. Jbara,**

*Alternate Certifying Officer.*

[FR Doc. 2021-17452 Filed 8-13-21; 8:45 am]

**BILLING CODE 7710-FW-P**

<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).

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92632; File No. S7-07-21]

### Notice of Substituted Compliance Application Submitted by UBS AG and Credit Suisse AG in Connection With Certain Requirements Applicable to Non-U.S. Security-Based Swap Dealers Subject to Regulation in the Swiss Confederation; Proposed Order

August 10, 2021.

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Notice of application for substituted compliance determination; proposed order.

**SUMMARY:** The Securities and Exchange Commission ("Commission") is soliciting public comment on an application by UBS AG and Credit Suisse AG (the "Swiss Firms") requesting that, pursuant to rule 3a71-6 under the Securities Exchange Act of 1934 ("Exchange Act"), the Commission determine that registered security-based swap dealers ("SBSDs") that are not U.S. persons and that are subject to certain regulation in the Swiss Confederation ("Switzerland") may comply with certain requirements under the Exchange Act via compliance with corresponding requirements of Switzerland. The Commission also is soliciting comment on a proposed Order providing for conditional substituted compliance in connection with the application.

**DATES:** Submit comments on or before September 10, 2021.

**ADDRESSES:** Comments may be submitted by any of the following methods:

#### Electronic Comments

- Use the Commission's internet comment form (<https://www.sec.gov/rules/submitcomments.htm>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number S7-07-21 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 Number S7-07-21. 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/proposed.shtml). Typically, comments are also available for 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 the Commission does not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make publicly available.

**FOR FURTHER INFORMATION CONTACT:**

Carol M. McGee, Assistant Director or James R. Curley, Special Counsel, at 202-551-5870, Office of Derivatives Policy, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-7010.

**SUPPLEMENTARY INFORMATION:**

The Commission is soliciting public comment on an application by the Swiss Firms requesting that the Commission determine that SBSDs that are not U.S. persons and that are subject to certain regulation in Switzerland may satisfy certain requirements under the Exchange Act by complying with comparable requirements in Switzerland. The Commission also is soliciting comment on a proposed Order, set forth in Attachment A, providing for conditional substituted compliance in connection with the application.

**I. Background**

On August 6, 2021, market participants will begin to count security-based swap transactions toward the thresholds for registration with the Commission as SBSDs.<sup>1</sup> Exchange Act rule 3a71-6<sup>2</sup> conditionally provides that non-U.S. SBSDs and major security-based swap participants ("SBS Entities") may satisfy certain requirements under Exchange Act section 15F<sup>3</sup> by complying with comparable regulatory requirements of a foreign jurisdiction.<sup>4</sup> Substituted

compliance potentially is available in connection with requirements regarding business conduct and supervision, chief compliance officers, trade acknowledgment and verification, non-prudentially regulated capital and margin, recordkeeping and reporting, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation.<sup>5</sup>

Substituted compliance in part is predicated on the Commission determining the analogous foreign requirements are "comparable" to the applicable requirements under the Exchange Act, after accounting for factors such as the "scope and objectives" of the relevant foreign regulatory requirements and the effectiveness of the relevant foreign authority's or authorities' supervisory and enforcement frameworks.<sup>6</sup> Substituted compliance further requires that the Commission and the relevant foreign financial regulatory authorities have entered into an effective supervisory and enforcement

Kingdom ("UK"). See Exchange Act Release No. 90378 (Nov. 9, 2020), 85 FR 72726 (Nov. 13, 2020) ("German Notice and Proposed Order"); Exchange Act Release No. 90765 (Dec. 22, 2020), 85 FR 85686 (Dec. 29, 2020) ("German Substituted Compliance Order"); Exchange Act Release No. 90766 (Dec. 22, 2020), 85 FR 85720 (Dec. 29, 2020) ("French Notice and Proposed Order"); Exchange Act Release No. 91477 (Apr. 5, 2021), 86 FR 18341 (Apr. 8, 2021) ("French Reopening Release"); Exchange Act Release No. 92484 (July 23, 2021), 86 FR 41612 (Aug. 2, 2021) ("French Substituted Compliance Order"); Exchange Act Release No. 91476 (Apr. 5, 2021), 86 FR 18378 (Apr. 8, 2021) ("UK Notice and Proposed Order"); Exchange Act Release No. 92529 (July 30, 2021), 86 FR 43318 (Aug. 6, 2021) ("UK Substituted Compliance Order").

<sup>5</sup> See Exchange Act rule 3a71-6(d). Substituted compliance is not available for antifraud prohibitions and information-related requirements under section 15F. See Exchange Act rule 3a71-6(d)(1) (specifying that substituted compliance is not available in connection with the antifraud provisions of Exchange Act section 15F(h)(4)(A) and Exchange Act rule 15Fh-4(a), 17 CFR 240.15Fh-4(a), and the information-related provisions of Exchange Act sections 15F(j)(3) and 15F(j)(4)(B)). Substituted compliance under rule 3a71-6 also does not extend to certain other provisions of the federal securities laws that apply to security-based swaps, such as: (1) Additional antifraud prohibitions (see Exchange Act section 10(b), 15 U.S.C. 78j(b), Exchange Act rule 10b-5, 17 CFR 240.10b-5, and Securities Act of 1933 section 17(a), 15 U.S.C. 77q(a)); (2) requirements related to transactions with counterparties that are not eligible contract participants ("ECPs") (see Exchange Act section 6(l), 15 U.S.C. 78f(l); Securities Act of 1933 section 5(e), 15 U.S.C. 77e(e)); (3) segregation of customer assets (see Exchange Act section 3E, 15 U.S.C. 78c-5; Exchange Act rule 18a-4, 17 CFR 240.18a-4); (4) required clearing upon counterparty election (see Exchange Act section 3C(g)(5), 15 U.S.C. 78c-3(g)(5)); (5) regulatory reporting and public dissemination (see generally Regulation SBSR, 17 CFR 242.900 *et seq.*); (6) SBS Entity registration (see Exchange Act section 15F(a) and (b)); and (7) registration of offerings (see Securities Act of 1933 section 5, 15 U.S.C. 77e).

<sup>6</sup> See Exchange Act rule 3a71-6(a)(2)(i).

memorandum of understanding and/or other arrangement addressing cooperation and other matters related to substituted compliance.<sup>7</sup>

A party or group of parties that may potentially rely on a substituted compliance order may submit a substituted compliance application only if each such party provides a certification and opinion of counsel that the entity can, "as a matter of law, provide the Commission with prompt access to its books and records, and can, as a matter of law, submit to onsite inspection and examination by the Commission."<sup>8</sup> Commission rule 0-13<sup>9</sup> addresses procedures for filing substituted compliance applications. The rule provides that the Commission will publish a notice when a completed application has been submitted and that any person may submit to the Commission "any information that relates to the Commission action requested in the application."<sup>10</sup>

**II. The Swiss Firms' Substituted Compliance Request**

The Swiss Firms have submitted a complete substituted compliance application to the Commission ("Swiss Application").<sup>11</sup> Pursuant to rule 0-13, the Commission is publishing notice of the Swiss Application together with a proposed Order to conditionally grant substituted compliance to an entity that (1) is a security-based swap dealer registered with the Commission; (2) is not a "U.S. person," as that term is defined in rule 3a71-3(a)(4) under the

<sup>7</sup> See Exchange Act rule 3a71-6(a)(2)(ii). The Commission and FINMA are in the process of negotiating a memorandum of understanding to address cooperation matters related to substituted compliance. The memorandum of understanding or other arrangement will need to be in place before the Commission may make a final determination allowing Covered Entities (as defined herein) to use substituted compliance to satisfy obligations under the Exchange Act. The Commission expects to publish any such memorandum of understanding or arrangement on its website at [www.sec.gov](http://www.sec.gov) under the "Substituted Compliance" tab, which is located on the "Security-Based Swap Markets" page in the Division of Trading and Markets section of the site.

<sup>8</sup> See 17 CFR 240.15Fb2-4(c)(1); Exchange Act rule 3a71-6(c)(1)(ii). In the Commission's view the Swiss Firms have satisfied this prerequisite. See Letter from Colin Lloyd of Cleary Gottlieb Steen & Hamilton LLP on behalf of UBS AG and Credit Suisse AG to Vanessa Countryman, Secretary, Commission, dated August 10, 2021 ("Swiss Application"). The Swiss Firms' Application is available on the Commission's website at: <https://www.sec.gov/page/exchange-act-substituted-compliance-and-listed-jurisdiction-applications-security-based-swap>.

<sup>9</sup> 17 CFR 240.0-13.

<sup>10</sup> See Commission rule 0-13(h). The Commission may take final action on a substituted compliance application no earlier than 25 days following publication of the notice in the **Federal Register**. See *id.*

<sup>11</sup> See Swiss Application sections I-IV.

<sup>1</sup> See Exchange Act Release No. 86175 (June 21, 2019), 84 FR 43872, 43954 (Aug. 22, 2019) ("Capital and Margin Adopting Release"); see also Exchange Act Release No. 87780 (Dec. 18, 2019), 85 FR 6270, 6345-49 (Feb. 4, 2020).

<sup>2</sup> 17 CFR 240.3a71-6.

<sup>3</sup> 15 U.S.C. 78o-10.

<sup>4</sup> The Commission also has discussed the parameters of substituted compliance in connection with substituted compliance requests regarding the Federal Republic of Germany ("Germany"), the French Republic ("France"), and the United

Exchange Act;<sup>12</sup> (3) is a systemically important bank authorized by the Swiss Financial Market Supervisory Authority (“FINMA”) to conduct banking activities in Switzerland; and (4) is supervised by FINMA under the intensive and continual supervision model as a Category 1 firm as that term is defined in BO Annex 3. In making its substituted compliance determination, the Commission will consider public comments on the Swiss Application and the proposed Order.

The Swiss Firms seek substituted compliance for Swiss market participants in connection with a number of requirements under Exchange Act section 15F, including:

#### A. Relevant Market Participants

The Commission will consider whether to allow substituted compliance to be used by any Covered Entity.<sup>13</sup>

#### B. Relevant Section 15F Requirements

The Swiss Firms request that the Commission issue an order determining that—for substituted compliance purposes—applicable requirements in Switzerland are comparable with the following requirements under Exchange Act section 15F:

- *Risk control requirements*—Requirements related to internal risk management, trade acknowledgment and verification, portfolio reconciliation and dispute reporting, portfolio compression and trading relationship documentation.<sup>14</sup>

- *Internal supervision, chief compliance officer and additional Exchange Act section 15F(j) requirements*—Requirements related to diligent supervision, conflicts of interest, information gathering under Exchange Act section 15F(j) and chief compliance officers.<sup>15</sup>

- *Recordkeeping, reporting, and notification requirements*—Requirements related to making and keeping current certain prescribed records, the preservation of records, reporting, and notification.<sup>16</sup>

#### C. Comparability Considerations and Proposed Order

In the view of the Swiss Firms, Swiss requirements taken as a whole produce regulatory outcomes that are comparable to those of the relevant requirements under the Exchange Act.<sup>17</sup> In the Commission’s preliminary view,

requirements under the Exchange Act and Swiss requirements maintain similar approaches with respect to achieving regulatory goals in several respects, but follow differing approaches or incorporate disparate elements in certain other respects. The Commission has considered those similarities and differences when analyzing comparability and developing preliminary views, while recognizing that differences in approach do not necessarily preclude substituted compliance in light of the Commission’s holistic, outcomes-oriented framework for assessing comparability.<sup>18</sup>

Based on the Commission’s analysis of the Swiss Application and review of relevant Swiss requirements, the Commission is proposing an Order, located at Attachment A, granting substituted compliance subject to specific conditions and limitations. When Covered Entities seek to rely on substituted compliance to satisfy particular requirements under the Exchange Act, non-compliance with the applicable Swiss requirements would lead to a violation of those requirements under the Exchange Act and potential enforcement action by the Commission (as opposed to automatic revocation of the substituted compliance order).

#### III. Scope of Substituted Compliance

The Swiss Application relates solely to entity-level requirements and for entity-level Exchange Act requirements a Covered Entity must choose either to apply substituted compliance pursuant to the Order with respect to all security-based swap business subject to the relevant Swiss requirements or to comply directly with the Exchange Act with respect to all such business; a Covered Entity may not choose to apply substituted compliance for some of the business subject to the relevant Swiss requirements and comply directly with the Exchange Act for another part of the business that is subject to the relevant Swiss requirements. Additionally, for entity-level Exchange Act requirements, if the Covered Entity also has security-based swap business that is not subject to the relevant Swiss requirements, the

<sup>18</sup> In this context, the Commission recognizes that other regulatory regimes will have exclusions, exceptions and exemptions that may not align perfectly with the corresponding requirements under the Exchange Act. Where the Commission preliminarily has found that the Swiss regime produces comparable outcomes notwithstanding those particular differences, the Commission proposes to make a positive determination on substituted compliance. Where the Commission preliminarily has found that those exclusions, exemptions and exceptions lead to outcomes that are not comparable, however, the proposed Order would not provide for substituted compliance.

Covered Entity must either comply directly with the Exchange Act for that business or comply with the terms of another applicable substituted compliance order.

#### IV. Applicable Entities and General Conditions

##### A. Covered Entities for Which the Commission is Proposing a Positive Conditional Substituted Compliance Determination

Under the proposed Order, substituted compliance would be available to “Covered Entities”—a term that would limit the scope of the substituted compliance determination to SBSBs that are subject to applicable Swiss requirements and oversight. Consistent with the parameters of substituted compliance under Exchange Act rule 3a71–6, the proposed “Covered Entity” definition provides that the relevant entity must be a security-based swap dealer registered with the Commission, and that the entity cannot be a U.S. person.<sup>19</sup> The proposed “Covered Entity” definition further would provide that the entity must be a systemically important bank authorized by FINMA to conduct banking activities in Switzerland.<sup>20</sup> Each entity also must be supervised by FINMA under the intensive and continual supervision model as a Category 1 firm as that term is defined in BO Annex 3.<sup>21</sup> These prongs of the definition are intended to help ensure that Covered Entities are subject to relevant Swiss requirements and oversight.

##### B. General Conditions and Prerequisites

Substituted compliance under the proposed Order would be subject to a number of conditions and other prerequisites, to help ensure that the relevant Swiss requirements that form the basis for substituted compliance in practice will apply to the SBSB’s security-based swap business and activities, and to promote the Commission’s oversight over entities that avail themselves of substituted compliance.

##### 1. “Subject to and complies with” Applicable Provisions

Each relevant section of the proposed Order would be subject to the condition that the Covered Entity “is subject to and complies with” the applicable Swiss requirements that are needed to establish comparability. Accordingly,

<sup>19</sup> See para. (e)(1)(i) and (ii) of the proposed Order.

<sup>20</sup> See para. (e)(1)(iii) of the proposed Order.

<sup>21</sup> See para. (e)(1)(iv) of the proposed Order.

<sup>12</sup> 17 CFR 240.3a71–3(a)(4).

<sup>13</sup> See para. (d)(1) of the proposed Order.

<sup>14</sup> See part V, *infra*.

<sup>15</sup> See part VI, *infra*.

<sup>16</sup> See part VII, *infra*.

<sup>17</sup> See Swiss Application section II at 3.



the proposed Order would not provide substituted compliance when a Covered Entity is excused from compliance with relevant foreign provisions, such as, for example, if relevant Swiss requirements do not apply to the security-based swap activities of a branch of a Swiss SBSB located outside of Switzerland. In that event, the Covered Entity would not be “subject to” those requirements, and the Covered Entity could not rely on substituted compliance in connection with those activities.<sup>22</sup>

## 2. Additional General Conditions

Substituted compliance under the proposed Order would be subject to the following general conditions intended to help ensure the applicability of relevant Swiss requirements. In particular:

- *Security-based swaps and transactions as “derivatives” or “derivative transactions”*—For each condition in paragraphs (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of FinMIA and FMIO, the relevant security-based swaps and security-based swap transactions are “derivatives” and/or “derivative transactions” for purposes of FinMIA article 2(c), or otherwise are described by the relevant language of that provision.<sup>23</sup>

- *“Counterparty” status*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FinMIA and FMIO, the Covered Entity complies with the applicable conditions of the Order regardless of whether the Covered Entity’s counterparty is a “counterparty” for purposes of FinMIA article 93, or otherwise is described by the relevant language of that provision.<sup>24</sup>

- *Counterparty status as “company”*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FMIO, the Covered Entity

complies with the applicable conditions of the Order regardless of whether a Covered Entity’s counterparty is a “company” for purposes of FMIO article 77, or otherwise is described by the relevant language of that provision.<sup>25</sup>

- *Covered Entity as “bank”*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of the BA and BO and/or other Swiss requirements adopted pursuant to those provisions, the Covered Entity is a “bank” for purposes of BA article 1a, or otherwise is described by the relevant language of that provision.<sup>26</sup>

- *Covered Entity as “systemically important”*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of the FINMA Circular 2017/1, the Covered Entity is “systemically important” for purposes of BA article 8(3), or otherwise is described by the relevant language of that provision.<sup>27</sup>

- *Covered Entity as “category 1”*—For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FINMA Circular 2017/1, the Covered Entity is supervised as “category 1,” as defined in BO articles 2(2) and 2(3) and BO Annex 3, or otherwise is described by the relevant language of those provisions.<sup>28</sup>

- *“Institution-specific approach” to operational risk quantification*—For each condition in paragraphs (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FINMA Circular 2008/21 margins 45–107, the Covered Entity applies the “institution-specific approach” to quantifying capital requirements for operational risk, as defined in CAO article 94, or otherwise is described by the relevant language of those provisions, and as approved by FINMA.<sup>29</sup>

- *Memorandum of understanding*—The Commission has an applicable memorandum of understanding or other arrangement with FINMA addressing cooperation with respect of the proposed Order at the time the Covered Entity makes use of substituted compliance.<sup>30</sup>

- *Notice of reliance on substituted compliance*—A Covered Entity must provide notice of its intent to rely on the proposed Order by notifying the Commission in the manner specified on the Commission’s website.<sup>31</sup> In the notice, the Covered Entity would need to identify each specific substituted compliance determination in the proposed Order for which the Covered Entity intends to apply substituted compliance.<sup>32</sup> If a Covered Entity elects not to apply substituted compliance with respect to a specific substituted compliance determination in the proposed Order, it must comply with the Exchange Act requirements subject to that determination. Finally, a Covered Entity must promptly update its notice to the Commission if it intends to modify its reliance on the positive substituted compliance determinations in the proposed Order.<sup>33</sup>

- *Notification related to changes in capital category*—Covered Entities with a prudential regulator would need to apply substituted compliance with respect to the requirements of Exchange

<sup>31</sup> See para. (a)(9) of the proposed Order.

<sup>32</sup> If the Covered Entity intends to rely on all the substituted compliance determinations in a given paragraph of the proposed Order, it can cite that paragraph in the notice. For example, if the Covered Entity intends to rely on the risk control determinations in paragraph (b) of the proposed Order, it would indicate in the notice that it is relying on the determinations in paragraph (b). However, if the Covered Entity intends to rely on the internal risk management, trade acknowledgement and verification, and portfolio reconciliation determinations but not the portfolio compression determination, it would need to indicate in the notice that it is relying on paragraphs (b)(1)–(3) of the proposed Order. In this case, paragraph (b)(4) of the proposed Order (the portfolio compression determination) would be excluded from the notice and the Covered Entity would need to comply with the Exchange Act portfolio compression requirements. Further, as discussed below in section VII.B of this notice, the recordkeeping and reporting determinations in the proposed Order have been structured to provide Covered Entities with a high level of flexibility in selecting specific requirements within those rules for which they want to rely on substituted compliance. For example, paragraph (d)(1)(i) of the proposed Order sets forth the Commission’s preliminary substituted compliance determinations with respect to the requirements of Exchange Act rule 18a–5, 17 CFR 240.18a–5. These proposed determinations are set forth in paragraphs (d)(1)(i)(A) through (O). If a Covered Entity intends to rely on some but not all of the determinations, it would need to identify in the notice the specific determinations in this paragraph it intends to rely on (e.g., paragraphs (d)(1)(i)(A), (B), (C), (D), (G), (H), (I), and (O)). For any determinations excluded from the notice, the Covered Entity would need to comply with the Exchange Act rule 18a–5 requirement.

<sup>33</sup> A Covered Entity would modify its reliance on the positive substituted compliance determinations in the proposed Order, and thereby trigger the requirement to update its notice, if it adds or subtracts determinations for which it is applying substituted compliance or completely discontinues its reliance on the proposed Order.

<sup>22</sup> An SBSB’s “voluntary” compliance with the relevant Swiss requirements would not suffice for these purposes. Substituted compliance reflects an alternative means by which an SBSB may comply with applicable requirements under the Exchange Act, and thus mandates that the SBSB be subject to the requirements needed to establish comparability and face consequences arising from any failure to comply with those requirements. Moreover, the comparability assessment takes into account the effectiveness of the supervisory compliance program administered and the enforcement authority exercised by FINMA, which would not be expected to promote comparable outcomes when compliance merely is “voluntary.”

<sup>23</sup> See para. (a)(1) of the proposed Order.

<sup>24</sup> See para. (a)(2) of the proposed Order.

<sup>25</sup> See para. (a)(3) of the proposed Order.

<sup>26</sup> See para. (a)(4) of the proposed Order.

<sup>27</sup> See para. (a)(5) of the proposed Order.

<sup>28</sup> See para. (a)(6) of the proposed Order.

<sup>29</sup> See para. (a)(7) of the proposed Order.

<sup>30</sup> See para. (a)(8) of the proposed Order.



Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to Exchange Act rule (c).<sup>34</sup> Exchange Act rule 18a–8(c) generally requires every security-based swap dealer with a prudential regulator that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency, or the Federal Deposit Insurance Corporation to give notice of this fact to the that same day by transmitting a copy to the Commission of the notice of adjustment of reported capital category in accordance with Exchange Act rule 18a–8(h).<sup>35</sup> Exchange Act rule 18a–8(h) sets forth the manner in which every notice or report required to be given or transmitted pursuant to Exchange Act rule 18a–8 must be made. While Exchange Act rule 18a–8(c) is not linked to an Exchange Act capital requirement, it is linked to capital requirements in the U.S. promulgated by the prudential regulators. In its application, the Swiss Firms cited various Swiss provisions as providing similar outcomes to the notifications requirements of Exchange Act Rule 18a–8.<sup>36</sup> This general condition would be designed to clarify that a prudentially regulated Covered Entity must provide the Commission with copies of any notifications regarding changes in the Covered Entity's capital situation required by Swiss law. The intent is to align the notification requirement with the Swiss capital requirements applicable to the Covered Entity.

## V. Substituted Compliance for Risk Control Requirements

### A. Swiss Firms' Request and Associated Analytic Considerations

The Swiss Application in part requests substituted compliance in connection with risk control requirements under the Exchange Act relating to:

- *Internal risk management*—Internal risk management system requirements pursuant to Exchange Act section 15F(j)(2) and relevant aspects of Exchange Act rule 15Fh–3(h)(2)(iii)(I).<sup>37</sup> Those provisions address the obligation of SBSDs to follow policies and procedures reasonably designed to help manage the risks associated with their business activities.<sup>38</sup>

- *Trade acknowledgment and verification*—Trade acknowledgment and verification requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–2.<sup>39</sup> Those provisions help avoid legal and operational risks by requiring definitive written records of transactions and for procedures to avoid disagreements regarding the meaning of transaction terms.<sup>40</sup>

- *Portfolio reconciliation and dispute reporting*—Portfolio reconciliation requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–3.<sup>41</sup> Those provisions require that counterparties engage in portfolio reconciliation and resolve discrepancies in connection with uncleared security-based swaps and promptly notify the Commission and applicable prudential regulators regarding certain valuation disputes.<sup>42</sup>

- *Portfolio compression*—Portfolio compression requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–4.<sup>43</sup> Those provisions require that SBSDs have procedures addressing bilateral offset, bilateral compression and multilateral compression in connection with uncleared security-based swaps.<sup>44</sup>

- *Trading relationship documentation*—Trading relationship documentation requirements pursuant to Exchange Act section 15F(i) and Exchange Act rule 15Fi–5.<sup>45</sup> Those provisions require that SBSDs have procedures to execute written security-based swap trading relationship documentation with their counterparties prior to, or contemporaneously with, executing certain security-based swaps.<sup>46</sup>

Swiss Application discusses Swiss requirements that address Covered Entities' obligations related to internal risk management. See Swiss Application section II.1.a at 5–8.

<sup>39</sup> 17 CFR 240.15Fi–2.

<sup>40</sup> See Exchange Act Release No. 78011 (June 8, 2016), 81 FR 39808, 39809 & 39820 (June 17, 2016) (“Trade Acknowledgment and Verification Adopting Release”). The Swiss Application discusses Swiss requirements that address Covered Entities' obligations related to confirmations. See Swiss Application section II.1.b at 9–16.

<sup>41</sup> 17 CFR 240.15Fi–3.

<sup>42</sup> See Exchange Act Release No. 87782 (Dec. 18, 2019), 85 FR 6359, 6360–61 (Feb. 4, 2020) (“Risk Mitigation Adopting Release”). The Swiss Application discusses Swiss requirements that address portfolio reconciliation and dispute resolution and reporting. See Swiss Application section II.1.c at 17–23.

<sup>43</sup> 17 CFR 240.15Fi–4.

<sup>44</sup> See Risk Mitigation Adopting Release, 85 FR at 6361. The Swiss Application discusses Swiss portfolio compression requirements. See Swiss Application section II.1.c at 17–19, 23–24.

<sup>45</sup> 17 CFR 240.15Fi–5.

<sup>46</sup> See Risk Mitigation Adopting Release, 85 FR at 6361. The Swiss Application discusses Swiss

Taken as a whole, these risk control requirements help to promote market stability by mandating that SBSDs follow practices that are appropriate to manage the market, credit, counterparty, operational and legal risks associated with their security-based swap businesses. The Commission's comparability assessment accordingly focuses on whether the analogous foreign requirements—taken as a whole—produce comparable outcomes with regard to providing that Covered Entities follow risk mitigation and documentation practices that are appropriate to the risks associated with their security-based swap businesses.

### B. Preliminary Views and Proposed Order

#### 1. General considerations

In the Commission's preliminary view based on the Swiss Application and the Commission's review of applicable provisions, relevant Swiss requirements would produce regulatory outcomes that are comparable to those associated with the internal risk management, trade acknowledgement and verification, portfolio reconciliation, and portfolio compression risk control requirements, by subjecting Covered Entities to risk mitigation and documentation practices that are appropriate to the risks associated with those elements of their security-based swap businesses. Substituted compliance for those risk control requirements accordingly would be conditioned on Covered Entities being subject to and complying with the Swiss provisions that in the aggregate establish a framework that produces outcomes comparable to those associated with the analogous risk control requirements under the Exchange Act.<sup>47</sup>

In connection with dispute reporting, the Commission preliminarily believes that Swiss requirements are not comparable to Exchange Act requirements.<sup>48</sup> Paragraph (c) of

requirements regarding records of agreements with counterparties. See Swiss Application section II.1.c at 17–19, 24–31.

<sup>47</sup> See para. (b)(1) of the proposed Order (listing the requirements a Covered Entity must be subject to and comply with in connection with internal risk management); para. (b)(2) (listing the requirements a Covered Entity must be subject to and comply with in connection with trade acknowledgement and verification); para. (b)(3) (listing the requirements a Covered Entity must be subject to and comply with in connection with portfolio reconciliation); and para. (b)(4) (listing the requirements a Covered Entity must be subject to and comply with in connection with portfolio compression).

<sup>48</sup> See para. (b)(3) of the proposed Order (excluding Exchange Act rule 15Fi–3(c) covering reporting of security-based swap valuation disputes

<sup>34</sup> See para. (a)(10) of the proposed Order.

<sup>35</sup> 17 CFR 240.18a–8(c).

<sup>36</sup> See FINMASA article 29(2); CAO articles 14, 42(3), 101, and 130(4); and Liquidity Ordinance articles 17b, and 26(2).

<sup>37</sup> 17 CFR 240.15Fh–3(h)(2)(iii)(I).

<sup>38</sup> See Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70214, 70250 (Nov. 23, 2012). The

Exchange Act rule 15Fi-3 requires SBSDs to promptly report to the Commission valuation disputes in excess of \$20 million that have been outstanding for three or five business days (depending on counterparty types).<sup>49</sup> However, Swiss law lacks a specific requirement for reporting security-based swap valuation disputes in excess of \$20 million.<sup>50</sup> Therefore, substituted compliance in connection with dispute reporting requirements is preliminarily determined to not be available. To fulfill the requirements of Exchange Act section 15F(i) and Exchange rule 15Fi-3, a Swiss Covered Entity would be required to comply with the dispute reporting requirements of Exchange Act rule 15Fi-3(c) directly.

In connection with portfolio reconciliation requirements, the Commission preliminarily believes that Swiss requirements are comparable to Exchange Act requirements when part of one of the applicable Swiss requirements is not applied. The proposed Order includes the requirement that a Covered Entity be subject to and comply with FinMIA 108(b). However, the proposed Order also requires that Covered Entities not apply FinMIA article 108(b)'s exception for "small non-financial counterparties" as defined in FinMIA article 98. Requiring that Covered Entities not apply this exception helps ensure that the Swiss requirements for portfolio reconciliation are applied to Covered Entities in a manner comparable to the applicable Exchange Act requirements.

In connection with portfolio compression requirements, the Commission preliminarily believes that Swiss requirements are comparable to Exchange Act requirements but only when one of the applicable Swiss exclusions is not applied. The proposed Order includes the requirement that a Covered Entity be subject to and comply with FinMIA article 108(d).<sup>51</sup> However, the proposed Order also requires that Covered Entities not apply the portion of FinMIA article 108(d) that excludes application of its requirements when

there are fewer than 500 non-centrally cleared OTC derivatives transactions outstanding.<sup>52</sup> Requiring that Covered Entities not apply this exclusion helps ensure that the Swiss requirements for portfolio compression are applied to Covered Entities in a manner comparable to the applicable Exchange Act requirements.

In connection with trading relationship documentation requirements, the Commission preliminarily believes that Swiss requirements are not comparable to Exchange Act requirements. Under Swiss law, there is no explicit requirement to agree in writing to all terms governing the trading relationship.<sup>53</sup> By comparison, Exchange Act rule 15Fi-5 requires that "[t]he security-based swap trading relationship documentation shall be in writing and shall include all terms governing the trading relationship between the security-based swap dealer . . . and its counterparty."<sup>54</sup> The Swiss Application's statement that "[e]ven if OTC derivative transactions were to be initially traded on the basis of a purely verbal agreement, they would still be subject to the statutory requirements to have the key contractual terms confirmed and reconciled"<sup>55</sup> is insufficient to produce a comparable regulatory outcome to Exchange Act rule 15Fi-5, which specifically requires that "the security-based swap trading relationship documentation shall be executed prior to, or contemporaneously with, executing a security-based swap with any counterparty."<sup>56</sup> Swiss law also does not require particularized disclosures regarding the status of a Swiss bank or its counterparty as an insured financial institution or financial company,<sup>57</sup> as required by Exchange Act rule 15Fi-5(b)(5). Additionally, Swiss law does not require SBSDs to provide information regarding security-based swaps that have been accepted for clearing,<sup>58</sup> as required by Exchange Act rule 15Fi-5(b)(6). Given these discrepancies between the Swiss and U.S. trading relationship documentation requirements, the Commission

preliminarily believes that the analogous Swiss requirements—taken as a whole—cannot be determined to produce comparable outcomes. Therefore the Commission is not proposing to make a positive substituted compliance determination for trading relationship documentation requirements. To fulfill the requirements of Exchange Act section 15F(i) and Exchange rule 15Fi-5, a Swiss Covered Entity would be required to comply with the trading relationship documentation requirements of Exchange Act rule 15Fi-5 directly.

While the Commission recognizes these and certain other differences between Swiss requirements and the applicable risk control requirements under the Exchange Act, in the Commission's preliminary view those differences on balance would not preclude substituted compliance for internal risk management, trade acknowledgement and verification, portfolio reconciliation, and portfolio compression, particularly as requirement-by-requirement similarity is not needed for substituted compliance.

## VI. Substituted Compliance for Internal Supervision, Chief Compliance Officer and Additional Exchange Act Section 15F(j) Requirements

### A. The Swiss Firms' Request and Associated Analytic Considerations

The Swiss Firms also request substituted compliance in connection with requirements under the Exchange Act relating to:

- *Internal supervision*—Diligent supervision is required pursuant to Exchange Act rule 15Fh-3(h),<sup>59</sup> and Exchange Act section 15F(j)(5) requires conflict of interest systems and procedures. These provisions generally require that SBSDs establish, maintain and enforce supervisory policies and procedures that reasonably are designed to prevent violations of applicable law, and implement certain systems and procedures related to conflicts of interest.<sup>60</sup>

- *Chief compliance officers*—Chief compliance officer requirements are set out in Exchange Act section 15F(k) and

from the risk control provisions covered by the proposed Order).

<sup>49</sup> See 17 CFR 240.15Fi-3(c).

<sup>50</sup> See Swiss Application section II.1.c at 17, 22-23 (noting that [t]he key difference between [Swiss and US portfolio reconciliation] requirements is the reporting of valuation disputes, which Swiss law does not require to be reported to the Commission . . . the Commission may consider granting the requested substituted compliance determination on the condition that a Swiss bank would comply with the Commission's reporting requirement for disputes with respect to more than USD \$20 million pursuant to Exchange Act rule 15Fi-3(c) with respect to U.S. person counterparties").

<sup>51</sup> See para. (b)(4)(i) of the proposed Order.

<sup>52</sup> See para. (b)(4)(ii) of the proposed Order.

<sup>53</sup> The voluntary "standard Swiss market practice to document OTC derivatives transactions through written agreements" described in the Swiss Application does not establish the requisite supervisory framework or enforcement authority to establish comparability with the specific regulatory requirements of Exchange Act section 15Fi-5. See Swiss Application section II.1.c at 24.

<sup>54</sup> 17 CFR 240.15Fi-5(b)(1).

<sup>55</sup> See Swiss Application section II.1.c at 24.

<sup>56</sup> 17 CFR 240.15Fi-5(a)(2).

<sup>57</sup> See Swiss Application section II.1.c at 18, 28-29.

<sup>58</sup> See *id.* at 30.

<sup>59</sup> 17 CFR 240.15Fh-3(h).

<sup>60</sup> The Swiss Application addresses Swiss provisions that address firms' supervisory systems, responsible individuals and qualification requirements for supervisors, supervisory system policies and procedures; the chief compliance officer and the chief compliance officer's reporting authority and job security, chief compliance officer policies and procedures, and chief compliance officer reports. See Swiss Application section II.3 at 67-109.

Exchange Act rule 15Fk-1.<sup>61</sup> These provisions in general require that SBSDs designate individuals with the responsibility and authority to establish, administer and review compliance policies and procedures, to resolve conflicts of interest, and to prepare and certify an annual compliance report to the Commission.<sup>62</sup>

- *Additional Exchange Act section 15F(j) requirements*—Additional requirements related to information-gathering pursuant to Exchange Act section 15F(j)(4)(A), and certain antitrust prohibitions specified by Exchange Act section 15F(j)(6).<sup>63</sup>

Taken as a whole, these internal supervision, chief compliance officer and additional Exchange Act section 15F(j) requirements help to promote SBSDs' use of structures, processes and responsible personnel reasonably designed to promote compliance with applicable law, to identify and cure instances of non-compliance and to manage conflicts of interest. The comparability assessment accordingly may focus on whether the analogous foreign requirements—taken as a whole—produce comparable outcomes with regard to providing that Covered Entities have structures and processes reasonably designed to promote compliance with applicable law, identify and cure instances of non-compliance and to manage conflicts of interest, in part through the designation of an individual with responsibility and authority over compliance matters.

## B. Preliminary Views and Proposed Order

### 1. General considerations

Based on the Swiss Application and the Commission's review of applicable provisions, in the Commission's preliminary view the relevant Swiss requirements would produce regulatory outcomes that are comparable to those associated with the above-described

<sup>61</sup> 17 CFR 240.15Fk-1.

<sup>62</sup> The Swiss Application discusses Swiss requirements that address compliance officers and their responsibilities, compliance officer appointment, removal and compensation, related conflict of interest provisions and compliance-related reports. See Swiss Application section II.3.c at 90-109.

<sup>63</sup> Section 15F(j)(4)(A) particularly requires firms to have systems and procedures to obtain necessary information to perform functions required under section 15F. The Swiss Application in turn discusses Swiss provisions generally addressing information gathering and disclosure. See Swiss Application Section II.2 at 33. Section 15F(j)(6) prohibits firms from adopting any process or taking any action that results in any unreasonable restraint of trade, or to impose any material anticompetitive burden on trading or clearing. The Swiss Application addresses Swiss antitrust requirements. See Swiss Application section II.3.b at 78.

internal supervision, chief compliance officer, conflict of interest and information-related requirements by providing that Covered Entities have structures and processes that reasonably are designed to promote compliance with applicable law and to identify and cure instances of non-compliance and manage conflicts of interest.<sup>64</sup> As elsewhere, this part of the proposed Order conditions substituted compliance on Covered Entities being subject to and complying with specified Swiss requirements that are necessary to establish comparability.<sup>65</sup>

The Commission recognizes that certain differences are present between those Swiss requirements and the applicable requirements under the Exchange Act. In the Commission's preliminary view, on balance, however, those differences would not preclude substituted compliance within the relevant outcomes-oriented context.

### 2. Additional Conditions

Substituted compliance in connection with these requirements would be subject to certain additional conditions to help ensure the comparability of outcomes:

#### a. Application of Swiss Supervisory and Compliance Requirements to Residual U.S. Requirements and Order Conditions

Under the proposed Order, substituted compliance for the relevant internal supervision requirements would be conditioned on Covered Entities complying with applicable Swiss supervisory and compliance provisions *as if* those provisions also require the Covered Entity to comply with applicable requirements under the Exchange Act and the other applicable conditions to the Order.<sup>66</sup>

<sup>64</sup> This portion of the proposed Order accordingly would extend generally to the internal supervision provisions of Exchange Act rule 15Fh-3(h), the requirement in Exchange Act section 15F(j)(4)(A) to have systems and procedures to obtain necessary information to perform functions required under Exchange Act section 15F and the conflict of interest provisions of Exchange Act section 15F(j)(5). See para. (c)(1) of the proposed Order. This portion of the proposed Order does not extend to the portions of rule 15Fh-3(h) that mandate supervisory policies and procedures in connection with: The risk management system provisions of Exchange Act section 15F(j)(2) (which are addressed by paragraph (b)(1) of the proposed Order in connection with internal risk management); the information-related provisions of Exchange Act sections 15F(j)(3) and (j)(4)(B) (for which substituted compliance is not available); or the antitrust provisions of Exchange Act section 15F(j)(6) (for which the Commission is not proposing to provide substituted compliance). See para. (c)(1)(ii) of the proposed Order.

<sup>65</sup> See para. (c)(3) of the proposed Order.

<sup>66</sup> See para. (c)(4) of the proposed Order.

Even with substituted compliance, Covered Entities still would be subject directly to a number of requirements under the Exchange Act and to the conditions to the Order. In some cases, particular requirements under the Exchange Act are outside the ambit of substituted compliance.<sup>67</sup> In other cases, certain requirements under the Exchange Act may not have comparable Swiss requirements or may be outside the scope of the Swiss Application,<sup>68</sup> or the Covered Entity may decide not to use substituted compliance for certain requirements under the Exchange Act.<sup>69</sup> While the Swiss regulatory framework in general reasonably appears to promote Covered Entities' compliance with applicable Swiss laws, those requirements do not appear to promote Covered Entities' compliance with requirements under the Exchange Act that are not subject to substituted compliance,<sup>70</sup> or promote Covered Entities' compliance with the applicable conditions to substituted compliance. This condition would address this issue, while still allowing Covered Entities to use their existing internal supervision and compliance frameworks to comply with the relevant Exchange Act requirements and Order conditions, rather than having to establish separate special-purpose supervision and compliance frameworks.

#### b. Compliance Reports

Under the proposed Order, substituted compliance in connection with the compliance report requirements under Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) also would be subject to the condition that the compliance reports required pursuant to FINMA Circular 2017/1 margins 78-81 must: (1) Be provided to the Commission at least annually and in the English language; (2) include a certification signed by the chief compliance officer or senior

<sup>67</sup> As noted, substituted compliance does not extend to antifraud prohibitions or to certain other requirements under the Exchange Act (e.g., segregation requirements and requirements related to transactions with counterparties that are not ECPs). See note 5, *supra*.

<sup>68</sup> The Swiss Firms are not requesting substituted compliance in connection with: (1) Capital requirements: Exchange Act Rules 18a-1; (2) margin requirements: Exchange Act Rule 18a-3; (3) recordkeeping requirements not applicable to non-bank SBSEs in Exchange Act Rules 18a-5 and 18a-6; (4) reporting requirements applicable to non-bank SBSEs in Exchange Act Rule 18a-7; (5) notification requirements applicable to non-bank SBSEs in Exchange Act rule 18a-8; and (6) securities count requirements in Exchange Act rule 18a-9.

<sup>69</sup> See part III, *supra*.

<sup>70</sup> See note 5, *supra*.

officer<sup>71</sup> of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects; (3) address the Covered Entity's compliance with applicable requirements under the Exchange Act and other applicable conditions of the proposed Order in connection with requirements for which the Covered Entity is relying on the proposed Order; (4) be provided to the Commission no later than 15 days following the earlier of the submission of the report to the Covered Entity's management body or the time the report is required to be submitted to the management body; and (5) together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) would be required to cover.<sup>72</sup>

Although certain Swiss requirements address a Covered Entity's use of internal compliance reports, those provisions do not require it to submit compliance reports to the Commission. Under this condition, a Covered Entity could leverage the compliance reports that it otherwise must produce, by extending those reports to address compliance with the conditions of the proposed Order.<sup>73</sup>

### c. Antitrust Considerations

Under the proposed Order, substituted compliance would not extend to Exchange Act section 15F(j)(6) (and related internal supervision requirements of Exchange Act rule 15Fh-3(h)(2)(iii)(I)). Allowing an alternative means of compliance would not lead to outcomes comparable to that statutory prohibition.<sup>74</sup>

<sup>71</sup> See Exchange Act rule 15Fk-1(e)(2) (defining "senior officer" as "the chief executive officer or other equivalent officer").

<sup>72</sup> See para. (c)(2) of the proposed Order. FINMA Circular 2017/1 margins 78–81 require that a Covered Entity's compliance function "annually report to the executive board its assessment of compliance risks and report on the activities of the compliance function. A copy of these reports shall be provided to Internal Audit as well as the audit firm." Under the proposed condition, those reports, as submitted to the Commission and the Covered Entity's management body, also would address the Covered Entity's compliance with the other conditions of the proposed Order (in addition to addressing the Covered Entity's compliance with applicable Swiss provisions).

<sup>73</sup> In practice, a Covered Entity may satisfy this condition by identifying relevant Order conditions and reporting on the implementation and effectiveness of its controls with regard to compliance with those Order conditions.

<sup>74</sup> See also German Substituted Compliance Order, 85 FR at 85691–92; French Substituted Compliance Order, 86 FR at 41643; UK Substituted Compliance Order, 86 FR at 43353. The Commission is not taking any position regarding the applicability of the section 15F(j)(6) antitrust

## VII. Substituted Compliance for Recordkeeping, Reporting and Notification Requirements

### A. Swiss Firms' Request and Associated Analytic Considerations

The Swiss Application in part requests substituted compliance for requirements applicable to SBS Entities with a prudential regulator under the Exchange Act relating to:

- *Record Making*—Exchange Act rule 18a-5 requires prescribed records to be made and kept current.<sup>75</sup>
- *Record Preservation*—Exchange Act rule 18a-6 requires preservation of records.<sup>76</sup>
- *Reporting*—Exchange Act rule 18a-7 requires certain reports.<sup>77</sup>
- *Notification*—Exchange Act rule 18a-8 requires notification to the Commission when certain financial or operational problems occur.<sup>78</sup>
- *Daily Trading Records*—Exchange Act section 15F(g) requires SBS Entities to maintain daily trading records.<sup>79</sup>

Taken as a whole, the recordkeeping, reporting, and notification requirements that apply to SBS Entities with a prudential regulator are designed to promote the prudent operation of the firm's security-based swap activities, assist the Commission in conducting compliance examinations of those activities, and alert the Commission to potential financial or operational problems that could impact the firm and its customers. The comparability assessment accordingly may focus on whether the analogous foreign requirements—taken as a whole—produce comparable outcomes with regard to recordkeeping, reporting, notification, and related practices that support the Commission's oversight of these registrants. A foreign jurisdiction need not have analogues to every requirement under Commission rules to

prohibitions in the cross-border context. Non-U.S. SBSs should assess the applicability of those prohibitions to their security-based swap businesses.

<sup>75</sup> 17 CFR 240.18a-5. The Swiss Application discusses Swiss record making requirements. See Swiss Application section II.2.a. at 33–47.

<sup>76</sup> 17 CFR 240.18a-6. The Swiss Application discusses Swiss record preservation requirements. See Swiss Application section II.2.b. at 48–61.

<sup>77</sup> 17 CFR 240.18a-7. The Swiss Application discusses Swiss requirements that address firms' obligations to make certain reports. See Swiss Application section II.2.c. at 62–64.

<sup>78</sup> 17 CFR 240.18a-8. The Swiss Application discusses Swiss requirements that address firms' obligations to make certain notifications. See Swiss Application section II.2.c. at 64–66.

<sup>79</sup> The Swiss Application discusses Swiss requirements that address firms' record preservation obligations related to records that firms are required to create, as well as additional records such as records of communications. See Swiss Application section II.2.b. at 50–52.

receive a positive substituted compliance determination.

### B. Preliminary Views and Proposed Order

#### 1. General Considerations

Based on the Swiss Application and the Commission's review of applicable provisions, in the Commission's preliminary view, the relevant Swiss requirements, subject to the conditions and limitations of the proposed Order, would produce regulatory outcomes that are comparable to the outcomes associated with the vast majority of the recordkeeping, reporting, and notification requirements under the Exchange Act applicable to SBS Entities with a prudential regulator pursuant to Exchange Act section 15F(g) and Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8.

In reaching this preliminary conclusion, the Commission recognizes that there are certain differences between Swiss requirements and the Exchange Act requirements. In the Commission's preliminary view, on balance, those differences generally would not be inconsistent with substituted compliance for these requirements. Requirement-by-requirement similarity is not needed for substituted compliance.

However, the Commission is structuring its preliminary substituted compliance determinations in the proposed Order to provide Covered Entities with greater flexibility to select which distinct requirements within the broader rule for which they would apply substituted compliance. This would not preclude a Covered Entity from applying substituted compliance for the entire rule (subject to conditions and limitations). However, it would permit the Covered Entity to apply substituted compliance with respect to certain requirements of a given rule and to comply directly with the remaining requirements. This granular approach to making substituted compliance determinations with respect to discrete requirements within Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8 (collectively, the "recordkeeping, reporting, and notification rules") is intended to permit Covered Entities to leverage existing recordkeeping and reporting systems that are designed to comply with the broker-dealer recordkeeping and reporting requirements on which the recordkeeping and reporting requirements applicable to SBS Entities are based. For example, it may be more efficient for a Covered Entity to comply with certain Exchange Act requirements

within a given recordkeeping, reporting, or notification rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them. This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.<sup>80</sup>

As applied to Exchange Act rules 18a-5 and 18a-6, this approach of providing greater flexibility results in preliminary substituted compliance determinations with respect to the different categories of records these rules require SBS Entities with a prudential regulator to make, keep current, and/or preserve. The objective of these rules—taken as a whole—is to assist the Commission in monitoring and examining for compliance with substantive Exchange Act requirements applicable to SBS Entities with a prudential regulator (e.g., business conduct requirements) as well as to promote the prudent operation of these firms.<sup>81</sup> The Commission preliminarily believes the comparable Swiss recordkeeping rules achieve these outcomes with respect to compliance with substantive Swiss requirements for which preliminary positive substituted compliance determinations are being made in this proposed Order (e.g., the preliminary positive substituted compliance determinations with respect to the majority of the Exchange Act business conduct requirements). At the same time, the recordkeeping rules address different categories of records through distinct requirements within the rules. Each requirement with respect to a specific category of records (e.g., paragraph (b)(1) of Exchange Act rule 18a-5 addressing trade blotters) can be viewed in isolation as a distinct recordkeeping rule. Therefore, it may be appropriate to make substituted compliance determinations at this level of Exchange Act rules 18a-5 and 18a-6.

As discussed in more detail below, the Commission's preliminary view is that substituted compliance is appropriate for most of the requirements applicable to SBS Entities with a prudential regulator within the recordkeeping, reporting, and notification rules. However, certain of the discrete requirements in these rules are fully or partially linked to substantive Exchange Act requirements for which substituted compliance is not

available or for which a positive substituted compliance determination would not be made under the proposed Order. In these cases, a preliminary positive substituted compliance determination is not be made for the requirement that is fully linked to the substantive requirement or to the part of the requirement that is linked to the substantive requirement. In particular, a preliminary positive substituted compliance determination is not being made, in full or in part, for recordkeeping, reporting, or notification requirements linked to the following Exchange Act rules for which substituted compliance is not available or a preliminary positive substituted compliance determination is not being made: (1) Exchange Act rule 15Fh-4 ("Rule 15Fh-4 Exclusion"); (2) Exchange Act rule 15Fh-5 ("Rule 15Fh-5 Exclusion"); (3) Exchange Act rule 15Fh-6 ("Rule 15Fh-6 Exclusion"); (4) Exchange Act rule 18a-4 ("Rule 18a-4 Exclusion"); (5) Regulation SBSR ("Regulation SBSR Exclusion"); (6) Form SBSE and its variations ("Form SBSE Exclusion"); (7) Exchange Act rule 15Fh-1 Exclusion ("Rule 15Fh-1 Exclusion"), (8) Exchange Act rule 15Fh-2 ("Rule 15Fh-2 Exclusion"); and (9) Exchange Act rule 15Fi-5 ("Rule 15Fi-5 Exclusion"). This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.<sup>82</sup>

In addition, certain of the requirements in the recordkeeping, reporting, and notification rules are expressly linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination is being made under the proposed Order. In these cases, substituted compliance with the linked requirement in the recordkeeping, reporting, or notification rule is conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement. This is the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement. The recordkeeping, reporting, and notification requirements that are linked to a substantive Exchange Act requirement are designed and tailored to assist the Commission in monitoring and examining an SBS Entity's compliance with the substantive Exchange Act requirement. Swiss recordkeeping, reporting, and

notification requirements are designed to perform a similar role with respect to the substantive Swiss requirements to which they are linked. Consequently, this condition is designed to ensure that the records, reports, and notifications of a Covered Entity align with the substantive Exchange Act or Swiss requirement to which they are linked. For these reasons, under the proposed Order, substituted compliance for recordkeeping, reporting, and notification requirements linked to the following Exchange Act rules would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh-3(h) ("Rule 15Fh-3 Condition"); (2) Exchange Act rule 15Fi-2 ("Rule 15Fi-2 Condition"); (3) Exchange Act rule 15Fi-3 ("Rule 15Fi-3 Condition"); (4) Exchange Act rule 15Fi-4 ("Rule 15Fi-4 Condition"); and (5) Exchange Act rule 15Fk-1 ("Rule 15Fk-1 Condition"). This proposed approach is consistent with the approach taken by the Commission in the French and UK Substituted Compliance Orders.<sup>83</sup>

## 2. Exchange Act Rule 18a-5

Exchange Act rule 18a-5 requires SBS Entities to make and keep current various types of records. The requirements for SBS Entities without a prudential regulator are set forth in paragraph (a) of the rule.<sup>84</sup> The requirements for SBS Entities with a prudential regulator are set forth in paragraph (b) of the rule.<sup>85</sup> The Commission is making a preliminary positive substituted compliance determination for many of the requirements of paragraph (b) of Exchange Act rule 18a-5 in the granular manner discussed above.<sup>86</sup>

However, certain of the requirements in these paragraphs are linked to substantive Exchange Act requirements for which substituted compliance is not available or a preliminary positive substituted compliance determination would not be made under the proposed Order. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a-5 or the portion of the requirement in Exchange Act rule 18a-5 that is linked

<sup>83</sup> See French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

<sup>84</sup> See paras. (a)(1) through (18) of Exchange Act rule 18a-5.

<sup>85</sup> See paras. (b)(1) through (14) of Exchange Act rule 18a-6.

<sup>86</sup> See para. (d)(1) of the proposed Order.

<sup>80</sup> See French Substituted Compliance Order, 86 FR at 41649; UK Substituted Compliance Order, 86 FR at 43360.

<sup>81</sup> See, e.g., Exchange Act Release No. 71958 (Apr. 17, 2014), 79 FR 25194, 25199-200 (May 2, 2014).

<sup>82</sup> See French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

to the substantive Exchange Act requirement.<sup>87</sup>

In addition, certain of the requirements in Exchange Act rule 18a-5 are fully or partially linked to substantive Exchange Act requirements where a preliminary positive substituted compliance determination would be made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-5 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.<sup>88</sup>

In addition, the proposed Order would allow a Covered Entity to apply substituted compliance on a transaction-by-transaction basis for the Commission's recordkeeping requirements that are linked with the counterparty protection requirements in Exchange Act rule 15Fh-3(h).<sup>89</sup> This approach is intended to be consistent with the Commission preliminarily allowing Covered Entities to apply substituted compliance on a transaction-by-transaction basis for the

Commission's counterparty protection requirements.

Under the proposed Order, substituted compliance in connection with the record making requirements of Exchange Act rule 18a-5 would be subject to the condition that the Covered Entity: (1) Preserves all of the data elements necessary to create the records required by Exchange Act rules 18a-5(b)(1), (2), (3), and (7); and (2) upon request furnishes promptly to representatives of the Commission the records required by those rules ("SEC Format Condition").<sup>90</sup> This proposed condition is modeled on the alternative compliance mechanism in paragraph (c) of Exchange Act rule 18a-5. In effect, a Covered Entity applying substituted compliance with respect to these requirements of Exchange Act rule 18a-5 would need to comply with the comparable Swiss requirements. However, under the SEC Format Condition, the Covered Entity would need to produce a record that is formatted in accordance with the requirements of Exchange Act rule 18a-5 at the request of Commission staff. The objective is to require—on a very

limited basis—the production of a record that consolidates the information required by Exchange Act rules 18a-5(b)(1), (2), (3), and (7) in a single record and, as applicable, in a blotter or ledger format. This will assist the Commission staff in reviewing the information on the record.

The following table summarizes the Commission's preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-5 by listing in each row: (1) The paragraph of the proposed Order that sets forth the preliminary determination; (2) the paragraph(s) of Exchange Act rule 18a-5 to which the preliminary determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance.<sup>91</sup>

**EXCHANGE ACT RULE 18a-5**  
[Record making]

Order paragraph	Rule paragraph	Rule description	Additional conditions and partial exclusions
(d)(1)(i)(A) .....	(b)(1) .....	Trade blotters .....	SEC Format Condition.
(d)(1)(i)(B) .....	(b)(2) .....	Account ledgers .....	SEC Format Condition.
(d)(1)(i)(C) .....	(b)(3) .....	Stock record .....	SEC Format Condition.
(d)(1)(i)(D) .....	(b)(4) .....	Memoranda of brokerage orders .....	N/A.
(d)(1)(i)(E) .....	(b)(5) .....	Memoranda of proprietary orders .....	N/A.
(d)(1)(i)(F) .....	(b)(6) .....	Confirmations, trade verification .....	Rule 15Fi-2 Condition.
	(b)(11) .....		
(d)(1)(i)(G) .....	(b)(7) .....	Accountholder information .....	SEC Format Condition.
(d)(1)(i)(H) .....	(b)(8) .....	Associated person's employment application .....	N/A.
(d)(1)(i)(I) .....	(b)(13) .....	Compliance with business conduct requirements.	(1) Rule 15Fh-3(h) Condition. (2) Rule 15Fk-1 Condition. (3) Rule 15Fh-1 Exclusion. (4) Rule 15Fh-2 Exclusion. (5) Rule 15Fh-4 Exclusion. (6) Rule 15Fh-5 Exclusion.
(d)(1)(i)(J) .....	(b)(14)(i) .....	Portfolio reconciliation .....	Rule 15Fi-3 Condition.
	(b)(14)(ii) .....		

<sup>87</sup> A positive preliminary substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a-5 because they are linked to a substantive Exchange Act requirement for which the proposed Order would not provide substituted compliance: (1) Exchange Act rules 18a-5(b)(9) and (10) are fully linked to Exchange Act rule 18a-4 and, therefore, would be subject to the Rule 18a-4 Exclusion; (2) Exchange Act rule 18a-5(b)(12) is fully linked to Exchange Act rule 15Fh-6 and, therefore, would be subject to the Rule 15Fh-6 Exclusion; (3) the portions of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fh-4 would be subject to the Rule 15Fh-4 Exclusion; (4) the portion of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fh-5 would be subject to the 15Fh-5 Exclusion; (5) the portion of Exchange Act rule 18a-

5(b)(13) that relates to Exchange Act rule 15Fh-1 would be subject to the 15Fh-1 Exclusion; and (6) the portion of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fh-2 would be subject to the 15Fh-2 Exclusion.

<sup>88</sup> Substituted compliance with the following requirements of Exchange Act rule 18a-5 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rules 18a-5(b)(6) and (b)(11) are linked to Exchange Act rule 15Fi-2 and, therefore, would be subject to the Rule 15Fi-2 Condition; (2) Exchange Act rule 18a-5(b)(13) is linked to Exchange Act rule 15Fh-3 and, therefore, would be subject to the Rule 15Fh-3(h) Condition; (3) Exchange Act rule 18a-5(b)(13) is linked to Exchange Act rule 15Fk-1, and therefore, would be subject to the Rule 15Fk-1 Condition; (4)

Exchange Act rules 18a-5(b)(14)(i) and (ii) are linked to Exchange Act rule 15Fi-3 and, therefore, would be subject to the Rule 15Fi-3 Condition; and (5) Exchange Act rule 18a-5(b)(14)(iii) is linked to Exchange Act rule 15Fi-4 and, therefore, would be subject to the Rule 15Fi-4 Condition.

<sup>89</sup> See para. (d)(1)(ii)(B) of the proposed Order.

<sup>90</sup> See para. (d)(1)(ii)(A) of the proposed Order.

<sup>91</sup> The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-5; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) as discussed below, must promptly furnish to a representative of the Commission upon request an English translation of a record. See para. (d)(7) of the proposed Order (setting forth the English translation requirement).

EXCHANGE ACT RULE 18a-5—Continued  
[Record making]

Order paragraph	Rule paragraph	Rule description	Additional conditions and partial exclusions
(d)(1)(i)(K) .....	(b)(14)(iii) .....	Portfolio compression .....	Rule 15Fi-4 Condition.

The following table summarizes the Commission’s preliminary determinations with respect to requirements of Exchange Act rule 18a-5 for which a positive substituted compliance determination would not be made because they are fully linked to

substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-5 to which the

determination applies; (3) a brief description of the records required by the paragraph; and (4) a brief description of why the requirement is excluded from substituted compliance.

EXCHANGE ACT RULE 18a-5  
[Record making]

Order paragraph	Rule paragraph	Rule description	Exclusion
(d)(1)(ii)(C) .....	(b)(9) .....	Possession or control records .....	Rule 18a-4 Exclusion.
(d)(1)(ii)(C) .....	(b)(10) .....	Reserve computations .....	Rule 18a-4 Exclusion.
(d)(1)(ii)(C) .....	(b)(12) .....	Political contribution records .....	Rule 15Fh-6 Exclusion.

3. Exchange Act Rule 18a-6

Exchange Act rule 18a-6 requires an SBS Entity to preserve certain types of records if it makes or receives them (in addition to the records the SBS Entity is required to make and keep current pursuant to Exchange Act rule 18a-5).<sup>92</sup> Exchange Act rule 18a-6 also prescribes the time period that these additional records and the records required to be made and kept current pursuant to Exchange Act rule 18a-5 must be preserved and the manner in which they must be preserved.

Paragraphs (a) through (d) of Exchange Act rule 18a-6 identify the records that an SBS Entity must retain if it makes or receives them and prescribes the retention periods for these records as well as for the records that must be made and kept current pursuant to Exchange Act rule 18a-5. Certain of these paragraphs prescribe requirements separately for SBS Entities without a prudential regulator and SBS Entities with a prudential regulator.<sup>93</sup> The proposed Order would make substituted compliance available for the requirements of these paragraphs applicable to SBS Entities with a prudential regulator. As discussed below, the Commission is making a

preliminary positive substituted compliance determination for many of the requirements of these paragraphs applicable to SBS Entities with a prudential regulator.

However, certain of these requirements are fully or partially linked to substantive Exchange Act requirements for which a preliminary positive substituted compliance determination would not be made under the proposed Order. In these cases, a positive substituted compliance determination would not be made for the linked requirement in Exchange Act rule 18a-6.<sup>94</sup>

<sup>94</sup> A positive substituted compliance determination would not be made for the following requirements of Exchange Act rule 18a-6 because they are linked to a substantive Exchange Act requirement for which the proposed Order would not provide substituted compliance: (1) Exchange Act rule 18a-6(b)(2)(vi) is fully linked to Regulation SBSR and, therefore, would be subject to the Regulation SBSR Exclusion; (2) Exchange Act rule 18a-6(b)(2)(viii) is fully linked to Exchange Act rule 15Fh-4 and, therefore, would be subject to the Rule 15Fh-4 Exclusion; (3) Exchange Act rule 18a-6(b)(2)(viii) is fully linked to Exchange Act rule 15Fh-5 and, therefore, would be subject to the Rule 15Fh-5 Exclusion; (4) Exchange Act rule 18a-6(b)(2)(v) is fully linked to Exchange Act rule 18a-4 and, therefore, would be subject to the Rule 18a-4 Exclusion; (5) the portion of Exchange Act rule 18a-6(c) relating to Form SBSE and its variations would be subject to the Form SBSE Exclusion; (6) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-1 would be subject to the 15Fh-1 Exclusion; (7) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-2 would be subject to the 15Fh-2 Exclusion; (8) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-4 would be subject to the 15Fh-4 Exclusion; (9) the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-5 would be subject to the 15Fh-5 Exclusion; (10)

In addition, certain of the requirements in Exchange Act rule 18a-6 are fully or partially linked to substantive Exchange Act requirements where a positive substituted compliance determination would be made under the proposed Order. In these cases, substituted compliance with the requirement in Exchange Act rule 18a-6 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement.<sup>95</sup>

Paragraph (e) of Exchange Act rule 18a-6 sets forth the requirements for preserving records electronically. Paragraph (f) sets forth requirements for when records are prepared or maintained by a third party. The Order would make substituted compliance available for the requirements of paragraphs (e) and (f) of Exchange Act

the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fh-6 would be subject to the 15Fh-6 Exclusion; and (11) the portion of Exchange Act rules 18a-6(d)(4) and (d)(5) that relates to Exchange Act rule 15Fi-5 would be subject to the Rule 15Fi-5 Exclusion.

<sup>95</sup> Substituted compliance with the following requirements of Exchange Act rule 18a-6 would be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement: (1) Exchange Act rule 18a-6(b)(2)(vii) is linked to Exchange Act rule 15Fh-3 and, therefore, would be subject to the Rule 15Fh-3(h) Condition; (2) Exchange Act rule 18a-6(b)(2)(vii) is linked to Exchange Act rule 15Fk-1 and, therefore, would be subject to the Rule 15Fk-1 Condition; (3) Exchange Act rules 18a-6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi-3 and, therefore, would be subject to the Rule 15Fi-3 Condition; and (4) Exchange Act rules 18a-6(d)(4) and (d)(5) are linked to Exchange Act rule 15Fi-4 and, therefore, would be subject to the Rule 15Fi-4 Condition.

<sup>92</sup> See 17 CFR 240.18a-6.

<sup>93</sup> Paras. (a)(1), (b)(1), (d)(2)(i), and (d)(3)(i) of Exchange Act rule 18a-6 apply to SBS Entities without a prudential regulator. Paras. (a)(2), (b)(2), (d)(2)(ii), and (d)(3)(ii) of Exchange Act rule 18a-6 apply to SBS Entities with a prudential regulator. Paras. (c), (d)(1), (d)(4), and (d)(5) of Exchange Act rule 18a-6 apply to SBS Entities irrespective of whether they have a prudential regulator.

rule 18a-6 with respect to Covered Entities with a prudential regulator.<sup>96</sup>

Paragraph (g) of Exchange Act rule 18a-6 requires an SBS Entity to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBS Entity that are required to be preserved under Exchange Act rule 18a-6, or any other records of the SBS Entity that are subject to examination or required to be made or maintained pursuant to section 15F of the Exchange Act that are requested by a

representative of the Commission. The proposed Order would not make substituted compliance available for the requirements of paragraph (g) of Exchange Act rule 18a-6 because there is no comparable requirement in Switzerland to produce these records to a representative of the Commission.

The following table summarizes the Commission's preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-6 by listing in each row: (1) The paragraph of the

proposed Order that sets forth the determination; (2) the paragraph(s) of Exchange Act rule 18a-6 to which the determination applies; (3) a brief description of the records required by the paragraph(s); and (4) a brief description of any additional conditions to applying substituted compliance to the requirements, including any partial exclusions because portions of the requirements are linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance.<sup>97</sup>

**EXCHANGE ACT RULE 18a-6**  
[Record preservation]

Order paragraph	Rule paragraph	Rule description	Conditions and partial exclusions
(d)(2)(i)(A) .....	(a)(2) .....	6 year record preservation .....	N/A.
(d)(2)(i)(B) .....	(b)(2)(i) .....	3 year record preservation .....	N/A.
(d)(2)(i)(C) .....	(b)(2)(ii) .....	Communications .....	N/A.
(d)(2)(i)(D) .....	(b)(2)(iii) .....	Account documents .....	N/A.
(d)(2)(i)(E) .....	(b)(2)(iv) .....	Written agreements .....	N/A.
(d)(2)(i)(F) .....	(b)(2)(vii) .....	Business conduct standard records .....	(1) Rule 15Fh-3(h) Condition. (2) Rule 15Fk-1 Condition. (3) Rule 15Fh-1 Exclusion. (4) Rule 15Fh-2 Exclusion. (5) Rule 15Fh-4 Exclusion. (6) Rule 15Fh-5 Exclusion. (7) Rule 15Fh-6 Exclusion. Form SBSE Exclusion.
(d)(2)(i)(G) .....	(c) .....	Corporate documents .....	Form SBSE Exclusion.
(d)(2)(i)(H) .....	(d)(1) .....	Associated person's employment application	N/A.
(d)(2)(i)(I) .....	(d)(2)(ii) .....	Regulatory authority reports .....	N/A.
(d)(2)(i)(J) .....	(d)(3)(ii) .....	Compliance, supervisory, and procedures manuals.	N/A.
(d)(2)(i)(K) .....	(d)(4) .....	Portfolio reconciliation .....	(1) Rule 15Fi-3 Condition. (2) Rule 15Fi-4 Condition. (3) Rule 15Fi-5 Exclusion.
	(d)(5) .....		
(d)(2)(i)(L) .....	(e) .....	Electronic storage system .....	N/A.
(d)(2)(i)(M) .....	(f) .....	Third-party recordkeeper .....	N/A.

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a-6 for which a positive substituted compliance determination would not be made because they are fully linked to

substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-6 to which the

determination applies; (3) a brief description of the records required by those paragraph; and (4) a brief description of why the requirement is excluded from substituted compliance.

**EXCHANGE ACT RULE 18a-6**  
[Preservation]

Order paragraph	Rule paragraph	Rule description	Exclusion
(d)(2)(ii) .....	(b)(2)(v) .....	Information supporting financial reports .....	Rule 18a-4 Exclusion.
(d)(2)(ii) .....	(b)(2)(vi) .....	Regulation SBSR information .....	Regulation SBSR Exclusion.
(d)(2)(ii) .....	(b)(2)(viii) .....	Special entity documents .....	(1) Rule 15Fh-4 Exclusion. (2) Rule 15Fh-5 Exclusion.

**4. Exchange Act Rule 18a-7**

Exchange Act rule 18a-7 requires SBS Entities, on a monthly basis (if not

prudentially regulated) or on a quarterly basis (if prudentially regulated), to file an unaudited financial and operational

report on the FOCUS Report Part II (if not prudentially regulated) or Part IIC (if prudentially regulated). The

<sup>96</sup> See paras. (d)(2)(i)(L) and (M) of the proposed Order.

<sup>97</sup> The chart below does not include the proposed conditions for applying substituted compliance to

Exchange Act rule 18a-6; namely that the Covered Entity: (1) must be subject to and complies with the requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon

request an English translation of a record. See para. (d)(7) of the proposed Order (setting forth the English translation requirement).



Commission will use the FOCUS Reports filed by the SBS Entities to both monitor the financial and operational condition of individual SBS Entities and to perform comparisons across SBS Entities. The FOCUS Report Part IIC elicits less information than the FOCUS Report Part II because the Commission does not have responsibility for overseeing the capital and margin requirements applicable to these entities.

The FOCUS Report Parts II and IIC are standardized forms that elicit specific information through numbered line items. This facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission. Further, the Commission has designated the Financial Industry Regulatory Authority, Inc. (“FINRA”) to receive the FOCUS Reports from SBS Entities.<sup>98</sup> Broker-dealers registered with the Commission currently file their FOCUS Reports with FINRA through the eFOCUS system it administers. Using FINRA’s eFOCUS system will enable broker-dealers, security-based swap dealers, and major security-based swap

participants to file FOCUS Reports on the same platform using the same preexisting templates, software, and procedures.

Paragraph (a)(2) of Exchange Act rule 18a-7 requires SBS Entities with a prudential regulator to file the FOCUS Report Part IIC on a quarterly basis. The proposed Order would provide substituted compliance for this requirement subject to the condition that the Covered Entity file with the Commission periodic unaudited financial and operational information in the manner and format specified by the Commission by order or rule (“Manner and Format Condition”) and present the financial information in accordance with generally accepted accounting principles (“GAAP”) that the firms use to prepare general purpose publicly available or available to be issued financial statements in Switzerland (“Swiss GAAP Condition”).<sup>99</sup> The Commission believes that it would be appropriate to condition substituted compliance with respect to Exchange Act rule 18a-7 on the Covered Entity filing unaudited financial and

operational information in a manner and format that facilitates cross-firm analysis and comprehensive monitoring of all SBS Entities registered with the Commission.<sup>100</sup> For example, the Commission could by order or rule require Covered Entities with a prudential regulator to file the financial and operational information with FINRA using the FOCUS Report Part IIC but permit the information input into the form to be the same information the SBS Entity reports to FINMA.

The following table summarizes the Commission’s proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-7 by listing in each row: (1) The paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-7 to which the determination applies; (3) a brief description of the report required by the paragraph; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements.<sup>101</sup>

EXCHANGE ACT RULE 18A-7  
[Reporting]

Order paragraph	Rule paragraph	Rule description	Conditions
(d)(3)(i) .....	(a)(2) .....	File FOCUS Reports .....	(1) Manner and Format Condition. (2) Swiss GAAP Condition.

5. Exchange Act Rule 18a-8

Exchange Act rule 18a-8 requires SBS Entities to send notifications to the Commission if certain adverse events occur.<sup>102</sup> The proposed Order would provide substituted compliance for the requirements of Exchange Act rule 18a-8 applicable to SBS Entities with a prudential regulator (subject to conditions and limitations). In particular, the requirements of: (1) Paragraph (c) of Exchange Act Rule 18a-8 that an SBS Entity that is a security-based swap dealer and that files a notice of adjustment to its reported capital category with a U.S. prudential regulator must transmit a copy of the notice to the Commission; (2) paragraph

(d) of the rule that an SBS Entity provide notification to the Commission if it fails to make and keep current books and records under Exchange Act rule 18a-5 and to transmit a subsequent report on steps being taken to correct the situation; and (3) paragraph (h) of the rule setting forth how to make the notifications required by Exchange Act 18a-8.

Under the proposed Order, substituted compliance in connection with the notification requirements of Exchange Act rule 18a-8 would be subject to the condition that the Covered Entity: (1) Simultaneously sends a copy of any notice required to be sent by Swiss notification laws to the Commission in the manner specified on

the Commission’s website (*i.e.*, the “SEC Filing Condition”); and (2) includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice (*i.e.*, the “Contact Information Condition”). The purpose of this condition is to alert the Commission to financial or operational problems that could adversely affect the firm—the objective of Exchange Act rule 18a-8.

In addition, the Order does not provide substituted compliance for paragraph (g) of Exchange Act rule 18a-8 that an SBS Entity that is a security-based swap dealer provide notification if it fails to make a required deposit into its special reserve account for the

<sup>98</sup> See Order Designating Financial Industry Regulatory Authority, Inc., to Receive Form X-17A-5 (FOCUS Report) from Certain Security-Based Swap Dealers and Major Security-Based Swap Participants, Exchange Release No. 88866 (May 14, 2020).

<sup>99</sup> Under the proposed Order, Covered Entities with a prudential regulator would need to present the information reported in the FOCUS Report in accordance with GAAP that the firm uses to prepare publicly available or available to be issued general purpose financial statements in its home

jurisdiction instead of U.S. GAAP if other GAAP, such as International Financial Reporting Standards (IFRS) as issued by the International Accounting Standards Board (IASB), is used by the Covered Entity in preparing publicly available or available to be issued general purpose financial statements in Switzerland.

<sup>100</sup> The Manner and Format condition is included in the French and UK Substituted Compliance Orders. See French Substituted Compliance Order, 86 FR at 41651; UK Substituted Compliance Order, 86 FR at 43361-62.

<sup>101</sup> The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-7; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English translation of a report. See para. (d)(7) of the proposed Order (setting forth the English translation requirement).

<sup>102</sup> See 17 CFR 240.18a-8.

exclusive benefit of security-based swap customers under Exchange Act rule 18a-4. Substituted compliance is not available for Exchange Act rule 18a-4.

In addition, the proposed Order would not provide substituted compliance for paragraph (g) of Exchange Act rule 18a-8 that an SBS Entity that is a security-based swap dealer provide notification if it fails to make a required deposit into its special

reserve account for the exclusive benefit of security-based swap customers under Exchange Act rule 18a-4. Substituted compliance is not available for Exchange Act rule 18a-4.

The following table summarizes the Commission's proposed preliminary positive substituted compliance determinations with respect to requirements of Exchange Act rule 18a-8 by listing in each row: (1) The

paragraph of the proposed Order that sets forth the determination; (2) the paragraph of Exchange Act rule 18a-8 to which the determination applies; (3) a brief description of the notification required by the paragraph; and (4) a brief description of any additional conditions to applying substituted compliance to the requirements.<sup>103</sup>

**EXCHANGE ACT RULE 18a-8**

[Notification]

Order paragraph	Rule paragraph	Rule description	Conditions
(d)(4)(i)(B) .....	(c) .....	Prudential regulator capital category adjustment notices.	(1) SEC Filing Condition. (2) Contact Information Condition.
(d)(4)(i)(C) .....	(d) .....	Books and records notices .....	(1) SEC Filing Condition. (2) Contact Information Condition.

The following table summarizes the Commission's preliminary determinations with respect to requirements of Exchange Act rule 18a-8 for which a positive substituted compliance determination would not be

made because they are fully linked to substantive Exchange Act requirements for which the proposed Order would not provide substituted compliance by listing in each row: (1) The paragraph of the proposed Order that sets forth the

determination; (2) the paragraph of Exchange Act rule 18a-8 to which the determination applies; (3) a brief description of the notification required by the paragraph; and (4) the exclusion from substituted compliance.

**EXCHANGE ACT RULE 18a-8**

[Notification]

Order paragraph	Rule paragraph	Rule description	Exclusion
(d)(4)(ii)(C) .....	(g) .....	Reserve account notices .....	Rule 18a-4 Exclusion.

**6. Exchange Act Section 15F(g)**

Exchange Act Section 15F(g) requires SBS Entities, including SBS Entities with a prudential regulator, to maintain daily trading records.<sup>104</sup> The Commission preliminarily believes Swiss laws produce a comparable result in terms of its daily trading recordkeeping requirements.<sup>105</sup> Accordingly, the Commission preliminarily is making a positive substituted compliance determination for the self-executing requirements in this paragraph.<sup>106</sup>

**7. Examination and Production of Records**

The proposed Order would not extend to, and Covered Entities would remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and

the requirement of Exchange Act rule 18a-6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a-6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.<sup>107</sup>

Consequently, every Covered Entity registered with the Commission, whether complying directly with Exchange Act requirements or relying on substituted compliance as a means of complying with the Exchange Act, would be required to satisfy the inspection and production requirements imposed on such entities under the Exchange Act. Covered Entities would be able to make, keep, and preserve

records, subject to the proposed conditions described above, in a manner prescribed by applicable Swiss requirements. As an element of its substituted compliance application, the Swiss Firms have provided the Commission with adequate assurances that no law or policy would impede the ability of any entity that is directly supervised by the authority and that may register with the Commission to provide prompt access to the Commission to such entity's books and records or to submit to onsite inspection or examination by the Commission. Consistent with those assurances and the requirements that apply to all Covered Entities under the Exchange Act, Covered Entities operating under the proposed Order would need to keep books and records open to inspection by any representative of the Commission and to furnish promptly to a

<sup>103</sup> The chart below does not include the proposed conditions for applying substituted compliance to Exchange Act rule 18a-8; namely that the Covered Entity: (1) Must be subject to and comply with specified requirements of foreign law; and (2) must promptly furnish to a representative of the Commission upon request an English

translation of a notification. See para. (d)(7) of the proposed Order (setting forth the English translation requirement).

<sup>104</sup> See 15 U.S.C. 78o-10(g).

<sup>105</sup> See CO article 958f; FMIO article 36; FMIO-FINMA article 1; FinMIA articles 38, 104, and 106; FINMA Circular 2013/8 marg. 60 and marg. 61.

<sup>106</sup> See para. (d)(5) of the proposed Order.

<sup>107</sup> See Exchange Act section 15F(f); Exchange Act rule 18a-6(g). French and UK Substituted Compliance Orders do not extend substituted compliance to these requirements. See French Substituted Compliance Order, 86 FR at 41650; UK Substituted Compliance Order, 86 FR at 43361.

representative of the Commission legible, true, complete, and current copies of those records of the firm that these entities are required to preserve under Exchange Act rule 18a-6 (which would include records for which a positive substituted compliance determination is being made with respect to Exchange Act rule 18a-6 under the Order), or any other records of the firm that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

#### 8. English Translations

The proposed Order provides that to the extent documents are not prepared in the English language, Covered Entities would need to furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F or the proposed Order.<sup>108</sup> This condition would be designed to address difficulties that Commission examinations staff would have examining Covered Entities that furnish documents in a foreign language. The English translations would need to be provided promptly. This condition is included in the French and UK Substituted Compliance Orders.<sup>109</sup>

### VIII. Additional Considerations Regarding Supervisory and Enforcement Effectiveness in Switzerland

#### A. General Considerations

As noted above, Exchange Act rule 3a71-6 provides that the Commission's assessment of the comparability of the requirements of the foreign financial regulatory system must account for "the effectiveness of the supervisory program administered, and the enforcement authority exercised" by the foreign financial regulatory authority. This prerequisite accounts for the understanding that substituted compliance determinations should reflect the reality of the foreign regulatory framework, in that rules that appear high-quality on paper nonetheless should not form the basis for substituted compliance if—in practice—market participants are permitted to fall short of their regulatory obligations. This prerequisite, however, also recognizes that differences among

the supervisory and enforcement regimes should not be assumed to reflect flaws in one regime or another.<sup>110</sup>

In connection with these considerations, the Swiss Application includes information regarding the Swiss supervisory and enforcement framework applicable to derivatives markets and market participants. This includes information regarding the supervisory and enforcement authority afforded to FINMA to promote compliance with applicable requirements, applicable supervisory and enforcement tools and capabilities, consequences of non-compliance, and the application of FINMA's supervisory and enforcement practices in the cross-border context.<sup>111</sup> After review of this information, the Commission preliminarily believes that the framework is reasonably designed to promote compliance with the laws where substituted compliance has been requested.

In preliminarily concluding that the relevant supervisory and enforcement considerations are consistent with substituted compliance, the Commission particularly has considered the following factors:

#### B. Supervisory Framework in Switzerland

FINMA is the supervisor for the Swiss Firms, and all Covered Entities that will register as security-based swap dealers in the United States. FINMA has the ability to request records needed for supervision from firms through the supervisory process. Every four years, FINMA's Board of Directors publishes strategic goals that serve as guidelines for FINMA's operational management. Each year, FINMA's Board of Directors uses the strategic goals to define the annual supervisory priorities, which are incorporated into the annual objectives for individual organizational units and employees.

FINMA assigns prudentially supervised banks to five supervisory categories. Category 1 firms receive the most supervisory attention and the staff has been told that the Swiss Firms are Category 1 firms. FINMA has multiple supervisors dedicated to each Category 1 firm who are in constant dialogue with the firms, including weekly contact (phone calls, emails) and quarterly meetings with senior management. Supervisors review the various reports filed by the firms, including monthly

reports related to AML and risk as well as daily liquidity reports. The supervisors also work with cross-divisional teams, who add expertise to the supervision team covering specific aspects of the Covered Entity such as risk management, AML, and compliance/conduct.

Audit firms play an important role in FINMA's supervisory activities, primarily by conducting regulatory audits to assess firms' compliance with supervisory requirements, and whether they can continue to adhere to these requirements in the future. For Category 1 firms, FINMA defines the audit strategy for each firm and audit firms are engaged by the bank to conduct the regulatory audit annually in line with FINMA's specifications. The audit reports are submitted directly to FINMA, and include a risk analysis of each firm. FINMA can also appoint mandataries (mandated auditors appointed to assist in ongoing supervision by conducting audits at supervised institutions) to assist it in performing its supervisory duties. Mandataries, which may be deployed for urgent matters, focus on a specific situation or circumstances at an individual firm.

On an annual basis, FINMA conducts a formal assessment of the Swiss Firms (including assigning a risk rating) taking into account internal audit reports, external audit reports, annual reports, and FINMA's view of regulatory, economic, and business developments. FINMA sends the firms an annual assessment letter detailing the risk rating, any weaknesses that have been identified (with actions for the firms to take), and the supervisory priorities for the year. Firms are typically required to submit regular progress reports of corrective action for any issues identified and provide evidence of closure.

FINMA conducts multiple onsite reviews of Category 1 firms each year, some of which relate to the derivatives business. FINMA conducts two types of reviews: (1) Supervisory reviews during which FINMA obtains information on conceptual issues but also reviews and assesses implementation; and (2) deep dives, which are narrower in scope. When FINMA identifies findings during an onsite examination, FINMA provides the firm a summary report or feedback letter that contains key findings. FINMA may direct the firm to develop a mitigation plan, reviews the plan for adequacy, and tracks the progress of the plan until FINMA is satisfied with the corrective action taken. In general, firms are given a certain period of time within which they have to mitigate the

<sup>108</sup> See para. (d)(7) of the proposed Order.

<sup>109</sup> See French Substituted Compliance Order, 86 FR at 41651; UK Substituted Compliance Order, 86 FR at 43361.

<sup>110</sup> See generally Business Conduct Adopting Release, 81 FR at 30079.

<sup>111</sup> Staff also spoke with FINMA supervisors and reviewed information on FINMA's website.

identified issues and restore compliance with the law. FINRA's review and evaluation of corrective action undertaken by the firms is performed on a case-by-case basis, depending on the severity of the deficiency and the risks to be addressed. While minor issues may be addressed through correspondence, material issues are reviewed and evaluated through interviews or desk reviews of the appropriate material. FINMA can also appoint an audit mandatory to confirm that corrective action has been taken. For more significant issues, FINMA supervisory staff can refer the matter to FINMA enforcement staff.

### *C. Enforcement Authority in Switzerland*

As the financial market supervisory authority, FINMA is empowered to enforce all financial law requirements relevant to the Swiss Application. Informal investigations may be launched whenever FINMA receives information about potential regulatory irregularities or violations of law. Sources of information include, among others, referrals from FINMA's supervisory staff, reports by other domestic or foreign authorities, or complaints from investors and clients. Absent a legal obligation to disclose, FINMA treats complaints confidentially. However, there are no incentives provided for whistleblowers, and they receive no specific statutory protection. At the conclusion of an informal investigation, a determination is made whether the initial indications of violations have been confirmed and are sufficiently important, and if other relevant factors support opening a formal investigation. If a formal investigation is launched, the Administrative Procedure Act ("APA") is implicated and provides for certain rights and obligations of the involved parties.

FINMA has a broad range of investigative tools at its disposal, and is empowered with unrestricted access to certain books, records and recordings. In particular, Article 29 of FINMASA stipulates that supervised persons and certain associates (including their auditors and audit firms) must provide FINMA with all information and documents FINMA requires to carry out its tasks. In addition, other provisions of FINMASA and the APA empower FINMA to compel witnesses, subject to certain statutory prerequisites, and hire experts to assist in conducting investigations. FINMA is also permitted to inspect documents and premises, and may investigate trading records from securities dealers and trade reports from

trade venues and repositories. In general however, FINMA does not have jurisdiction over third parties and cannot obtain electronic communications held by third parties absent a contractual obligation to do so between the Covered Firm and the third party provider. As needed to fulfill its supervisory duties, FINMA may seek to obtain the information from public prosecutors who are authorized to obtain electronic communications.

After evidence has been gathered, it is summarized in a statement of facts regarding which the parties are permitted to comment. Ultimately, the matter is concluded with an order by FINMA. The span of time from the commencement of an informal investigation through the issuance of an order varies. As an example, FINMA noted that the average length for 2019 was 14.4 months. FINMASA provides a statute of limitations of seven years for confiscation and the criminal prosecution of minor offenses; there is no general statute of limitations applicable to the rules related to the application for substituted compliance.

FINMA may order a variety of sanctions to enforce the law. The primary goal of Swiss financial market supervision relevant to the application is to maintain and, if necessary, restore compliance with the law by Covered Entities. In that regard, FINMA is not empowered to issue penalties. FINMA does have authority to: Issue declaratory rulings, order substitution of performance by FINMA, publish supervisory rulings, impose cease-and-desist orders, require disgorgement of illegal profits, issue activity bans against individuals, impose industry bans, order liquidation or bankruptcy procedures, or revoke the license of a Covered Firm, among other sanctions. FINMA does not return confiscated ill-gotten gains to harmed investors; however, it takes into account remedial payments to investors made by the Covered Firm when establishing the amount to be confiscated. Additionally, FINMA has the right and obligation to refer conduct to prosecuting authorities if it suspects a criminal act by a Covered Firm. For example, insider trading and price manipulation fall within the remit of the public prosecutor. Swiss public prosecutors are empowered to take coercive measures, such as an asset freeze, and seek imposition of fines and other criminal law sanctions from competent criminal courts. FINMA is not empowered to take coercive measures.

FINMA annually publishes its enforcement results in the aggregate. As a general principle, it does not publish

individual proceedings unless necessary (i) for the protection of the market participants or the supervised persons and entities, (ii) to correct false or misleading information, or (iii) to safeguard the reputation of the Swiss financial market. Article 34 of FINMASA permits FINMA to publish the supervisory ruling in an individual matter in the case of a serious violation of supervisory law. FINMA also maintains and publishes on its website a warning list of companies and individuals who may be carrying out unauthorized services and are not supervised by FINMA.

### **IX. Request for Comment**

#### *A. General Aspects of the Comparability Assessments and Proposed Order*

The Commission requests comment regarding the preliminary views and proposed Order in connection with each of the general "regulatory outcome" categories addressed above. Commenters particularly are invited to address, among other issues, whether the relevant Swiss provisions generally are sufficient to produce regulatory outcomes that are comparable to the outcomes associated with requirements under the Exchange Act, and whether the conditions and limitations of the proposed Order would adequately address potential gaps in the relevant regulatory outcomes or would otherwise result in any implementation or other practical issues. The Commission also requests comment upon whether there are additional conditions that should be added to those in the proposed Order to produce comparable regulatory outcomes.

Further, the Commission requests comment regarding whether the proposed conditions and limitations guard against comparability gaps arising from the cross-border application of Swiss requirements (including when SBSBs conduct security-based swap business through branches located in the United States or in third countries).

With respect to the proposed conditions and limitations, commenters also are invited to address any differences between Swiss regulatory requirements and frameworks and either the German, French or UK requirements and frameworks that formed the basis for the Commission's conditional and proposed conditional grants of substituted compliance in those countries.<sup>112</sup> Would the responses to

<sup>112</sup> See generally German Substituted Compliance Order, 85 FR 85686; French Substituted Compliance Order, 86 FR 41612; UK Substituted Compliance Order, 86 FR 43318. See also German

any of the questions that the Commission asked in connection with the German Notice and Proposed Order,<sup>113</sup> the French Notice and Proposed Order,<sup>114</sup> the French Reopening Order,<sup>115</sup> or the UK Notice and Proposed Order<sup>116</sup> differ if those questions applied to Swiss regulatory requirements and frameworks?

#### B. Risk Control Requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal risk management systems, trade acknowledgement and verification, portfolio reconciliation, and portfolio compression. Commenters particularly are invited to address the basis for substituted compliance in connection with those risk control requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements.

The Commission further requests comment regarding the initial determination to not grant substituted compliance in connection with dispute reporting and trading relationship documentation. Commenters particularly are invited to address the basis for not providing a grant of substituted compliance in connection with those risk control requirements.

With respect to all risk control requirements, commenters also are invited to address any differences between Swiss regulatory requirements and frameworks and either the German or French requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for those countries, or the UK requirements and frameworks that formed the basis for the Commission's proposed conditional grant of substituted compliance for the UK.<sup>117</sup> Would the responses to any of the questions about risk control requirements that the Commission asked in connection with the German

Notice and Proposed Order,<sup>118</sup> the French Notice and Proposed Order,<sup>119</sup> the French Reopener,<sup>120</sup> or the UK Notice and Proposed Order<sup>121</sup> differ if those questions applied to Swiss regulatory requirements and frameworks?

#### C. Internal Supervision, Chief Compliance Officer and Additional Exchange Act Section 15F(j) Requirements

The Commission requests comment regarding the proposed grant of substituted compliance in connection with requirements under the Exchange Act related to internal supervision and chief compliance officers, as well as additional Exchange Act section 15F(j) requirements. Commenters particularly are invited to address the basis for substituted compliance in connection with those risk control requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements.

With respect to internal supervision and chief compliance officer requirements, as well as additional Exchange Act section 15F(j) requirements, commenters also are invited to address any differences between Swiss regulatory requirements and frameworks and either the German or French requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for those countries, or the UK requirements and frameworks that formed the basis for the Commission's proposed conditional grant of substituted compliance for the UK.<sup>122</sup> In addition, would the responses to any of the questions about internal supervision or chief compliance officer requirements, or the additional Exchange Act section 15F(j) requirements, that the Commission asked in connection with the German Notice and Proposed Order,<sup>123</sup> the French Notice and Proposed Order,<sup>124</sup>

the French Reopener,<sup>125</sup> or the UK Notice and Proposed Order<sup>126</sup> differ if those questions applied to Swiss regulatory requirements and frameworks?

#### D. Recordkeeping, Reporting, and Notification

The Commission requests comment regarding the proposed grants of substituted compliance in connection with requirements under the Exchange Act related to recordkeeping, reporting, and notification, as well as the requirement of Exchange Act section 15F(g). Commenters particularly are invited to address the basis for substituted compliance in connection with those requirements, and the proposed conditions and limitations connected to substituted compliance for those requirements. Does Swiss law taken as a whole produce regulatory outcomes that are comparable to those of Exchange Act section 15F(g) and Exchange Act rules 18a-5, 18a-6, 18a-7, and 18a-8? In this regard, commenters are invited to address Swiss laws cited for each substituted compliance determination with respect to the distinct requirements within the recordkeeping, reporting, and notification rules (*i.e.*, the rules for which a more granular approach to substituted compliance is being taken). With respect to each substituted compliance determination, the Commission seeks comment on the following matters: (1) Will the Swiss laws cited for the determination result in a comparable regulatory outcome; (2) are there additional or alternative Swiss laws that should be cited to achieve a comparable regulatory outcome; and (3) are any of the Swiss laws cited for the determination unnecessary to achieve a comparable regulatory outcome?

Commenters particularly are invited to address the proposed condition with respect to Exchange Act rule 18a-5 that the Covered Entity: (1) Preserve all of the data elements necessary to create the records required by Exchange Act rules 18a-5(b)(1), (2), (3), and (7); and (2) upon request furnish promptly to representatives of the Commission the records required by those rules. Do the relevant Swiss laws require Covered Entities to retain the data elements necessary to create the records required by these rules? If not, please identify which data elements are not preserved pursuant to the relevant Swiss laws. Further, how burdensome would it be for a Covered Entity to format the data

Notice and Proposed Order, 85 FR 72726; French Notice and Proposed Order, 85 FR 85720; UK Notice and Proposed Order, 86 FR 18378.

<sup>113</sup> German Notice and Proposed Order, 85 FR at 72740.

<sup>114</sup> French Notice and Proposed Order, 85 FR 85720 at 85734.

<sup>115</sup> French Reopening Release, 86 FR 18341.

<sup>116</sup> UK Notice and Proposed Order, 86 FR at 18406.

<sup>117</sup> See German Substituted Compliance Order, 85 FR at 85689-91; French Substituted Compliance Order, 86 FR at 41622-29; UK Substituted Compliance Order, 86 FR at 43331-37. See also German Notice and Proposed Order, 85 FR at 72730-32; French Notice and Proposed Order, 85 FR at 85724-25; UK Notice and Proposed Order, 85 FR at 18383-85.

<sup>118</sup> German Notice and Proposed Order, 85 FR at 72740.

<sup>119</sup> French Notice and Proposed Order, 85 FR at 85734.

<sup>120</sup> French Reopening Release, 86 FR 18341.

<sup>121</sup> UK Notice and Proposed Order, 86 FR at 18406.

<sup>122</sup> See German Substituted Compliance Order, 85 FR at 85691-92; French Substituted Compliance Order, 86 FR at 41639-43; UK Substituted Compliance Order, 86 FR at 43347-43353. See also German Notice and Proposed Order, 85 FR at 72732-34; French Notice and Proposed Order, 85 FR at 85726-28; UK Notice and Proposed Order, 85 FR at 18389-90.

<sup>123</sup> German Notice and Proposed Order, 85 FR at 72740.

<sup>124</sup> French Notice and Proposed Order, 85 FR at 85734.

<sup>125</sup> French Reopening Release, 86 FR 18341.

<sup>126</sup> UK Notice and Proposed Order, 86 FR at 18406.

elements into the records required by these rules (e.g., a blotter, ledger, or securities record, as applicable) if the firm was requested to do so? In what formats do Covered Entities in Switzerland produce this information to FINMA or other Swiss authorities? How do those formats differ from the formats required by Exchange Act rules 18a-5(b)(1), (2), (3), and (7)?

Is it appropriate to structure the Commission's substituted compliance determinations in the proposed Order to provide Covered Entities with greater flexibility to select which distinct requirements within the broader recordkeeping, reporting, and notification rules for which they want to apply substituted compliance? Explain why or why not. For example, would it be more efficient for a Covered Entity to comply with certain Exchange Act requirements within a given rule (rather than apply substituted compliance) because it can utilize systems that its affiliated broker-dealer has implemented to comply with them? If so, explain why. If not, explain why not. Is it appropriate to permit Covered Entities to take a more granular approach to the requirements within the recordkeeping rules? For example, would this approach make it more difficult for the Commission to get a comprehensive understanding of the Covered Entity's security-based swap activities and financial condition? Explain why or why not. Would it be overly complex for the Covered Entity to administer a firm-wide recordkeeping system under this approach? Explain why or why not.

Certain of the Commission's recordkeeping and notification requirements are fully or partially linked to substantive Exchange Act requirements for which a positive substituted compliance determination preliminarily would not be made under the proposed Order. In these cases, should the Commission not make a positive substituted compliance determination for the fully linked requirement in the recordkeeping or notification rules or to the portion of the requirement that is linked to a substantive Exchange Act requirement? In particular, should the Commission not make a positive substituted compliance determination for recordkeeping or notification requirements linked to the following Exchange Act rules for which a positive substituted compliance determination is preliminarily not being made: (1) Exchange Act rule 15Fh-4; (2) Exchange Act rule 15Fh-5; (3) Exchange Act rule 15Fh-6; (4) Exchange Act rule 18a-4; (5) Regulation SBSR; (6) Form SBSE and its

variations; (7) Exchange Act rule 15Fh-1; (8) Exchange Act rule 15Fh-2; and (9) Exchange Act rule 15Fi-5? If not, explain why.

Certain of the requirements in the Commission's recordkeeping rules are linked to substantive Exchange Act requirements where a positive substituted compliance determination is being made under the proposed Order. In these cases, should a positive substituted compliance determination for the linked requirement in the recordkeeping rule be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act requirement? If not, explain why. Should this be the case regardless of whether the requirement is fully or partially linked to the substantive Exchange Act requirement? If not, explain why. In particular, should substituted compliance for recordkeeping, reporting, and notification requirements linked to the following Exchange Act rules be conditioned on the Covered Entity applying substituted compliance to the linked substantive Exchange Act rule: (1) Exchange Act rule 15Fh-3(h); (2) Exchange Act rule 15Fi-2; (3) Exchange Act rule 15Fi-3; (4) Exchange Act rule 15Fi-4; and (5) Exchange Act rule 15Fk-1? If not, explain why.

Commenters also are invited to address the preliminary positive substituted compliance determination with respect to Exchange Act rule 18a-7, which would be conditioned on the Covered Entity filing financial and operational information with the Commission in the manner and format specified by the Commission by order or rule. Should the Commission require Covered Entities with a prudential regulator to file the financial and operational information using the FOCUS Report Part IIC? Are there line items on the FOCUS Report Part IIC that elicit information that is not included in the reports Covered Entities with a prudential regulator file with FINMA or other Swiss authorities? If so, do Covered Entities with a prudential regulator record that information in their required books and records? Please identify any information that is elicited in the FOCUS Report Part IIC that is not: (1) Included in the financial reports filed by Covered Entities with a prudential regulator with FINMA or other Swiss authorities; or (2) recorded in the books and records required of Covered Entities with a prudential regulator. Would the answer to these questions change if references to FFIEC Form 031 were not included in the FOCUS Report Part IIC? If so, how? As a preliminary matter, as a condition of

substituted compliance should Covered Entities with a prudential regulator file a limited amount of financial and operational information on the FOCUS Report Part IIC for a period of two years to further evaluate the burden of requiring all applicable line items to be filled out? If so, which line items should be required? To the extent that Covered Entities with a prudential regulator otherwise report or record information that is responsive to the FOCUS Report Part IIC, how could the information on this report be integrated into a database of filings the Commission or its designee will maintain for filers of the FOCUS Report Parts IIC (e.g., the eFOCUS system) to achieve the objective of being able to perform cross-form analysis of information entered into the uniquely numbered line items on the forms?

Commenters further are invited to address any differences between Swiss regulatory requirements and frameworks and the German, French, and/or UK requirements and frameworks that formed the basis for the Commission's conditional grants of substituted compliance for recordkeeping, reporting, and notification requirements in those countries.<sup>127</sup> Would the responses to any of the questions about those requirements that the Commission asked in connection with the German, French, and/or UK notices and proposed orders differ if those questions applied to Swiss regulatory requirements and frameworks?

#### *E. Supervisory and Enforcement Issues*

The Commission further requests comment regarding how to weigh considerations regarding supervisory and enforcement effectiveness in Switzerland as part of the comparability assessments. Commenters particularly are invited to address relevant issues regarding the effectiveness of Swiss supervision and enforcement over firms that may register with the Commission as SBSDs, including but not limited to issues regarding:

- Swiss supervisory and enforcement authority, supervisory inspection practices and the use of alternative supervisory tools, and enforcement tools and practices;
- Swiss supervisory and enforcement effectiveness with respect to derivatives such as security-based swaps; and
- Swiss supervision and enforcement in the cross-border context (e.g., any differences between the oversight of firms' businesses within Switzerland

<sup>127</sup> See German Substituted Compliance Order, 85 FR at 85695-97; French Substituted Compliance Order, 86 FR at 41648-57; UK Substituted Compliance Order, 86 FR at 43359-69.

and the oversight of activities and branches outside of Switzerland, including within the United States).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>128</sup>

**J. Matthew DeLesDernier,**  
*Assistant Secretary.*

#### Attachment A

*It is hereby determined and ordered,* pursuant to rule 3a71-6 under the Exchange Act, that a Covered Entity (as defined in paragraph (e)(1) of this Order) may satisfy the requirements under the Exchange Act that are addressed in paragraphs (b) through (d) of this Order so long as the Covered Entity is subject to and complies with relevant requirements of the Swiss Confederation and with the conditions to this Order, as amended or superseded from time to time.

##### (a) General conditions.

This Order is subject to the following general conditions, in addition to the conditions specified in paragraphs (b) through (d):

(1) *Security-based swaps and transactions as “derivatives” or “derivative transactions.”* For each condition in paragraphs (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, provisions of FinMIA and FMIO, the relevant security-based swaps and security-based swap transactions are “derivatives” and/or “derivative transactions” for purposes of FinMIA article 2(c), or otherwise are described by the relevant language of that provision.

(2) *“Counterparty” status.* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FinMIA and FMIO, the Covered Entity complies with the applicable conditions of the Order regardless of the Covered Entity’s counterparty is a “counterparty” for purposes of FinMIA article 93, or otherwise is described by the relevant language of that provision.

(3) *Counterparty’s status as “company.”* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FMIO, the Covered Entity complies with the applicable conditions of the Order regardless of whether a Covered Entity’s counterparty is a “company” for purposes of FMIO article 77, or otherwise is described by the relevant language of that provision.

(4) *Covered Entity as “bank.”* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of the BA and BO and/or other Swiss requirements adopted pursuant to those provisions, the Covered Entity is a “bank” for purposes of BA article 1a, or otherwise is described by the relevant language of that provision.

(5) *Covered Entity as “systemically important.”* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of the FINMA Circular 2017/1, the Covered Entity is “systemically important” for purposes of BA article 8(3) and article 9, or otherwise are described by the relevant language of that provision.

(6) *Covered Entity as “category 1.”* For each condition in paragraph (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FINMA Circular 2017/1, the Covered Entity is supervised as “category 1,” as defined in BO articles 2(2) and 2(3) and BO Annex 3, or otherwise are described by the relevant language of those provisions.

(7) *“Institution-specific approach” to operational risk quantification.* For each condition in paragraphs (b) through (d) of this Order that requires the application of, and the Covered Entity’s compliance with, the provisions of FINMA Circular 2008/21 margins 45–107, the Covered Entity applies the institution-specific approach, as defined in CAO article 94, to quantifying capital requirements for operational risk, as approved by FINMA.

(8) *Memorandum of Understanding with FINMA.* The Commission and FINMA have a supervisory and enforcement memorandum of understanding and/or other arrangement addressing cooperation with respect to this Order at the time the Covered Entity complies with the relevant requirements under the Exchange Act via compliance with one or more provisions of this Order.

(9) *Notice to Commission.* A Covered Entity relying on this Order must provide notice of its intent to rely on this Order by notifying the Commission in writing. Such notice must be sent to an email address provided on the Commission’s website. The notice must include the contact information of an individual who can provide further information about the matter that is the subject of the notice. The notice must identify each specific substituted compliance determination within

paragraphs (b) through (d) of the Order for which the Covered Entity intends to apply substituted compliance. A Covered Entity must promptly provide an amended notice if it modifies its reliance on the substituted compliance determinations in this Order.

(10) *Notification Requirements Related to Changes in Capital.* A Covered Entity that is prudentially regulated relying on this Order must apply substituted compliance with respect to the requirements of Exchange Act rule 18a-8(c) and the requirements of Exchange Act rule 18a-8(h) as applied to Exchange Act rule 18a-8(c).

##### (b) Substituted compliance in connection with risk control requirements.

This Order extends to the following provisions related to risk control:

(1) *Internal risk management.* The requirements of Exchange Act section 15F(j)(2) and relevant aspects of Exchange Act rule 15Fh-3(h)(2)(iii)(I), provided that the Covered Entity is subject to and complies with the requirements of: BO article 12; FINMA Circular 2017/1 margins 9–14, 31–49, 52–76, 82–97; and FINMA Circular 2008/21 margins 45, 54–63, 65–68, 117–138.

(2) *Trade acknowledgement and verification.* The requirements of Exchange Act rule 15Fi-2, provided that the Covered Entity is subject to and complies with the requirements of FinMIA articles 108(a) and (c); and FMIO articles 95, 97, and 113(1).

(3) *Portfolio reconciliation.* The requirements of Exchange Act rule 15Fi-3, other than paragraph (c) to that rule, provided that:

(i) The Covered Entity is subject to and complies with the requirements of FINMASA article 29; FinMIA article 108(b) and (c); and FMIO articles 96, 97 and 113(1)(d);

(ii) The Covered Entity does not apply FinMIA article 108(b)’s exception for “small non-financial counterparties” as defined in FinMIA article 98.

(4) *Portfolio compression.* The requirements of Exchange Act rule 15Fi-4, provided that:

(i) The Covered Entity is subject to and complies with the requirements of FinMIA article 108(d); and FMIO articles 98 and 113(1)(d); and

(ii) The Covered Entity does not apply the portion of FinMIA article 108(d) that excludes application of the requirement when there are fewer than 500 non-centrally cleared OTC derivatives transactions outstanding.

##### (c) Substituted compliance in connection with internal supervision and compliance requirements and

<sup>128</sup> 17 CFR 200.30-3(a)(89).



certain Exchange Act section 15F(j) requirements.

This Order extends to the following provisions related to internal supervision and compliance and Exchange Act section 15F(j) requirements:

(1) *Internal supervision.* The requirements of Exchange Act rule 15Fh-3(h) and Exchange Act sections 15F(j)(4)(A) and (j)(5), provided that:

(i) The Covered Entity is subject to and complies with the requirements identified in paragraph (c)(3) of this Order; and

(ii) This paragraph (c) does not extend to the requirements of paragraph (h)(2)(iii)(I) to rule 15Fh-3 to the extent those requirements pertain to compliance with Exchange Act sections 15F(j)(2), (j)(3), (j)(4)(B) and (j)(6), or to the general and supporting provisions of paragraph (h) to rule 15Fh-3 in connection with those Exchange Act sections.

(2) *Chief compliance officers.* The requirements of Exchange Act section 15F(k) and Exchange Act rule 15Fk-1, provided that:

(i) The Covered Entity complies with the requirements identified in paragraph (c)(3) of this Order;

(ii) All reports required pursuant to FINMA Circular 2017/1 margins 78–81 must also:

(A) Be provided to the Commission at least annually, and in the English language;

(B) Include a certification signed by the chief compliance officer or senior officer (as defined in Exchange Act rule 15Fk-1(e)(2)) of the Covered Entity that, to the best of the certifier's knowledge and reasonable belief and under penalty of law, the report is accurate and complete in all material respects;

(C) Address the firm's compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions to this Order in connection with requirements for which the Covered Entity is relying on this Order;

(D) Be provided to the Commission no later than 15 days following the earlier of:

(i) The submission of the report to the Covered Entity's management body; or

(ii) The time the report is required to be submitted to the management body; and

(E) Together cover the entire period that the Covered Entity's annual compliance report referenced in Exchange Act section 15F(k)(3) and Exchange Act rule 15Fk-1(c) would be required to cover.

(3) *Applicable supervisory and compliance requirements.* Paragraphs (c)(1) and (c)(2) are conditioned on the Covered Entity being subject to and complying with the following requirements: BA articles 3(2)(c), and 3f; BO articles 12, 14e, and 14g; FINMA Circular 2017/1 articles 9–97; FINMA Circular 2008/21 margins 54–62, 65–68, 121–122, and 128–136.5; FINMA Circular 2013/8 margins 45–61, 64; FINMA Circular 2010/1 margins 16–74; and FINMA Circular 2018/3 margins 14–35.

(4) *Additional condition to paragraph (c)(1).* Paragraph (c)(1) further is conditioned on the requirement that the Covered Entity complies with the provisions specified in paragraph (c)(3) as if those provisions also require compliance with:

(i) Applicable requirements under the Exchange Act; and

(ii) The other applicable conditions to this Order in connection with requirements for which the Covered Entity is relying on this Order.

(d) *Substituted compliance in connection with recordkeeping, reporting, and notification requirements.*

This Order extends to the following provisions that apply to a Covered Entity related to recordkeeping, reporting, and notification:

(1)(i) *Make and keep current certain records.* The requirements of the following provisions of Exchange Act rule 18a-5, provided that the Covered Entity complies with the relevant conditions in this paragraph (d)(1)(i) and with the applicable conditions in paragraph (d)(1)(ii):

(A) The requirements of Exchange Act rule 18a-5(b)(1), provided that the Covered Entity is subject to and complies with the requirements of FMIO-FINMA article 1; FinMIA articles 104 and 106; FMIO annex 2; CO article 958f;

(B) The requirements of Exchange Act rule 18a-5(b)(2), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; AccO article 1; FinMIA article 106;

(C) The requirements of Exchange Act rule 18a-5(b)(3), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; FinMIA articles 104 and 106; FMIO annex 2;

(D) The requirements of Exchange Act rule 18a-5(b)(4), provided that the Covered Entity is subject to and complies with the requirements of FinMIA article 38; FMIO article 36;

FinIA article 50; FMIO-FINMA article 1; CO article 958f;

(E) The requirements of Exchange Act rule 18a-5(b)(5), provided that the Covered Entity is subject to and complies with the requirements of FMIO article 38; FinIA article 50; FMIO-FINMA article 1; CO article 958f;

(F) The requirements of Exchange Act rules 18a-5(b)(6) and (b)(11), provided that:

(1) The Covered Entity is subject to and complies with the requirements of FinMIA articles 106 and 108(a); FMIO article 95; CO article 958f; and

(2) The Covered Entity applies substituted compliance for the requirements of Exchange Act rule 15Fi-2 pursuant to this Order;

(G) The requirements of Exchange Act rule 18a-5(b)(7), provided that the Covered Entity is subject to and complies with the requirements of FMIO article 38; FinIA article 50; FMIO-FINMA article 1; FMIO annex 2; FinMIA articles 104 and 106; AMLA article 3; CO article 958f;

(H) The requirements of Exchange Act rule 18a-5(b)(8), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; BA article 3; BO article 12; CO article 330a; FINMA Circular 2008/21, Annex 3, margins 30–33;

(I) The requirements of Exchange Act rule 18a-5(b)(13), regarding one or more provisions of Exchange Act rules 15Fh-3 or 15Fk-1 for which substituted compliance is available under this Order, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FINMA Circular 2017/1; BA article 3; CO article 958f, in each case with respect to the relevant security-based swap or activity;

(2) With respect to the portion of Exchange Act rule 18a-5(b)(13) that relates to one or more provisions of Exchange Act rule 15Fh-3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh-3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(3) With respect to the portion of Exchange Act rule 18a-5(b)(13) that relates to Exchange Act rule 15Fk-1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk-1 pursuant to this Order;

(J) The requirements of Exchange Act rule 18a-5(b)(14)(i) and (ii), provided that:



(1) The Covered Entity is subject to and complies with the requirements of FinMIA articles 104 and 106; CO article 958f; and

(2) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi-3 pursuant to this Order; and

(K) The requirements of Exchange Act rule 18a-5(b)(14)(iii), provided that:

(1) The Covered Entity is subject to and complies with the requirements of FinMIA articles 104 and 106; CO article 958f; and

(2) The Covered Entity applies substituted compliance for Exchange Act rule 15Fi-4 pursuant to this Order.

(ii) Paragraph (d)(1)(i) is subject to the following further conditions:

(A) Paragraphs (d)(1)(i)(A) through (C) and (G) are subject to the condition that the Covered Entity preserves all of the data elements necessary to create the records required by the applicable Exchange Act rules cited in such paragraphs and upon request furnishes promptly to representatives of the Commission the records required by those rules;

(B) A Covered Entity may apply the substituted compliance determination in paragraph (d)(1)(i)(I) to records of compliance with Exchange Act rule 15Fh-3(h) in respect of one or more security-based swaps or activities related to security-based swaps; and

(C) This Order does not extend to the requirements of Exchange Act rule 18a-5(b)(9), (b)(10), or (b)(12).

(2)(i) *Preserve certain records.* The requirements of the following provisions of Exchange Act rule 18a-6, provided that the Covered Entity complies with the relevant conditions in this paragraph (d)(2)(i) and with the applicable conditions in paragraph (d)(2)(ii):

(A) The requirements of Exchange Act rule 18a-6(a)(2), provided that the Covered Entity is subject to and complies with the requirements of FinMIA article 106; CO article 958f; FMIO-FINMA article 1(4); AccO article 3; FINMA Circular 2008/4 Marg. 16;

(B) The requirements of Exchange Act rule 18a-6(b)(2)(i), provided that the Covered Entity is subject to and complies with the requirements of FinMIA article 106; CO article 958f; FMIO-FINMA article 1(4); AccO article 3; FINMA Circular 2008/4 Marg. 16;

(C) The requirements of Exchange Act rule 18a-6(b)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; FINMA Circular 2013/8 Marg. 60 and Marg. 61;

(D) The requirements of Exchange Act rule 18a-6(b)(2)(iii), provided that the

Covered Entity is subject to and complies with the requirements of CO article 958f; AMLA article 7(3); AMLO-FINMA article 5(1);

(E) The requirements of Exchange Act rule 18a-6(b)(2)(iv), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; FINMA Circular 2013/8 Marg. 60 and Marg. 61;

(F) The requirements of Exchange Act rule 18a-6(b)(2)(vii), regarding one or more provisions of Exchange Act rules 15Fh-3 or 15Fk-1 for which substituted compliance is available under this Order, provided that:

(1) The Covered Entity is subject to and complies with the requirements of FINMA Circular 2017/1; BA article 3; CO article 958f, in each case with respect to the relevant security-based swap or activity;

(2) With respect to the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to one or more provisions of Exchange Act rule 15Fh-3 for which substituted compliance is available under this Order, the Covered Entity applies substituted compliance for such business conduct standard(s) of Exchange Act rule 15Fh-3 pursuant to this Order, as applicable, with respect to the relevant security-based swap or activity; and

(3) With respect to the portion of Exchange Act rule 18a-6(b)(2)(vii) that relates to Exchange Act rule 15Fk-1, the Covered Entity applies substituted compliance for Exchange Act section 15F(k) and Exchange Act rule 15Fk-1 pursuant to this Order;

(G) The requirements of Exchange Act rule 18a-6(c), provided that:

(1) The Covered Entity is subject to and complies with the requirements of BA article 3; BO article 12; CO articles 686 and 958f; and

(2) This Order does not extend to the requirements of Exchange Act rule 18a-6(c) relating to Forms SBSE, SBSE-A, SBSE-C, SBSE-W, all amendments to these forms, and all other licenses or other documentation showing the registration of the Covered Entity with any securities regulatory authority or the U.S. Commodity Futures Trading Commission;

(H) The requirements of Exchange Act rule 18a-6(d)(1), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; BA article 3; BO article 12; CO article 330a; FINMA Circular 2008/21, Annex 3, margins 30-33;

(I) The requirements of Exchange Act rule 18a-6(d)(2)(ii), provided that the Covered Entity is subject to and complies with the requirements of BA article 3; BO article 12; CO article 958f;

FINMA Circular 2008/21 margins 122, 128, 131, and Appendix 2;

(J) The requirements of Exchange Act rule 18a-6(d)(3)(ii), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; BA article 3; BO article 12;

(K) The requirements of Exchange Act rule 18a-6(d)(4) and (d)(5), regarding one or more provisions of Exchange Act rules 15Fi-3 or 15Fi-4 for which substituted compliance is available under this Order, provided that:

(1) The Covered Entity is subject to and complies with the requirements of CO article 958f; FinMIA article 106;

(2) With respect to the portion of Exchange Act rule 18a-6(d)(4) and (d)(5) that relates to Exchange Act rules 15Fi-3 or 15Fi-4, the Covered Entity applies substituted compliance for Exchange Act rules 15Fi-3 and 15Fi-4 pursuant to this Order; and

(3) This Order does not extend to the requirements of Exchange Act rule 18a-6(d)(4) and (d)(5) relating to Exchange Act rule 15Fi-5;

(L) The requirements of Exchange Act rule 18a-6(e), provided that the Covered Entity is subject to and complies with the requirements of AccO; and

(M) The requirements of Exchange Act rule 18a-6(f), provided that the Covered Entity is subject to and complies with the requirements of FINMA Circular 2018/3.

(ii) Paragraph (d)(2)(i) is subject to the following further conditions:

(A) A Covered Entity may apply the substituted compliance determination in paragraph (d)(2)(i)(F) to records related to Exchange Act rule 15Fh-3(h) in respect of one or more security-based swaps or activities related to security-based swaps; and

(B) This Order does not extend to the requirements of Exchange Act rule 18a-6(b)(2)(v), (b)(2)(vi), or (b)(2)(viii).

(3) *File Reports.* The requirements of the following provisions of Exchange Act rule 18a-7, provided that the Covered Entity complies with the relevant conditions in this paragraph (d)(3):

(i) The requirements of Exchange Act rule 18a-7(a)(2) and the requirements of Exchange Act rule 18a-7(j) as applied to the requirements of Exchange Act rule 18a-7(a)(2), provided that:

(A) The Covered Entity is subject to and complies with the requirements of BA article 6a; BO article 32; CAO article 16; FINMA Circular 2020/1; and FINMA Circular 2016/1; and

(B) The Covered Entity files periodic unaudited financial and operational information with the Commission or its designee in the manner and format required by Commission rule or order

and presents the financial information in the filing in accordance with generally accepted accounting principles that the Covered Entity uses to prepare general purpose publicly available or available to be issued financial statements in Switzerland.

(4)(i) *Provide Notification.* The requirements of the following provisions of Exchange Act rule 18a–8, provided that the Covered Entity complies with the relevant conditions in this paragraph (d)(4)(i) and with the applicable conditions in paragraph (d)(4)(ii):

(A) The requirements of Exchange Act rule 18a–8(c) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(c), provided that the Covered Entity is subject to and complies with the requirements of FINMASA article 29(2); CAO articles 14, 42(3), 101, and 130(4); and Liquidity Ordinance articles 17b, and 26(2).

(B) The requirements of Exchange Act rule 18a–8(d) and the requirements of Exchange Act rule 18a–8(h) as applied to the requirements of Exchange Act rule 18a–8(d), provided that:

(1) The Covered Entity is subject to and complies with the requirements of FINMASA article 29(2); CAO articles 14, 42(3), 101, and 130(4); and Liquidity Ordinance articles 17b, and 26(2); and

(2) This Order does not extend to the requirements of Exchange Act rule 18a–8(d) to give notice with respect to books and records required by Exchange Act rule 18a–5 for which the Covered Entity does not apply substituted compliance pursuant to this Order;

(ii) Paragraph (d)(4)(i) is subject to the following further conditions:

(A) The Covered Entity:

(1) Simultaneously sends a copy of any notice required to be sent by Swiss law cited in this paragraph of the Order to the Commission in the manner specified on the Commission's website; and

(2) Includes with the transmission the contact information of an individual who can provide further information about the matter that is the subject of the notice; and

(B) This Order does not extend to the requirements of paragraph (g) of rule 18a–8 or to the requirements of Exchange Act rule 18a–8(h) as applied to such requirements.

(5) *Daily Trading Records.* The requirements of Exchange Act section 15F(g), provided that the Covered Entity is subject to and complies with the requirements of CO article 958f; FMIO article 36; FMIO–FINMA article 1; FinMIA articles 38, 104, and 106;

FINMA Circular 2013/8 marg. 60 and marg. 61.

(6) *Examination and Production of Records.* Notwithstanding the forgoing provisions of paragraph (d) of this Order, this Order does not extend to, and Covered Entities remain subject to, the requirement of Exchange Act section 15F(f) to keep books and records open to inspection by any representative of the Commission and the requirement of Exchange Act rule 18a–6(g) to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the Covered Entity that are required to be preserved under Exchange Act rule 18a–6, or any other records of the Covered Entity that are subject to examination or required to be made or maintained pursuant to Exchange Act section 15F that are requested by a representative of the Commission.

(7) *English Translations.* Notwithstanding the forgoing provisions of paragraph (d) of this Order, to the extent documents are not prepared in the English language, Covered Entities must promptly furnish to a representative of the Commission upon request an English translation of any record, report, or notification of the Covered Entity that is required to be made, preserved, filed, or subject to examination pursuant to Exchange Act section 15F of this Order.

(e) *Definitions.*

(1) “Covered Entity” means an entity that:

(i) Is a security-based swap dealer registered with the Commission;

(ii) Is not a “U.S. person,” as that term is defined in rule 3a71–3(a)(4) under the Exchange Act;

(iii) Is a systemically important bank authorized by FINMA to conduct banking activities in the Swiss Confederation; and

(iv) Is supervised by FINMA under the intensive and continual supervision model as a Category 1 firm as that term is defined in BO Annex 3.

(2) “AccO” means the Ordinance on the Maintenance and Retention of Accounts (Accounts Ordinance), CC 221.431, as amended from time to time.

(3) “AMLA” means the Federal Act on Combating Money Laundering and Terrorist Financing (Anti-Money Laundering Act), CC 955, as amended from time to time.

(4) “AMLO–FINMA” means the Ordinance of the Swiss Financial Market Supervisory Authority on the Prevention of Money Laundering and the Financing of Terrorist Activities (FINMA Anti-Money Laundering Ordinance), CC 955.033.0, as amended from time to time.

(5) “BA” means the Federal Act on Banks and Savings Banks (Banking Act), CC 952, as amended from time to time.

(6) “BO” means the Ordinance on Banks and Savings Banks (Banking Ordinance), CC 952.02, as amended from time to time.

(7) “CAO” means the Ordinance concerning Capital Adequacy and Risk Diversification for Banks and Securities Dealers (Capital Adequacy Ordinance), CC 952.03, as amended from time to time.

(8) “CO” means the Federal Act on the Amendment of the Swiss Civil Code (Part Five: The Code of Obligations, CC 220, as amended from time to time.

(9) “FinIA” means Federal Act on Financial Institutions (Financial Institutions Act), CC 954.1, as amended from time to time.

(10) “FINMA” means the Swiss Financial Market Supervisory Authority.

(11) “FINMA Circular 2008/4” means the FINMA Circular 2008/4, Securities Journals.

(12) “FINMA Circular 2008/21” means the FINMA Circular 2008/21, Operational Risk—Banks.

(13) “FINMA Circular 2010/1” means the FINMA Circular 2010/1, Remuneration schemes.

(14) “FINMA Circular 2013/8” means the FINMA Circular 2013/8, Market conduct rules, Supervisory rules on market conduct in securities trading.

(15) “FINMA Circular 2016/1” means the FINMA Circular 2016/1, Disclosure—Banks.

(16) “FINMA Circular 2017/1” means the FINMA Circular 2017/1, Corporate Governance—Banks.

(17) “FINMA Circular 2017/7” means the FINMA Circular 2017/7, Credit Risk—Banks.

(18) “FINMA Circular 2018/3” means the FINMA Circular 2018/3, Outsourcing—Banks and Insurers.

(19) “FINMA Circular 2020/1” means the FINMA Circular 2020/1, Accounting—Banks.

(20) “FINMASA” means the Federal Act on the Swiss Financial Market Supervisory Authority (Financial Market Supervision Act), CC 956.1, as amended from time to time.

(21) “FinMIA” means the Federal Act on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Act), CC 958.1, as amended from time to time.

(22) “FMIO” means the Ordinance on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (Financial Market Infrastructure Ordinance), CC 958.11, as amended from time to time.

(23) “FMIO–FINMA” means the Ordinance of the Swiss Financial Market Supervisory Authority on Financial Market Infrastructures and Market Conduct in Securities and Derivatives Trading (FINMA Financial Market Infrastructure Ordinance), CC 958.111, as amended from time to time.

(24) “Liquidity Ordinance” means the Ordinance on the Liquidity of Banks.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92626; File No. SR–CboeBZX–2021–053]

### Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Rule 14.11(m) (Tracking Fund Shares) To Provide for the Use of Custom Baskets Consistent With the Exemptive Relief Issued Pursuant to the Investment Company Act of 1940 Applicable to a Series of Tracking Fund Shares

August 10, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act”),<sup>1</sup> and Rule 19b–4 thereunder,<sup>2</sup> notice is hereby given that on August 3, 2021, Cboe BZX Exchange, Inc. (“Exchange” or “BZX”) 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

Cboe BZX Exchange, Inc. (the “Exchange” or “BZX”) proposes to amend Rule 14.11(m) (Tracking Fund Shares) to provide for the use of “Custom Baskets” consistent with the exemptive relief issued pursuant to the Investment Company Act of 1940 (“Investment Company Act”) applicable to a series of Tracking Fund Shares. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange’s website ([http://markets.cboe.com/us/equities/regulation/rule\\_filings/bzx/](http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/)), at the Exchange’s Office of the Secretary,

and at the Commission’s Public Reference Room.

#### II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

##### A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

###### 1. Purpose

The Exchange proposes to amend Rule 14.11(m) (Tracking Fund Shares)<sup>3</sup> to provide for the use of “Custom Baskets” consistent with the exemptive relief issued pursuant to the Investment Company Act<sup>4</sup> applicable to a series of Tracking Fund Shares.

To effectuate this change, the Exchange proposes the following amendments to Rule 14.11(m). First, the proposed rule change adopts new subparagraph (F) under Rule 14.11(m)(3) (Definitions), which defines “Custom Basket”, for the purposes of Rule 14.11(m), to mean a portfolio of securities that is different from the Tracking Basket and is otherwise consistent with the exemptive relief issued pursuant to the Investment Company Act applicable to a series of Tracking Fund Shares. The proposed rule change makes conforming amendments to the definition of Tracking Fund Shares in Rule 14.11(m)(3)(A) and Reporting Authority

in Rule 14.11(m)(3)(C). The proposed rule change amends the definition of “Tracking Fund Share” in Rule 14.11(m)(3)(A) to provide for creations of shares in return for a deposit by the purchaser of, and redemptions of shares at a holder’s request in return for, a Custom Basket rather than a Tracking Basket to the extent permitted by a fund’s exemptive relief. In addition, the proposed rule change amends the definition of “Reporting Authority” in respect of a particular series of Tracking Fund Shares in Rule 14.11(m)(3)(C) to provide for Custom Baskets to the extent permitted by a fund’s exemptive relief. Currently, “Reporting Authority” in respect of a particular series of Tracking Fund Shares means the Exchange, an institution, or a reporting service designated by the Exchange or by the exchange that lists a particular series of Tracking Fund Shares (if the Exchange is trading such series pursuant to unlisted trading privileges) as the official source for calculating and reporting information relating to such series, including, but not limited to, the Tracking Basket; the Fund Portfolio; the amount of any cash distribution to holders of Tracking Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Tracking Fund Shares. Rule 14.11(m)(3)(C) further provides that a series of Tracking Fund Shares may have more than one Reporting Authority, each having different functions. The proposed rule change adds “Custom Basket” to the non-exclusive list of information relating to Tracking Fund Shares that a Reporting Authority calculates and reports, *i.e.*, including, but not limited to, the Tracking Basket; the Fund Portfolio; the amount of any cash distribution to holders of Tracking Fund Shares, net asset value, or other information relating to the issuance, redemption or trading of Tracking Fund Shares.

Second, the proposed rule change amends Rule 14.11(m)(4) (Initial and Continued Listing), which currently provides criteria that Tracking Fund Shares must satisfy for initial and continued listing on the Exchange, to incorporate specific initial and continued listing criteria for Custom Baskets. Specifically, Rule 14.11(m)(4)(A)(ii) currently provides that the Exchange will obtain a representation from the issuer of each series of Tracking Fund Shares that the net asset value per share for the series will be calculated daily and that each of the following will be made available to all market participants at the same time when disclosed: the net asset value, the

<sup>3</sup> Rule 14.11(m)(3)(A) defines the term “Tracking Fund Share” as a security that: (i) Represents an interest in an investment company registered under the Investment Company Act of 1940 (“Investment Company”) organized as an open-end management investment company, that invests in a portfolio of securities selected by the Investment Company’s investment adviser consistent with the Investment Company’s investment objectives and policies; (ii) is issued in a specified aggregate minimum number in return for a deposit of a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; (iii) when aggregated in the same specified minimum number, may be redeemed at a holder’s request, which holder will be paid a specified Tracking Basket and/or a cash amount with a value equal to the next determined net asset value; and (iv) the portfolio holdings for which are disclosed within at least 60 days following the end of every fiscal quarter.

<sup>4</sup> 15 U.S.C. 80a *et seq.*

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b–4.

Tracking Basket, and the Fund Portfolio. The proposed rule change adopts an additional requirement in Rule 14.11(m)(4)(A)(ii) providing that the Exchange will also obtain a representation from the issuer of each series of Tracking Fund Shares that the issuer and any person acting on behalf of the series of Tracking Fund Shares will comply with Regulation Fair Disclosure under the Securities Exchange Act of 1934 (“Exchange Act”)<sup>5</sup>, including with respect to any Custom Basket.<sup>6</sup>

Third, the proposed Rule change adopts new Rule 14.11(m)(4)(B)(ii), which provides that, with respect to each Custom Basket utilized by a series of Tracking Fund Shares, each business day, before the opening of trading in Regular Trading Hours (as defined in Rule 1.5(w)), the investment company shall make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash.<sup>7</sup>

Finally, the proposed rule change makes conforming amendments to Rule 14.11(m)(2)(E) and (F). In particular, Rule 14.11(m)(2)(E) currently provides that, if the investment adviser to the Investment Company issuing Tracking Fund Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio and/or the Tracking Basket. Any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Fund Portfolio and/or the Tracking Basket or has access to nonpublic information regarding the Fund

Portfolio and/or the Tracking Basket or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio and/or the Tracking Basket or changes thereto. The proposed rule change amends 14.11(m)(2)(E) to provide for Custom Baskets to the extent permitted by a fund’s exemptive relief. As proposed, Rule 14.11(m)(2)(E) provides that if the investment adviser to the Investment Company issuing Tracking Fund Shares is registered as a broker-dealer or is affiliated with a broker-dealer, such investment adviser will erect and maintain a “fire wall” between the investment adviser and personnel of the broker-dealer or broker-dealer affiliate, as applicable, with respect to access to information concerning the composition of and/or changes to the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable. In addition, proposed Rule 14.11(m)(2)(E) provides that any person related to the investment adviser or Investment Company who makes decisions pertaining to the Investment Company’s Fund Portfolio, the Tracking Basket, and/or the Custom Basket or has access to nonpublic information regarding the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable, or changes thereto must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the Fund Portfolio, the Tracking Basket, and/or the Custom Basket, as applicable, or changes thereto.

Rule 14.11(m)(2)(F) currently provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio or the Tracking Basket or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio or the Tracking Basket or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio or Tracking Basket. The proposed rule change similarly amends Rule 14.11(m)(2)(F) to provide for Custom Baskets to the extent permitted by a

fund’s exemptive relief. As proposed, Rule 14.11(m)(2)(F) provides that any person or entity, including a custodian, Reporting Authority, distributor, or administrator, who has access to nonpublic information regarding the Fund Portfolio, the Tracking Basket, or the Custom Basket, as applicable, or changes thereto, must be subject to procedures designed to prevent the use and dissemination of material nonpublic information regarding the applicable Fund Portfolio, the Tracking Basket, or the Custom Basket, as applicable, or changes thereto. Moreover, if any such person or entity is registered as a broker-dealer or affiliated with a broker-dealer, such person or entity will erect and maintain a “fire wall” between the person or entity and the broker-dealer with respect to access to information concerning the composition and/or changes to such Fund Portfolio, Tracking Basket, or Custom Basket, as applicable.

## 2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Exchange Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Exchange Act.<sup>8</sup> Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)<sup>9</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>10</sup> requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes that proposed rule change to provide for the use of Custom Baskets consistent with the applicable exemptive relief applicable to a series of Tracking Fund Shares will perfect the mechanism of a free and open market and, in general, to protect investors and the public interest

<sup>5</sup> 17 CFR 243.100–243.103. Regulation Fair Disclosure provides that whenever an issuer, or any person acting on its behalf, discloses material nonpublic information regarding that issuer or its securities to certain individuals or entities—generally, securities market professionals, such as stock analysts, or holders of the issuer’s securities who may well trade on the basis of the information—the issuer must make public disclosure of that information.

<sup>6</sup> The proposed rule change also delineates each of the three representation requirements, as proposed, as (a) through (c) within the text of Rule 14.11(m)(4)(A)(ii) for ease of reading.

<sup>7</sup> As a result of the addition of subparagraph (4)(B)(ii), the proposed rule change also updates the subsequent numbering of current subparagraphs (4)(b)(ii), (4)(b)(iii), (4)(b)(iv), (4)(b)(v) and (4)(b)(vi) to (4)(b)(iii), (4)(b)(iv) (4)(b)(v), (4)(b)(vi) and (4)(b)(vii) respectively.

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5).

<sup>10</sup> *Id.*

in that it will permit use of Custom Baskets, consistent with the applicable exemptive relief, in a manner that will benefit investors by increasing efficiencies in the creation and redemption process. More specifically, Custom Baskets provide an issuer with flexibility in portfolio construction that may assist in reducing taxable capital gains distributions for investors and may generally improve tax efficiencies. Further, the use of Custom Baskets, to the extent permitted by a fund's exemptive relief, may also result in narrower bid/ask spreads and smaller premiums and discounts to the net asset value for Tracking Fund Shares to the extent that the Investment Company utilizes Custom Baskets with fewer securities which may, in turn, allow Authorized Participants to more efficiently hedge and participate generally in the Tracking Fund Shares. In addition to this, the flexibility provided in the creation of Custom Baskets may serve to increase competition between issuers. The Exchange believes the proposed rule change will enhance competition among market participants overall, to the benefit of investors and the marketplace.

The Exchange also believes that amending Rule 14.11(m) to incorporate specific initial listing criteria required to be met by Tracking Fund Shares that utilize Custom Baskets is designed to prevent fraudulent and manipulative acts and practices. The Exchange believes that the daily dissemination of the composition of any Custom Basket transacted on the previous day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash, together with the right of Authorized Participants to create and redeem each day at the net asset value, will enable market participants to value and trade shares in a manner that will not lead to significant deviations between the bid/ask price and net asset value of shares of a series of Tracking Fund Shares. Further, including Custom Baskets in the requirements of Rules 14.11(m)(2)(E) and (F) would act as a safeguard against any misuse and improper dissemination of nonpublic information related to a fund's Custom Basket or changes thereto. The requirement that any person or entity implement procedures reasonably designed to prevent the use and dissemination of material non-public information regarding a Custom Basket will act to prevent any individual or entity from sharing such information externally and the internal "fire wall" requirements applicable where an entity is a registered broker-dealer or affiliated

with a broker-dealer will act to make sure that no entity will be able to misuse the data for their own purposes. As such, the Exchange believes that the proposed rule change to Rule 14.11(m) is designed to prevent fraudulent and manipulative acts and practices.

The Exchange also believes that the proposed initial and continued listing standards are designed to promote disclosure and transparency with respect to the use of Custom Baskets consistent with the applicable exemptive relief. Specifically, the Exchange believes that requiring as an initial listing condition that an issuer and any person acting on behalf of the series of Tracking Fund Shares comply with Regulation Fair Disclosure under the Exchange Act, including with respect to any Custom Basket, would further the full and fair disclosure objectives of Regulation Fair Disclosure to the benefit of the investing public and all market participants. Further, with respect to each Custom Basket utilized by a series of Tracking Fund Shares, the Exchange believes that requiring, as a continued listing condition, that each business day, before the opening of trading in Regular Trading Hours (as defined in Rule 1.5(w)), an investment company make publicly available on its website the composition of any Custom Basket transacted on the previous business day, except a Custom Basket that differs from the applicable Tracking Basket only with respect to cash, also furthers the goals of transparency and full and fair disclosure, to the benefit of investors and the public interest.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. The Exchange believes the proposed rule change, by permitting the use of Custom Baskets, consistent with a fund's exemptive relief, would introduce additional competition among various ETF products to the benefit of investors.

#### *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**

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 Exchange consents, the Commission will:

- A. By order approve or disapprove such proposed rule change, or
- 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 Exchange Act. Comments may be submitted by any of the following methods:

#### *Electronic Comments*

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CboeBZX-2021-053 on the subject line.

#### *Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBZX-2021-053. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for

inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX-2021-053 and should be submitted on or before September 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>11</sup>

**J. Matthew DeLesDernier,**  
Assistant Secretary.

[FR Doc. 2021-17412 Filed 8-13-21; 8:45 am]

**BILLING CODE 8011-01-P**

**SECURITIES AND EXCHANGE COMMISSION**

**Sunshine Act Meetings**

**TIME AND DATE:** 2:00 p.m. on Thursday, August 19, 2021.

**PLACE:** The meeting will be held via remote means and/or at the Commission's headquarters, 100 F Street NE, Washington, DC 20549.

**STATUS:** This meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters also may be present.

In the event that the time, date, or location of this meeting changes, an announcement of the change, along with the new time, date, and/or place of the meeting will be posted on the Commission's website at <https://www.sec.gov>.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (8), 9(B) and (10) and 17 CFR 200.402(a)(3), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9)(ii) and (a)(10), permit consideration of the scheduled matters at the closed meeting.

The subject matter of the closed meeting will consist of the following topics:

- Institution and settlement of injunctive actions;
- Institution and settlement of administrative proceedings;
- Resolution of litigation claims; and

Other matters relating to examinations and enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting agenda items that may consist of adjudicatory, examination, litigation, or regulatory matters.

**CONTACT PERSON FOR MORE INFORMATION:** For further information; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551-5400.

Dated: August 12, 2021.

**Eduardo A. Aleman,**  
Deputy Secretary.

[FR Doc. 2021-17624 Filed 8-12-21; 4:15 pm]

**BILLING CODE 8011-01-P**

**SMALL BUSINESS ADMINISTRATION**

**[Disaster Declaration #17076 and #17077; Texas Disaster Number TX-00605]**

**Administrative Declaration of a Disaster for the State of Texas**

**AGENCY:** U.S. Small Business Administration.

**ACTION:** Notice.

**SUMMARY:** This is a notice of an Administrative declaration of a disaster for the State of Texas dated 08/11/2021.

*Incident:* Severe Storms, Straight-line Winds, and Flash Flooding.

*Incident Period:* 06/26/2021.

**DATES:** Issued on 08/11/2021.

*Physical Loan Application Deadline Date:* 10/12/2021.

*Economic Injury (EIDL) Loan Application Deadline Date:* 05/11/2022.

**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:* Dawson.  
*Contiguous Counties:*

Texas: Borden, Gaines, Howard, Lynn, Martin, Terry.

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
Non-Profit Organizations without Credit Available Elsewhere .....	2.000

The number assigned to this disaster for physical damage is 17076 B and for economic injury is 17077 0.

The States which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Number 59008)

Dated: August 11, 2021.

**Isabella Guzman,**  
Administrator.

[FR Doc. 2021-17492 Filed 8-13-21; 8:45 am]

**BILLING CODE 8026-03-P**

**STATE JUSTICE INSTITUTE**

**SJI Board of Directors Meeting, Notice**

**AGENCY:** State Justice Institute.

**ACTION:** Notice of meeting.

**SUMMARY:** The SJI Board of Directors will be meeting on Monday, August 30, 2021 at 1:00 p.m. ET. The purpose of this meeting is to consider grant applications for the 4th quarter of FY 2021, and other business.

**FOR FURTHER INFORMATION CONTACT:** Jonathan Mattiello, Executive Director, State Justice Institute, 12700 Fair Lakes Circle, Suite 340, Fairfax, VA 22033, 703-660-4979, [contact@sjj.gov](mailto:contact@sjj.gov).

**Jonathan D. Mattiello,**  
Executive Director.

[FR Doc. 2021-17490 Filed 8-13-21; 8:45 am]

**BILLING CODE 6820-SC-P**

<sup>11</sup> 17 CFR 200.30-3(a)(12).

**SURFACE TRANSPORTATION BOARD****[Docket No. AB 122 (Sub-No. 2X)]****Terminal Railroad Association of St. Louis—Abandonment Exemption—in St. Louis County, Mo.**

Terminal Railroad Association of St. Louis (TRRA) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments* to abandon an approximately 0.1-mile segment of rail line, between milepost 0.7 (near Bodine Industrial Drive crossing) and milepost 0.8 (the end of the track) in St. Louis County, Mo., (the Line). The Line traverses U.S. Postal Service Zip Code 63114.

TRRA has certified that: (1) No local traffic has moved over the Line for at least two years; (2) there is no overhead traffic that cannot be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of a complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7(b) and 1105.8(c) (notice of environmental and historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,<sup>1</sup> this exemption will be effective on September 15, 2021, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,<sup>2</sup> formal expressions of intent to

<sup>1</sup> Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.*, subsidy or purchase) and demonstrating that they are preliminarily financially responsible. See 49 CFR 1152.27(c)(2)(i).

<sup>2</sup> The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental Analysis (OEA) in its independent investigation)

file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by August 26, 2021.<sup>3</sup> Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 7, 2021.

All pleadings, referring to Docket No. AB 122 (Sub-No. 2X), 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 TRRA's representative, Audrey L. Brodrick, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void ab initio.

TRRA has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by August 20, 2021. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245-0294. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), TRRA shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line.<sup>4</sup> If consummation has not been effected by TRRA's filing of a notice of consummation by August 16, 2022, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at [www.stb.gov](http://www.stb.gov).

cannot be made before the exemption's effective date. See *Exemption of Out-of-Serv. Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

<sup>3</sup> Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

<sup>4</sup> After TRRA filed its verified notice of exemption, West Belt Railway LLC (WBRY) filed a verified notice of exemption to discontinue service over the Line. WBRY Notice 1, Aug. 4, 2021, *West Belt Ry.—Discontinuance of Serv. Exemption—in St. Louis Cnty., Mo.*, AB 1318X. There, WBRY states that it leases the Line from TRRA. See *id.* at 2. TRRA may not consummate abandonment of the Line until WBRY has received authority to discontinue service over the Line.

Decided: August 11, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

**Jeffrey Herzig,**  
Clearance Clerk.

[FR Doc. 2021-17499 Filed 8-13-21; 8:45 am]

**BILLING CODE 4915-01-P**

**TENNESSEE VALLEY AUTHORITY****Sunshine Act Meetings**

**TIME AND DATE:** 10 a.m. on August 18, 2021.

**PLACE:** Please use the following link for the live stream of meeting: <https://tva.com/board/watch>.

**STATUS:** Open, via live streaming only.

**MATTERS TO BE CONSIDERED:****Meeting No. 21-03**

The TVA Board of Directors will hold a public meeting on August 18, 2021. Due to the ongoing risks associated with the COVID-19 outbreak, the meeting will be streamed to the public. The meeting will be called to order at 10 a.m. ET to consider the agenda items listed below. TVA Board Chair John Ryder and TVA management will answer questions from the news media following the Board meeting.

Public health concerns also require a change to the Board's public listening session. Although in-person comments from the public are not feasible, the Board is encouraging those wishing to express their opinions to submit written comments that will be provided to the Board members before the August 18 meeting. Written comments can be submitted through the same online system used to register to speak at previous listening sessions.

**Agenda**

1. Approval of minutes of the May 6, 2021 Board Meeting
2. Report of the Finance, Rates, and Portfolio Committee
  - A. FY 2022 Pandemic recovery credit
  - B. FY 2022 Financial plan and budget
  - C. FY 2022 Bond issuance and financing authority
3. Report of the People and Performance Committee
  - A. Corporate goals for FY 2022
4. Report of the Audit, Risk, and Regulation Committee
  - A. FY 2022 External auditor selection
5. Report of the Nuclear Oversight Committee
  - A. Financial assurance for nuclear decommissioning activities
6. Report of the External Relations Committee
7. Information Items



- A. Selection of Board Chair
- B. TVARS Board proposal—pension changes
- 8. Governance Items
  - A. Committee structure and assignments

9. Report from President and CEO

**CONTACT PERSON FOR MORE INFORMATION:**

For more information: Please call Jim Hopson, TVA Media Relations at (865) 632-6000, Knoxville, Tennessee.

Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: August 11, 2021.

**David Fountain,**

*Executive Vice President, General Counsel and Corporate Secretary.*

[FR Doc. 2021-17597 Filed 8-12-21; 4:15 pm]

**BILLING CODE 8120-08-P**

**OFFICE OF THE UNITED STATES  
TRADE REPRESENTATIVE**

[Docket Number USTR-2021-0014]

**Request for Comments and Notice of  
Public Hearing Concerning Russia's  
Implementation of Its WTO  
Commitments**

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Request for comments and notice of public hearing.

**SUMMARY:** The interagency Trade Policy Staff Committee (TPSC) is seeking public comments to assist the Office of the United States Trade Representative (USTR) in the preparation of its annual report to Congress on Russia's implementation of its obligations as a Member of the World Trade Organization (WTO). Due to COVID-19, the TPSC will foster public participation via written submissions rather than an in-person hearing. This notice includes the schedule for submission of comments and responses to questions from the TPSC for the Russia report.

**DATES:**

*September 22, 2021 at 11:59 p.m. EDT:* Deadline for submission of written comments for the 2021 Russia WTO Implementation Report.

*September 30, 2021 at 11:59 p.m. EDT:* Deadline for the TPSC to pose questions on written comments.

*October 20, 2021 at 11:59 p.m. EDT:* Deadline for submission of commenters' responses to questions from the TPSC.

**ADDRESSES:** USTR strongly prefers electronic submissions made through

the Federal eRulemaking Portal: <http://www.regulations.gov> (REGS.GOV). Follow the instructions for submitting comments in section III below. The docket number is USTR-2021-0014. For alternatives to online submissions, please contact Spencer Smith at [Spencer.L.Smith2@ustr.eop.gov](mailto:Spencer.L.Smith2@ustr.eop.gov) or (202) 395-2974 before transmitting a comment and in advance of the relevant deadline.

**FOR FURTHER INFORMATION CONTACT:** For procedural questions concerning written comments, contact Spencer Smith at [Spencer.L.Smith2@ustr.eop.gov](mailto:Spencer.L.Smith2@ustr.eop.gov) or (202) 395-2974. Direct all other questions to Betsy Hafner, Deputy Assistant U.S. Trade Representative for Russia and Eurasia at [Elizabeth\\_Hafner@ustr.eop.gov](mailto:Elizabeth_Hafner@ustr.eop.gov) or (202) 395-9124.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Russia became a Member of the WTO on August 22, 2012, and on December 21, 2012, following the termination of the application of the Jackson-Vanik amendment to Russia and the extension of permanent normal trade relations to the products of Russia, the United States and Russia both filed letters with the WTO withdrawing their notices of non-application and consenting to have the WTO Agreement apply between them. In accordance with Section 201(a) of the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (Pub. L. 112-208), USTR is required annually to submit a report to Congress on the extent to which Russia is implementing the WTO Agreement, including the Agreement on the Application of Sanitary and Phytosanitary Measures and the Agreement on Trade Related Aspects of Intellectual Property Rights. The report also must assess Russia's progress on acceding to and implementing the Information Technology Agreement (ITA) and the Government Procurement Agreement (GPA). In addition, to the extent that USTR finds that Russia is not implementing fully any WTO agreement or is not making adequate progress in acceding to the ITA or the GPA, USTR must describe in the report the actions it plans to take to encourage Russia to improve its implementation and/or increase its accession efforts. In accordance with Section 201(a), and to assist it in preparing this year's report, the TPSC is soliciting public comments.

The terms of Russia's accession to the WTO are contained in the Marrakesh Agreement Establishing the World Trade Organization and the Protocol on the Accession of the Russian Federation

to the WTO (including its annexes) (Protocol). The Report of the Working Party on the Accession of the Russian Federation (Working Party Report) provides detail and context to the commitments listed in the Protocol. You can find the Protocol and Working Party Report on USTR's website at <https://ustr.gov/node/5887> or on the WTO website at <http://docsonline.wto.org> (document symbols: WT/ACC/RUS/70, WT/MIN(11)/2, WT/MIN(11)/24, WT/L/839, WT/ACC/RUS/70/Add.1, WT/MIN(11)/2/Add.1, WT/ACC/RUS/70/Add.2, and WT/MIN(11)/2/Add.1.).

**II. Public Participation**

Due to COVID-19, the TPSC will foster public participation via written submissions rather than an in-person hearing on Russia's implementation of its WTO commitments. USTR invites public comments on Russia's implementation according to the schedule set out in the Dates section above. Written comments should address Russia's implementation of the commitments made in connection with its accession to the WTO, including, but not limited to, commitments in the following areas:

- a. Import regulation (*e.g.*, tariffs, tariff-rate quotas, quotas, import licenses).
- b. Export regulation.
- c. Subsidies.
- d. Standards and technical regulations.
- e. Sanitary and phytosanitary measures.
- f. Trade-related investment measures (including local content requirements).
- g. Taxes and charges levied on imports and exports.
- h. Other internal policies affecting trade.
- i. Intellectual property rights (including intellectual property rights enforcement).
- j. Services.
- k. Government procurement.
- l. Rule of law issues (*e.g.*, transparency, judicial review, uniform administration of laws and regulations).
- m. Other WTO commitments.

The TPSC will review comments and may ask clarifying questions to commenters. The TPSC will post the questions on the public docket, other than questions that include properly designated business confidential information (BCI). USTR will send questions that include properly designated BCI to the relevant commenters by email, and will not post these questions on the public docket. Replies to questions that contain BCI must follow the procedures in section IV below.



### III. Requirements for Submissions

To ensure consideration, interested parties must submit comments and responses to TPSC questions electronically via *REGS.GOV* by the applicable deadlines in the **DATES** section above. The docket number is USTR–2021–0014. All submissions must be in English. USTR will not accept hand-delivered submissions.

To submit comments using *REGS.GOV*, enter docket number USTR–2021–0014 in the ‘search for’ field on the home page and click ‘search.’ The site will provide a search-results page listing all documents associated with this docket. Find a reference to this notice by selecting ‘notice’ under ‘document type’ in the ‘filter results by’ section on the left side of the screen and click on the link entitled ‘comment now.’ *REGS.GOV* offers the option of providing comments by filling in a ‘type comment’ field or by attaching a document using the ‘upload file(s)’ field. USTR prefers that you provide submissions in an attached document and, in such cases, that you write ‘see attached’ in the ‘type comment’ field on the online submission form. In addition, USTR prefers submissions in Microsoft Word (.doc) or Adobe Acrobat (.pdf). If the submission is in an application other than those two, please indicate the name of the application in the ‘type comment’ field. At the beginning of the submission, include the following text: (1) 2021 Russia WTO Implementation Report; (2) your organization’s name; and (3) whether the document is a comment or an answer to a TPSC question. Written comments should not exceed 30 single-spaced, standard letter-size pages in 12-point type, including attachments. Include any data attachments to the submission in the same file as the submission itself, and not as separate files.

When you complete the submission procedure at *REGS.GOV* you will receive a tracking number confirming successful transmission. For further information on using *REGS.GOV*, please consult the resources provided on the website by clicking on ‘How to Use Regulations.gov’ on the bottom of the home page. USTR is not able to provide technical assistance for *REGS.GOV*.

### IV. Business Confidential Submissions

An interested party requesting that USTR treat information contained in a submission as BCI must certify that the information is business confidential and would not customarily be released to the public by the submitter. You must clearly designate BCI by marking the

submission ‘BUSINESS CONFIDENTIAL’ at the top and bottom of the cover page and on each succeeding page, and indicating, via brackets, the specific information that is BCI. Additionally, you must include ‘business confidential’ in the ‘type comment’ field and add the designation BCI to the end of the file name for any attachments. For any submission containing BCI, you separately must submit a non-confidential version, *i.e.*, not as part of the same submission with the BCI version, indicating where BCI has been redacted. USTR will post the non-confidential version in the docket for public inspection.

### V. Public Viewing of Review Submissions

USTR will post comments in the docket for public inspection, except BCI. You can view comments at *REGS.GOV* by entering docket number USTR–2021–0014 in the search field on the home page. General information concerning USTR is available at [www.ustr.gov](http://www.ustr.gov).

**Edward Gresser,**

*Chair of the Trade Policy Staff Committee,  
Office of the United States Trade Representative.*

[FR Doc. 2021–17477 Filed 8–13–21; 8:45 am]

**BILLING CODE 3290-F1-P**

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

[Docket No. FAA–2021–0180]

#### Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Report of Inspections Required by Airworthiness Directive, Part 39

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

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2021. The collection involves the member of the public that may submit an Alternative Methods of Compliance (AMOC) request to the FAA by using the ADD External website. The information

to be collected will be used to support publicly disseminated information to the FAA and/or is necessary because this information supports the Department of Transportation’s strategic goal to promote the public health and safety by working toward eliminating transportation-related deaths and injuries.

**DATES:** Written comments should be submitted by September 15, 2021.

**ADDRESSES:** Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to [www.reginfo.gov/public/do/PRAMain](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:**

Robert Romero by email at: [Robert.A.Romero@faa.gov](mailto:Robert.A.Romero@faa.gov); phone: 817–222–5102.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA’s performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information.

*OMB Control Number:* 2120–0056.

*Title:* Report of Inspections Required by Airworthiness Directives, Part 39.

*Form Numbers:* There is no standard form to use for AMOC submission.

However, the public may access the AMOC External website to submit an AMOC request to the FAA.

*Type of Review:* Renewal of an information collection.

*Background:* The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on March 31, 2021 (FRN citation 2021–06646). Alternative Methods of Compliance (AMOC) are submitted to the FAA by the general public. While anyone may submit an AMOC there is no standard form to use. From Order 8110.103B Alternative Methods of Compliance (AMOC), Section 3–2:

3–2. AMOC Proposal. 14 CFR 39.19 states in part that “anyone may propose to FAA an alternative method of compliance or a change in the compliance time, if the proposal provides an acceptable level of safety.”

a. Although a letter is preferred, AMOC proposals may be submitted by

other means, such as email, fax, or telephone. AMOC proposals received by telephone must be documented.

An AMOC Response Letter is written by an internal FAA user and sent to the AMOC Requester. The template may be generated from the ADD Dashboard and follows the latest Order. There is not an FAA or OMB number on this template.

A member of the public may submit an AMOC request to the FAA by using the AMOC external website. Registration is not needed to use this website. External users must consent to the "Terms of Use" statement before proceeding to the AMOC proposal web page. An AMOC is required if an owner/operator of aircraft cannot comply with an AD or finds a different method to comply with the actions specified in an AD, as mandated by FAA Order 8110.103B.

**Respondents:** The respondents are a member of the public who may submit an AMOC request to FAA by using the AMOC External website. We estimate that 25 ADs yearly will require reports of information and findings. The average AD affects about 1,120 owners/operators. Therefore, 25 ADs times 1,120 owners/operators per year equal 28,000 reports.

**Frequency:** As needed.

**Estimated Average Burden per Response:** These reports, requiring an average of 1 hour each to prepare, consume 28,000 reporting hours.

**Estimated Total Annual Burden:** The total annualized cost to respondents is \$2,380,000. We base this on the 28,000 reporting hours times an estimated hourly rate of \$85/hour per respondent. The average cost to the respondents per AD per year is \$85.00 (\$2,380,000 divided by 28,000).

Issued in Washington, DC, on July 9, 2021.

**Patrick Idlett,**

*ASKME Program Manager, Office of Enterprise Program Management (AEM), Project Portfolio Performance Division.*

[FR Doc. 2021-17417 Filed 8-13-21; 8:45 am]

**BILLING CODE 4910-13-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2015-0116; FMCSA-2019-0027]

#### Qualification of Drivers; Exemption Applications; Epilepsy and Seizure Disorders

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of renewal of exemptions; request for comments.

**SUMMARY:** FMCSA announces its decision to renew exemptions for two individuals from the requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) that interstate commercial motor vehicle (CMV) drivers have "no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a CMV." The exemptions enable these individuals who have had one or more seizures and are taking anti-seizure medication to continue to operate CMVs in interstate commerce.

**DATES:** The exemptions are applicable on August 13, 2021. The exemptions expire on August 13, 2023. Comments must be received on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2015-0116 or Docket No. FMCSA-2019-0027 using any of the following methods:

- **Federal eRulemaking Portal:** Go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number, FMCSA-2015-0116 or FMCSA-2019-0027 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click on the "Comment" button. Follow the online instructions for submitting comments.

- **Mail:** Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- **Hand Delivery:** West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- **Fax:** (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket,

contact Dockets Operations, (202) 366-9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Public Participation

###### A. Submitting Comments

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2015-0116 or Docket No. FMCSA-2019-0027), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number, FMCSA-2015-0116 or FMCSA-2019-0027 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click the "Comment" button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

###### B. Viewing Comments

To view comments go to [www.regulations.gov](http://www.regulations.gov/). Insert the docket number, FMCSA-2015-0116 or FMCSA-2019-0027 in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you,

please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

### C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

## II. Background

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The physical qualification standard for drivers regarding epilepsy found in 49 CFR 391.41(b)(8) states that a person is physically qualified to drive a CMV if that person has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause the loss of consciousness or any loss of ability to control a CMV.

In addition to the regulations, FMCSA has published advisory criteria<sup>1</sup> to assist Medical Examiners in determining whether drivers with certain medical conditions are qualified to operate a CMV in interstate commerce.

The two individuals listed in this notice have requested renewal of their exemptions from the epilepsy and seizure disorders prohibition in § 391.41(b)(8), in accordance with FMCSA procedures. Accordingly, FMCSA has evaluated these applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period.

## III. Request for Comments

Interested parties or organizations possessing information that would otherwise show that any, or all, of these

drivers are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b), FMCSA will take immediate steps to revoke the exemption of a driver.

## IV. Basis for Renewing Exemptions

In accordance with 49 U.S.C. 31136(e) and 31315(b), each of the two applicants has satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition. The two drivers in this notice remain in good standing with the Agency, have maintained their medical monitoring and have not exhibited any medical issues that would compromise their ability to safely operate a CMV during the previous 2-year exemption period. In addition, for Commercial Driver's License (CDL) holders, the Commercial Driver's License Information System and the Motor Carrier Management Information System are searched for crash and violation data. For non-CDL holders, the Agency reviews the driving records from the State Driver's Licensing Agency. These factors provide an adequate basis for predicting each driver's ability to continue to safely operate a CMV in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

As of August 13, 2021, and in accordance with 49 U.S.C. 31136(e) and 31315(b), the following two individuals have satisfied the renewal conditions for obtaining an exemption from the epilepsy and seizure disorders prohibition in the FMCSRs for interstate CMV drivers:

Dennis Klamm (MN) and Stephen Root (NY).

The drivers were included in docket number FMCSA-2015-0116 or FMCSA-2019-0027. Their exemptions are applicable as of August 13, 2021 and will expire on August 13, 2023.

## V. Conditions and Requirements

The exemptions are extended subject to the following conditions: (1) Each driver must remain seizure-free and maintain a stable treatment during the 2-year exemption period; (2) each driver must submit annual reports from their treating physicians attesting to the stability of treatment and that the driver has remained seizure-free; (3) each

driver must undergo an annual medical examination by a certified ME, as defined by § 390.5; and (4) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy of his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

## VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

## VII. Conclusion

Based on its evaluation of the two exemption applications, FMCSA renews the exemptions of the aforementioned drivers from the epilepsy and seizure disorders prohibition in § 391.41(b)(8). In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years unless revoked earlier by FMCSA.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-17420 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0010]

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

**ACTION:** Notice of applications for exemption; request for comments.

**SUMMARY:** FMCSA announces receipt of applications from seven individuals for an exemption from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. If granted, the exemptions will enable

<sup>1</sup> These criteria may be found in APPENDIX A TO PART 391—MEDICAL ADVISORY CRITERIA, section H. *Epilepsy*; § 391.41(b)(8), paragraphs 3, 4, and 5, which is available on the internet at <https://www.gpo.gov/fdsys/pkg/CFR-2015-title49-vol5/pdf/CFR-2015-title49-vol5-part391-appA.pdf>.

these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

**DATES:** Comments must be received on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by the Federal Docket Management System (FDMS) Docket No. FMCSA-2021-0010 using any of the following methods:

- *Federal eRulemaking Portal:* Go to [www.regulations.gov/](http://www.regulations.gov/), insert the docket number, FMCSA-2021-0010, in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click on the "Comment" button. Follow the online instructions for submitting comments.

- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery:* West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.

- *Fax:* (202) 493-2251.

To avoid duplication, please use only one of these four methods. See the "Public Participation" portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366-4001, [fmcsamedical@dot.gov](mailto:fmcsamedical@dot.gov), FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64-224, Washington, DC 20590-0001. Office hours are 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

#### *A. Submitting Comments*

If you submit a comment, please include the docket number for this notice (Docket No. FMCSA-2021-0010), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there

are questions regarding your submission.

To submit your comment online, go to [www.regulations.gov/docket?D=FMCSA-2021-0010](http://www.regulations.gov/docket?D=FMCSA-2021-0010). Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, click the "Comment" button, and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

#### *B. Viewing Comments*

To view comments go to [www.regulations.gov](http://www.regulations.gov). Insert the docket number, FMCSA-2021-0010, in the keyword box, and click "Search." Next, sort the results by "Posted (Newer-Older)," choose the first notice listed, and click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

#### *C. Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.transportation.gov/privacy](http://www.transportation.gov/privacy).

### **II. Background**

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year period. FMCSA grants medical

exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The seven individuals listed in this notice have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10). Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber.

On July 16, 1992, the Agency first published the criteria for the Vision Waiver Program, which listed the conditions and reporting standards that CMV drivers approved for participation would need to meet (57 FR 31458). The current Vision Exemption Program was established in 1998, following the enactment of amendments to the statutes governing exemptions made by § 4007 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107, 401 (June 9, 1998). Vision exemptions are considered under the procedures established in 49 CFR part 381 subpart C, on a case-by-case basis upon application by CMV drivers who do not meet the vision standards of § 391.41(b)(10).

To qualify for an exemption from the vision requirement, FMCSA requires a person to present verifiable evidence that he/she has driven a commercial vehicle safely in intrastate commerce with the vision deficiency for the past three years. Recent driving performance is especially important in evaluating future safety, according to several research studies designed to correlate past and future driving performance. Results of these studies support the principle that the best predictor of future performance by a driver is his/her past record of crashes and traffic violations. Copies of the studies may be found at [www.regulations.gov/docket?D=FMCSA-1998-3637](http://www.regulations.gov/docket?D=FMCSA-1998-3637).

FMCSA believes it can properly apply the principle to monocular drivers,

because data from the Federal Highway Administration's former waiver study program clearly demonstrated the driving performance of experienced monocular drivers in the program is better than that of all CMV drivers collectively.<sup>1</sup> The fact that experienced monocular drivers demonstrated safe driving records in the waiver program supports a conclusion that other monocular drivers, meeting the same qualifying conditions as those required by the waiver program, are also likely to have adapted to their vision deficiency and will continue to operate safely.

The first major research correlating past and future performance was done in England by Greenwood and Yule in 1920. Subsequent studies, building on that model, concluded that crash rates for the same individual exposed to certain risks for two different time periods vary only slightly (See Bates and Neyman, University of California Publications in Statistics, April 1952). Other studies demonstrated theories of predicting crash proneness from crash history coupled with other factors.

These factors—such as age, sex, geographic location, mileage driven and conviction history—are used every day by insurance companies and motor vehicle bureaus to predict the probability of an individual experiencing future crashes (See Weber, Donald C., "Accident Rate Potential: An Application of Multiple Regression Analysis of a Poisson Process," Journal of American Statistical Association, June 1971). A 1964 California Driver Record Study prepared by the California Department of Motor Vehicles concluded that the best overall crash predictor for both concurrent and nonconcurrent events is the number of single convictions. This study used 3 consecutive years of data, comparing the experiences of drivers in the first 2 years with their experiences in the final year.

### III. Qualifications of Applicants

#### *Christopher W. Cochran*

Mr. Cochran, 37, has had optic atrophy in his left eye since birth. The visual acuity in his right eye is 20/20, and in his left eye, hand motion. Following an examination in 2021, his optometrist stated, "In my medical opinion, the patient has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Cochran reported that he has driven straight trucks for 5 years, accumulating

13,000 miles. He holds a Class B CDL from Missouri. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Jon C. Dillon*

Mr. Dillon, 53, has a macular scar in his left eye due to a traumatic incident in 1996. The visual acuity in his right eye is 20/20, and in his left eye, counting fingers. Following an examination in 2021, his optometrist stated, "It is my medical opinion that Mr. Dillon has sufficient vision to perform the driving tests required to operate a commercial vehicle under guidelines." Mr. Dillon reported that he has driven straight trucks for 28 years, accumulating 14,000 miles, and tractor-trailer combinations for 15 years, accumulating 45,000 miles. He holds a Class A CDL from Minnesota. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *David L. Marsh*

Mr. Marsh, 59, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/70. Following an examination in 2020, his ophthalmologist stated, "In my medical opinion, David Marsh has sufficient vision to perform the driving tasks required to operate a commercial vehicle." Mr. Marsh reported that he has driven straight trucks for 39 years, accumulating 136,500 miles, tractor-trailer combinations for 4 years, accumulating 14,000 miles, and buses for 10 years, accumulating 35,000 miles. He holds a Class A CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Jason A. Melo*

Mr. Melo, 36, has had amblyopia in his right eye since birth. The visual acuity in his right eye is 20/150, and in his left eye, 20/20. Following an examination in 2020, his optometrist stated, "In my medical opinion, Jason has sufficient vision to perform the duties required to operate a commercial vehicle." Mr. Melo reported that he has driven straight trucks for 6 years, accumulating 117,000 miles. He holds a Class B CDL from New Hampshire. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Jeffrey S. Rockhill*

Mr. Rockhill, 30, has had amblyopia in his right eye since childhood. The

visual acuity in his right eye is 20/400, and in his left eye, 20/20. Following an examination in 2021, his optometrist stated, "Jeff has adequate vision to perform the driving tasks required to operate a commercial vehicle." Mr. Rockhill reported that he has driven straight trucks for 20 years, accumulating 300,000 miles, and tractor-trailer combinations for 20 years, accumulating 300,000 miles. He holds a Class A CDL from Kansas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

#### *Leonard J. VanVelkinburgh*

Mr. VanVelkinburgh, 74, has complete vision loss in his right eye due to a traumatic incident in childhood. The visual acuity in his right eye is no light perception, and in his left eye, 20/20. Following an examination in 2021, his ophthalmologist stated, "I believe that he has sufficient vision in his left eye to provide the driving tasks required to operate a commercial vehicle." Mr. VanVelkinburgh reported that he has driven straight trucks for 13 years, accumulating 65,000 miles, and tractor-trailer combinations for 13 years, accumulating 58,500 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes, and one citation for moving violations in a CMV; he exceeded the speed limit by 20 miles per hour.

#### *Ananias E. Yoder*

Mr. Yoder, 27, has had amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20, and in his left eye, 20/150. Following an examination in 2020, his optometrist stated, "In my medical opinion, Mr. Yoder has sufficient vision to perform driving tasks required to operate a commercial vehicle." Mr. Yoder reported that he has driven tractor-trailer combinations for 3 years, accumulating 150,000 miles. He holds a Class A CDL from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

### IV. Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b), FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. We will consider all comments and material received before the close of business on the closing date

<sup>1</sup> A thorough discussion of this issue may be found in a FHWA final rule published in the *Federal Register* on March 26, 1996 and available on the internet at <https://www.govinfo.gov/content/pkg/FR-1996-03-26/pdf/96-7226.pdf>.

indicated under the **DATES** section of the notice.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021-17419 Filed 8-13-21; 8:45 am]

**BILLING CODE** 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2021-0107]

#### Agency Information Collection Activities; Approval of a New Information Collection; Waiver and Exemption Requirements

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Federal Motor Carrier Safety Administration (FMCSA) announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This notice invites comment on a new information collection titled "Waiver and Exemption Requirements". The ICR estimates the burden applicants incur to comply with the reporting tasks required for requesting waivers and exemptions. FMCSA has not previously accounted for these burdens.

**DATES:** We must receive your comments on or before October 15, 2021.

**ADDRESSES:** You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA-2021-0107 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public

Participation heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>, and follow the online instructions for accessing the dockets, or go to the street address listed above.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

*Public Participation:* The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the "help" section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Pearlie Robinson, Driver and Carrier Operations Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: 202-366-4225. Email: [MCPSD@dot.gov](mailto:MCPSD@dot.gov). Office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

#### SUPPLEMENTARY INFORMATION:

*Background:* In 1998, the Federal Highway Administration (FHWA), the predecessor agency of FMCSA, adopted 49 CFR part 381 as an interim final rule (IFR), establishing procedures for applying for waivers, exemptions, and pilot programs (63 FR 67600, December 8, 1998). Section 4007 of the Transportation Equity Act for the 21st Century (TEA-21) amended 49 U.S.C. 31315 and 31136(e) to provide authority to the Secretary of Transportation to grant waivers and exemptions from motor carrier safety regulations. Section 4007 of TEA-21 requires that the terms and conditions for all waivers and exemptions likely achieve a level of safety equivalent to or greater than what

would be achieved by complying with the safety regulations. In 2004, FMCSA adopted its IFR as final at 49 CFR part 381, consistent with section 4007 of TEA-21 (69 FR 51589, August 20, 2004). The final rule also established procedures that govern how FMCSA reviews, grants, or denies requests for waivers and applications for exemptions. The final rule included requirements for publishing notice of exemption applications in the **Federal Register** to afford the public an opportunity for comment. There is no statutory requirement to publish **Federal Register** notices concerning waiver applications.

When the waiver and exemption provisions were first adopted, FHWA stated that it would "consider the information collection requirements for each waiver, exemption, and pilot program and, if necessary, request approval from the Office of Management and Budget for any special recordkeeping requirements associated with the waiver, exemption, or pilot program." (63 FR 67608). FMCSA included a similar statement when finalizing its IFR in 2004 (69 FR 51597). Recently, FMCSA determined that it now receives a sufficient number of waiver and exemption requests per year to require OMB approval.

*Title:* Waiver and Exemption Requirements.

*OMB Control No.:* To be determined by OMB upon OMB approval of the ICR.

*Type of Request:* New information collection.

*Respondents:* States, State Drivers Licensing Authorities, individuals, and motor carriers.

*Estimated Number of Respondents:* 131 per year.

*Estimated Time per Response:* 2 minutes to 2 hours.

*Expiration Date:* This is a new information collection.

*Frequency of Response:* On occasion (respondents are not required to submit requests for waivers or exemptions).

*Estimated Total Annual Burden:* 95 burden hours.

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for the FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information.

The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

**Thomas P. Keane,**

*Associate Administrator, Office of Research and Registration.*

[FR Doc. 2021-17418 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-EX-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0159]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: SOLEIL (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0159 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0159 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0159, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your

document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel SOLEIL is:

—*Intended Commercial Use of Vessel:* “Passenger vessel for hire.”

—*Geographic Region Including Base of Operations:* “Washington, Alaska.” (Base of Operations: Bellevue, WA)

—*Vessel Length and Type:* 84' Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0159 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach

additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0159 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### *Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*



By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-17474 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0160]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: HOTEL CALIFORNIA (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0160 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0160 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0160, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel HOTEL CALIFORNIA is:

—Intended Commercial Use of Vessel: “Cruises for small parties to Santa Barbara and Channel Islands, Marina del Rey, Catalina, Newport and San Diego.”

—*Geographic Region Including Base of Operations:* “California.” (Base of Operations: Marina del Rey, CA)

—*Vessel Length and Type:* 79.3' Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0160 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an undue adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach

additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0160 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2021-17473 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0161]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LIBERTY (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0161 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0161 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0161, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel LIBERTY is:

- Intended Commercial Use of Vessel:* “6-pack charters and bareboat charters.”
- Geographic Region Including Base of Operations:* “Maine.” (Base of Operations: Southwest Harbor, ME)
- Vessel Length and Type:* 47.1' Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0161 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary.

There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0161 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### *Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2021-17472 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0156]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: TRUE BLUE (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0156 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0156 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0156, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel TRUE BLUE is:

- Intended Commercial Use of Vessel:* “Local pleasure charters/tours on the Chesapeake Bay, MD”
- Geographic Region Including Base of Operations:* “MD and VA.” (Base of Operations: Annapolis, MD)
- Vessel Length and Type:* 49’ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0156 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary.

There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0156 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. § 55103, 46 U.S.C. § 12121)

\* \* \* \* \*

By Order of the Acting Maritime Administrator.

T. Mitchell Hudson, Jr.,

Secretary, Maritime Administration.

[FR Doc. 2021-17460 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0154]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: STEAMBOAT (Sail); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0154 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0154 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0154, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel STEAMBOAT is:

—*Intended Commercial Use of Vessel:* “Passenger sailing charter operation under OUPV.”

—*Geographic Region Including Base of Operations:* “Florida, Maine.” (Base of Operations: South Portland, ME)

—*Vessel Length and Type:* 38’ Sail

The complete application is available for review identified in the DOT docket as MARAD 2021-0154 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary.

There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0154 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department’s FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2021-17462 Filed 8-13-21; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-21-0152]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: EFFORTLESS (Sail); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0152 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-XXXX-XXXX and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0152, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel EFFORTLESS is:

—*Intended Commercial Use of Vessel:* “Passenger charter.”

—*Geographic Region Including Base of Operations:* “Hawaii.” (Base of Operations: Honolulu, HI)

—*Vessel Length and Type:* 38’ Sail

The complete application is available for review identified in the DOT docket as MARAD 2021-0152 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD’s regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel’s coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter’s interest in the application, and address the eligibility criteria given in section 388.4 of MARAD’s regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0152 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department’s FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### *Privacy Act*

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2021-17464 Filed 8-13-21; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0158]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: MAKANI (Sail); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0158 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0158 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0158, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel MAKANI is:

- Intended Commercial Use of Vessel:* “Sailing instruction, day charter.”
- Geographic Region Including Base of Operations:* “Maryland.” (Base of Operations: Middle River, MD)
- Vessel Length and Type:* 39' Sail

The complete application is available for review identified in the DOT docket as MARAD 2021-0158 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0158 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2021-17458 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0162]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: WEE OUTAHERE (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0162 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0162 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0162, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel WEE OUTAHERE is:

—*Intended Commercial Use of Vessel:*

“Water taxi and snorkeling tour guide.”

—*Geographic Region Including Base of Operations:* “Puerto Rico” (Base of Operations: Fajardo, PR)

—*Vessel Length and Type:* 26’ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0162 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary.

There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0162 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*



By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2021-17471 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0157]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: TWINS (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0157 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0157 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0157, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel TWINS is:

- Intended Commercial Use of Vessel:* “Recreational charters in the North Atlantic”
- Geographic Region Including Base of Operations:* “Florida.” (Base of Operations: Miami Beach, FL)
- Vessel Length and Type:* 73’ Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0157 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0157 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \*

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2021-17459 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0164]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PRIVILEGIO (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, DOT.

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0164 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0164 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0164, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

*Instructions:* All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel PRIVILEGIO is:

—*Intended Commerical Use of Vessel:* “Day and weekly charters in Florida waters.”

—*Geographic Region Including Base of Operations:* “Florida” (Base of Operations: Miami, FL)

—*Vessel Length and Type:* 76.5' Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0164 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary.

There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0164 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

Secretary, Maritime Administration.

[FR Doc. 2021-17469 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0155]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: THANKFUL II (Sail); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0155 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0155 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0155, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel THANKFUL II is:

- Intended Commercial Use of Vessel:* “Sailing charters on the Charlotte Harbor, Punta Gorda FL.”
- Geographic Region Including Base of Operations:* “Florida.” (Base of Operations: Punta Gorda, FL)
- Vessel Length and Type:* 42’ Sail (Catamaran)

The complete application is available for review identified in the DOT docket as MARAD 2021-0155 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary.

There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0155 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2021-17461 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0163]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: PROVIDENZA (Sail); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0163 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0163 and follow the instructions for submitting comments.

- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0163, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel PROVIDENZA is:

- Intended Commercial Use of Vessel:* “Passenger transportation to/from small Alaska villages due to state ferry budget cuts.”
- Geographic Region Including Base of Operations:* “Alaska, Washington, Oregon” (Base of Operations: Douglas Island, AK)
- Vessel Length and Type:* 38’ Sail (with aux motor)

The complete application is available for review identified in the DOT docket as MARAD 2021-0163 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise

comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0163 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2021-17470 Filed 8-13-21; 8:45 am]

BILLING CODE 4910-81-P

## DEPARTMENT OF TRANSPORTATION

### Maritime Administration

[Docket No. MARAD-2021-0153]

#### Coastwise Endorsement Eligibility Determination for a Foreign-Built Vessel: LA VIE (Motor); Invitation for Public Comments

**AGENCY:** Maritime Administration, Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to issue coastwise endorsement eligibility determinations for foreign-built vessels which will carry no more than twelve passengers for hire. A request for such a determination has been received by MARAD. By this notice, MARAD seeks comments from interested parties as to any effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. Information about the requestor's vessel, including a brief description of the proposed service, is listed below.

**DATES:** Submit comments on or before September 15, 2021.

**ADDRESSES:** You may submit comments identified by DOT Docket Number MARAD-2021-0153 by any one of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Search MARAD-2021-0153 and follow the instructions for submitting comments.
- *Mail or Hand Delivery:* Docket Management Facility is in the West Building, Ground Floor of the U.S. Department of Transportation. The Docket Management Facility location address is: U.S. Department of Transportation, MARAD-2021-0153, 1200 New Jersey Avenue SE, West Building, Room W12-140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

*Note:* If you mail or hand-deliver your comments, we recommend that you include your name and a mailing address, an email address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

**Instructions:** All submissions received must include the agency name and specific docket number. All comments received will be posted without change to the docket at [www.regulations.gov](http://www.regulations.gov), including any personal information provided. For detailed instructions on submitting comments, or to submit comments that are confidential in nature, see the section entitled Public Participation.

#### FOR FURTHER INFORMATION CONTACT:

James Mead, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE, Room W23-459, Washington, DC 20590. Telephone 202-366-5723, Email [James.Mead@dot.gov](mailto:James.Mead@dot.gov).

**SUPPLEMENTARY INFORMATION:** As described in the application, the intended service of the vessel LA VIE is:

—*Intended Commercial Use of Vessel:*

“This boat is intended to carry 12 or less passengers for hire.”

—*Geographic Region Including Base of Operations:* “California.” (Base of Operations: Marina Del Rey, CA)

—*Vessel Length and Type:* 76' Motor

The complete application is available for review identified in the DOT docket as MARAD 2021-0153 at <http://www.regulations.gov>. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the employment of the vessel in the coastwise trade to carry no more than 12 passengers will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, MARAD will not issue an approval of the vessel's coastwise endorsement eligibility. Comments should refer to the vessel name, state the commenter's interest in the application, and address the eligibility criteria given in section 388.4 of MARAD's regulations at 46 CFR part 388.

#### Public Participation

##### *How do I submit comments?*

Please submit your comments, including the attachments, following the instructions provided under the above heading entitled **ADDRESSES**. Be advised that it may take a few hours or even days for your comment to be reflected on the docket. In addition, your comments must be written in English. We encourage you to provide concise comments and you may attach additional documents as necessary. There is no limit on the length of the attachments.

*Where do I go to read public comments, and find supporting information?*

Go to the docket online at <http://www.regulations.gov>, keyword search MARAD-2021-0153 or visit the Docket Management Facility (see **ADDRESSES** for hours of operation). We recommend that you periodically check the Docket for new submissions and supporting material.

*Will my comments be made available to the public?*

Yes. Be aware that your entire comment, including your personal identifying information, will be made publicly available.

*May I submit comments confidentially?*

If you wish to submit comments under a claim of confidentiality, you should submit the information you claim to be confidential commercial information by email to [SmallVessels@dot.gov](mailto:SmallVessels@dot.gov). Include in the email subject heading “Contains Confidential Commercial Information” or “Contains CCI” and state in your submission, with specificity, the basis for any such confidential claim highlighting or denoting the CCI portions. If possible, please provide a summary of your submission that can be made available to the public.

In the event MARAD receives a Freedom of Information Act (FOIA) request for the information, procedures described in the Department's FOIA regulation at 49 CFR 7.29 will be followed. Only information that is ultimately determined to be confidential under those procedures will be exempt from disclosure under FOIA.

#### Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice, DOT/ALL-14 FDMS, accessible through [www.dot.gov/privacy](http://www.dot.gov/privacy). To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered.

(Authority: 49 CFR 1.93(a), 46 U.S.C. 55103, 46 U.S.C. 12121)

\* \* \* \* \*

By Order of the Acting Maritime Administrator.

**T. Mitchell Hudson, Jr.,**

*Secretary, Maritime Administration.*

[FR Doc. 2021-17463 Filed 8-13-21; 8:45 am]

**BILLING CODE 4910-81-P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[Docket No. NHTSA-2021-0038; Notice 1]

#### Porsche Cars North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Receipt of petition.

**SUMMARY:** Porsche Cars North America, Inc., (“Porsche”), has determined that certain model year (MY) 2017–2021 Porsche Panamera, MY 2019–2021 Porsche Cayenne, and MY 2020–2021 Porsche Taycan motor vehicles do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 135, *Light Vehicle Brake Systems*. Porsche filed an original noncompliance report dated March 10, 2021.

Subsequently, Porsche petitioned NHTSA on April 1, 2021, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This notice announces receipt of Porsche’s petition.

**DATES:** Send comments on or before September 15, 2021.

**ADDRESSES:** Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited in the title of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

- *Hand Delivery:* Deliver comments by hand to the U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except for Federal holidays.

- *Electronically:* Submit comments electronically by logging onto the Federal Docket Management System (FDMS) website at [https://](https://www.regulations.gov/)

[www.regulations.gov/](https://www.regulations.gov/). Follow the online instructions for submitting comments.

- Comments may also be faxed to (202) 493-2251.

Comments must be written in the English language and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that comments you have submitted by mail were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to <https://www.regulations.gov/>, including any personal information provided.

All comments and supporting materials received before the close of business on the closing date indicated above will be filed in the docket and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the fullest extent possible.

When the petition is granted or denied, notice of the decision will also be published in the **Federal Register** pursuant to the authority indicated at the end of this notice.

All comments, background documentation, and supporting materials submitted to the docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the internet at <https://www.regulations.gov/> by following the online instructions for accessing the docket. The docket ID number for this petition is shown in the heading of this notice.

DOT’s complete Privacy Act Statement is available for review in a **Federal Register** notice published on April 11, 2000 (65 FR 19477-78).

**FOR FURTHER INFORMATION CONTACT:** Vince Williams, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366-2319.

#### SUPPLEMENTARY INFORMATION:

##### I. Overview

Porsche has determined that certain MY 2017–2021 Porsche Panamera, MY 2019–2021 Porsche Cayenne, and MY 2020–2021 Porsche Taycan motor vehicles do not fully comply with the requirements of paragraph S5.5.5(d)(5) of FMVSS No. 135, *Light Vehicle Brake Systems* (49 CFR 571.135). Porsche filed a noncompliance report dated March 10, 2021, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports*. Porsche

subsequently petitioned NHTSA on April 1, 2021, for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance*.

This notice of receipt of Porsche’s petition is published under 49 U.S.C. 30118 and 30120 and does not represent any Agency decision or other exercise of judgment concerning the merits of the petition.

##### II. Vehicles Involved

Approximately 80,666 of the following MY 2017–2021 Porsche motor vehicles manufactured between October 23, 2016, and February 9, 2021, are potentially involved:

- MY 2017–2021 Panamera 4
  - MY 2017–2021 Panamera
  - MY 2017–2021 Panamera 4 S
  - MY 2017–2020 Panamera Turbo
  - MY 2017–2020 Panamera 4 S
- Executive
- MY 2017–2020 Panamera Turbo
- Executive Hybrid
- MY 2018–2021 Panamera 4 Hybrid
  - MY 2018–2020 Panamera Turbo S Hybrid
- MY 2018–2021 Panamera 4
- Executive Hybrid
- MY 2018–2020 Panamera 4 Hybrid
- Executive Hybrid Executive
- MY 2018–2020 Panamera Turbo S Hybrid Executive
  - MY 2018–2020 Panamera 4 Sport Turismo
  - MY 2018–2020 Panamera 4 S Sport Turismo
- MY 2018–2020 Panamera 4 Hybrid Sport Turismo
  - MY 2018–2020 Panamera Turbo Sport Turismo
  - MY 2018–2020 Panamera Turbo S Hybrid Sport Turismo
  - MY 2019–2021 Panamera GTS
  - MY 2020 Panamera GTS Sport Turismo
  - MY 2019–2021 Cayenne
  - MY 2019–2021 Cayenne S
  - MY 2019–2021 Cayenne Hybrid
  - MY 2019–2021 Cayenne Turbo
  - MY 2020 Panamera 10 Year Special Model
  - MY 2020 Panamera 4 10 Year Special Model
  - MY 2020–2021 Taycan 4S
  - MY 2020 Taycan Top S
  - MY 2020 Taycan Top
  - MY 2020 Panamera 4 Hybrid 10 Year Special Model
  - MY 2020 Cayenne Turbo S Hybrid
  - MY 2020–2021 Cayenne Coupe
  - MY 2020–2021 Cayenne S Coupe

- MY 2020–2021 Cayenne Hybrid Coupe
- MY 2020–2021 Cayenne Turbo Coupe
- MY 2020 Cayenne Turbo S Hybrid Coupe
- MY 2021 Taycan
- MY 2021 Taycan Turbo S
- MY 2021 Taycan Turbo
- MY 2021 Panamera Turbo S
- MY 2021 Panamera 4S Hybrid
- MY 2021 Cayenne GTS
- MY 2021 Cayenne GTS Coupe

### III. Noncompliance

Porsche explains that the noncompliance is that the subject vehicles are equipped with brake wear indicators that do not meet the minimum lettering height requirements, as specified in paragraph S5.5.5(d)(5) of FMVSS No. 135. Specifically, the lettering height for the brake wear indicators range in height from 1.7 mm to 2.2 mm, when the required minimum height is 3.2 mm.

### IV. Rule Requirements

Paragraph S5.5.5(d)(5) of FMVSS No. 135 includes the requirements relevant to this petition. Each visual indicator shall display a word or words in accordance with the requirements of FMVSS No. 101 (49 CFR 571.101) and FMVSS No. 135, which shall be legible to the driver under all daytime and nighttime conditions when activated. Unless otherwise specified, the words shall have letters not less than 3.2 mm ( $\frac{1}{8}$  inch) high and the letters and background shall be of contrasting colors, one of which is red. Words or symbols in addition to those required by FMVSS No. 101 and FMVSS No. 135 may be provided for purposes of clarity. If a separate indicator is provided to indicate brake lining wear-out as specified in S5.5.1(d), the words “Brake Wear” shall be used.

### V. Summary of Porsche’s Petition

The following views and arguments presented in this section, “V. Summary of Porsche’s Petition,” are the views and arguments provided by Porsche. They have not been evaluated by the Agency and do not reflect the views of the Agency. Porsche describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

In support of its petition, Porsche submitted the following reasoning:

1. *Multi-Function Display*: In addition to the brake wear indicator required by FMVSS No. 135, the Porsche vehicles also have a multi-functional display that provides brake wear information. Information about brake wear is

provided in this display, which is readily visible to drivers, on the subject vehicles. Although the brake wear message can be confirmed and then suppressed by the vehicle operator at the next ignition cycle, doing so would necessarily require the operator to read and understand the message. Therefore, it can be assured that the need to check the vehicle’s brake lining wear has been received. The brake wear message is presented in a display that expresses the need to change the brake pads, with continued driving possible/permitted.

2. *Conspicuous, Accurate Information*: The brake wear warning symbol is the correct color as required by paragraph S5.5.5 of FMVSS No. 135. The warning symbol lettering is red, and the lettering and background are of contrasting colors. This makes the symbol conspicuous to the driver, as does its readily visible position immediately adjacent to fuel, temperature, and other critical vehicle data displays. The information provided by the brake wear symbol is also correct; the brake lining wear detection ability of the vehicle is entirely functional and completely unaffected by the lettering size issue.

3. *Uniform Height*: All letters in the brake wear warning indicator are capitalized, so the height is preserved across the width of the words “brake” and “wear,” making the words are more easily seen and read.

4. *Owner’s Manual*: Information about the brake wear warning symbol is displayed in the owner’s manual, which ensures that vehicle owners understand the symbol despite the smaller size of the lettering. For instance, the Panamera owner’s manual explains the symbol and notifies the vehicle owner to have the brake pads replaced immediately.

5. *Labeling*: This type of labeling noncompliance is precisely the type that NHTSA generally finds more appropriate for a determination of inconsequentiality. *See*, Porsche Cars North America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance, 85 FR 62365, 62366 (Oct. 2, 2020), where NHTSA states “We note that the noncompliance at issue concerns a failure to meet a performance requirement. The burden of establishing the inconsequentiality of a failure to comply with a *performance requirement* in a standard—as opposed to a *labeling requirement*—is more substantial and difficult to meet. Accordingly, the Agency has not found many such noncompliances inconsequential.” (Emphasis in original).

6. *Issue Corrected*: The noncompliance issue has been corrected in production vehicles and all vehicles

currently being produced meet applicable lettering height requirements.

7. *NHTSA Precedent*: Finally, and most significantly, NHTSA precedent supports granting this petition. The described noncompliance is very similar to others that NHTSA has found to be inconsequential to motor vehicle safety. *See* 81 FR 92964 (Dec. 20, 2016) (grant of inconsequentiality petition to General Motors for parking brake indicator labeling below the required size, where corresponding driver information was provided in the instrument cluster); 67 FR 72026 (Dec. 3, 2002) (grant of inconsequentiality petition to Mercedes-Benz, U.S.A., Inc., where some letters in brake indicator warning were smaller than the required size, but additional messaging was provided in a message center).

Porsche concludes that the subject noncompliance is inconsequential as it relates to motor vehicle safety and that its petition to be exempted from providing notification of the noncompliance, as required by 49 U.S.C. 30118, and a remedy for the noncompliance, as required by 49 U.S.C. 30120, should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that Porsche no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Porsche notified them that the subject noncompliance existed.

(Authority: 49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.95 and 501.8)

**Otto G. Matheke, III,**

*Director, Office of Vehicle Safety Compliance.*

[FR Doc. 2021–17476 Filed 8–13–21; 8:45 am]

**BILLING CODE 4910–59–P**



**DEPARTMENT OF TRANSPORTATION****Office of the Secretary**

[Docket No. DOT-OST-2018-0204]

**Air Carrier Access Act Advisory Committee; Notice of Public Meeting****AGENCY:** Office of the Secretary (“OST”), Department of Transportation (“DOT”).**ACTION:** Notice of public meeting.**SUMMARY:** This notice announces a meeting of the Air Carrier Access Act Advisory Committee (“ACAA Advisory Committee”).**DATES:** The ACAA Advisory Committee will hold virtual meetings on September 2, 8 and 9, 2021, from 9:00 a.m. to 5:00 p.m., Eastern Daylight Time.

Requests to attend the meeting must be received by August 30, 2021.

Requests for accommodations because of a disability must be received by August 30, 2021. If you wish to speak during the meeting, you must submit a written copy of your remarks to DOT by August 30, 2021.

Requests to submit written materials to be reviewed during the meeting must be received no later than August 30, 2021.

**ADDRESSES:** The virtual meetings will be open to the public and held via the Zoom Webinar Platform. Virtual attendance information will be provided upon registration. A detailed agenda will be available on the ACAA Advisory Committee website at <https://www.transportation.gov/airconsumer/ACAACommittee> at least one week before the meeting, along with copies of the meeting minutes after the meeting.**FOR FURTHER INFORMATION CONTACT:** To register and attend this virtual meeting, please contact the Department by email at [ACAA-Advisory-Committee@dot.gov](mailto:ACAA-Advisory-Committee@dot.gov). Attendance is open to the public subject to any technical and/or capacity limitations. For further information, please contact Vinh Nguyen, Senior Attorney, by email at [vinh.nguyen@dot.gov](mailto:vinh.nguyen@dot.gov).**SUPPLEMENTARY INFORMATION:****I. Background**

The ACAA Advisory Committee was created under the Federal Advisory Committee Act (“FACA”), in accordance with Section 439 of the FAA Reauthorization Act of 2018 (“FAA Act”), to identify and assess barriers to accessible air travel, determine the extent to which DOT’s programs and activities are addressing the barriers, recommend improvements, and advise the Secretary on implementing the Air Carrier Access Act. The charter of the

ACAA Advisory Committee sets forth policies for the operation of the advisory committee. The charter is available at <https://www.transportation.gov/individuals/aviation-consumer-protection/charter-air-carrier-access-act-advisory-committee>.

The first meeting of the ACAA Advisory Committee was held on March 10 and 11, 2020, in Washington, DC. The purpose of the first meeting was to gather information on the barriers encountered by passengers with disabilities in the following areas: Ticketing; pre-flight seat assignments; access to bulkhead seating; stowage of assistive devices; and guide and wheelchair assistance at airports and on aircraft. In each of these areas, the ACAA Advisory Committee heard from speakers who provided an overview of: The applicable rules, requirements, and complaint data; challenges faced by air travelers with disabilities; and airlines’ policies and procedures. In addition, the Department presented a working draft of the “Airline Passenger with Disabilities Bill of Rights” to the ACAA Advisory Committee for discussion.

At that first meeting, the ACAA Advisory Committee also discussed the benefits of establishing subcommittees to help the Committee with its work. Soon thereafter the Department established three subcommittees to address: (1) Ticketing practices and seating accommodations; (2) stowage of assistive devices; and (3) assistance at airports and on aircraft and related training of carrier personnel and contractors. The Subcommittees submitted reports with recommendations to the ACAA Advisory Committee members for their consideration. The reports are available for public review on the ACAA Advisory Committee’s docket, DOT-OST-2018-0204.

**II. Summary of the Agenda**

During the September 2, 8 and 9, 2021 meeting, the ACAA Advisory Committee will deliberate on the Subcommittees’ recommendations and continue its discussion of the draft Airline Passenger with Disabilities Bill of Rights. A more detailed agenda will be made available at least one week before the meeting at <https://www.transportation.gov/airconsumer/ACAACommittee>.

**III. Public Participation**

The meeting will be open to the public and attendance may be limited due to virtual meeting constraints. To register, please send an email to the Department as set forth in the **FOR FURTHER INFORMATION CONTACT** section.

The Department is committed to providing equal access to this meeting for all participants. If you need alternative formats or services because of a disability, such as sign language interpreter or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above no later than August 30, 2021.

Members of the public may also present written comments at any time. The docket number referenced above (DOT-OST-2018-0204) has been established for committee documents, including any written comments that may be filed. At the discretion of the Chair or DFO, after completion of the planned agenda, individual members of the public may provide comments through the chat feature of the webinar platform or orally, time permitting. Any oral comments presented must be limited to the objectives of the committee and will be limited to five (5) minutes per person. Individual members of the public who wish to present oral comments must notify the Department of Transportation contact noted above via email that they wish to attend and present oral comments no later than August 30, 2021.

Speakers are requested to submit a written copy of their prepared remarks for inclusion in the meeting records and for circulation to ACAA Advisory Committee members by August 30, 2021. All prepared remarks submitted on time will be accepted and considered as part of the meeting’s record.

**IV. Viewing Documents**

You may view documents mentioned in this notice at <https://www.regulations.gov>. After entering the docket number (DOT-OST-2018-0204), click the link to “Open Docket Folder” and choose the document to review.

Issued in Washington, DC, this 10th day of August 2021.

**John E. Putnam,***Acting General Counsel.*

[FR Doc. 2021-17431 Filed 8-13-21; 8:45 am]

**BILLING CODE P****DEPARTMENT OF THE TREASURY****Bureau of the Fiscal Service****Proposed Collection of Information: Request for Payment of Federal Benefit by Check, EFT Waiver Form****ACTION:** Notice and request for comments.**SUMMARY:** The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning Request for Payment of Federal Benefit by Check, EFT Waiver Form.

**DATES:** Written comments should be received on or before October 15, 2021 to be assured of consideration.

**ADDRESSES:** Direct all written comments and requests for additional information to Bureau of the Fiscal Service, Bruce A. Sharp, Room #4006-A, P.O. Box 1328, Parkersburg, WV 26106-1328, or [bruce.sharp@fiscal.treasury.gov](mailto:bruce.sharp@fiscal.treasury.gov).

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Payment of Federal Benefit by Check, EFT Waiver Form.

*OMB Number:* 1530-0019.

*Form Number:* FS Form 1201W, FS Form 1201W-DFAS, FS Form 1201W (SP).

*Abstract:* 31 CFR part 208 requires that all Federal non-tax payments be made by electronic funds transfer (EFT). The forms are used to collect information from individuals requesting a waiver from the EFT requirement because of a mental impairment, living in a remote geographic location that does not support the use of EFT, or persons born on or before May 1, 1921. These individuals may continue to receive payment by check. However, 31 CFR part 208 requires individuals requesting one of these waiver conditions to submit a written justification that is notarized by a notary public. In order to assist individuals with this submission, Treasury has prepared waiver forms in order to collect all necessary information.

*Current Actions:* Extension of a currently approved collection.

*Type of Review:* Regular.

*Affected Public:* Individuals or Households.

*Estimated Number of Respondents:* 3,250.

*Estimated Time per Respondent:* 20 minutes.

*Estimated Total Annual Burden Hours:* 1,083.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: 1. Whether the collection of information is necessary for the proper performance

of the functions of the agency, including whether the information shall have practical utility; 2. the accuracy of the agency's estimate of the burden of the collection of information; 3. ways to enhance the quality, utility, and clarity of the information to be collected; 4. ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and 5. estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: August 11, 2021.

**Bruce A. Sharp,**

*Bureau PRA Clearance Officer.*

[FR Doc. 2021-17445 Filed 8-13-21; 8:45 am]

**BILLING CODE 4810-AS-P**

**DEPARTMENT OF VETERANS AFFAIRS**

[OMB Control No. 2900-0003]

**Agency Information Collection Activity: Application for Burial Benefits**

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veteran's Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 15, 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. 2900-0003" 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. 2900-0003" 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:* 38 U.S.C. 2302.

*Title:* Application for Burial Benefits (VA Form 21P-530).

*OMB Control Number:* 2900-0003.

*Type of Review:* Revision of a currently approved collection.

*Abstract:* Under the authority of 38 U.S.C. 2302, VA uses the information provided on VA Form 21P-530 to evaluate respondents' eligibility for monetary burial benefits, including the burial allowance, plot or internment allowance, and transportation reimbursement. In these situations, VBA uses VA Form 21P-530 *Application for Burial Benefits*, to gather information that is necessary to determine eligibility for income-based benefits and the rate payable; without this information, determination of eligibility would not be possible.

The program office requests removal of the 21P-530EZ (Under 38 U.S.C. Chapter 23), from the 2900-0003 series, as the form will be submitted as a new form, requiring a separate control number. The program office submits a request to reinstate VA Form 21P-530 *Application for Burial Benefits* as the instrument has expired.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 34,750 hours.

*Estimated Average Burden per Respondent:* 15 minutes.

*Frequency of Response:* Once.  
*Estimated Number of Respondents:*  
139,000.

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. 2021-17411 Filed 8-13-21; 8:45 am]

**BILLING CODE 8320-01-P**

**DEPARTMENT OF VETERANS  
AFFAIRS**

**VA National Academic Affiliations  
Council, Notice of Meeting**

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. App. 2, that the VA National Academic Affiliations Council (Council) will meet via conference call on September 16, from 1:00 p.m. to 3:00 p.m. EST. The meeting is open to the public.

The purpose of the Council is to advise the Secretary on matters affecting partnerships between VA and its academic affiliates.

On September 16, 2021, the Council will receive briefs on VA initiatives that influence trainees and the academic mission. The Council will receive public comments from 2:45 p.m. to 2:55 p.m. EST.

Interested persons may attend and/or present oral statements to the Council.

The dial in number to attend the conference call is: 646-828-7666. At the prompt, enter meeting ID 160 780 1157, then press #. The meeting passcode is 008466, then press #. Individuals seeking to present oral statements are invited to submit a 1-2 page summary of their comments at the time of the meeting for inclusion in the official meeting record. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may also provide written comments for review by the Council prior to the meeting or at any time, by email to [Larissa.Emory@va.gov](mailto:Larissa.Emory@va.gov), or by mail to Larissa A. Emory PMP, CBP, MS, Designated Federal Officer, Office of Academic Affiliations (14AA), 810 Vermont Avenue NW, Washington, DC 20420. Any member of the public wishing to participate or seeking additional information should contact Ms. Emory via email or by phone at (915) 269-0465.

Dated: August 11, 2021.

**Jelessa M. Burney,**

*Federal Advisory Committee Management  
Officer.*

[FR Doc. 2021-17516 Filed 8-13-21; 8:45 am]

**BILLING CODE P**

**DEPARTMENT OF VETERANS  
AFFAIRS**

**[OMB Control No. 2900-0501]**

**Agency Information Collection  
Activity: Agency Information  
Collection Activity: Veterans Mortgage  
Life Insurance Inquiry**

**AGENCY:** Veterans Benefits  
Administration, Department of Veterans  
Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Benefits Administrations, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed from Veterans for the proper maintenance of Veterans Mortgage Life Insurance accounts.

**DATES:** Written comments and recommendations on the proposed collection of information should be received on or before October 15, 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. 2900-0501" 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. 2900-0501" 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:* Public Law 104-13; 44 U.S.C. 3501-3521.

*Title:* Veterans Mortgage Life Insurance Inquiry (VA Form 29-0543).

*OMB Control Number:* 2900-0501.

*Type of Review:* Extension of a previously approved collection.

*Abstract:* The Veterans Mortgage Life Insurance Inquiry solicits information needed from Veterans for the proper maintenance of Veterans Mortgage Life Insurance accounts. The form is authorized by 38 U.S.C. 2106 and 38 CFR 8a.3(e).

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 17 hours.

*Estimated Average Burden per Respondent:* 5 minutes.

*Frequency of Response:* On occasion.

*Estimated Number of Respondents:* 200.

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. 2021-17403 Filed 8-13-21; 8:45 am]

**BILLING CODE 8320-01-P**



# FEDERAL REGISTER

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August 16, 2021

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Part II

## National Credit Union Administration

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12 CFR Parts 702 and 703

Capital Adequacy: The Complex Credit Union Leverage Ratio; Risk-Based Capital; Proposed Rule

## NATIONAL CREDIT UNION ADMINISTRATION

### 12 CFR Parts 702 and 703

[NCUA–2021–0072]

RIN 3133–AF12

### Capital Adequacy: The Complex Credit Union Leverage Ratio; Risk-Based Capital

**AGENCY:** National Credit Union  
Administration (NCUA).

**ACTION:** Proposed rule.

**SUMMARY:** The NCUA is seeking comment on a proposed rule that would provide a simplified measure of capital adequacy for federally insured, natural-person credit unions (credit unions) classified as complex (those with total assets greater than \$500 million). Under the proposed rule, a complex credit union that maintains a minimum net worth ratio, and that meets other qualifying criteria, will be eligible to opt into the complex credit union leverage ratio (CCULR) framework. The minimum net worth ratio would initially be established at 9 percent on January 1, 2022, and be gradually increased to 10 percent by January 1, 2024. A complex credit union that opts into the CCULR framework would not be required to calculate a risk-based capital ratio under the Board’s October 29, 2015, risk-based capital final rule, as amended on October 18, 2018. A qualifying complex credit union that opts into the CCULR framework and that maintains the minimum net worth ratio would be considered well capitalized. The proposed rule would also make several amendments to update the NCUA’s October 29, 2015, risk-based capital final rule, including addressing asset securitizations issued by credit unions, clarifying the treatment of off-balance sheet exposures, deducting certain mortgage servicing assets from a complex credit union’s risk-based capital numerator, updating several derivative-related definitions, and clarifying the definition of a consumer loan.

**DATES:** Comments must be received on or before October 15, 2021.

**ADDRESSES:** You may submit comments using one of the following methods (please do not send the same comments via two or more methods):

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. The docket number for this proposed rule is NCUA–2021–0072. Follow the instructions for submitting comments.

- *Fax:* (703) 518–6319. Include “[Your name] Comments on ‘‘Capital

Adequacy: The Complex Credit Union Leverage Ratio, Amendments to Risk-Based Capital, and other Technical Amendments’’ in the transmittal.

- *Mail:* Address to Melane Conyers-Ausbrooks, Secretary of the Board, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

- *Hand Delivery/Courier:* Same as mail address.

*Public Inspection:* All public comments are available on the Federal eRulemaking Portal at: <http://www.regulations.gov> as submitted, except where technical limitations make posting the comments on the portal impossible. Public comments will not be edited to remove any identifying or contact information. Due to social distancing measures in effect, the usual opportunity to inspect paper copies of comments in the NCUA’s law library is not currently available. After social distancing measures are relaxed, visitors may make an appointment to review paper copies by calling (703) 518–6540 or emailing [OGCMail@ncua.gov](mailto:OGCMail@ncua.gov).

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#### I. Background

##### A. The NCUA’S Risk-Based Capital Requirements

The NCUA’s mission is to ensure the safety and soundness of federally insured credit unions (FICUs), in addition to carrying out other statutory responsibilities. The NCUA performs this function by examining and supervising federally chartered credit unions (FCUs), participating in the examination and supervision of federally insured, state-chartered credit unions (FISCU) in coordination with state regulators, and insuring members’ accounts at all FICUs up to the limits prescribed by statute.

Capital adequacy standards are an important prudential tool to ensure the safety and soundness of individual credit unions and the credit union system as a whole. Capital serves as a buffer for credit unions to prevent institutional failure and dramatic deleveraging during times of stress. During a financial crisis, a buffer can mean the difference between the survival or failure of a financial institution. Higher levels of capital insulate credit unions from the effects of unexpected adverse developments in their financial condition, reduce the probability of a systemic crisis, allow credit unions to continue to serve as credit providers during times of stress without government intervention, and produce benefits that outweigh the associated costs.

Following the 2007–2009 recession, the NCUA substantially reevaluated its capital adequacy standards, which are codified in 12 CFR part 702 (part 702). On October 29, 2015, as amended on October 18, 2018, the Board published a final rule restructuring its capital adequacy regulations (2015 Final Rule).<sup>1</sup> The effective date of the 2015 Final Rule was originally January 1, 2019. The overarching intent of the 2015 Final Rule was to reduce the likelihood that a relatively small number of high-risk credit unions would exhaust their capital and cause large losses to the National Credit Union Share Insurance Fund (NCUSIF). Under the Federal Credit Union Act (FCUA), FICUs are collectively responsible for replenishing losses to and capitalizing the NCUSIF.<sup>2</sup>

<sup>1</sup> 80 FR 66626 (Oct. 29, 2015). *See also*, 83 FR 55467 (Oct. 18, 2018).

<sup>2</sup> *See* 12 U.S.C. 1782(c). At the times the Board prescribes, subject to statutory parameters, the

The 2015 Final Rule restructured the NCUA's current capital adequacy regulations and made various revisions, including amending the agency's risk-based net worth requirement by replacing a credit union's risk-based net worth ratio with a risk-based capital ratio. The risk-based capital requirements in the 2015 Final Rule are more consistent with the NCUA's risk-based capital ratio measure for corporate credit unions, are more comparable to the risk-based capital measures implemented by the Federal Deposit Insurance Corporation (FDIC), Board of Governors of the Federal Reserve System (Federal Reserve Board), and Office of the Comptroller of Currency (OCC) (collectively, the other banking agencies) in 2013, and consistent with the FCUA.<sup>3</sup>

The risk-based capital provisions of the 2015 Final Rule apply only to credit unions that are complex, which the rule defined as those with total assets over \$100 million.<sup>4</sup> On November 6, 2018, the Board published a supplemental final rule that raised the threshold level for a complex credit union to \$500 million (2018 Supplemental Rule).<sup>5</sup> Therefore, only credit unions with over \$500 million in assets are now subject to the risk-based capital requirements of the 2015 Final Rule. The 2018 Supplemental Rule also delayed the effective date of the 2015 Final Rule for one year (from January 1, 2019, to January 1, 2020).

The effective date was delayed a second time through a final rule published on December 17, 2019 (2019 Supplemental Rule).<sup>6</sup> The 2015 Final Rule is now scheduled to become effective on January 1, 2022. The delay has provided credit unions and the NCUA with additional time to implement the 2015 Final Rule. Further, as explained in the 2019 Supplemental Rule, the delay provided the Board

additional time to holistically and comprehensively evaluate the NCUA's capital standards for credit unions.<sup>7</sup> Among a few items that the Board made reference to, the rule highlighted a community bank leverage ratio (CBLR) analogue and the treatment of asset securitizations issued by credit unions as items for possible consideration by the Board during the delay.<sup>8</sup>

#### *B. The Other Banking Agencies' Risk-Based Capital and CBLR Framework*

As discussed previously, the other banking agencies adopted a revised risk-based capital rule in 2013, which was designed to strengthen their capital requirements and improve risk sensitivity. These rules, along with subsequent amendments, were intended to address weaknesses that became apparent during the financial crisis of 2007–08 (the other banking agencies' 2013 capital rule).<sup>9</sup> The other banking agencies' 2013 capital rule provides two methodologies for determining risk-weighted assets: (i) A standardized approach; and (ii) a more complex, models-based approach, which includes both the internal ratings-based approach for measuring credit risk exposure and the advanced measurement approach for measuring operational risk exposure.<sup>10</sup> The standardized approach applied to all banking organizations, whereas the internal ratings-based approach applied only to certain large or internationally active banking organizations.

In 2018, section 201 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), directed the other banking agencies to propose a simplified, alternative measure of capital adequacy for certain federally insured banks.<sup>11</sup> On November 13, 2019, the other banking agencies issued a final rule implementing this statutory directive (CBLR Final Rule).<sup>12</sup>

Under the CBLR Final Rule, the CBLR framework is optional for depository institutions and depository institution

holding companies that meet the following criteria:

(1) A leverage ratio (equal to tier 1 capital divided by average total consolidated assets) of greater than nine percent;<sup>13</sup>

(2) Total consolidated assets of less than \$10 billion;<sup>14</sup>

(3) Total off-balance sheet exposures of 25 percent or less of its total consolidated assets;

(4) Trading assets plus trading liabilities of five percent or less of its total consolidated assets; and

(5) Not an advanced approaches banking organization (advanced approaches banking organizations are generally those with at least \$250 billion in total consolidated assets or at least \$10 billion in total on-balance sheet foreign exposure, and depository institution subsidiaries of those firms).

The CBLR Final Rule refers to the depository institutions and depository institution holding companies that meet these criteria as "qualifying community banking organizations." Qualifying community banking organizations that opt into the CBLR framework are considered to be in compliance with the other banking agencies' generally applicable risk-based and leverage capital requirements. Further, these qualifying banking organizations will be considered to have met the well-capitalized ratio requirements for purposes of section 38 of the Federal Deposit Insurance Act (FDI Act), which applies prompt corrective action to federally insured depository institutions.<sup>15</sup> Qualifying community banking organizations may opt into or out of the CBLR framework at any time.

The CBLR Final Rule includes a two-quarter grace period during which a qualifying community banking organization that temporarily fails to meet any of the qualifying criteria, including the greater than nine percent leverage ratio requirement, generally will still be deemed well-capitalized so long as the qualifying community banking organization maintains a leverage ratio greater than eight percent. At the end of the grace period, the banking organization must meet all

FCUA requires each insured credit union to pay an insurance premium equal to a percentage of the credit union's insured shares. The FCUA also requires each insured credit union to pay and maintain a deposit with the NCUSIF equaling one percent of the credit union's insured shares. The NCUSIF's reserves are available to pay potential share insurance claims, to provide assistance in connection with the liquidation or threatened liquidation of credit unions, and for administrative and other expenses the Board incurs in carrying out the purposes of the share insurance subchapter of the FCUA. See 12 U.S.C. 1783(a).

<sup>3</sup> The Federal Reserve Board and OCC issued a joint final rule on October 11, 2013 (78 FR 62018), and the FDIC issued a substantially identical interim final rule on September 10, 2013 (78 FR 55340). On April 14, 2014 (79 FR 20754), the FDIC adopted the interim final rule as a final rule with no substantive changes.

<sup>4</sup> See, *supra* note 1.

<sup>5</sup> 83 FR 55467 (Nov. 6, 2018).

<sup>6</sup> 84 FR 68781 (Dec. 17, 2019).

<sup>7</sup> *Id.* at 68782.

<sup>8</sup> *Id.*

<sup>9</sup> See, 84 FR 35234, 35235 (July 22, 2019). The other banking agencies' 2013 capital rule also reflected agreements reached by the Basel Committee on Banking Supervision (BCBS) in "Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems" (Basel III), including subsequent changes to the BCBS's capital standards and recent BCBS consultative papers. Their rule also included changes consistent with the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act).

<sup>10</sup> 12 CFR part 3, subparts D & E (OCC); 12 CFR part 217, subparts D & E (Federal Reserve Board); 12 CFR part 324, subparts D & E (FDIC).

<sup>11</sup> Public Law 115–174 (May 24, 2018). Section 201 is codified at 12 U.S.C. 5371 note.

<sup>12</sup> 84 FR 61776 (Nov. 13, 2019).

<sup>13</sup> Under section 4012 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (Mar. 27, 2020), the CBLR was temporarily set to eight percent. See, 85 FR 22924 (Apr. 23, 2020). Under the statute, the temporary CBLR of eight percent ended on December 31, 2020. The CBLR transitions back to nine percent during calendar year 2021. See, 85 FR 22930 (Apr. 23, 2020).

<sup>14</sup> See, 85 FR 77345 (Dec. 2, 2020), providing temporary relief from December 2, 2020, through December 31, 2021, for purposes of determining the asset size of an institution.

<sup>15</sup> 12 U.S.C. 1831o.

qualifying criteria to remain in the CBLR framework or otherwise must comply with and report under the generally applicable risk-based and leverage capital requirements. Similarly, a banking organization that fails to maintain a leverage ratio greater than eight percent will not be permitted to use the grace period and must comply with the generally applicable capital requirements and file the appropriate regulatory reports.

In March 2020, the CBLR was temporarily set to eight percent by statute.<sup>16</sup> Accordingly, effective the second quarter of 2020, the CBLR requirement was eight percent or greater.<sup>17</sup> At the start of 2021, the CBLR requirement was increased to 8.5 percent or greater and the minimum requirement during the grace period is 7.5 percent.<sup>18</sup> Beginning on January 1, 2022, the CBLR requirement will return to nine percent and the minimum requirement during the grace period will return to eight percent.

### C. The NCUA'S Advance Notice of Proposed Rulemaking

At its January 14, 2021, meeting the Board issued an advance notice of proposed rulemaking (ANPR) to solicit comments on two approaches to simplify the 2015 Final Rule.<sup>19</sup> The risk-based leverage ratio (RBLR) is the first alternative to the 2015 Final Rule included in the ANPR, which would replace the 2015 Final Rule with a new capital framework. The RBLR would use relevant risk-attribute thresholds to determine which complex credit unions would be required to hold additional capital buffers above the statutory leverage ratio. The second alternative contemplated in the ANPR is to retain the 2015 Final Rule but enable eligible complex credit unions to opt-in to the CCULR framework.

The ANPR provided for a 60-day comment period that closed on May 10, 2021. The Board received 19 comments. Almost all commenters supported the stated goal of simplifying the 2015 Final Rule. In general, commenters favored the NCUA developing a CCULR complement to risk-based capital rather than adopting a RBLR system of capital adequacy.

Several commenters were opposed to the RBLR framework because it would likely call for higher capital requirements for credit unions holding certain assets compared to the current RBC requirements. Several commenters

also stated that introducing a RBLR regime at this point would increase regulatory burden and negate the substantial work complex credit unions have undertaken to achieve compliance with the 2015 Final Rule. Commenters also generally stated that the RBLR would increase transaction costs for complex credit unions as they would be required to invest additional resources to redevelop the processes that have been put in place in anticipation of the RBC requirements. A few commenters also stated that a RBLR framework could result in a capital cliff. These commenters were concerned that a small change in assets could move a credit union to a new buffer, thereby causing a large increase in minimum capital requirements.

Almost all commenters that favored the CCULR framework noted that it is a more flexible framework than the RBLR because complex credit unions have the option of calculating the more complex risk-based capital measure for a more precise and generally lower overall capital requirement. A few commenters noted that a benefit of the CCULR framework, as compared to a RBLR framework, is its similarity to the capital framework of the other banking agencies.

After reviewing the comments received in response to the ANPR, the Board decided to issue this proposed rule to provide a simple measure of capital adequacy for complex credit unions that would serve as a complement to the 2015 Final Rule.

## II. Legal Authority

This proposed rule would primarily provide a simple measure of capital adequacy for credit unions classified as complex based on the principles of the CBLR framework. The CCULR would relieve complex credit unions that satisfy specified qualifying criteria from having to calculate the risk-based capital ratio. In exchange, the credit union would be required to maintain a higher net worth ratio than is otherwise required for the well-capitalized classification for risk-based capital purposes. This is a similar trade-off to the decision qualifying community banks make under the CBLR. After the initial phase in period, a qualifying complex credit union that has a net worth ratio of 10 percent or greater will be eligible to opt into the CCULR framework.

A qualifying complex credit union that opts into the CCULR framework and maintains the minimum net worth ratio (both during and after the threshold transition) will be considered well capitalized under the 2015 Final

Rule.<sup>20</sup> The proposed rule would also make several amendments to update the NCUA's 2015 Final Rule, including addressing asset securitizations issued by credit unions, clarifying the treatment of off-balance sheet exposures, deducting certain mortgage servicing assets from a complex credit union's risk-based capital numerator, updating certain derivative-related definitions and clarifying the definition of a consumer loan.

The Board is issuing this proposed rule pursuant to its authority under the FCUA. Under the FCUA, the NCUA is the chartering and supervisory authority for FCUs and the federal supervisory authority for FICUs.<sup>21</sup> The FCUA grants the NCUA a broad mandate to issue regulations governing both FCUs and all FICUs. Section 120 of the FCUA is a general grant of regulatory authority and authorizes the Board to prescribe rules and regulations for the administration of the FCUA.<sup>22</sup> Section 207 of the FCUA is a specific grant of authority over share insurance coverage, conservatorships, and liquidations.<sup>23</sup> Section 209 of the FCUA is a plenary grant of regulatory authority to the Board to issue rules and regulations necessary or appropriate to carry out its role as share insurer for all FICUs.<sup>24</sup> Accordingly, the FCUA grants the Board broad rulemaking authority to ensure that the credit union industry and the NCUSIF remain safe and sound.

The FCUA also includes an express grant of authority for the Board to develop capital adequacy standards for credit unions. In 1998, Congress enacted the Credit Union Membership Access Act (CUMAA).<sup>25</sup> Section 301 of CUMAA added section 216 to the FCUA,<sup>26</sup> which required the Board to adopt by regulation a system of prompt corrective action (PCA) to restore the net worth of credit unions that become inadequately capitalized.<sup>27</sup> Section

<sup>20</sup> 12 CFR 702.102(a)(1) (effective Jan. 1, 2022).

<sup>21</sup> 12 U.S.C. 1752–1775.

<sup>22</sup> 12 U.S.C. 1766(a).

<sup>23</sup> 12 U.S.C. 1787(b)(1).

<sup>24</sup> 12 U.S.C. 1789(a)(11).

<sup>25</sup> Public Law 105–219, 112 Stat. 913 (1998).

<sup>26</sup> 12 U.S.C. 1790d.

<sup>27</sup> The risk-based net worth requirement for credit unions meeting the definition of complex was first applied on the basis of data in the Call Report reflecting activity in the first quarter of 2001. 65 FR 44950 (July 20, 2000). The NCUA's risk-based net worth requirement has been largely unchanged since its implementation, with the following limited exceptions: Revisions were made to the rule in 2003 to amend the risk-based net worth requirement for member business loans, 68 FR 56537 (Oct. 1, 2003); revisions were made to the rule in 2008 to incorporate a change in the statutory definition of "net worth," 73 FR 72688 (Dec. 1, 2008); revisions were made to the rule in 2011 to expand the definition of "low-risk assets" to include debt instruments on which the payment of

<sup>16</sup> Public Law 116–136.

<sup>17</sup> See, 85 FR 22924 (Apr. 23, 2020).

<sup>18</sup> See, 85 FR 22930 (Apr. 23, 2020).

<sup>19</sup> 86 FR 13498 (Mar. 9, 2021).



216(b)(1)(A) requires the Board to adopt by regulation a system of PCA for credit unions consistent with section 216 of the FCUA and comparable to section 38 of the FDI Act.<sup>28</sup> Section 216(b)(1)(B) requires that the Board, in designing the PCA system, also take into account the “cooperative character of credit unions” (that is, credit unions are not-for-profit cooperatives that do not issue capital stock, must rely on retained earnings to build net worth, and have boards of directors that consist primarily of volunteers).<sup>29</sup> The Board initially implemented the required system of PCA in 2000,<sup>30</sup> primarily in part 702, and, as discussed previously, most recently made substantial updates to the regulation in the 2015 Final Rule.

Among other things, section 216(c) of the FCUA requires the NCUA to use a credit union’s net worth ratio to determine its classification among five net worth categories set forth in the FCUA.<sup>31</sup> Section 216(o) generally defines a credit union’s net worth as its retained earnings balance as determined under generally accepted accounting principles (GAAP),<sup>32</sup> and a credit union’s net worth ratio, as the ratio of its net worth to its total assets.<sup>33</sup> As a credit union’s net worth ratio declines, so does its classification among the five net worth categories, thus subjecting it to an expanding range of mandatory and discretionary supervisory actions.<sup>34</sup>

Section 216(d)(1) of the FCUA requires that the NCUA’s system of PCA include, in addition to the statutorily defined net worth ratio requirement, “a risk-based net worth<sup>35</sup> requirement for

principal and interest is unconditionally guaranteed by NCUA, 76 FR 16234 (Mar. 23, 2011); revisions were made in 2013 to exclude credit unions with total assets of \$50 million or less from the definition of complex credit union, 78 FR 4033 (Jan. 18, 2013); and revisions were made in 2020 to reflect loans issued under the Paycheck Protection Program, 85 FR 23212 (Apr. 27, 2020).

<sup>28</sup> 12 U.S.C. 1790d(b)(1)(A); see also 12 U.S.C. 1831o (section 38 of the FDI Act setting forth the PCA requirements for insured banks). In discussing the statutory requirement for comparability, the 2019 Supplemental Rule stated that “the FCU Act requires the Board to adopt a PCA framework comparable to the PCA framework in the FDI Act. The FCU Act, however, does not require the Board to adopt a system of risk-based capital identical to the risk-based capital framework for federally insured banking organizations.”

<sup>29</sup> 12 U.S.C. 1790d(b)(1)(B).

<sup>30</sup> 12 CFR part 702; see also 65 FR 8584 (Feb. 18, 2000) and 65 FR 44950 (July 20, 2000).

<sup>31</sup> 12 U.S.C. 1790d(c).

<sup>32</sup> 12 U.S.C. 1790d(o)(2).

<sup>33</sup> 12 U.S.C. 1790d(o)(3).

<sup>34</sup> 12 U.S.C. 1790d(c)–(g); 12 CFR 702.204(a)–(b).

<sup>35</sup> 12 U.S.C. 1790d(d)(2). For purposes of this rulemaking, the term risk-based net worth requirement is used in reference to the statutory requirement for the Board to design a risk-based net worth requirement to take account of any material risks against which the net worth ratio required for

credit unions that are complex, as defined by the Board.”<sup>36</sup> The FCUA directs the NCUA to base its definition of complex credit unions “on the portfolios of assets and liabilities of credit unions.”<sup>37</sup> If a credit union is not classified as complex, as defined by the NCUA, it is not subject to a risk-based net worth requirement. In addition to granting the NCUA broad authority to determine which credit unions are complex, and therefore subject to a risk-based net worth requirement, the FCUA also grants the NCUA broad authority to design a risk-based net worth requirement to apply to such complex credit unions.<sup>38</sup> Specifically, unlike the terms net worth and net worth ratio, the term risk-based net worth is not defined in the FCUA. Accordingly, section 216 grants the Board the authority to design risk-based net worth requirements, so long as the regulations are comparable to those applicable to other federally insured depository institutions and consistent with the requirements of the FCUA.

The proposed CCULR framework is comparable to section 38 of the FDI Act, as implemented by CBLR Final Rule.<sup>39</sup> As discussed previously, section 201 of the EGRRCPA amended part of the other banking agencies’ capital adequacy framework to direct the other banking agencies to propose a simplified, alternative measure of capital adequacy for certain federally insured banks.<sup>40</sup> The other banking agencies implemented this requirement, including amendments to their PCA regulations under section 38 of the FDI Act, in the CBLR Final Rule. The Board also notes that the proposed amendments to the NCUA’s 2015 Final Rule would make the rule more comparable to the other banking agencies’ 2013 capital rules.

In addition to satisfying the comparability requirement in section 216, the proposed CCULR framework also meets the requirements in section

an insured credit union to be adequately capitalized may not provide adequate protection. The term risk-based capital ratio is used to refer to the specific standards established in the 2015 Final Rule to function as criteria for the statutory risk-based net worth requirement. The term risk-based capital ratio is also used by the other banking agencies and the international banking community when referring to the types of risk-based requirements that are addressed in the 2015 Final Rule. This change in terminology throughout the proposed rule would have no substantive effect on the requirements of the FCUA, and is intended only to reduce confusion for the reader.

<sup>36</sup> 12 U.S.C. 1790d(d)(1).

<sup>37</sup> 12 U.S.C. 1790d(d).

<sup>38</sup> *Id.*

<sup>39</sup> 12 CFR part 3 (OCC), 12 CFR part 217 (Federal Reserve Board), and 12 CFR part 324 (FDIC).

<sup>40</sup> 12 U.S.C. 5371.

216 for the NCUA’s risk-based net worth framework. Section 216 has two express provisions that authorize an NCUA analogue to the CBLR—the definition of complex credit unions and the mandate for the Board to design a risk-based net worth requirement. In designing its CCULR framework, the Board considered both its legal authority to exclude credit unions from risk-based net worth requirements under the definition of complex, and its authority to design a system of risk-based net worth that includes a higher net worth ratio in place of calculating a ratio based on risk-adjusted assets.<sup>41</sup>

The Board considered its express authority under section 216 to define which credit unions are complex, and thus exclude noncomplex credit unions from the risk-based net worth requirement.<sup>42</sup> The express delegation grants the Board significant discretion to determine which credit unions are considered complex. Under this legal basis, the Board would continue to limit the definition of complex to only those credit unions with quarter-end total assets that exceed \$500 million dollars. In using asset size as a proxy for complexity, the Board complied with the statutory directive that the definition of complex be based on the portfolios of assets and liabilities of credit unions. Specifically, the Board relied on a complexity index that counted the number of complex

<sup>41</sup> The Board also briefly considered an additional independent legal basis for the proposed CCULR framework. As discussed in the section III.D. Calibration of the CCULR, the proposed CCULR framework would result in complex credit unions generally holding more capital than under the 2015 Final Rule. Because of the higher capital requirements under the proposed CCULR framework, the Board also considered whether the proposal could be considered an alternative method to demonstrate compliance with the 2015 Final Rule, instead of an alternative measure of risk-based net worth. This approach would be within the Board’s general discretion to determine the means and manner by which it measures compliance with its regulations, including the risk-based net worth requirement. However, in light of the express statutory authority to define complex and design a risk-based net worth framework, the Board believes this alternative basis, while valid, is not necessary to support the proposed rule.

<sup>42</sup> When Congress expressly authorizes or directs an agency to define a statutory term, it grants the agency broad discretion. Under these circumstances, an agency is permitted to interpret a term so long as its interpretation is not manifestly contrary to the statute. The interpretation need not conform to the ordinary meaning of the term. *See Am. Bankers Ass’n v. Nat’l Credit Union Admin.*, 934 F.3d 649, 663 (D.C. Cir. 2019) (“An express delegation of definitional power ‘necessarily suggests that Congress did *not* intend the [terms] to be applied in [their] plain meaning sense,” *Women Involved in Farm Econ. v. U.S. Dep’t of Agric.*, 876 F.2d 994, 1000 (D.C. Cir. 1989), that they are not “self-defining,” *id.*, and that the agency “enjoy[s] broad discretion” in how to define them. *Lindeen v. SEC*, 825 F.3d 646, 653 (D.C. Cir. 2016)).

products and services provided by credit unions.<sup>43</sup> The complexity index demonstrated that credit unions with greater than \$500 million in total assets held complex assets and liabilities as larger share of their total assets than smaller credit unions.<sup>44</sup>

The Board, however, could also propose a definition of complex that, rather than looking at the assets and liabilities of credit unions in the aggregate, looks at the individual portfolios of credit unions with total assets greater than \$500 million. This approach is also consistent with the statutory provision that the complex definition should be based on the portfolios of assets and liabilities of credit unions. The Board would use the same qualifying criteria as in the proposed rule, as measures of complexity. If a credit union would otherwise meet the proposed definition of a qualifying credit union, it would be considered not complex, and therefore not subject to risk-based capital, as implemented by the 2015 Final Rule. This alternative approach would create a functionally equivalent requirement to the one set forth in this proposed rule, with the only difference being the technical details of the implementing regulatory text in part 702.

The Board also considered its express authority and mandate to design the CCULR on the basis that the CCULR constitutes a risk-based net worth requirement, as required for complex credit unions in section 216(d). As discussed previously, the FCUA does not define the term risk-based net worth requirement and only sets forth general guidelines for the design of the risk-based net worth requirement mandated under section 216(d)(1). Specifically, section 216(d)(2) requires that the Board “design the risk-based net worth requirement to take account of any material risks against which the net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection.” Under section 216(c)(1)(B) of the FCUA, the net worth ratio required for a credit union to be adequately capitalized is six percent.

The plain language of section 216(d)(2) supports the NCUA’s interpretation that Congress intended for the NCUA to design the risk-based net worth requirement to take into account any material risks beyond those already addressed through the statutory six percent net worth ratio required for a credit union to be adequately capitalized. In other words, the language

in paragraph 216(d)(2) simply identifies the types of risks that the NCUA’s risk-based net worth requirement must address, that is, those risks not already addressed by the statutory six percent net worth requirement. Notably, the FCUA does not require that the risk-based net worth requirement include risk-adjusted assets as part of its calculation.<sup>45</sup> Instead, the Board interprets “risk-based” to require an accounting for risks in some manner—that is, the measure must be based on a consideration of risks—but not any particular manner of doing so.<sup>46</sup> Therefore, provided the Board determines that the proposed CCULR considers all material risks against which the six percent net worth ratio does not provide protection, then the Board has satisfied the statutory requirements for a risk-based net worth ratio.<sup>47</sup>

<sup>43</sup> Case law research revealed no decisions discussing the meaning of “risk-based” under the FCUA or other statutes that impose risk-based capital requirements on financial institutions.

<sup>46</sup> By contrast, in 2010, Congress specifically elaborated on the risk-based measures applicable to banks by providing that the generally applicable risk-based capital requirements for those institutions must include risk-weighted assets in the denominator of the ratio. Public Law 111–203, codified at 12 U.S.C. 5371. Congress did not elect to amend the FCUA to add a similar elaboration on the risk-based net worth requirement applicable to complex credit unions, which is consistent with the Board’s interpretation that the term risk-based by itself does not necessarily entail risk-weighted assets. This reading is consistent with judicial interpretations of the closely related phrase “based on,” which the Supreme Court has held to indicate a causal or but-for causation relationship between the phrase “based on” and the term it modifies. *Babb v. Wilkie*, 140 S.Ct. 1168, 2020 WL 1668281, at \*4 (Apr. 6, 2020). Similarly, a “risk-based” requirement can be understood as a requirement that bears a causal relationship to the relevant risks but does not require a specific form for the calculation of this requirement.

<sup>47</sup> In a similar manner, the Board initially explored a non-risk-adjusted approach in the advance notice of proposed rulemaking that the Board issued following CUMAA’s enactment in 1998, in which it requested comments on addressing this provision through increased net worth requirements as well as through risk-adjusted measures. 63 FR 57938 (Oct. 29, 1998). This approach is also consistent with the Senate report accompanying CUMAA, which stated: “The NCUA must design the risk-based net worth requirement to take into account any material risks against which the 6 percent net worth ratio required for an insured credit union to be adequately capitalized may not provide adequate protection. Thus the NCUA should, for example, consider whether the six percent requirement provides adequate protection against interest-rate risk and other market risks, credit risk, and the risks posed by contingent liabilities, as well as other relevant risks. The design of the risk-based net worth requirement should reflect a reasoned judgment about the actual risks involved.” S. Rep. No. 105–193 at 14 (May 21, 1998) (emphasis added). The report indicates that Congress did not intend to prescribe the manner in which the Board accounts for any relevant risks that the six percent net worth ratio does not adequately address.

The Board believes that both approaches to designing the CCULR framework are supported by the FCUA. The Board, however, has chosen to draft the proposed rule under its authority to design a risk-based net worth requirement. The Board believes that considering the CCULR as an alternative way to calculate a risk-based net worth requirement is more straightforward, consistent with the structure of section 216, and simpler for complex credit unions to implement.

### III. Proposed Rule

#### A. Overview of the CCULR Framework

This proposed rule would provide a simplified measure of capital adequacy for credit unions classified as complex (credit unions with total assets greater than \$500 million). Under the proposed rule, a qualifying complex credit union that meets the minimum CCULR, which is equal to its net worth ratio, would be eligible to opt into the CCULR framework and would be considered well capitalized. The proposed CCULR framework is based on the principles of the CBLR framework. It would relieve complex credit unions that meet specified qualifying criteria and have opted into the CCULR framework from having to calculate a risk-based capital ratio, as implemented by the 2015 Final Rule. In exchange, the qualifying complex credit union would be required to maintain a higher net worth ratio than is otherwise required for the well-capitalized classification. This is a similar trade-off to the one qualifying community banking organizations are able to make under the CBLR. The CCULR would further the goal of the FCUA’s PCA requirements by ensuring that complex credit unions continue to hold sufficient capital, while minimizing the burden associated with complying with the NCUA’s risk-based capital requirement.

As noted previously, the 2015 Final Rule is scheduled to take effect on January 1, 2022. Accordingly, the regulatory amendments contained in this proposed rule, if finalized, would not take effect until January 1, 2022, and qualifying complex credit unions would not be able to opt into the proposed CCULR framework prior to this effective date.

#### B. Qualifying Complex Credit Unions

Under the proposal, a qualifying complex credit union would be defined as a complex credit union under § 702.103 that meets the following criteria (qualifying criteria), each as described further below:

<sup>43</sup> *Supra* note 5 at 55470.

<sup>44</sup> *Id.*

(1) Has a CCULR (net worth) of 10 percent or greater, subject to an initial transition period;<sup>48</sup>

(2) Has total off-balance sheet exposures of 25 percent or less of its total assets;

(3) Has the sum of total trading assets and total trading liabilities of five percent or less of its total assets; and

(4) Has the sum of total goodwill, including goodwill that meets the definition of excluded goodwill, and total other intangible assets, including intangible assets that meet the definition of excluded other intangible assets, of two percent or less of its total assets.

The Board believes that complex credit unions that do not meet any one of the qualifying criteria should remain subject to risk-based capital to ensure that such credit unions hold capital commensurate with the risk profile of their activities. The Board would continue to evaluate the qualifying criteria over time to ensure that they continue to be appropriate.

*Question 1:* The Board invites comment on the qualifying criteria. What are the advantages and disadvantages of each qualifying criterion? What is the burden associated with determining whether a complex credit union meets the proposed qualifying criteria? What other criteria, if any, should the Board consider in the proposed definition? What are commenters' views on the tradeoffs between simplicity and having additional qualifying criteria? In specifying any alternative qualifying criteria regarding a credit union's risk profile, please provide information on how alternative qualifying criteria should be considered in conjunction with the calibration of the CCULR level and why the Board should consider such alternative criteria. For example, if the Board were to consider a CCULR of less than 10 percent to be well capitalized, should additional qualifying criteria be incorporated? The Board may consider qualifying criteria related to mortgage servicing assets, investments in credit union service organizations (CUSOs), or investments in corporate credit unions if a permanent CCULR of less than 10 percent is considered.

#### 1. CCULR of 10 Percent or Greater

After the transition period, the proposed rule would require a complex credit union to have a CCULR of at least 10 percent to be classified as a

qualifying complex credit union. An otherwise qualifying complex credit union could not opt into the CCULR framework unless its CCULR was at least 10 percent.

#### Transition Provision

Under the proposed rule, there is a transition provision to phase in the 10 percent CCULR over two years to give complex credit unions time to adjust and adapt to the new requirements. The transition provision provides for full effectiveness of the 10 percent CCULR on January 1, 2024. From January 1, 2022, to December 31, 2022, a complex credit union may opt into the CCULR framework if it has a CCULR of nine percent or greater. Therefore, a qualifying complex credit union that opts into the CCULR framework and that maintains a CCULR of nine percent would be considered well capitalized. Beginning January 1, 2023, a complex credit union that has opted into the CCULR framework must have a CCULR of 9.5 percent or greater to meet the eligibility criteria and be considered well-capitalized. After January 1, 2024, a complex credit union would need to maintain a CCULR of 10 percent to be considered well-capitalized. Accordingly, the proposed rule provides a complex credit union two years to meet a CCULR of 10 percent or greater. See, Section I. *Transition Provision* for additional information.

#### 2. Off-Balance Sheet Exposures

Under the proposal, a qualifying complex credit union would be required to have total off-balance sheet exposures of 25 percent or less of its total assets, as of the end of the most recent calendar quarter. The Board is including these qualifying criteria in the CCULR framework because the CCULR includes only on-balance sheet assets in its denominator and thus would not require a qualifying complex credit union to hold capital against its off-balance sheet exposures. This qualifying criterion is intended to reduce the likelihood that a qualifying complex credit union with significant off-balance sheet exposures would be required to hold less capital under the CCULR framework than under the risk-based capital ratio.<sup>49</sup>

The other banking agencies' CBLR framework also excludes banking organizations with significant off-balance sheet exposures. The CBLR Final Rule excludes banking organizations that have more than 25

percent of total consolidated assets in off-balance sheet exposures. The other banking agencies' definition of off-balance sheet exposures, however, has several differences from the current definition of off-balance sheet exposures in the 2015 Final Rule. Therefore, to make the CCULR framework more comparable to the CBLR and to improve on the effectiveness of the 2015 Final Rule, the proposed rule would amend the NCUA's definition of off-balance sheet exposures. The proposed amendments to the definition of off-balance sheet exposure would apply to both the proposed CCULR framework and the risk-based capital framework.<sup>50</sup>

Under the proposed CCULR framework, off-balance sheet exposures would mean:

(1) For unfunded commitments, excluding unconditionally cancellable commitments, the remaining unfunded portion of the contractual agreement.

(2) For loans transferred with limited recourse, or other seller-provided credit enhancements, and that qualify for true sale accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance.

(3) For loans transferred under the Federal Home Loan Bank (FHLB) mortgage partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance.

(4) For financial standby letters of credit, the total potential exposure of the credit union under the contractual agreement.

(5) For forward agreements that are not derivative contracts, the future contractual obligation amount.

(6) For sold credit protection through guarantees and credit derivatives, the total potential exposure of the credit union under the contractual agreement.

(7) For off-balance sheet securitization exposures, the notional amount of the off-balance sheet credit exposure (including any credit enhancements, representations, or warranties that obligate a credit union to protect another party from losses arising from the credit risk of the underlying exposures) that arises from a securitization.

(8) For securities borrowing or lending transactions, the amount of all securities borrowed or lent against

<sup>48</sup> For an additional discussion on why the Board set the ratio to 10 percent, see *Section D. Calibration of the CCULR*. For additional information on the transition period, see *Section I. Transition Provision*.

<sup>49</sup> The proposed amendments to § 702.104, Risk-based capital ratio, include credit conversion factors and risk-weights for off-balance sheet exposures.

<sup>50</sup> The proposed rule would also include risk weights for each new exposure in the definition of off-balance sheet exposure. See, *Section M. Amendments to the 2015 Final Rule*.

collateral or on an uncollateralized basis.<sup>51</sup>

Each element of the off-balance sheet definition is discussed in more detail below.

#### Unfunded Commitments

The current definition of off-balance sheet exposures in the 2015 Final Rule includes all unfunded commitments. The proposed definition, however, would not include commitments that are unconditionally cancellable. Under the proposed rule, an unconditionally cancellable commitment would mean a commitment that a credit union may, at any time, with or without cause, refuse to extend credit under (to the extent permitted under applicable law). The Board notes that for an exposure to be treated as unconditionally cancellable, the contractual agreement must explicitly state that the credit union can unconditionally refuse to extend credit under the commitment. A provision stating the credit union can cancel the commitment for good cause would be insufficient.

#### Loans Transferred With Limited Recourse

The current definition of off-balance sheet exposures in the 2015 Final Rule includes all other loans transferred with limited recourse or other seller-provided credit enhancements and that qualify for true sales accounting. The proposed rule would make no substantive changes to this prong of the off-balance sheet exposure definition. The exposure amount for loans transferred with limited recourse is the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance.

#### Loans Transferred Under the Federal Home Loan Bank (FHLB) Mortgage Partnership Finance Program Loans

The current definition of off-balance sheet exposures in the 2015 Final Rule includes loans transferred under the FHLB mortgage partnership finance program. The proposed rule would clarify the language of this item in the off-balance sheet exposure definition but would make no other substantive change. The exposure amount for loans that meet the definition of mortgage partnership finance program and are transferred under the FHLB mortgage

partnership finance program is the outstanding loan balance as of the reporting date, net of any related valuation allowance.

#### Financial Standby Letters of Credit

The proposed rule would include financial standby letters of credit in the definition of off-balance sheet exposures. These exposures are not explicitly included in the current definition of off-balance sheet exposure in the 2015 Final Rule; however, they are included as off-balance sheet items. Under the proposed rule, the exposure amount for financial standby letters of credit would be the total potential exposure of the credit union under the contractual agreement.

#### Forward Agreements

The proposed definition of off-balance exposures would also include forward agreements that are not derivative contracts. Forward agreements are not explicitly included in the current definition of off-balance sheet exposure in the 2015 Final Rule; however, forward agreements are included as off-balance sheet items. A forward agreement would mean a legally binding contractual obligation to purchase assets with certain drawdown at a specified future date, not including commitments to make residential mortgage loans or forward foreign exchange contracts. The exposure amount of a forward agreement that is not a derivative contract would be the future contractual obligation amount.

Similar to the other banking agencies, the Board is also clarifying that typical mortgage lending activities such as forward loan delivery commitments between credit unions and investors are typically derivative contracts, and therefore, would be excluded from the off-balance sheet exposure definition.<sup>52</sup> The Board also notes that put and call options on mortgage-backed securities are also typically derivatives and would be excluded from the definition of off-balance sheet exposure. A contractual obligation for the future purchase of a “to be announced” (that is, when-issued) mortgage securities contract that does not meet the definition of a

derivative contract, however, would be captured by the off-balance sheet exposure definition as it would be considered a forward agreement. In contrast, a contractual obligation for the future sale (rather than purchase) of a “to be announced” mortgage securities contract that does not meet the definition of a derivative contract would not be captured in the off-balance sheet qualifying criterion, as it would not be considered a forward agreement.

#### Sold Credit Protection Through Guarantees and Credit Derivatives

The proposed definition of off-balance sheet exposure would also include sold credit protection through guarantees<sup>53</sup> and credit derivatives. These exposures are not explicitly included in the definition of off-balance sheet exposure in the 2015 Final Rule; however, guarantees are included as off-balance sheet items. Credit derivatives are included in the other banking agencies’ CBLR framework as part of the off-balance sheet threshold. Under the proposed definition, the exposure amount for sold credit protection through guarantees and credit derivatives would be the total potential exposure of the credit union under the contractual agreement. A credit derivative would mean a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure[s]) to another party (the protection provider) for a certain period of time. At this time, FCUs are not permitted to have credit derivatives and the Board is unaware of any state-chartered credit unions engaging in credit derivatives. The Board is including this provision for consistency with the other banking agencies and to ensure that the proposed rule is flexible should credit unions hold credit derivatives in the future.

#### Off-Balance Sheet Securitizations

Additionally, compared to the current definition of off-balance sheet exposure, the proposed definition would include off-balance sheet securitizations, including any credit enhancements, representations, or warranties that obligate a credit union to protect another party from losses arising from the credit risk of the underlying

<sup>51</sup> New exposure categories may require changes to the Call Report. For example, unconditionally cancellable commitments, off-balance sheet securitization exposures, forward agreements, sold credit protection through guarantees and credit derivatives, and securities borrowing and lending transactions may require additional Call Report fields.

<sup>52</sup> Derivative contract means a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity derivative contracts, and credit derivative contracts. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days. 12 CFR 702.2 (effective Jan. 1, 2022).

<sup>53</sup> A guarantee means a financial guarantee, letter of credit, insurance, or similar financial instrument that allows one party to transfer the credit risk of one or more specific exposures to another party. 12 CFR 702.2 (effective Jan. 1, 2022).

exposures.<sup>54</sup> Off-balance sheet securitizations are not included in the current definition of off-balance sheet exposure or off-balance sheet items, but are included in the other banking agencies' CBLR framework as part of the off-balance sheet threshold. An off-balance sheet securitization exposure could arise in a number of circumstances. For example, if an originating credit union provides liquidity or credit support for an issued securitization, the credit union may report an off-balance sheet securitization exposure. The exposure amount of an off-balance sheet securitization exposure would be the notional amount of the exposure.

#### Securities Borrowing or Lending Transactions

Finally, the proposed rule would explicitly include securities borrowing or lending transactions. Securities borrowing or lending transactions are not included in the current definition of off-balance sheet exposure or off-balance sheet items, but are included in the other banking agencies' CBLR framework as part of the off-balance sheet qualifying criterion. These types of transactions are permissible for FCUs under part 703 of NCUA regulations and may be permissible for FISCUs as well.<sup>55</sup> For these transactions, the exposure amount would be the amount of all securities borrowed or lent against collateral or on an uncollateralized basis.

Collectively, the above eight elements comprise the proposed definition of off-balance sheet exposures that would apply to both the proposed CCULR framework and the risk-based capital framework under the 2015 Final Rule. *Section M. Amendments to the 2015 Final Rule*, which addresses two additional off-balance sheet exposures, that are not part of the off-balance exposure definition because they are not included as an off-balance sheet exposure in either the CCULR or the other banking agencies' CBLR off-balance sheet thresholds. However, they are considered in the other banking agencies' 2013 capital rule and are proposed amendments to the NCUA's 2015 risk-based capital rule. By applying the proposed changes to both

frameworks, the Board would establish consistency between the 2015 Final Rule and the proposed CCULR framework. Without these conforming amendments to the definition of off-balance sheet exposures, a credit union might be required to hold less capital under the CCULR framework than under the risk-based capital framework of the 2015 Final Rule.

The Board proposes a 25 percent threshold for off-balance sheet exposures, as this threshold is similar to the CBLR framework and it would provide enough flexibility for complex credit unions to engage in normal lending practices. The Board does not believe that traditional banking activities, such as extending loan commitments to members, should necessarily preclude a complex credit union from qualifying to use the CCULR framework. The 25 percent threshold will also ensure that complex credit unions engaging in substantial off-balance sheet activity will also have the commensurate regulatory capital requirement. Therefore, the Board proposes a 25 percent threshold for off-balance sheet exposures, consistent with the CBLR Final Rule.

*Question 2:* The Board invites comment on the proposed off-balance sheet exposures qualifying criterion. What aspects of the off-balance sheet exposures qualifying criterion, including the related definition, requires further clarity? What other alternatives should the Board consider for purposes of defining the proposed qualifying criterion? What impact would the proposed qualifying criterion have on a complex credit union's business strategies and lending decisions? Is a 25 percent threshold appropriate? If commenters believe an alternative threshold is more appropriate, please provide data.

#### 3. Trading Assets and Liabilities

Under the proposal, a qualifying complex credit union would be required to have the sum of its total trading assets and total trading liabilities be five percent or less of its total assets, each measured as of the end of the most recent calendar quarter.<sup>56</sup> The proposed rule would include new definitions for the terms trading assets and trading liabilities. Trading assets would be defined as securities or other assets

acquired, not including loans originated by the credit union, for the purpose of selling in the near term or otherwise with the intent to resell to profit from short-term price movements. Trading assets would not include shares of a registered investment company or a collective investment fund used for liquidity purposes. Trading assets, however, would include derivatives recorded as assets on a credit union's balance sheet that are used for trading purposes. The Board notes that FCUs do not currently have the authority under part 703 to enter into derivative transactions for trading.

The Board is proposing to define trading assets similarly to the other banking agencies' definition with the exception of including securities or investments acquired through underwriting or dealing, or securities acquired as an accommodation to a customer. The Board does not believe these are activities that credit unions currently engage in and, additionally, they would still likely be captured in the definition of trading assets. The Board notes that any loan originated by a credit union would not be considered a trading asset. However, under the proposed definition, loans purchased with the intent to sell in the short-term would be considered trading assets.

Trading liabilities would be defined as the total liability for short positions of securities or other liabilities held for trading purposes. A short position is established when an investor sells an investment that the investor does not own. The following is an example of a short position that would not be included within the definition of trading liability because it is used to manage interest rate risk. In managing interest rate risk, an investor might sell a 10-year Treasury Note to decrease the price volatility of the investor's bond/loan portfolio. The value of the 10-year Treasury Note, which is a liability for the investor, would change in the same direction as the bond/loan portfolio, reducing interest rate risk if the price change of assets minus liabilities is less than it would have been without shorting the 10-year Treasury Note. If a credit union engaged in such a transaction, it would not be included in the trading liabilities definition. The Board also notes that FCUs do not currently have the authority to short securities.<sup>57</sup> Additionally, trading liabilities would include derivatives recorded as liabilities on a credit union's balance sheet that are used for trading purposes. The Board notes that FCUs do not currently have the

<sup>54</sup> The other banking agencies define the term "credit enhancements, representations, or warranties." The Board believes the definition used by the other banking agencies introduces additional complexity and therefore is not adopting it at this time and, instead, will rely on the plain meaning of these terms.

<sup>55</sup> 12 CFR 703.13. 12 CFR 703.2 defines securities lending as lending a security to a counterparty, either directly or through an agent, and accepting collateral in return.

<sup>56</sup> Currently, the Call Report does not include a reporting requirement for trading assets and trading liabilities. As discussed in *Section III. L. Illustrative Reporting Forms to Support the CCULR*, if the proposed rule is finalized, the NCUA would update the Call Report before January 1, 2022. The revised Call Report would include reporting requirements for trading assets and trading liabilities.

<sup>57</sup> 12 CFR 703.15.

authority to enter into derivative transactions for trading.

These qualifying criteria would be calculated in accordance with the reporting instructions in the Call Report and the complex qualifying credit union would divide the sum of its total trading assets and total trading liabilities by its total assets.

The other banking agencies limited a qualifying community banking organization to having total trading assets and trading liabilities of five percent or less of its total consolidated assets. In the CBLR Final Rule, the other banking agencies discussed the potential elevated levels of risk and complexity that can be associated with certain trading activities and, therefore, required banking organizations with significant trading assets and liabilities to be subject to risk-based capital requirements. The other banking agencies noted that elevated levels of trading activity can produce a heightened level of earnings volatility, which has implications for capital adequacy. The other banking agencies also expressed concerns about making the CBLR framework available to banking organizations with material market risk exposure. For similar reasons, the Board believes it is important to have a qualifying criterion based on the sum of total trading assets and trading liabilities.

Based on the Board's analysis of currently available Call Report data and permissible activities for FCUs, the Board believes the vast majority of complex credit unions do not have material amounts of trading assets and trading liabilities.<sup>58</sup> The Board has included a trading activity criterion, despite the general lack of credit union trading activity, because the Board recognizes the potential elevated levels of risk and complexity that can be associated with certain trading activities even if is not applicable to most complex credit unions. In addition, the Board recognizes that the level of credit union trading activity could increase in the future.

*Question 3:* The Board invites comment on the proposed trading activity criterion. What other alternative measures of trading activity should the

<sup>58</sup> Even though it is permissible for FCUs to trade securities, Call Report data shows FCUs do not hold substantial trading assets. See, 12 CFR 703.13(f). Depending on state law, FISCUs also may be permitted to hold trading assets, however, again, the Board's analysis shows that FISCUs do not hold material amounts of trading assets. As of December 2020, the largest concentration in trading debt securities at a complex credit union was 2.3 percent of assets. Furthermore, only four complex credit unions had over one percent of assets in trading debt securities.

Board consider for purposes of defining a qualifying complex credit union and why?

#### 4. Goodwill and Other Intangible Assets

Under the proposal, a qualifying complex credit union would be required to have the sum of total goodwill and other intangible assets of two percent or less of its total assets. Qualifying complex credit unions would be required to include excluded goodwill and excluded other intangible assets in this calculation.<sup>59</sup> Goodwill is defined as an intangible asset, maintained in accordance with GAAP, representing the future economic benefits arising from other assets acquired in a business combination (for example, a merger) that are not individually identified and separately recognized. Other intangible assets mean intangible assets, other than servicing assets and goodwill, maintained in accordance with GAAP. Other intangible assets do not include excluded other intangible assets. These are the same definitions as in the 2015 Final Rule. However, as discussed previously, for purposes of the CCULR, complex credit unions would be required to include in the proposed threshold excluded goodwill and excluded other intangible assets, even though excluded goodwill and excluded other intangible assets are not included in the goodwill deduction under the 2015 Final Rule. The 2015 Final Rule established an implementation period for deducting goodwill and other intangible assets acquired by certain supervisory mergers prior to the publication of the 2015 Final Rule. This approach ensured credit unions were not treated punitively for goodwill and other intangible assets acquired before the publication of the 2015 Final Rule. However, the CCULR framework is voluntary and the same fairness concerns are not present. Therefore, the Board has chosen to include the full amount of goodwill and other intangible assets for this criterion.

The Board is proposing a qualifying criterion related to goodwill and other intangible assets because goodwill and other intangible assets contain a high

<sup>59</sup> Excluded goodwill means the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed on or before December 28, 2015. This term and definition expire on January 1, 2029. Excluded other intangible assets means the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before December 28, 2015. This term and definition expire on January 1, 2029. 12 CFR 702.2 (effective Jan. 1, 2022).

level of uncertainty regarding a credit union's ability to realize value from these assets, especially under adverse financial conditions. Due to the uncertainty of recognizing value from goodwill and other intangible assets, the other banking agencies require insured banks to deduct goodwill and intangible assets from tier 1 capital.<sup>60</sup> The Board believes it is prudent to assess the credit union's balance of goodwill and other intangible assets to ensure comparability with the banking industry. Without this proposed criterion, a qualifying credit union could use the CCULR despite substantial goodwill and intangible assets, which would be inconsistent with the principles of the CBLR framework. The Board also notes that under the 2015 Final Rule, goodwill and other intangible assets are deducted from both the risk-based capital ratio numerator and denominator.

As stated previously, the proposed rule includes a two percent threshold on goodwill and other intangibles assets. The Board believes that complex credit unions with two percent or less of their assets in goodwill and other intangibles assets would not hold less capital under the CCULR framework than under the risk-based capital ratio. In addition, a two percent threshold only would exclude a small portion of otherwise qualifying complex credit unions, an estimated four credit unions as of December 31, 2020, from the CCULR framework. Therefore, the Board believes a two percent threshold balances regulatory relief for most qualifying complex credit unions, while still recognizing the uncertainty and volatility of goodwill and other intangible assets. The Board believes that complex credit unions with substantial goodwill and other intangible assets should calculate their capital adequacy using the risk-based capital ratio, as their portfolios may require higher capital levels.

*Question 4:* The Board invites comment on the proposed qualifying criterion for the sum of total goodwill and other intangible assets. What are commenters' views on the inclusion of such a qualifying criterion? Should qualifying complex credit unions be required to include excluded goodwill and excluded other intangible assets that would have been excluded under the 2015 Final Rule?

*Question 5:* As discussed previously, under the 2015 Final Rule, goodwill and other intangible assets are deducted from both the risk-based capital ratio numerator and denominator in order to

<sup>60</sup> See e.g., 12 CFR 324.22.

achieve a risk-based capital ratio numerator reflecting equity available to cover losses in the event of liquidation. The Board, however, recognized that requiring the exclusion of goodwill and other intangibles associated with supervisory mergers and combinations of credit unions that occurred prior to the 2015 Final Rule could directly reduce a credit union's risk-based capital ratio. Accordingly, under the 2015 Final Rule, the Board also permitted credit unions to exclude certain goodwill and other intangible assets from the deduction in the risk-based capital ratio numerator. In particular, the 2015 Final Rule excluded from the definition of goodwill, which must be deducted from the risk-based capital ratio numerator, certain goodwill or other intangible assets acquired by a credit union in a supervisory merger or consolidation.

Under the 2015 Final Rule, excluded goodwill is defined as the outstanding balance, maintained in accordance with GAAP, of any goodwill originating from a supervisory merger or combination that was completed on or before December 28, 2015. This term and definition expire on January 1, 2029. Excluded other intangible assets is defined as the outstanding balance, maintained in accordance with GAAP, of any other intangible assets such as core deposit intangible, member relationship intangible, or trade name intangible originating from a supervisory merger or combination that was completed on or before December 28, 2015. This term and definition expire on January 1, 2029. The Board added these two definitions to take into account the impact goodwill or other intangible assets recorded from transactions defined as supervisory mergers or combinations have on the calculation of the risk-based capital ratio upon implementation. Both definitions apply to supervisory mergers or combinations that occurred before December 28, 2015. The date, December 28, 2015, was 60 days after the 2015 Final Rule was published in the **Federal Register**, which provided sufficient notice to complex credit unions contemplating supervisory mergers at the time the 2015 Final Rule was issued. The Board understands, however, that there is some confusion as to whether the dates were amended after the subsequent delays to the 2015 Final Rule in the 2018 Supplemental Rule and the 2019 Supplemental Rule. The Board notes that as currently written, the delays to the effective date of the 2015 Final Rule do not amend the December 28, 2015, date for excluded goodwill

and other intangible assets. Any supervisory mergers that included goodwill and other intangible assets after December 28, 2015, are required deductions once the 2015 Final Rule becomes effective on January 1, 2022. The Board, however, is open to considering an amendment to the 2015 Final Rule. Should the Board amend the December 28, 2015, date to alleviate any potential confusion in the date caused by the delayed effective date of the 2015 Final Rule? The Board also notes that the CCULR framework, as proposed, would not require a deduction, so any potential amendment would only be relevant for complex credit unions that are not qualifying complex credit unions or that have not opted to calculate their risk-based capital measure under the CCULR framework. What are the advantages and disadvantages of deducting goodwill from regulatory capital under the 2015 Final Rule? As goodwill is not a tangible asset, how would not deducting goodwill from regulatory capital adequately protect the NCUSIF in the event of a failure and liquidation?

*Question 6:* Please comment on whether the Board should consider qualifying criteria for other categories of exposures that are subject to heightened risk weights under the 2015 Final Rule. Should the Board combine several categories of higher risk-weighted exposures to ensure a complex credit union's aggregate exposure is under a certain threshold?

#### 5. Other CBLR Eligibility Criteria Total Assets of Less Than \$10 Billion

Under the other banking agencies' CBLR framework, only depository institutions or depository institution holding companies with total consolidated assets of less than \$10 billion are eligible to use the CBLR. The \$10 billion limitation was included in the EGRRCPA.<sup>61</sup> The other banking agencies also stated that a risk-based capital ratio is more appropriate for larger banking organizations because such banking organizations may present risks that are not appropriately captured by the CBLR framework.<sup>62</sup> Commenters to the ANPR that addressed the scope of eligible institutions generally favored not using the CBLR threshold of \$10 billion. One commenter stated that because credit unions are generally subject to more stringent portfolio shaping regulations than banks, a \$10 billion cap was not appropriate. One commenter stated that the NCUA could

set a higher threshold of \$15 billion or \$20 billion to harmonize the CCULR with the more granular stress testing tiers. Other non-credit union commenters favored a \$10 billion limit on eligibility to opt into the CCULR framework.

The Board is not proposing to include this qualifying criterion in the proposed rule. The Board believes that the CCULR framework would appropriately capture the risk for all complex credit unions regardless of asset size. The FCUA limits the types of assets a Federal credit union can hold compared to banking organizations. Consequently, larger banking organizations may be more likely to include assets that cannot be adequately risk weighted with a leverage ratio than a complex credit union. Therefore, the Board believes permitting all complex credit unions regardless of asset size to opt into the CCULR framework is prudent and does not present a risk to the NCUSIF. Permitting credit unions with total assets over \$10 billion would only include 18 additional credit unions, with total assets of over \$438 billion, or 27 percent of all complex credit union assets as of March 31, 2021. In addition, these credit unions are highly capitalized and have an average net worth ratio of just under 10 percent. Twelve of the eighteen credit unions have net worth ratios over nine percent. The remaining six credit unions with total assets over \$10 billion as of March 2021 have an average net worth ratio of 8.32 percent.

The Board notes that \$10 billion is the threshold for credit unions to begin capital planning under part 702. In addition, complex credit unions with \$20 billion or more in total assets are subject to stress testing requirements.<sup>63</sup> These requirements are independent of the complex credit union's CCULR selection. Therefore, a complex credit union that meets the applicable thresholds for capital planning and stress testing requirements will be subject to such requirements regardless of its CCULR opt in election.

*Question 7:* Should the Board consider limiting eligibility to the CCULR framework to only complex credit unions with less than \$10 billion in total assets? The Board seeks comments on a potential \$10 billion asset limitation and whether it is appropriate for the CCULR framework.

*Question 8:* In contrast to the other banking agencies' CBLR statute and regulation, the Board is not proposing to include a qualifying criterion for mortgage servicing assets (MSAs). As

<sup>61</sup> *Supra* note 11.

<sup>62</sup> *Supra* note 12.

<sup>63</sup> 12 CFR 702.502.



discussed subsequently in this preamble, the Board is proposing changes to the risk-weighting of MSAs under the 2015 Final Rule consistent with the other banking agencies' risk-based capital regulations. Currently, MSA balances are insignificant enough relative to total assets that the Board believes a qualifying criterion would be unnecessary and would not have much, or any, effect. However, as discussed in the section on risk-based capital, revisions to the other banking agencies' capital rules on this subject and potential increases in future activity warrant at least some adjustment to the risk-based capital treatment of MSAs. But the Board does not currently find that even that potential increase, which is not certain and would depend on a separate, pending rulemaking, would warrant including MSAs as a qualifying criterion for the CCULR framework. The Board invites comment on this issue. What are commenters' views on the exclusion of such a qualifying criterion?

### C. The CCULR Ratio

Under the proposal, the CCULR would be the net worth ratio, which is defined under the 2015 Final Rule as the ratio of the credit union's net worth to its total assets rounded to two decimal places.<sup>64</sup> Therefore, any amendments to the definition of the net worth ratio would also be applicable to the calculation of CCULR. For example, the Board finalized changes to the net worth ratio to provide that, for purposes of the prompt corrective action regulations, credit unions may phase-in the day-one impact of transitioning to the Current Expected Credit Loss (CECL) methodology over a three-year period.<sup>65</sup> This change would be part of a credit union's net worth ratio, and therefore, its CCULR. The 2015 Final Rule, as amended, defines net worth as:

(1) The retained earnings balance of the credit union at quarter-end as determined under GAAP, subject to paragraph (3) of this definition.

(2) With respect to a low-income designated credit union, the outstanding principal amount of Subordinated Debt treated as Regulatory Capital in accordance with § 702.407, and the outstanding principal amount of Grandfathered Secondary Capital treated as Regulatory Capital in accordance with § 702.414, in each case that is:

- (i) Uninsured; and
- (ii) Subordinate to all other claims against the credit union, including

claims of creditors, shareholders, and the NCUSIF.

(3) For a credit union that acquires another credit union in a mutual combination, net worth also includes the retained earnings of the acquired credit union, or of an integrated set of activities and assets, less any bargain purchase gain recognized in either case to the extent the difference between the two is greater than zero. The acquired retained earnings must be determined at the point of acquisition under GAAP. A mutual combination, including a supervisory combination, is a transaction in which a credit union acquires another credit union or acquires an integrated set of activities and assets that is capable of being conducted and managed as a credit union.

(4) The term "net worth" also includes loans to and accounts in an insured credit union, established pursuant to section 208 of the Act [12 U.S.C. 1788], provided such loans and accounts:

- (i) Have a remaining maturity of more than 5 years;
- (ii) Are subordinate to all other claims including those of shareholders, creditors, and the NCUSIF;
- (iii) Are not pledged as security on a loan to, or other obligation of, any party;
- (iv) Are not insured by the NCUSIF;
- (v) Have non-cumulative dividends;
- (vi) Are transferable; and
- (vii) Are available to cover operating losses realized by the insured credit union that exceed its available retained earnings.

The proposed denominator of the CCULR would be a complex credit union's total assets, consistent with the net worth ratio. Total assets, as defined under the 2015 Final Rule, means:

(1) Average quarterly balance. The credit union's total assets measured by the average of quarter-end balances of the current and three preceding calendar quarters;

(2) Average monthly balance. The credit union's total assets measured by the average of month-end balances over the three calendar months of the applicable calendar quarter;

(3) Average daily balance. The credit union's total assets measured by the average daily balance over the applicable calendar quarter; or

(4) Quarter-end balance. The credit union's total assets measured by the quarter-end balance of the applicable calendar quarter as reported on the credit union's Call Report.<sup>66</sup>

The Board is proposing to use the net worth ratio for the CCULR for its

simplicity. Complex credit unions are required to calculate their net worth ratio regardless of whether they opt into the CCULR framework. Therefore, complex credit unions would not be required to calculate a unique ratio for purposes of opting into the CCULR framework. Additionally, complex credit unions are already familiar with the net worth ratio, which would reduce compliance costs compared to a unique ratio designed for the CCULR. The Board intends for the CCULR to be a simple alternative to the risk-based capital ratio and is concerned that the burden imposed by a unique CCULR would exceed its possible utility as a capital reporting measure.

The Board notes that the other banking agencies originally proposed a new ratio for purposes of the CBLR, but declined to adopt the definition due to the complexities that would be created by adopting a new measure of capital.<sup>67</sup> Instead, the other banking agencies based the CBLR on the existing tier 1 capital definition, which is also the basis of the other banking agencies' leverage ratio.<sup>68</sup> Similarly, the Board is proposing to use the established and well understood net worth ratio rather than proposing a new definition of capital for purposes of the CCULR.

The Board considered using the risk-based capital ratio numerator from the 2015 Final Rule.<sup>69</sup> The Board believes that the numerator to the 2015 Final Rule is a more conservative measure of capital compared to the net worth ratio because it includes several deductions, including deductions for the NCUSIF capitalization deposit, goodwill, other intangible assets, and identified losses not reflected in the risk-based capital ratio numerator. The 2015 Final Rule, however, is not yet effective, and complex credit unions are not familiar with calculating and implementing the definition of capital.<sup>70</sup> Therefore, the Board believes it is preferable to base the CCULR on the net worth ratio.

Several commenters to the ANPR requested that all complex credit unions be permitted to use Subordinated Debt under any proposed CCULR framework. Under the proposed rule, however, the CCULR is defined as net worth; therefore, Subordinated Debt would not be eligible for inclusion as capital under the CCULR framework unless the complex credit union is also a low-income designated credit union. As

<sup>67</sup> *Supra* note 12, at 61783.

<sup>68</sup> See, 12 CFR 324.10(b)(4).

<sup>69</sup> 12 CFR 702.104(b) (effective Jan. 1, 2022).

<sup>70</sup> As proposed, both the 2015 Final Rule and this CCULR framework would be effective January 1, 2022.

<sup>64</sup> 12 CFR 702.2 (effective Jan. 1, 2022).

<sup>65</sup> 86 FR 34924 (July 1, 2021).

<sup>66</sup> 12 CFR 702.2 (effective Jan. 1, 2022).

raised in Question 9, the Board could consider alternative definitions of capital, for example, the risk-based capital numerator, such that Subordinated Debt is included as capital for purposes of the CCULR framework. However, the Board notes that the risk-based capital numerator also includes deductions that are not included in the definition of net worth.

*Question 9:* What are the advantages and disadvantages of using the net worth ratio as the measure of capital adequacy under the CCULR? Should the Board consider alternative measures for the CCULR? Instead of the existing net worth definition, the proposed rule could use the risk-based capital ratio numerator from the 2015 Final Rule. The Board could also consider drafting a new numerator for purposes of the CCULR. For example, the Board could use net worth as the basic framework for the CCULR numerator, but then make additional deductions.

#### D. Calibration of the CCULR

Under the proposal, a qualifying complex credit union may opt into the CCULR framework if it meets the minimum CCULR at the time of opting into the CCULR framework. A qualifying complex credit union opting into the CCULR framework that maintains the minimum ratio or higher would be considered well capitalized.

Commenters to the ANPR, recommended a wide range for the minimum amount of capital necessary for the CCULR framework. Some commenters stated the CCULR should be no greater than eight percent. One commenter supported eight percent by referring to a 2020 Federal Deposit Insurance Corporation (FDIC) survey. The commenter stated that the FDIC's 2020 study of the CBLR found that under the nine percent leverage ratio, only three percent of banks would see their capital buffers shrink by taking the CBLR option. The commenter stated that for credit unions, a comparable measure of capital relief would be accomplished with a leverage ratio set between eight and 8.5 percent. Other commenters, including a banking trade organization, said nine percent should be the minimum (the CBLR is set at nine percent). One commenter recommended 11 percent, which is 400 basis points above the well capitalized leverage ratio (the CBLR is set 400 basis points above the other banking agencies' well-capitalized leverage ratio). A commenter also recommended a reduced calibration due to accelerated asset growth in the last year.

In proposing 10 percent as the fully phased-in well-capitalized ratio

requirement for qualifying complex credit unions, the Board considered several factors. The proposed calibration of the CCULR, in conjunction with the qualifying criteria, seeks to strike a balance among several objectives, including maintaining strong capital levels in the credit union system, ensuring safety and soundness, and providing appropriate regulatory burden relief to as many credit unions as possible. The CCULR framework is designed to generally require credit unions to hold more capital than would be required for a credit union under the 2015 Final Rule. The Board also considered aggregate levels of capital among complex credit unions. The CCULR framework would not result in a reduction of the minimum amount of capital held by complex credit unions and would likely result in an overall increase in minimum amount of required capital held by complex credit unions. Additional data on capital levels under the proposed rule are discussed below.

The Board also considered comparability to the other banking agencies' CBLR framework, which established a CBLR of nine percent (that is, if an insured bank has a CBLR of nine percent it is considered well capitalized). As discussed previously, the EGRRCPA mandates a higher capital requirement to qualify for the CBLR framework than the five percent leverage ratio required for well-capitalized status under the other banking agencies' capital regulations.<sup>71</sup> Specifically, the EGRRCPA requires that the CBLR be not less than eight percent and not more than 10 percent for qualifying community banks.<sup>72</sup> This statutory requirement calibrates the CBLR to maintain the overall amount of capital currently held by qualifying community banking organizations.<sup>73</sup> The NCUA is not subject to the statutory requirement of not less than eight percent and not more than 10 percent; however, the Board considers the congressional directive as an important reference point in considering a comparable CCULR framework.

The 8 to 10 percent range established by Congress for the CBLR is 300 to 500 basis points higher than the five percent leverage ratio required for well-capitalized status under the other banking agencies' PCA framework. Insured banks and credit unions, however, have different minimum requirements under their PCA

frameworks. Insured banks must maintain a leverage ratio of five percent to be considered well capitalized, whereas insured credit unions are statutorily required to have a seven percent net worth ratio to be considered well capitalized. Therefore, a similar 300 to 500 basis points range would equate to a CCULR of 10 to 12 percent for credit unions.

The Board notes that one of the underlying reasons for the higher statutory net worth requirement may no longer be as relevant given changes in the credit union industry since CUMAA was enacted over 20 years ago. When CUMAA was enacted in 1998, Congress determined that a higher net worth ratio was appropriate because credit unions cannot quickly issue capital stock to raise their net worth as soon as a financial need arises.<sup>74</sup> Instead, credit unions must rely on retained earnings to build net worth, which necessarily takes time. In addition, according to the 2001 Treasury Report, issued pursuant to CUMAA on the NCUA's compliance with the statute, Congress established a capital level two percentage points higher because one percent of a credit union's capital is dedicated to the NCUSIF and another one percent of a typical credit union's capital is dedicated to its corporate credit union.<sup>75</sup> In 1998, most credit unions had at least .5 percent of their assets in corporate credit unions.<sup>76</sup> That is no longer true. Today, a significant amount of complex credit unions have less than 0.25 percent of their capital invested in corporate credit unions.<sup>77</sup> Furthermore, the aggregate total capital complex credit unions have dedicated to corporate credit unions, through nonperpetual capital and perpetual contributed capital, is just under 0.04 percent of complex credit union assets. Due to the reduction of concentration in corporate credit union capital, the Board

<sup>74</sup> The Department of the Treasury, Comparing Credit Unions With Other Depository Institutions, p. 11 (Jan. 2001) (2001 Treasury Report).

<sup>75</sup> *Id.*

<sup>76</sup> Note, 6,874 of 10,972 credit unions had more than 0.5 percent of assets in Membership Capital Share Deposit and Paid-In Capital of Corporate Credit Unions as of December 1998. The Board also notes that an FCU is permitted to invest up to two percent of its assets in the perpetual and nonperpetual capital in one corporate credit union. An FCU's aggregate amount of contributed capital in all corporate credit unions is limited to four percent of assets. Therefore, it is possible that in the future credit union investments in corporate credit unions exceeds the current investment amounts. See 12 CFR 703.14(b).

<sup>77</sup> 616 of 649 complex credit unions have less than 0.25 percent of assets in nonperpetual capital and perpetual contributed capital as of December 2020.

<sup>71</sup> 12 CFR 6.4 (OCC), 12 CFR 208.43 (Federal Reserve Board), and 12 CFR 324.403 (FDIC).

<sup>72</sup> *Supra* note 11.

<sup>73</sup> *Supra* note 12, at 61778.

initially considered a potential ratio for the CCULR of 9 to 11 percent.

When considering the appropriate calibration for the proposed CCULR, the Board intended to strike a balance between strong capital levels and providing appropriate regulatory burden relief. To that end, the Board analyzed the potential impact in terms of safety and soundness and burden reduction for potential CCULRs of 9 and 10 percent.

- The Board estimates that as of December 31, 2020, the majority of complex credit unions would constitute qualifying complex credit unions and would meet a proposed CCULR well capitalized standard of nine percent. Based on reported data, approximately 73 percent of complex credit unions would qualify to use the CCULR framework and be well capitalized under a nine percent calibration. Of the 649 complex credit unions, 472 have net worth greater than nine percent as of December 31, 2020, and would be well capitalized under a nine percent CCULR standard. Of those 472 credit unions, it is estimated that two credit unions would not meet the proposed qualifying criteria, and thus would not be eligible to opt into the CCULR. The total minimum capital required for these 470 credit unions under the 2015 Final Rule to be well capitalized is estimated at \$82 billion. Under the proposed CCULR, if all estimated 470 credit unions opted into the CCULR and held the minimum nine percent to be well capitalized, the total minimum net worth required would be estimated at \$104.6 billion, an increased capital requirement of \$22 billion.

- Based on reported data as of December 31, 2020, approximately 48 percent of complex credit unions would qualify to use the CCULR framework and be well capitalized under a 10 percent calibration. Of the 649 complex credit unions, 313 have net worth greater than 10 percent as of December 31, 2020, and would be well capitalized under a 10 percent CCULR standard. Of those 313 credit unions, it is estimated that one credit union would not meet the proposed qualifying criteria, and thus would not be eligible to opt into the CCULR framework. The total minimum capital required for those 312 credit unions under the 2015 Final Rule to be well capitalized is estimated at \$57.5 billion. Under the proposed CCULR, if all estimated 312 credit unions opted into the CCULR and held the minimum 10 percent net worth required to be well capitalized, the total minimum net worth required would be estimated at \$81.7 billion, and increased capital requirement of \$24 billion.

A nine percent CCULR would allow more credit unions to opt into the CCULR framework but could incentivize some qualifying complex credit unions to hold less regulatory capital than they do today. In contrast, a 10 percent well-capitalized standard would ensure strong capital levels and more certainty that qualifying complex credit unions are holding greater levels of capital than under the 2015 Final Rule. The Board has proposed a 10 percent well-capitalized threshold for the CCULR framework. A 10 percent well-capitalized standard for the CCULR would be 300 basis points above the well-capitalized threshold for the net worth ratio, and 400 basis points above a six percent well-capitalized standard for the net worth ratio when considering credit unions decreased holdings in corporate credit unions. In addition, a 10 percent well-capitalized threshold for the CCULR would be 100 basis points higher than the nine percent threshold established by the other banking agencies for the CBLR. As discussed previously, the total minimum capital required to be well capitalized under the 2015 Final Rule is \$57.5 billion for credit unions that also meet the CCULR qualifying criteria and would be well capitalized under a 10 percent calibration for the CCULR. If all those credit unions meeting the qualifying criteria opted into the CCULR and held the minimum 10 percent net worth required to be well capitalized, the total minimum net worth required would be estimated at \$81.6 billion. This figure is approximately \$24.2 billion in excess of the risk-based capital requirement under the 2015 Final Rule. The Board believes that the proposed 10 percent CCULR requirement strikes the right balance between maintaining strong capital levels and providing a simpler option to comply with risk-based capital requirements.

*Question 10:* The Board invites comment on the proposed CCULR calibration. What are the advantages and disadvantages to the Board considering a CCULR of 8, 9 or 10 percent? Should the Board consider further modifications to its methodology in calibrating the CCULR? What other factors should the Board consider in calibrating the CCULR and why? The Board requests that commenters include a discussion of how the proposed CCULR level should be affected by potential changes to other aspects of the proposed framework, such as the definition of CCULR and the definition of a qualifying complex credit union.

*Question 11:* One factor in the Board's calibration of the CCULR is the recent

trend in credit unions investing in fewer corporate credit union capital instruments. The Board is soliciting comment on whether the trend is likely to continue or whether it is likely that the trend is temporary and in response to the 2007–2009 recession.

#### *E. Opting Into the CCULR Framework*

Under the proposal, a qualifying complex credit union with a CCULR of 10 percent or greater, subject to the transition provisions, may opt into the CCULR framework at the end of each calendar quarter. Similar to the other banking agencies' CBLR framework, a qualifying complex credit union may only opt into the CCULR framework if it would be well capitalized. Requiring credit unions to be at least be well capitalized when they opt into the framework would ensure that complex credit unions that do not meet the minimum CCULR are reporting capital under the 2015 Final Rule, which is a more risk-sensitive measure of capital adequacy. A qualifying complex credit union choosing to opt into the CCULR would indicate its decision by completing a CCULR reporting schedule in its Call Report.

*Question 12:* The Board invites comment on the proposed procedure a qualifying complex credit union would use to opt into the CCULR framework. What are commenters' views on the frequency with which a qualifying complex credit union may opt into the CCULR framework? What other alternatives should the Board consider for purposes of qualifying complex credit unions' opt in elections to use and report the CCULR and why?

#### *F. Voluntarily Opting Out of the CCULR Framework*

Under the proposal, after a qualifying complex credit union has adopted the CCULR framework, it may voluntarily opt out of the framework by providing written notice to the appropriate Regional Director or the Director of the Office of National Examinations and Supervision (ONES). The notice must be provided at least 30 days before the end of the calendar quarter that the credit union will begin reporting its risk-based capital ratio.

The notice must include several items:

- A statement of intent explaining why the qualifying complex credit union is opting out of the CCULR framework.
- A copy of board meeting minutes showing that the credit union's board of directors was notified of the opt out election.

- The calendar quarter that the qualifying complex credit union will begin calculating its risk-based capital ratio. The earliest a complex credit union may begin calculating its risk-based capital ratio is the calendar quarter that the credit union submits its notification.

- A completed Call Report schedule as if the complex credit union had calculated its risk-based capital ratio the prior quarter. For example, if a credit union seeks to begin using a risk-based capital ratio in the second quarter, it would have to provide notice to the appropriate Regional Director or the Director of the ONES by June 1st and would have to include a Call Report with data as of March 31st.

Under the other banking agencies' CBLR framework, qualifying complex credit unions that have opted into the CBLR may opt out of the framework at any time. In addition, commenters to the ANPR generally favored allowing credit unions to liberally opt into and out of the CCULR framework. The Board believes, however, that qualifying complex credit unions should not opt out of the CCULR framework at any time because, in contrast to qualifying community banking organizations, qualifying complex credit unions are not currently calculating risk-based capital under the 2015 Final Rule.

The Board notes that qualifying community banking organizations had been complying with their revised risk-based capital requirements for several years when the CBLR was implemented.<sup>78</sup> Banking organizations had systems and processes in place to implement risk-based capital, staff had acquired experience calculating their capital ratios under risk-based capital, and qualifying complex banking organizations had been examined for compliance with risk-based capital standards. In contrast, complex credit unions will be subject to the risk-based capital ratio requirement established in the 2015 Final Rule for the first time when they are eligible to opt into the CCULR framework. It is likely that a qualifying complex credit union opting out of the CCULR framework would not have any experience calculating a risk-based capital ratio under the 2015 Final Rule.

The Board does not believe it is prudent to allow qualifying complex credit unions opting out of the CCULR framework the same flexibility as provided to qualifying community banking organizations under the CBLR. Instead, the Board believes a qualifying complex credit union opting out of the

CCULR framework should notify the NCUA of its intentions to begin calculating a risk-based capital ratio. Following notification to the NCUA, the NCUA may, through the supervisory process, monitor whether the credit union has acquired the necessary systems and processes to be capable of calculating and reporting its risk-based capital ratio accurately.

*Question 13:* The Board invites comment on the proposed procedure a complex credit union would use to opt out of the CCULR framework. What are commenters' views on the frequency with which qualifying complex credit unions may opt out of the CCULR framework? Do qualifying complex credit unions anticipate frequent switching between the CCULR framework and the risk-based capital requirements, and if so, why? What are the operational or other challenges associated with switching between frameworks?

#### *G. Compliance With the Proposed Criteria To Be a Qualifying Complex Credit Union*

Under the proposal, after a qualifying complex credit union has adopted the CCULR framework and then no longer meets the proposed qualifying criteria, it would be required, within a limited grace period of two calendar quarters, either to once again meet the qualifying criteria or comply with the risk-based capital ratio requirements. The grace period would begin at the end of the calendar quarter in which the credit union ceases to satisfy the criteria to be a qualifying complex credit union and would end after two consecutive calendar quarters. For example, if the complex credit union exceeded one of the qualifying criteria after December 31st (and still does not meet the criteria as of the end of that quarter), the grace period for such a credit union would begin at the quarter ending March 31st and would end at the quarter ending September 30th. The complex credit union could continue to use the CCULR framework as of June 30th, but would need to fully comply with the risk-based capital ratio (including the associated reporting requirements) as of September 30th, unless at that time the qualifying complex credit union again met the qualifying criteria of the CCULR framework. The Board believes that this limited grace period is appropriate to mitigate potential volatility in capital and associated regulatory reporting requirements based on temporary changes in a credit union's risk profile from quarter to quarter, while capturing more permanent changes in risk profile.

During the grace period, the credit union continues to be treated as a qualifying complex credit union and must continue calculating and reporting its CCULR, unless it has opted out of using the CCULR framework.

Additionally, during the grace period, the qualifying complex credit union continues to be considered to have met the capital ratio requirements for the well-capitalized capital category. However, if the qualifying complex credit union has a CCULR of less than seven percent, it would not be considered well capitalized. Instead, its capital classification would be determined by its net worth ratio. For additional discussion on the treatment of a qualifying complex credit union when its CCULR falls below 10 percent, see Section H—*Treatment of a Qualifying Complex Credit Union That Falls Below the CCULR Requirement*.

The two-quarter grace period is similar to the other banking agencies' CBLR framework. However, unlike the CBLR framework, under the proposed rule, a qualifying complex credit union that is likely to not meet the requirements to be a qualifying complex credit union by the end of the grace period must submit written notification to the appropriate Regional Director or the Director of the ONES. The notification must be submitted at least 30 days before the end of the grace period and state that the credit union may cease to meet the requirements to be a qualifying complex credit union. The Board believes it is necessary to receive notice in case the complex credit union begins calculating a risk-based capital ratio. As discussed previously, qualifying complex credit unions initially opting into the CCULR would not likely have calculated a risk-based capital ratio under the 2015 Final Rule. Therefore, the notice would provide the NCUA the option, through the supervisory process, to monitor whether the appropriate systems and processes are being developed to calculate a risk-based capital ratio.

The Board acknowledges that a credit union may believe it is reasonably likely to meet the qualifying criteria, and not submit a notice, and then be subject to risk-based capital requirements at the end of the quarter for failure to comply with qualifying criteria. The Board is providing credit unions flexibility with notice requirements as a form of burden reduction. It would be unnecessary for every credit union to file notice during the grace period, as some credit unions will be certain of their compliance with the qualifying criteria. For such credit unions, completing the required notification would be an unnecessary

<sup>78</sup> *Supra* note 3.

burden. The Board believes that it would be rare for a credit union to not provide the notice when required. The notice would be submitted only 30 days before the end of the grace period and a credit union that is being prudently managed should be able to accurately predict whether it would be likely to meet the qualifying criteria. The Board believes that if a credit union does not provide the required notice, it raises supervisory concerns and the credit union may be subject to a lower management rating as a result.

The notification would be similar to the notification required for credit unions voluntarily opting out of the CCULR framework. First, the notification must provide the reason for the potential disqualification. The notification would also be required to include a copy of the board meeting minutes showing that the credit union's board of directors was notified that the credit union might cease to meet the qualifying complex credit union requirements. Finally, the notification also would be required to include a Call Report schedule completed as if the credit union calculated its risk-based capital ratio the previous calendar quarter.

Under the CBLR Final Rule, a qualifying community banking organization that ceases to meet the qualifying criteria as a result of a business combination is not provided a grace period. The proposed rule would include a similar limitation. Therefore, under the proposed rule a qualifying complex credit union that has opted into the CCULR framework and that ceases to meet the qualifying criteria as a result of a business combination would receive no grace period and would be required to revert to a risk-based capital framework immediately. The Board believes this approach is appropriate, as complex credit unions should consider the regulatory capital implications of a planned business combination and be prepared to comply with the applicable requirements. Therefore, a qualifying complex credit union that would not meet the qualifying criteria as a result of a business combination must fully comply with the 2015 Final Rule for the regulatory reporting period during which the transaction is completed.

*Question 14:* The Board invites comment on the proposed treatment for a complex credit union that no longer meets the definition of a qualifying complex credit union after opting into the CCULR framework. Specifically, what are the advantages and disadvantages of the proposed grace period? What other alternatives should

the Board consider with respect to a complex credit union that no longer meets the definition of a qualifying complex credit union and why? Should the Board consider requiring complex credit unions that no longer meet the qualifying criteria to begin to immediately calculate their assets according to the risk-based capital ratio? Is notification that a credit union will not meet the qualifying criteria necessary? Should the Board consider a grace period for previously qualified credit unions that have opted into the CCULR framework if after a business combination the credit union no longer qualified as of the next reporting period? Should the Board consider alternative notification requirements or consider not requiring any notification at all?

#### *H. Treatment of a Qualifying Complex Credit Union That Falls Below the CCULR Requirement*

As discussed previously, under the proposal, a qualifying complex credit union that has opted into the CCULR framework and has a CCULR of 10 percent or greater, subject to the transition provisions, would be considered well capitalized. A qualifying complex credit union's CCULR may deteriorate due to a decline in its level of retained earnings, growth in its total assets, or a combination of both. In such a case, a credit union may choose to stop using the CCULR framework and instead become subject to the risk-based capital ratio. However, the Board recognizes that some qualifying complex credit unions may find it unduly burdensome to begin complying with the more complex risk-based capital ratio reporting requirements at the same time that the credit union is experiencing a decline in its CCULR.

Under the proposed rule, a minimum CCULR (10 percent after the transition period) is one of the qualifying criteria. Therefore, if a qualifying complex credit union has a CCULR that falls below the minimum requirement, it would receive the same grace period of two calendar quarters, as applicable when a credit union ceases to meet the other qualifying criteria. After the two-quarter grace period, the qualifying complex credit union would either have to once again meet the minimum CCULR ratio or comply with the risk-based capital ratio requirements. During the grace period, the credit union would be deemed to have met the well-capitalized capital ratio requirements for PCA purposes, provided that its net worth ratio remains seven percent or greater.

If a credit union's net worth ratio falls below seven percent, it will not be considered to have met the capital ratio requirements for the well-capitalized capital category and its capital classification is determined by its net worth ratio. A credit union that becomes less than well capitalized during the two-quarter grace period would not be required to begin calculating its capital under the 2015 Final Rule immediately. Instead, the credit union would still be eligible for the full two-quarter grace period; however, it would be subject to any applicable PCA requirements for its capital category.

Under the other banking agencies' CBLR framework, an electing banking organization with a leverage ratio of eight percent or less is not eligible for the grace period and must comply with the generally applicable rule, that is, for the quarter in which the banking organization reports a leverage ratio of eight percent or less. An electing banking organization experiencing or anticipating such an event would be expected to notify its primary federal supervisory agency, which would respond as appropriate to the circumstances of the banking organization.<sup>79</sup> The Board believes that it would be unduly burdensome to require complex credit unions to immediately begin calculating their capital under the 2015 Final Rule.

As discussed previously, credit unions have not previously been subject to the 2015 Final Rule. The Board believes it is reasonable to provide complex credit unions the full two-quarter grace period regardless of their CCULR as the 2015 Final Rule would be a new system of capital adequacy and would require an adjustment for the complex credit union. The Board does not believe permitting two quarters to comply with the qualifying criteria or to begin calculating capital under the 2015 Final Rule presents unreasonable risk to the NCUSIF.

*Question 15:* What are the advantages and disadvantages of permitting a two-quarter grace period? Should the Board consider including the CCULR in the PCA framework similar to the other banking agencies' CBLR proposed rule? To what extent does the calibration of the CCULR relate to the Board's choice between including the CCULR into the PCA framework versus relying on a grace period when a credit union's CCULR falls below 10 percent?

#### *I. Transition Provision*

In light of strains in economic conditions related to the COVID-19

<sup>79</sup> *Supra* note 12.

pandemic and stress in U.S. financial markets, the NCUA has taken a number of actions intended to: (i) Restore market functioning and support the flow of credit to households, businesses, and Communities; and (ii) increase flexibility and tailor regulations.

Among those actions, the NCUA has communicated a number of rules and supervisory guidance designed to mitigate the economic consequences of the COVID-19 pandemic, facilitate the safe and effective operations of credit unions, and protect credit union members.<sup>80</sup> Credit unions have played an instrumental role in the nation's financial response to the COVID-19 pandemic, and many have experienced significant balance sheet growth because of the COVID-19 pandemic and the policy response to the event.

The unprecedented and significant balance sheet growth is largely a result of individual member response to actions taken by monetary and fiscal authorities. At the start of the COVID-19 pandemic, consumer spending decreased as individual states or major metropolitan areas ordered millions of Americans to stay home. Additionally, market volatility pushed savers with money in financial markets to safer assets, including insured shares. Fiscal stimulus applied additional upward pressure on credit union total assets.

The Board is aware that the unprecedented balance sheet growth has resulted in declining net worth ratios for most complex credit unions. To help mitigate the impact of this unprecedented balance sheet growth, the Board is proposing a two-year transition provision to delay the introduction of a 10 percent CCULR. This two-year phase would permit complex credit unions time to increase their net worth ratios.

Under the proposed rule, from January 1, 2022, to December 31, 2022, a complex credit union may opt into the CCULR framework if it has a net worth ratio of nine percent or greater. Therefore, a qualifying complex credit union that opts into the CCULR framework and that maintains a nine percent CCULR would be considered well capitalized. Beginning January 1, 2023, a complex credit union that has opted into the CCULR framework must have a CCULR of 9.5 percent or greater to meet the eligibility criteria. Finally, beginning January 1, 2024, a complex credit union must have a CCULR of 10 percent or greater to be eligible to determine their capital adequacy under the CCULR framework. Once an eligible credit union opts into the CCULR

framework it would be eligible to use the two-quarter grace period, as discussed in section G. *Compliance With the Proposed Criteria To Be a Qualifying Complex Credit Union*. Therefore, if a credit union has a CCULR of nine percent when it opts into the CCULR framework on March 31, 2022, but does not have a CCULR of 9.5 percent on March 31, 2023, the credit union would have until September 30th to either have a CCULR of 9.5 percent or determine their capital adequacy under the risk-based capital framework.

As discussed previously, the temporary changes to the CBLR framework implemented through the CARES Act expired December 31, 2021.<sup>81</sup> Therefore, the temporary reduction in the CBLR to eight percent (and 8.5 percent in calendar year 2021) will not be in effect when the 2015 Final Rule becomes effective. The Board, however, believes that due to credit unions' unique structure and dependence on retained earnings to accumulate capital, additional time to accumulate capital will be beneficial to complex credit unions. The Board believes that the CCULR framework is beneficial to complex credit unions due to the reduced compliance costs for managing and documenting risk-based capital standards, and to the NCUSIF as complex credit unions that opt into the CCULR framework will be required to hold higher capital levels under the CCULR framework than the risk-based capital framework. The Board does not want complex credit unions that would have otherwise been eligible to opt into a CCULR framework calibrated at 10 percent to be temporarily ineligible due to unexpected asset growth following the COVID-19 pandemic. The Board believes two years is sufficient time for complex credit unions that want to opt into the CCULR framework to build the necessary capital.

*Question 16:* What are the advantages and disadvantages of the transition provision starting at nine percent and permitting a transition period to a CCULR of 10 percent? Should the Board consider a transition period longer or shorter than two years? If suggesting a longer transition period, such as four years, discuss the merits of a longer phase-in and why the additional time over two years would be needed. Please provide specific data.

#### J. Reservation of Authority

In general, a complex credit union that meets the eligibility criteria may opt into the CCULR framework.

However, there may be limited instances in which the CCULR framework would be inappropriate and not require sufficient capital to adequately protect the NCUSIF. To address such situations, the proposed rule includes a reservation of authority. Under the reservation of authority, the Board can require a complex credit union that has opted into the CCULR framework to use the risk-based capital framework to calculate its capital adequacy if the Board determines that the complex credit union's capital requirements are not commensurate with its credit or other risks. When making any such determination, the Board would consider all relevant factors affecting the complex credit union's safety and soundness.

The Board expects to apply the reservation of authority only in limited circumstances. Under the reservation of authority, credit unions would be entitled to a two-quarter grace period before being required to comply with the risk-based capital framework. The other banking agencies also have reserved the authority to disallow the use of the CBLR framework by a depository institution or depository institution holding company, based on the risk profile of the banking organization.

*Question 17:* The Board invites general comment on the reservation of authority in the proposed rule. Should the Board consider a reservation of authority that applies to the risk-based capital rule? Should the Board consider a general waiver provision or consider including a statement that assets can be provided a more conservative risk weight than provided in the proposed rule? Should the Board consider adopting notice and response procedures to be used in determining whether the reservation of authority should be used?

#### K. Effect of the CCULR on Other Regulations

##### 1. Member Business Loan Cap

Section 107A of the FCUA generally limits the aggregate amount of member business loans (MBLs) that an insured credit union may make, subject to exceptions for some categories of loans, such as loans granted by a corporate credit union to another credit union.<sup>82</sup> In addition, the FCUA exempts certain credit unions from compliance with the aggregate MBL limit. Specifically, an insured credit union chartered for the purpose of making MBLs, or that has a history of making MBLs to its members,

<sup>80</sup> See, e.g., 86 FR 15397 (Mar. 23, 2021).

<sup>81</sup> Coronavirus Aid, Relief, and Economic Security Act, Public Law 116-136, 134 Stat. 281.

<sup>82</sup> 12 U.S.C. 1757a(c)(1)(B).

as determined by the Board, is not subject to the aggregate MBL limit.<sup>83</sup> Also, an insured credit union that serves predominantly low-income members, as defined by the Board, or is a community development financial institution, as defined in 12 U.S.C. 4702, is also not subject to the aggregate MBL limit.<sup>84</sup>

An insured credit union that is subject to the aggregate MBL limit may not make an MBL that would result in the total amount of outstanding MBLs at the credit union being more than the lesser of 1.75 times the actual net worth of the credit union or 1.75 times the minimum net worth required for a credit union to be well capitalized under section 216(c)(1)(A) of the FCUA.<sup>85</sup> Section 107A defines net worth for purposes of that section, providing that it includes the retained earnings balance, as determined under GAAP. Net worth under this section also includes, for credit unions that serve predominantly low-income members (which the Board defines as low-income designated credit unions), secondary capital accounts that are uninsured and subordinate to all other claims against the credit union, including the claims of creditors, shareholders, and the NCUSIF.<sup>86</sup>

For credit unions that are not complex and therefore are not subject to a risk-based net worth requirement under section 216(d) of the FCUA, MBLs are limited to 1.75 times the net worth required for the credit union to meet the seven percent net worth ratio under section 216(c)(1)(A)(i) (assuming the credit union's actual net worth is greater than the minimum required to be well capitalized). To determine its maximum allowable outstanding balance of MBLs, a credit union multiplies 1.75 by seven percent of its total assets.

Until 2016, the Board calculated the MBL limitation in the same manner for complex credit unions that are subject to a risk-based net worth requirement

under section 216(d) without considering any greater amount of net worth that a complex credit union might need to hold to be well capitalized under a risk-based net worth requirement.<sup>87</sup> However, in the 2015 proposed rule on MBLs, the Board proposed to amend the MBL regulation to incorporate section 107A more faithfully and noted that complex credit unions could have a different limitation caused by the need to hold more net worth under a risk-based requirement.<sup>88</sup> The preamble to the 2016 final rule on MBLs and commercial loans analyzed this issue in response to comments on the rule and explained that under the 2015 Final Rule on risk-based capital, the MBL limitation would be calculated in the following manner. The preamble to the 2016 final rule stated that where actual net worth is greater than the minimum to be well capitalized, the limit on MBLs is 1.75 times the greater of the following calculations: (i) The minimum amount of capital (in dollars) required by the net worth ratio, which is seven percent times total assets; and (ii) the minimum amount of capital (in dollars) required by the risk based capital ratio, which is 10 percent times total risk-weighted assets. Then, the credit union must solve for the minimum amount of net worth needed after accounting for other forms of qualifying capital allowed under the 2015 Final Rule.<sup>89</sup>

Therefore, a complex credit union subject to a risk-based capital requirement under the 2015 Final Rule would have to calculate the minimum amount of net worth required by both its net worth ratio and risk-based capital requirement. First, the net worth ratio requires a complex credit union to hold net worth (in dollars) equal to seven percent of its total assets. Second, for purposes of computing the MBL cap,<sup>90</sup> the risk-based capital ratio requires a complex credit union to hold net worth (in dollars) equal to 10 percent of the credit union's risk-weighted assets, as calculated under § 702.104. The complex credit union would then

compare the two net worth amounts as calculated in the preceding discussion. The credit union would take the larger of the two net worth amounts, which is the minimum amount of net worth necessary to be well capitalized under either the net worth ratio or the risk-based capital ratio, and compare that to actual net worth. The lesser of these two net worth amounts is used to compute the complex credit union's MBL cap, which would be 1.75 times the lesser of these two net worth amounts. While the 2015 Final Rule is not yet effective, the agency currently implements this approach for the small number of complex credit unions that are required to hold more net worth under the current risk-based net worth requirement than the net worth ratio.

The Board continues to find that this approach reflects the correct reading of sections 107A and 216 and re-affirms this interpretation over any prior interpretation that disregarded the risk-based net worth requirement for this purpose.<sup>91</sup> For complex credit unions, the amount to be well capitalized under section 216(c)(1)(A) is seven percent of total assets (the net worth ratio) or the amount required by the risk-based net worth requirement (which could be either the risk-based capital ratio under the 2015 Final Rule or the proposed CCULR framework). A complex credit union must satisfy both of these requirements to be well capitalized under section 216(c)(1)(A), which means that, in section 107A's terms, the minimum net worth required to be well capitalized is the higher of the amount required by the net worth ratio or the risk-based net worth requirement. The Board finds this is a clear, plain language reading of both provisions. Section 107A(a) points to section 216(c)(1)(A) to determine the minimum net worth required, and in turn, section 216(c)(1)(A) includes both the seven percent net worth ratio and the net worth required by any applicable risk-based net worth requirement, for complex credit unions. Reading section 107A(a) to exclude the net worth required for complex credit unions under section 216(c)(1)(A)(ii) would ignore a key component of the plain language of section 216(c)(1)(A) and inappropriately treat it as surplusage.

The Board also finds that even if sections 107A and 216(c)(1)(A) were considered ambiguous or unclear, it would interpret them in the same way. For instance, the Board observes two key textual indicators that Congress did

<sup>83</sup> 12 U.S.C. 1757a(b)(1).

<sup>84</sup> 12 U.S.C. 1575a(b)(2).

<sup>85</sup> 12 U.S.C. 1757a(a).

<sup>86</sup> This definition does not expressly cover two elements that were added to the definition of net worth in section 216(o)(2) for PCA purposes in a 2011 enactment: (1) Amounts that were previously retained earnings of any other credit union with which the insured credit union has combined; and (2) assistance that the Board has provided under Section 208. Public Law 111-382, 124 Stat. 4135 (Jan. 4, 2011). In the 2016 MBL final rule, the Board included these elements in net worth for purposes of the MBL limitation by defining net worth in the MBL regulation through a cross-reference to the current part 702 definition of net worth, which includes all the elements in section 216(o)(2). The 2015 Final Rule amended the definition of net worth in part 702 effective January 1, 2022, but did not add or remove any of the components of net worth in the current regulation.

<sup>87</sup> Prior to amendments that the Board adopted in the 2016, the MBL regulation limited MBLs to 12.25 percent of an insured credit union's total assets—1.75 times the seven percent net worth ratio.

<sup>88</sup> 80 FR 37898, 37909 (July 1, 2015).

<sup>89</sup> 81 FR 13530, 13548 (Mar. 14, 2016).

<sup>90</sup> The Board notes that the amount of capital a complex credit union needs to be well capitalized under the 2015 Final Rule for PCA purposes is a different calculation than the amount of net worth required to be well capitalized for purposes of the MBL cap. The reason is the 2015 Final Rule permits complex credit unions to include several forms of capital for purposes of determining its PCA status that do not meet the statutory definition of net worth. The MBL cap, however, is limited by statute to net worth.

<sup>91</sup> Therefore, the current language in part 723 remains valid, and the Board is not proposing any changes to part 723 at this time.



not intend to limit this calculation to the seven percent net worth ratio. First, section 107A was enacted in the same legislation as section 216. Thus, Congress was aware that section 216(c)(1)(A) set a seven percent net worth ratio to be well capitalized. Yet in section 107A(a), rather than specifying that the MBL limitation is determined by the amount of net worth required to achieve a seven percent net worth ratio, Congress provided more broadly that the limitation is determined by reference to the minimum net worth required under section 216(c)(1)(A). Second, Congress could have limited this calculation to the seven percent net worth ratio by providing that the MBL limitation is determined by reference only to the minimum net worth required under section 216(c)(1)(A)(i), which would have excluded the risk-based net worth requirement. Instead, section 107A points to section 216(c)(1)(A), which encompasses both applicable net worth requirements for complex credit unions.

The Board acknowledges that the Senate Report associated with the legislation that enacted sections 107A and 216 refers to the MBL limitation as being based on the seven percent net worth ratio in a parenthetical statement. A statement by an individual Senator also refers to the limitation as being determined by the seven percent net worth ratio.<sup>92</sup> But this discussion in the Senate Report is brief and does not touch upon the risk-based net worth

requirement or explain how the Senate believed the MBL limitation should work for complex credit unions, which are subject to additional net worth requirements. In any event, this general discussion does not expressly contradict the language and structure of sections 107A and 216, which the Board finds to be better indicators of the meaning and purpose of these provisions.

Applying this approach to the proposed CCULR framework, the Board proposes that for qualifying complex credit unions opting into the CCULR framework, such credit unions may calculate a different limitation on MBLs from what they do currently under the seven percent net worth ratio. This is because, as discussed previously in the Legal Authority section, the CCULR is considered a risk-based net worth requirement, and thus falls under section 216(c)(1)(A)(ii) as a measure of the minimum net worth required to be well capitalized. Accordingly, under the proposed rule, a qualifying complex credit union that opts into the CCULR would determine its MBL limitation by reference to the amount of net worth required to be well capitalized under the CCULR. Complex credit unions that do not qualify or do not opt into the CCULR would determine their MBL limitation by reference to the 10 percent risk-based capital ratio, as described in the 2016 MBL final rule, quoted previously. In either scenario, if a complex credit union has actual net worth below those measures, its actual net worth would determine its MBL limitation.

## 2. Capital Adequacy

Under the 2015 Final Rule, a complex credit union must have a process for assessing its overall capital adequacy in relation to its risk profile and a comprehensive written strategy for maintaining an appropriate level of capital.<sup>93</sup> While a qualifying complex credit union opting into the CCULR framework, is required to have a comprehensive written strategy for maintaining an appropriate level of capital, such strategy may be straightforward and minimally state how the credit union intends to comply with the CCULR framework, including minimum capital requirements and qualifying criteria. In contrast, complex credit unions that do not opt into the CCULR framework will be required to have a more detailed written strategy. The NCUA intends to review the written strategies during the supervisory process.

### *L. Illustrative Reporting Forms To Support the CCULR*

The NCUA intends to separately seek comment on the proposed changes to the Call Report for complex, qualifying credit unions that elect to use the CCULR framework. Chart 1, provided below, is an example of what the CCULR election form may look like in the Call report. Details supporting lines 2 through 6 can be found in section B of this proposed rule.

<sup>92</sup> S. Rep. No. 105–193 (May 21, 1998), at 5, 10, 29.

<sup>93</sup> 12 CFR 702.101(b)(2) (effective Jan. 1, 2022).

Chart 1 – Complex Credit Union Leverage Ratio form

<b>SCHEDULE FC-R</b>			
<b>Complex Credit Union Leverage Ratio (CCULR)</b>			
<b>Input is required if your credit union is electing to opt into the Complex Credit Union Leverage Ratio (CCULR)</b>			
<b>Election</b>	<b>Election</b>		<b>Account</b>
1. Is your credit union opting into the Complex Credit Union Leverage Ratio for the current quarter? (See Instructions for qualifications)	(1= Yes, 0 = No)	Required Input	CCLR1
<b>Qualifications</b>			
2. CCULR Ratio (Account 998).....	Amount	Account	Percentage
3. Total Assets (Account 010).....	Auto-populated	CCLR3	Auto-populated
<b>Other Qualifying Criteria (see Instructions)</b>			
4. Off-Balance sheet exposures are 25% or less of Total Assets	Required Input	CCLR4	Auto-Calculation
5. Trading Assets and Trading liabilities are 5% or less of Total assets	Required Input	CCLR5	Auto-Calculation
6. Goodwill and Other Intangible Assets are 2% or less of Total Assets	Auto-populated	CCLR6	Auto-Calculation
			CCLR7
			CCLR8
			CCLR9

This form provides an indication of the potential reporting format and potential reporting burden relative to the regulatory requirements associated

with electing to use the CCULR framework. Similarly, in support of the off-balance sheet exposures qualifying criteria, Chart 2 provides an example of

what an off-balance sheet exposures Call Report form may look like. Details supporting this schedule are in section B and M of this proposed rule.

Chart 2 – Off-Balance Sheet Exposures Form

		<b>Column A</b>
		Face or Notional Amount
<b>Off-Balance Sheet Exposures</b>		
<b>All off-balance sheet exposures for risk based capital rule</b>	<b>Off-balance sheet exposure definition</b>	<b>Total Unfunded Commitments for all loan types</b>
		<b>Total Unconditionally Cancelable Unfunded Commitments for all loan types</b>
		1 <b>Conditionally Cancelable Unfunded Commitments:</b>
		A. Unfunded Commitment - Commercial loans
		B. Unfunded Commitment - Consumer Loans - Secured & Real Estate
		C. Unfunded Commitment - Consumer Loans - Unsecured
		2 <b>Loans transferred with limited recourse, or other seller-provided credit enhancements</b>
		A. Loans Transferred Limited Recourse - Commercial loans
		B. Loans Transferred Limited Recourse - Consumer Loans
		3 <b>Federal Home Loan Bank under the MPF program</b>
4 <b>Financial Standby Letter of Credits (813A2)</b>		
5 <b>Forward Agreements that are not derivative contracts</b>		
6 <b>Sold Credit Protection through</b>	A. Guarantees	
	B. Credit Derivatives	
7 <b>Off-balance-Sheet Securitization Exposures</b>		
8 <b>Securities Borrowing or Lending transactions</b>		
9 <b>Off-balance sheet exposure of repurchase transactions</b>		
10 <b>All other off-balance sheet exposures not specifically listed, but meet the definition of Commitments</b>		

This form provides an indication of the potential reporting format and reporting burden relative to the regulatory requirements associated with the proposed off-balance sheet exposures for the CCULR framework and the risk-based capital framework under the 2015 Final Rule.

#### *M. Amendments to the 2015 Final Rule*

The Board stated its intent to holistically and comprehensively reevaluate the NCUA's capital standards for credit unions in the 2019 Final Rule. A principal component of this review is the proposed CCULR framework. The Board also stated it would consider whether to make more substantive revisions to the 2015 Final Rule.<sup>94</sup> The Board has completed this analysis and is proposing several changes to the 2015 Final Rule. Each change is discussed below.

##### 1. Off-Balance Sheet Exposure Risk Weights

The 2015 Final Rule states that the risk-weighted amounts for all off-balance sheet items<sup>95</sup> are determined by multiplying the off-balance sheet exposure amount<sup>96</sup> by the appropriate credit conversion factor and the assigned risk weight. However, the definition of off-balance sheet items is not aligned with the definition of off-balance sheet exposure. Under the 2015 Final Rule, only commitments, loans transferred with limited recourse, and loans transferred under the FHLB mortgage partnership finance program are provided explicit exposure amounts. The rule is silent on the appropriate treatment for the remaining items included in the definition of off-balance sheet items (contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements). In addition, the 2015 Final Rule does not

include a credit conversion factor or risk weight for the off-balance sheet items that are not provided a specific exposure amount in the definition of off-balance sheet exposure.

The proposed rule would make several changes to clarify the treatment of off-balance sheet items. First, as discussed previously, the proposed rule would amend the definition of off-balance sheet exposures. This definition is used as one of the CCULR eligibility criteria and is proposed to be amended to more closely align with the other banking agencies' CBLR framework. As a consequence of amending the definition of off-balance sheet exposure for the CCULR framework, the proposed off-balance sheet exposure definition would also more closely align with the existing definition of off-balance sheet items.<sup>97</sup> Therefore, under the proposed rule, several items currently defined as an off-balance sheet item, but not included in the current definition of off-balance sheet exposure, would be provided an exposure amount. This change reduces ambiguity in the 2015 Final Rule. In addition, in the proposed rule, each item included in the definition of off-balance sheet exposure would be provided an explicit credit conversion factor and risk weight for purposes of the risk-based capital rule. Each proposed change to the risk-based capital rule is discussed in detail below.

The proposed rule would state that unconditionally cancellable commitments have a zero percent credit conversion factor. Therefore, any unconditionally cancellable commitment would be excluded from a credit union's risk-based capital calculation. Under the 2015 Final Rule, these exposures would receive a minimum of a 10 percent credit conversion factor and could receive up to a 50 percent credit conversion factor. The Board believes that many of credit unions' commitments would qualify as unconditionally cancellable and that credit unions are currently subject to a more conservative treatment for unfunded commitments than banking organizations. Therefore, the Board believes providing a zero percent conversion factor will not only make the 2015 Final Rule more comparable to the other banking agencies' 2013 capital rule but will also provide a significant burden reduction for credit unions

calculating their capital adequacy under the 2015 Final Rule.

The proposed rule would provide that financial standby letters of credit are given a 100 percent credit conversion factor. The 2015 Final Rule does not provide a credit conversion factor for financial standby letters of credit. Including an explicit 100 percent conversion factor would provide parity between the other banking agencies and the NCUA. The risk weight would be 100 percent.

For forward agreements that are not derivative contracts, the proposed rule would provide for a 100 percent credit conversion factor. The 2015 Final Rule does not provide a credit conversion factor for forward agreements that are not derivative contracts. Including an explicit 100 percent conversion factor would provide parity between the other banking agencies and the NCUA. The risk weight would be 100 percent.

For sold credit protection through guarantees and credit derivatives, the proposed rule would provide for a 100 percent credit conversion factor. The 2015 Final Rule does not provide a credit conversion factor for sold credit protection through guarantees or credit derivatives. The proposed rule would provide different risk weights for guarantees and credit derivatives. Guarantees would receive a 100 percent risk weight. For credit derivatives, the risk weight would be determined through the applicable provisions of FDIC's capital rules. A credit union offering credit protection through a credit derivative would risk weight the exposure according to 12 CFR 324.34 (for derivatives that are not cleared) or 324.35 (for derivatives that are cleared exposures).

The Board understands the proposed treatment of credit derivatives is complex and compliance with these requirements increases the regulatory burden for credit unions that offer credit protection through credit derivatives. However, credit derivatives are complex instruments. Furthermore, credit derivatives are not a permissible activity for FCUs and the Board believes that state-chartered credit unions should only offer credit derivatives if the credit union has the appropriate resources and capabilities to manage the complexity associated with them. The Board believes any credit union that has offered credit protection through credit derivatives should also be capable of complying with the complexity in the FDIC's capital rules. Therefore, the Board believes it is appropriate to reference the other banking agencies' 2013 capital rules when determining the

<sup>94</sup> 84 FR 68781, 68783 (Dec. 17, 2019).

<sup>95</sup> Off-balance sheet items are defined as items such as commitments, contingent items, guarantees, certain repo-style transactions, financial standby letters of credit, and forward agreements that are not included on the statement of financial condition, but are normally reported in the financial statement footnotes. 12 CFR 702.2 (effective Jan. 1, 2022).

<sup>96</sup> Off-balance sheet exposure means: (1) For loans transferred under the Federal Home Loan Bank mortgage partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance. (2) For all other loans transferred with limited recourse or other seller-provided credit enhancements and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance. (3) For unfunded commitments, the remaining unfunded portion of the contractual agreement. 12 CFR 702.2 (effective Jan. 1, 2022).

<sup>97</sup> The only item included in the current definition of off-balance sheet item that would not be provided an explicit exposure amount would be contingent items. However, as discussed below, the Board is proposing to amend the definition of off-balance sheet item and would no longer include contingent items.

appropriate risk weights for credit derivatives.

For off-balance sheet securitization exposures, the credit conversion factor would be 100 percent. The 2015 Final Rule does not currently provide a credit conversion factor for the off-balance sheet portion of securitization exposures. The risk weight would be determined as if the exposure is an on-balance sheet securitization exposure. Under the 2015 Final Rule, the risk weight for securitization exposures is dependent upon whether the exposure is a subordinated or non-subordinated tranche. Non-subordinated tranches can receive a 100 percent risk weight (credit unions also have the option to use the gross up approach).<sup>98</sup> In contrast, a subordinated tranche would receive a 1,250 percent risk weight (credit unions also have the option to use the gross-up approach).<sup>99</sup>

For securities borrowing or lending transactions, the proposed credit conversion factor would be 100 percent. The 2015 Final Rule does not provide a credit conversion factor for securities borrowing or lending transactions. Including an explicit 100 percent credit conversion factor would provide parity between the other banking agencies and the NCUA. Unlike the other banking agencies' rules, the proposed rule would include a risk weight of 100 percent for these transactions. The Board is aware this may be a more conservative risk weight than for securities borrowing and lending transactions under the other banking agencies' 2013 capital rule.

The Board is proposing a 100 percent risk weight for simplicity. However, a credit union may recognize the credit risk mitigation benefits of financial collateral by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37. Any collateral recognized would have to meet the definition of financial collateral under the other banking agencies 2013 capital rules.<sup>100</sup> The Board solicits comments

<sup>98</sup> 12 CFR 702.104(c)(2)(v)(B)(8) (effective Jan. 1, 2022).

<sup>99</sup> 12 CFR 702.104(c)(2)(x) (effective Jan. 1, 2022).

<sup>100</sup> See 12 CFR 324.2. Financial collateral means collateral: (1) In the form of: (i) Cash on deposit with the FDIC-supervised institution (including cash held for the FDIC-supervised institution by a third-party custodian or trustee); (ii) Gold bullion; (iii) Long-term debt securities that are not resecuritization exposures and that are investment grade; (iv) Short-term debt instruments that are not resecuritization exposures and that are investment grade; (v) Equity securities that are publicly traded; (vi) Convertible bonds that are publicly traded; or (vii) Money market fund shares and other mutual fund shares if a price for the shares is publicly quoted daily; and (2) In which the FDIC-supervised institution has a perfected, first-priority security interest or, outside of the United States, the legal

on whether referencing the other banking agencies' risk mitigation provisions introduces undue complexity. The Board understands that some credit unions engaged in securities lending and borrowing transactions would benefit from a lower risk weight, as provided by the other banking agencies' rules; however, the Board believes most credit unions do not engage in a substantial amount of securities lending and borrowing activities and therefore would benefit from a simple, although conservative, 100 percent risk weight.

The proposed rule would also include a specific credit conversion factor and risk weight for the off-balance sheet exposure amount of repurchase transactions.<sup>101</sup> Under the proposed rule, the off-balance sheet exposure amount for a repurchase transaction would equal all of the positions the credit union has sold or bought subject to repurchase or resale, which equals the sum of the current fair values of all such positions. The off-balance sheet exposure amounts of repurchase transactions are not provided a credit conversion factor under the 2015 Final Rule. The proposed rule would provide a 100 percent risk weight for the off-balance sheet exposure amounts of repurchase transactions. A credit union may recognize the credit risk mitigation benefits of financial collateral, as defined by 12 CFR 324.2, by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37.

The Board notes that repurchase transactions are not included in the definition of off-balance sheet exposure. This exclusion of repurchase transactions from the definition of off-balance sheet exposure is because the other banking agencies did not include repurchase transactions in their related measure of CBLR and the definition of off-balance sheet exposure is used for purposes of the CCULR eligibility criteria.<sup>102</sup>

Even though, for purposes of the CCULR framework, repurchase transactions are excluded from the off-

equivalent thereof (with the exception of cash on deposit; and notwithstanding the prior security interest of any custodial agent or any priority security interest granted to a CCP in connection with collateral posted to that CCP).

<sup>101</sup> Repurchase transactions would mean either a transaction in which a credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price or a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

<sup>102</sup> 12 CFR 324.12(a)(2)(iii).

balance sheet criterion, the Board believes that the off-balance sheet portion of repurchase transactions should be risk-weighted under the risk-based capital ratio. First, repurchase transactions are included in the current definition of off-balance sheet items. Second, the other banking agencies risk-weight the off-balance sheet portion of repurchase transactions in their risk-based capital framework.<sup>103</sup>

The Board, however, does not believe that repurchase transactions are a material exposure for credit unions. As of December 31, 2020, there are only 31 complex credit unions with repurchase transactions on their balance sheets. Therefore, the proposed rule would include the off-balance sheet portion of repurchase transactions for purposes of risk-based capital, even though such transactions are not included as part of the off-balance sheet eligibility criteria under the CCULR framework.<sup>104</sup>

Finally, the proposed rule would include a "catchall" category. Under the proposed rule, all other off-balance sheet exposures not explicitly provided a credit conversion factor or risk weight that meet the definition of a commitment would be given a credit conversion factor of 100 percent and a risk weight of 100 percent. The Board believes a catchall category is necessary given that the definition of commitment is broad. Commitments include any legally binding arrangement that obligates the credit union to extend credit, purchase or sell assets, enter into a borrowing agreement, or enter into a financial transaction.<sup>105</sup> To ensure all off-balance sheet exposures that met the definition of commitment are provided a credit conversion factor and risk weight, the proposed rule would include a new catchall category for such exposures.

## 2. Asset Securitizations Issued by Complex Credit Unions

The 2019 Supplemental Rule included asset securitizations as one of the reasons the Board sought a holistic reevaluation of the 2015 Final Rule. The Board has further considered asset securitizations issued by credit unions and has decided to propose to amend the 2015 Final Rule to explicitly address credit union issued securitizations.

<sup>103</sup> 12 CFR 324.33(b)(4)(ii).

<sup>104</sup> The proposed rule would also revise the definition of off-balance sheet items. The proposed definition of off-balance sheet items would include off-balance sheet exposures and the off-balance sheet exposure amount of repurchase transactions. This change is necessary to ensure repurchase transactions are not included as part of the off-balance sheet criteria for eligibility in the CCULR framework.

<sup>105</sup> 12 CFR 702.2 (effective Jan. 1, 2022).

The proposed rule would require credit unions that issue securitizations to use the other banking agencies' 2013 capital rules when determining whether assets transferred in connection with a securitization are excluded from risk-based capital. The Board has reviewed these standards and finds they would be appropriate as applied to credit union securitizations, with the minor differences noted below. Specifically, under the proposed rule, a credit union must follow the requirements of the applicable provisions of 12 CFR 324.41 when it transfers exposures in connection with a securitization. A credit union may only exclude the transferred exposures from the calculation of its risk-weighted assets if each condition in 12 CFR 324.41 is satisfied. The conditions for traditional securitizations in 12 CFR 324.41 are as follows (adapted for credit unions):

(1) The exposures are not reported on the credit union's consolidated balance sheet under GAAP;

(2) The credit union has transferred to one or more third parties credit risk associated with the underlying exposures;

(3) Any clean-up calls relating to the securitization are eligible clean-up calls (a defined term under the other banking agencies' 2013 capital rules);<sup>106</sup> and

(4) The securitization does not:

(i) Include one or more underlying exposures in which the borrower is permitted to vary the drawn amount within an agreed limit under a line of credit; and

(ii) Contain an early amortization provision.

A credit union that meets the conditions, but retains any credit risk for the transferred exposures, must hold risk-based capital against the credit risk it retains in connection with the securitization.

The other banking agencies' 2013 rule includes conditions for both traditional securitizations and synthetic securitizations.<sup>107</sup> The Board believes

almost all securitizations issued by credit unions would be traditional securitizations and subject to the conditions in 12 CFR 324.41(a). The Board does not believe that credit unions are likely to engage in synthetic securitizations, however, if a credit union issues a synthetic securitization, it would be subject to the conditions in 12 CFR 324.41(b).

The Board also notes that 12 CFR 324.41(c) includes explicit due diligence requirements for banking organizations' investments in securitizations. The Board is not proposing to adopt these requirements at this time. The proposed rule only references 12 CFR 324.41 to incorporate the factors a credit union must consider when excluding assets transferred in connection with a securitization from risk-weighted assets. The Board intends to use its supervisory authority to monitor securitizations for safety and soundness purposes and is not currently proposing to adopt any new regulatory requirements for such transactions.

The other banking agencies' 2013 capital rule has an explicit treatment for any gain-on-sale in connection with a securitization exposure and any credit-enhancing interest only strips (CEIOs) retained by a banking organization that do not qualify as a gain-on-sale. Any gain-on-sale in connection with a securitization exposure is deducted from a banking organization's common equity tier 1 capital.<sup>108</sup> CEIOs that do not qualify as a gain-on-sale are given a 1,250 percent risk weight.<sup>109</sup> The other banking agencies provided punitive treatments for these exposures because of historical supervisory concerns with the subjectivity involved in valuations of gains-on-sale and CEIOs. Furthermore, although the treatments for gains-on-sale and CEIOs can increase an originating banking organization's risk-based capital requirement following a securitization, the other banking agencies believe that such anomalies are

rare where a securitization transfers significant credit risk to third parties.

The 2015 Final Rule does not include specific treatments for gain-on-sales or CEIOs because, as discussed previously, in 2015 credit unions had not issued any securitizations. Under the 2015 Final Rule, however, most CEIOs would still receive a 1,250 percent risk weight because they constitute a subordinated tranche. However, the 2015 Final Rule permits a credit union to use the gross-up approach as an alternative. The Board believes that credit union-issued securitizations should be given a similar capital treatment under the 2015 Final Rule as under the other banking agencies' risk-based capital rule.

Therefore, the proposed rule would include a specific risk weight for certain exposures associated with securitization activities. While the Board believes the capital treatment for credit union-issued securitizations should be similar to bank-issued securitizations, for simplicity, the proposed rule is slightly different than the other banking agencies' 2013 risk-based capital rule. Under the proposed rule, the gain-on-sale amount from a securitization transaction, generally the CEIO, will be included the numerator in calculating a credit union's net worth. This is a different approach than the other banking agencies' rule, which excludes gains-on-sale in calculating a bank's common equity tier 1 capital. Instead, the Board has chosen to address the risks associated with a gain-on-sale amount by requiring that a 1,250 percent risk weighting be applied to retained non-security beneficial interests. The Board believes the proposed approach is simpler and that it provides a more conservative risk weight overall than the other banking agencies' approach. The Board believes this approach is warranted given the limited securitizations issued by credit unions at this time.

Under the proposed rule, a non-security beneficial interest is defined as the residual equity interest in the special purpose entity that represents a right to receive possible future payments after specified payment amounts are made to third-party investors in the securitized receivables. Therefore, under the proposed rule, if a credit union has a non-security beneficial interest, such as a CEIO or cash collateral account, it cannot be risk-weighted with the gross-up approach and, instead, would be given a 1,250 risk weight. The Board believes this treatment is similar to the treatment provided by the other banking agencies in their 2013 risk-based capital rule.

<sup>106</sup> Under the other banking agencies' 2013 capital rules, eligible clean-up call means a clean-up call that: (1) Is exercisable solely at the discretion of the originating institution or servicer; (2) is not structured to avoid allocating losses to securitization exposures held by investors or otherwise structured to provide credit enhancement to the securitization; and (3)(i) for a traditional securitization, is only exercisable when 10 percent or less of the principal amount of the underlying exposures or securitization exposures (determined as of the inception of the securitization) is outstanding; or (ii) for a synthetic securitization, is only exercisable when 10 percent or less of the principal amount of the reference portfolio of underlying exposures (determined as of the inception of the securitization) is outstanding.

<sup>107</sup> Under the other banking agencies' 2013 capital rule, a synthetic securitization means a transaction

in which: (1) All or a portion of the credit risk of one or more underlying exposures is retained or transferred to one or more third parties through the use of one or more credit derivatives or guarantees (other than a guarantee that transfers only the credit risk of an individual retail exposure); (2) The credit risk associated with the underlying exposures has been separated into at least two tranches reflecting different levels of seniority; (3) Performance of the securitization exposures depends upon the performance of the underlying exposures; and (4) All or substantially all of the underlying exposures are financial exposures (such as loans, commitments, credit derivatives, guarantees, receivables, asset-backed securities, mortgage-backed securities, other debt securities, or equity securities). See, 12 CFR 324.2.

<sup>108</sup> See, 12 CFR 324.22(a)(4) and 12 CFR 324.42(a)(1).

<sup>109</sup> See, 12 CFR 324.42(a)(1).

The Board notes that subordinate tranches, either retained by the securitization sponsor or offered to investors as securities, that are also senior in payment priority to the non-security beneficial interest, are allowed to be risk weighted using the gross-up approach.

*Question 18:* What are the advantages and disadvantages of relying on the other banking agencies' risk-based capital rule for determining whether a credit union has transferred the credit risk associated with a securitization? Should credit union-issued securitizations be subject to the same capital treatment as bank-issued securitizations? Should there be an option for complex credit unions to use the gross-up approach for risk weighting non-security beneficial interest of a securitization? If so, please provide examples where the gross-up approach would sufficiently capture the risks of a non-security beneficial interest of a securitization.

### 3. Mortgage Servicing Assets

The Board is proposing to amend § 702.104(b), risk-based capital numerator, to deduct mortgage servicing assets that exceed 25 percent of the sum of the capital elements in § 702.104(b)(1), less deductions required under § 702.104(b)(2)(i) through (iv) of this section. Under the 2015 Final Rule, MSAs are assets, maintained in accordance with GAAP, resulting from contracts to service loans secured by real estate (that have been securitized or owned by others) for which the benefits of servicing are expected to more than adequately compensate the servicer for performing the servicing.<sup>110</sup>

To determine if a complex credit union would be subject to the MSA deduction from the risk-based capital numerator in this proposal, the complex credit union would first need to calculate the risk-based capital numerator before the MSA deduction. This calculation is in the current rule and requires that the complex credit union add all the capital elements of the risk-based capital numerator and subtract all risk-based capital numerator deductions, not including the MSA deduction. The complex credit union would then determine if its MSA exposure exceeds 25 percent of the previous calculation. If its MSAs do not exceed 25 percent, then the previous calculation is the risk-based capital numerator. If its MSAs exceed 25 percent, the complex credit union will need to deduct the amount of MSAs that exceed 25 percent of the previous

calculation. All MSA exposures that are not deducted from the risk-based capital numerator are risk weighted at 250 percent.

The current rule does not include a deduction to the risk-based capital numerator for MSAs. The Board chose not to include a deduction for MSA exposures because, when the 2015 Final Rule was issued, the other banking agencies' risk-based capital rule included a complex deduction for MSAs that included other items that were not comparable to the credit union structure. In 2015, the other banking agencies made numerator adjustment based on the collective exposure to MSAs, deferred tax assets arising from temporary differences that could not be realized through net operating loss carrybacks, and significant investments in capital of nonconsolidated financial institutions in the form of common stock. As the other banking agencies' 2015 approach was not comparable to the credit union capital structure and added significant complexity to their rule, the Board did not include a similar deduction to the 2015 Final Rule.

The Board is now proposing a deduction to the risk-based capital numerator for MSAs that exceed 25 percent of the risk-based capital numerator for two primary reasons. First, this change will make the NCUA's risk-based capital calculation more consistent with the other banking agencies' revised risk-based capital rules as the other banking agencies simplified their MSA calculation post-issuance of the 2015 Final Rule.<sup>111</sup> Under the other banking agencies' revised risk-based capital rule, banking organizations deduct MSAs that exceed 25 percent of the banking organization's common equity tier 1 capital.<sup>112</sup> The Board believes the simplification of the other banking agencies' approach easily allows the NCUA to be consistent with the other banking agencies' risk-based capital rule. Also, the Board believes it would be important to implement prudential conditions around MSAs if the Board adopts the recent proposed rule to amend parts 703 and 721 to allow FCUs to purchase mortgage servicing rights<sup>113</sup> from other FICUs.<sup>114</sup> If adopted, this rule could increase MSA holdings for complex credit unions. But even if the Board does not adopt the proposed rule on mortgage servicing rights, the other considerations in this

section support the proposed amendment to the 2015 Final Rule.

The Board believes that by including a deduction to the risk-based capital numerator for MSAs in risk-based capital, complex credit unions will be encouraged to avoid excessive exposures in MSAs relative to the other risks on their balance sheets. As mentioned in the preamble of the 2015 Final Rule, the Board believes the risks of MSAs contribute to a high level of uncertainty regarding the ability of credit unions to realize value from these assets. Therefore, the Board believes it is appropriate to add the proposed risk-based numerator deduction to address the potential of complex credit unions purchasing MSAs from other FICUs.

The Board does not believe the proposed treatment would have an immediate effect on complex credit unions. As of December 31, 2020, the largest concentration in MSAs held by complex credit unions was just under 15 percent of the credit union's net worth. While net worth and the risk-based capital numerator are different calculations, the Board believes the two calculations are similar enough to state, with a high degree of certainty, there are no complex credit unions that would be required to deduct MSAs from the risk-based capital numerator were risk-based capital currently in effect.

Finally, the Board is aware that complex credit unions may believe that deducting exposures of MSAs over 25 percent of their risk-based capital numerator is punitive. However, the Board notes that both the Board and other banking agencies have stated that MSAs have a relatively high level of uncertainty regarding the ability to both value and realize value from these assets.<sup>115</sup> The Board also believes including the proposed MSA deduction from the risk-based capital numerator is prudential for potential balance sheets complex credit union may have in the future.

*Question 19:* What are the advantages and disadvantages of deducting MSAs from the risk-based capital numerator? Should the Board consider a higher or lower deduction threshold? Why or why not?

### 4. Supranational Organizations and Multilateral Development Banks

The Board is proposing to amend the risk-based capital rule to assign a risk

<sup>115</sup> Report to Congress on the Effect of Capital Rules on Mortgage Servicing Assets, Report to the Congress on the Effect of Capital Rules on Mortgage Servicing Assets, June 2016, available at <https://www.federalreserve.gov/publications/other-reports/files/effect-capital-rules-mortgage-servicing-assets-201606.pdf>.

<sup>111</sup> 84 FR 35234 (July 22, 2019).

<sup>112</sup> 12 CFR 324.22(d).

<sup>113</sup> The terms mortgage servicing rights and MSAs are used interchangeably.

<sup>114</sup> 85 FR 86867 (Dec. 31, 2020).

<sup>110</sup> 12 CFR 702.2 (effective Jan. 1, 2022).

weighting of zero percent to an obligation of the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, and multilateral development banks (MDBs). The 2015 Final Rule did not specifically discuss MDBs, which would have a risk weight of 100 percent under the catchall category for all other assets not specifically assigned a risk weight.<sup>116</sup> Assigning a risk-weight of zero percent is consistent with the other banking agencies' risk-based capital rule and the Board believes the zero percent risk weight is appropriate due to the generally high-credit quality of the issuers. This proposed change to the risk-based capital risk weighting was also requested in a comment letter in the ANPR. As part of this change, the Board would add a definition listing MDBs and criteria for non-listed multilateral lending institutions or regional development banks to be included in the MDB category. The MDBs listed in the definition are:

- International Bank for Reconstruction and Development;
- Multilateral Investment Guarantee Agency;
- International Finance Corporation;
- Inter-American Development Bank;
- Asian Development Bank;
- African Development Bank;
- European Bank for Reconstruction and Development;
- European Investment Bank;
- European Investment Fund;
- Nordic Investment Bank;
- Caribbean Development Bank;
- Islamic Development Bank; and
- Council of Europe Development Bank.

• Multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member are also included in the definition of MDBs.

Furthermore, the Board notes that MDBs are not permissible investments for FCUs under the general investment authorities. However, FCUs may invest in MDBs under § 701.19 and under § 721.3(b), subject to some conditions.

Question 20: Are there any supranational entities that should be included in the zero percent risk weight category? Specifically, the Board is requesting whether this proposed change sufficiently aligns NCUA's risk-weightings with the other banking agencies' risk weights for supranational organizations and MDBs.

<sup>116</sup> 12 CFR 702.104(c)(2)(v)(C) (effective Jan. 1, 2022).

#### 5. Paycheck Protection Program Loans

As discussed previously in connection with the other banking agencies' CBLR regulation, the CARES Act was enacted in 2020 to provide aid to the U.S. economy during the COVID-19 pandemic.<sup>117</sup> The CARES Act authorized the Small Business Administration (SBA) to create a loan guarantee program, the Paycheck Protection Program (PPP), to help certain affected businesses meet payroll needs and utilities (including employee salaries, sick leave, other paid leave, and health insurance expenses) as a result of the COVID-19 pandemic. Provided credit union lenders comply with the applicable lender obligations set forth in the SBA's interim final rule, the SBA fully guaranteed loans issued under the PPP. Most FICUs were eligible to make PPP loans to members. Under the CARES Act, PPP loans must receive a zero percent risk weighting under the NCUA's risk-based capital requirements.<sup>118</sup> The NCUA issued a 2020 interim final rule to explicitly state that PPP loans under the risk-based net worth requirement receive a zero percent risk-weight.<sup>119</sup> The 2020 interim final rule stated that the NCUA's risk-based capital regulations would be amended in the future. The Board is now proposing to update the 2015 Final Rule to reflect that PPP loans receive a zero percent risk weight.

#### 6. Updates to Derivative-Related Definitions

The Board recently amended its rule on derivatives to modernize the rule and make it more principles-based, while retaining key safety and soundness components.<sup>120</sup> The rulemaking amended several defined terms. A few of those defined terms are also included in the 2015 Final Rule. For consistency, the proposed rule would update those definitions that are also included in the 2015 Final Rule. First, under the proposed rule, the term derivative would be defined as "a financial contract that derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate."<sup>121</sup> Second the proposed rule

<sup>117</sup> Public Law 116-136 (Mar. 27, 2020).

<sup>118</sup> Public Law 116-136, 134 Stat. 281 (Mar. 27, 2020).

<sup>119</sup> 85 FR 23212 (Apr. 27, 2020).

<sup>120</sup> 85 FR 23212 (Apr. 27, 2020).

<sup>121</sup> The 2015 Final Rule defines a derivative contract as "a financial contract whose value is derived from the values of one or more underlying assets, reference rates, or indices of asset values or reference rates. Derivative contracts include interest rate derivative contracts, exchange rate derivative contracts, equity derivative contracts, commodity

would make minor changes to the definitions of a derivative clearing organization and swap dealer by including a more general reference to the Commodity Futures Trading Commission (CFTC)'s regulations (for both definitions, the 2015 Final Rule references the definitions used by the CFTC).<sup>122</sup>

#### 7. Definitions of Consumer Loan and Current

The Board is proposing to amend the definitions for Consumer Loan and Current in § 702.2. The Board is proposing these changes as a clarification to the 2015 Final Rule. The 2015 Final Rule does not include leases in the definition in Consumer Loan, despite the fact that the 2014 Risk-Based Capital NPR stated "[c]onsumer loans (unsecured credit card loans, lines of credit, automobile loans, and leases) are generally highly desired credit union assets and a key element of providing basic financial services."<sup>123</sup> The Board is providing this proposed change for clarity. Without this proposed change the treatment of consumer leases is unclear and, therefore, may be risk weighted in the catchall category of 100 percent. The change makes clear that consumer leases receive a 75 percent risk weight. Due to the proposed change in the definition of a consumer loan, the definition of current will also be amended for consistency and would include the term leases.

#### N. Technical Amendments

The proposed rule would also include two technical amendments to 12 CFR part 703. Both amendments would make minor corrections related to the 2015 Final Rule.

#### O. Illustrative Reporting Forms for Risk-Based Capital

In January 2018, the Board issued a Request for Comment (RFI) seeking comments on all proposed changes to the Call Report form 5300, the Profile

derivative contracts, and credit derivative contracts. Derivative contracts also include unsettled securities, commodities, and foreign exchange transactions with a contractual settlement or delivery lag that is longer than the lesser of the market standard for the particular instrument or five business days." 12 CFR 702.2 (effective Jan. 1, 2022).

<sup>122</sup> The 2015 Final Rule states a derivative clearing organization is "as defined by the Commodity Futures Trading Commission in 17 CFR 1.3(d)." The proposed rule would state that a derivative clearing organization "as defined by the Commodity Futures Trading Commission (CFTC) in 17 CFR 1.3." Essentially the proposed rule would remove the "(d)". Similarly, the more specific reference in the 2015 Final Rule would be updated with the more general reference included in the recent derivative rule.

<sup>123</sup> 79 FR 11184, 11198 (Feb. 27, 2014).



form 4501A, and the accompanying instructions. The proposed forms and instructions are available on the NCUA’s Call Report Modernization web page.<sup>124</sup> The proposed Call Report form included six risk-based capital schedules (FC–T–1 through FC–T–6) designed to collect information consistent with the 2015 Final Risk-based Capital Rule. The Board also provided other risk-based capital tools detailed on the Risk-based Capital Rule Resources Page on the NCUA’s website.<sup>125</sup>

The Board is illustrating as part of this proposal the draft forms that may be used as the risk-based capital Call Report schedules. Any new Call Report forms to support risk-based capital will be accompanied with detailed instructions. The NCUA intends to separately seek comment on the proposed changes to the Call Report for complex credit unions that use the risk-based capital framework. The examples below illustrate what the risk-based capital form for the numerator and denominator may look like. The

illustration consists of three sections: Part I—Numerator, Part II—Denominator for on-balance sheet assets, and Part III—Denominator for off-balance sheet exposures and derivatives.

The illustration of the capital elements for the risk-based capital numerator are consistent with the 2015 Final rule in § 702.104(b)(1) with the addition of the proposed MSA deduction as proposed in the Amendments to the 2015 Final Rule, section M.

Chart 3 Part I – Capital elements of the risk-based capital numerator

<b>Risk-Based Capital Form Part I - Numerator</b>	
<b>EQUITY</b>	<b>TOTALS</b>
Undivided earnings.....	
Regular reserves.....	
Appropriations for non-conforming investments.....	
Other reserves.....	
Equity acquired in merger.....	
Net income.....	
<b>Total Equity.....</b>	
<b>ADDITIONS</b>	
Allowance for Credit Losses.....	
Subordinated Debt in accordance with §702.407.....	
Section 208 Assistance included in net worth as defined in §702.2...	
<b>Total Additions.....</b>	
<b>DEDUCTIONS</b>	
NCUSIF capitalization deposit.....	
Goodwill.....	
Less: Excluded Goodwill.....	
Other intangible assets.....	
Less: Excluded intangible assets.....	
Identified losses not reflected in the risk-based capital numerator.	
<b>Total Deductions.....</b>	
<b>TOTAL RISK-BASED CAPITAL BEFORE MSA DEDUCTION</b>	
Less: MSA balance exceeding 25% of RBC Numerator.....	
<b>TOTAL RISK-BASED CAPITAL NUMERATOR.....</b>	

The illustration for Part II—Denominator form for on-balance sheet assets may auto-populate the totals from other schedules in the Call Report (see table below for “Totals from Schedules”

column with greyed out boxes). The Board will also provide a detailed instruction guide consistent with the 2015 Final Rule § 702.104(c)(2) for risk weighting the on-balance sheet assets

into their respective risk weight categories. An empty box underneath each risk-weight category indicates a possible asset amount for each line item in accordance with the 2015 Final Rule.

<sup>124</sup> <https://www.ncua.gov/regulation-supervision/examination-modernization-initiatives/call-report-modernization>.

<sup>125</sup> <https://www.ncua.gov/regulation-supervision/regulatory-compliance-resources/risk-based-capital-rule-resources>.



IV. Regulatory Procedures

A. Regulatory Flexibility Act

The Regulatory Flexibility Act 126 requires the NCUA to prepare an analysis to describe any significant economic impact a regulation may have on a substantial number of small entities (primarily those under \$100 million in assets).127 This proposed rule would affect only credit unions with over \$500 million in assets, which are subject to the 2015 Final Rule and the 2018 Supplemental Rule when they go into effect in January 2022. As a result, credit unions with \$100 million or less in total assets would not be affected by this proposed rule. Accordingly, the NCUA certifies that this proposed rule would not have a significant economic impact on substantial number of small credit unions.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) applies to rulemakings in which an agency by rule creates a new paperwork burden on regulated entities or amends an existing burden. For purposes of the PRA, a paperwork burden may take the form of a reporting, disclosure or recordkeeping requirement, each referred to as an information collection. The proposed changes to part 702 may revise existing information collection requirements to the Call Report. Should changes be made to the Call Report, they will be addressed in a separate Federal Register notice. The revisions to the Call Report will be submitted for approval by the Office of Information and Regulatory Affairs at the Office of Management and Budget prior to their effective date.

C. Executive Order 13132 on Federalism

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their actions on state and local interests.128 The NCUA, an independent regulatory agency, as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order to adhere to fundamental federalism principles. The proposed rule will apply to all federally insured natural-person credit unions, including federally insured, state-chartered natural-person credit unions. Accordingly, it may have, to some degree, a 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. The Board

believes this impact is minor, and it is an unavoidable consequence of carrying out the statutory mandate to adopt a system of PCA to apply to all federally insured, natural-person credit unions. Throughout the rulemaking process, however, NCUA has consulted with representatives of state regulators regarding the impact of the proposed rule.

D. Assessment of Federal Regulations and Policies on Families

The NCUA has determined that this proposed rule would not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105-277, 112 Stat. 2681 (1998).

List of Subjects

12 CFR Part 702

Credit unions, Reporting and recordkeeping requirements.

12 CFR Part 703

Credit unions, Investments, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on July 22, 2021.

Melane Conyers-Ausbrooks, Secretary of the Board.

For the reasons stated in the preamble, the NCUA proposes to amend 12 CFR parts 702 and 703, as follows:

PART 702—CAPITAL ADEQUACY

■ 1. The authority for part 702 continues to read as follows:

Authority: 12 U.S.C. 1766(a), 1790d.

■ 2. In § 702.2, revise the definitions of “Consumer Loan”, “Current”, “Derivative contract”, “Derivatives Clearing Organization”, “Off-balance sheet exposure”, “Off-balance sheet items”, and “Swap dealer” and add definitions of “CCULR”, “Credit derivative”, “Forward agreement”, “Multilateral development bank”, “Non-security beneficial interest”, “Repurchase transaction,” “Trading assets”, “Trading liabilities”, and “Unconditionally cancelable”, in alphabetical order, to read as follows:

§ 702.2 Definitions.

\* \* \* \* \*

CCULR means the complex credit union leverage ratio. It is calculated in the same manner as the net worth ratio under § 702.2.

\* \* \* \* \*

Consumer loan means a loan or lease for household, family, or other personal expenditures, including any loans or

leases that, at origination, are wholly or substantially secured by vehicles generally manufactured for personal, family, or household use regardless of the purpose of the loan or lease. Consumer loan excludes commercial loans, loans to CUSOs, first- and junior-lien residential real estate loans, and loans for the purchase of one or more vehicles to be part of a fleet of vehicles.

\* \* \* \* \*

Credit derivative means a financial contract executed under standard industry credit derivative documentation that allows one party (the protection purchaser) to transfer the credit risk of one or more exposures (reference exposure(s)) to another party (the protection provider) for a certain period of time.

\* \* \* \* \*

Current means, with respect to any loan or lease, that the loan or lease is less than 90 days past due, not placed on non-accrual status, and not restructured.

\* \* \* \* \*

Derivative contract means a financial contract that derives its value from the value and performance of some other underlying financial instrument or variable, such as an index or interest rate.

Derivatives Clearing Organization has the meaning as defined by the Commodity Futures Trading Commission (CFTC) in 17 CFR 1.3.

\* \* \* \* \*

Forward agreement means a legally binding contractual obligation to purchase assets with certain drawdown at a specified future date, not including commitments to make residential mortgage loans or forward foreign exchange contracts.

\* \* \* \* \*

Multilateral development bank (MDB) means the International Bank for Reconstruction and Development, the Multilateral Investment Guarantee Agency, the International Finance Corporation, the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development, the European Investment Bank, the European Investment Fund, the Nordic Investment Bank, the Caribbean Development Bank, the Islamic Development Bank, the Council of Europe Development Bank, and any other multilateral lending institution or regional development bank in which the U.S. government is a shareholder or contributing member.

\* \* \* \* \*

126 5 U.S.C. 601 et seq.

127 5 U.S.C. 603(a).

128 64 FR 43255 (Aug. 4, 1999).

*Non-security beneficial interest* is defined as the residual equity interest in the Special Purpose Entity (SPE) that represents a right to receive possible future payments after specified payment amounts are made to third-party investors in the securitized receivables. For purposes of this definition, a SPE means a trust, bankruptcy remote entity or other special purpose entity which is wholly owned, directly or indirectly, by the credit union and which is formed for the purpose of, and engages in no material business other than, acting as an issuer or a depositor in a securitization.

- Off-balance sheet exposure* mean:
- (1) For unfunded commitments, excluding unconditionally cancellable commitments, the remaining unfunded portion of the contractual agreement.
  - (2) For loans transferred with limited recourse, or other seller-provided credit enhancements, and that qualify for true sales accounting, the maximum contractual amount the credit union is exposed to according to the agreement, net of any related valuation allowance.
  - (3) For loans transferred under the Federal Home Loan Bank (FHLB) mortgage partnership finance program, the outstanding loan balance as of the reporting date, net of any related valuation allowance.
  - (4) For financial standby letters of credit, the total potential exposure of the credit union under the contractual agreement.
  - (5) For forward agreements that are not derivative contracts, the future contractual obligation amount.
  - (6) For sold credit protection through guarantees and credit derivatives, the total potential exposure of the credit union under the contractual agreement.
  - (7) For off-balance sheet securitization exposures, the notional amount of the off-balance sheet credit exposure (including any credit enhancements, representations, or warranties that obligate a credit union to protect

another party from losses arising from the credit risk of the underlying exposures) that arises from a securitization.

(8) For securities borrowing or lending transactions, the amount of all securities borrowed or lent against collateral or on an uncollateralized basis.

*Off-balance sheet items* mean off-balance sheet exposures and the off-balance sheet exposure amount of repurchase transactions.

*Repurchase transactions* mean either a transaction in which a credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price or a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price. The off-balance sheet exposure amount for a repurchase transaction equals all of the positions the credit union has sold or bought subject to repurchase or resale, which equals the sum of the current fair values of all such positions.

*Swap Dealer* has the meaning as defined by the CFTC in 17 CFR 1.3.

*Trading assets* means securities or other assets acquired, not including loans originated by the credit union, for the purpose of selling in the near term or otherwise with the intent to resell in order to profit from short-term price movements. Trading assets would not include shares of a registered investment company or a collective investment fund used for liquidity purposes.

*Trading liabilities* means the total liability for short positions of securities or other liabilities held for trading purposes.

*Unconditionally cancelable* means with respect to a commitment, that a credit union may, at any time, with or without cause, refuse to extend credit under the commitment (to the extent permitted under applicable law).

■ 3. In § 702.101, revise paragraph (a)(2) to read as follows:

**§ 702.101 Capital measures, capital adequacy, effective date of classification, and notice to NCUA.**

- (a) \* \* \*
- (2) If determined to be applicable under § 702.103, either the risk-based capital ratio under § 702.104(a) through (c) or the CCULR framework under § 702.104(d).

■ 4. In § 702.102, revise paragraph (a)(1)(i) and (ii), and Table 1 to read as follows:

**§ 702.102 Capital classification.**

- (a) \* \* \*
- (1) \* \* \*
- (i)(A) *Net worth ratio.* The credit union has a net worth ratio of 7.0 percent or greater; and
- (B) *Risk-based capital ratio.* The credit union, if complex, has a risk-based capital ratio of 10 percent or greater; or
- (ii) *Complex credit union leverage ratio.* (A) The complex credit union is a qualifying complex credit union that has opted into the CCULR framework under § 702.104(d) and it has a CCULR of 10 percent or greater, subject to any applicable transition provisions in § 702.104(d)(8); or
- (B) The complex credit union is a qualifying complex credit union that has opted into the CCULR framework under § 702.104(d), is in the grace period, as defined in § 702.104(d)(7), and has a CCULR of 7 percent or greater.

TABLE 1 TO § 702.102—CAPITAL CATERGORIES

Capital classification	Net worth ratio		Risk-based capital ratio, if applicable		CCULR, if applicable	And subject to following condition(s)
Well Capitalized .....	7% or greater .....	And ...	10% or greater .....	Or .....	10% or greater*.	
Adequately Capitalized.	6% or greater .....	And ...	8% or greater .....	Or .....	N/A .....	And does not meet the criteria to be classified as well capitalized.
Undercapitalized .....	4% to 5.99% .....	Or .....	Less than 8% .....	Or .....	N/A	
Significantly Undercapitalized.	2% to 3.99% .....	.....	N/A .....	.....	N/A .....	Or if “undercapitalized at <5% net worth and (a) fails to timely submit, (b) fails to materially implement, or (c) receives notice of the rejection of a net worth restoration plan.

TABLE 1 TO § 702.102—CAPITAL CATERGORIES—Continued

Capital classification	Net worth ratio		Risk-based capital ratio, if applicable		CCULR, if applica-ble	And subject to following condition(s)
Critically Under-capitalized.	Less than 2% .....	.....	N/A .....	.....	N/A	

\* A qualifying complex credit union opting into the CCULR framework should refer to 12 CFR 702.104(d)(7) if its CCULR falls below 10 percent and 12 CFR 702.104(d)(8) if the transition provisions are applicable.

\* \* \* \* \*

■ 5. Revise § 702.103 to read as follows:

**§ 702.103 Applicability of risk-based capital measures.**

For purposes of § 702.102, a credit union is defined as “complex” and a risk-based capital measure is applicable only if the credit union’s quarter-end total assets exceed five hundred million dollars (\$500,000,000), as reflected in its most recent Call Report. A complex credit union may calculate its risk-based capital measure either by using the risk-based capital ratio under § 702.104(a) through (c), or, for a qualifying complex credit union opting into the CCULR framework, by using the CCULR framework under § 702.104(d).

■ 6. In § 702.104:

- a. Revise the introductory text;
- b. Remove “; and” in paragraph (b)(2)(iii) and add in its place a semicolon, remove the period at the end of paragraph (b)(2)(iv) and add in its place “; and”, and add paragraph (b)(2)(v);
- c. Add paragraphs (c)(2)(i)(B)(3) and (c)(2)(i)(D);
- d. Revise paragraphs (c)(2)(vii) and (x);
- e. Revise paragraph (c)(4) introductory text;
- f. Redesignate paragraphs (c)(4)(iii)(A) through (E) as (c)(4)(iii)(B) through (F) and add new paragraph (c)(4)(iii)(A);
- g. Add paragraphs (c)(4)(iv) through (x); and
- h. Add paragraphs (c)(6), (d), and (e).

The revisions and additions read as follows:

**§ 702.104 Risk-based capital ratio.**

A complex credit union must calculate its risk-based capital measure in accordance with this section. A complex credit union may calculate its risk-based capital measure either by using the risk-based capital ratio under paragraphs (a) through (c) of this section, or, for a qualifying complex credit union opting into the CCULR framework, by using the CCULR framework under paragraph (d) of this section.

\* \* \* \* \*

- (b) \* \* \*
- (2) \* \* \*

(v) Mortgage servicing assets that exceed 25 percent of the sum of the capital elements in paragraph (b)(1) of this section, less deductions required under paragraphs (b)(2)(i) thorough (iv) of this section.

- (c) \* \* \*
- (2) \* \* \*
- (i) \* \* \*
- (B) \* \* \*

(3) An obligation of the Bank for International Settlements, the European Central Bank, the European Commission, the International Monetary Fund, the European Stability Mechanism, the European Financial Stability Facility, or an MDB.

\* \* \* \* \*

(D) Covered loans issued under the Small Business Administration’s Paycheck Protection Program, 15 U.S.C. 636(a)(36).

\* \* \* \* \*

(vii) Category 7—250 percent risk weight. A credit union must assign a 250 percent risk weight to the carrying value of mortgage servicing assets not deducted from the risk-based capital numerator pursuant to § 702.104(b).

\* \* \* \* \*

(x) *Category 10—1,250 percent risk weight.* A credit union must assign a 1,250 percent risk weight to the exposure amount of any subordinated tranche of any investment, with the option to use the gross-up approach in paragraph (c)(3)(iii)(A) of this section. However, a credit union may not use the gross-up approach for non-security beneficial interests.

\* \* \* \* \*

(4) *Risk weights for off-balance sheet items.* The risk weighted amounts for all off-balance sheet items are determined by multiplying the off-balance sheet exposure amount by the appropriate CCF and the assigned risk weight as follows:

\* \* \* \* \*

- (iii) \* \* \*

(A) For a commitment that is unconditionally cancelable, a 0 percent CCF.

\* \* \* \* \*

(iv) For financial standby letter of credits, a 100 percent CCF and a 100 percent risk weight.

(v) For forward agreements that are not derivative contracts, a 100 percent CCF and a 100 percent risk weight.

(vi) For sold credit protection through guarantees and credit derivatives, a 100 percent CCF and a 100 percent risk weight for guarantees; for credit derivatives the risk weight is determined by the applicable provisions of 12 CFR 324.34 or 324.35.

(vii) For off-balance sheet securitization exposures, a 100 percent CCF, and the risk weight is determined as if the exposure is an on-balance sheet securitization exposure.

(viii) For securities borrowing or lending transactions, a 100 percent CCF and a 100 percent risk weight. A credit union may recognize the credit risk mitigation benefits of financial collateral, as defined under 12 CFR 324.2, by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37.

(ix) For the off-balance sheet portion of repurchase transactions, a 100 percent CCF and a 100 percent risk weight. A credit union may recognize the credit risk mitigation benefits of financial collateral, as defined by 12 CFR 324.2, by risk weighting the collateralized portion of the exposure under the applicable provisions of 12 CFR 324.35 or 324.37.

(x) For all other off-balance sheet exposures not explicitly provided a CCF or risk weight in this paragraph (c) that meet the definition of a commitment, a 100 percent CCF and a 100 percent risk weight.

\* \* \* \* \*

(6) Asset Securitizations Issued by Complex Credit Unions. A credit union must follow the requirements of the applicable provisions of 12 CFR 324.41 when it transfers exposures in connection with a securitization. A credit union may only exclude the transferred exposures from the calculation of its risk-weighted assets if each condition in 12 CFR 324.41 is satisfied. A credit union that meets these conditions, but retains any credit risk for the transferred exposures, must hold risk-based capital against the credit risk it retains in connection with the securitization.

(d) *Complex Credit Union Leverage Ratio (CCULR) Framework.* (1) *General.* A qualifying complex credit union that has opted into the CCULR framework under paragraph (d)(5) of this section is considered to have met the capital ratio requirements for the well capitalized capital category under § 702.102(a)(1) if it has a CCULR of 10 percent or greater, subject to the transition provisions in paragraph (d)(8) of this section.

(2) *Qualifying Complex Credit Union.* For purposes of this part, a qualifying complex credit union means a complex credit union under § 702.103 that satisfies all of the following criteria:

(i) Has a CCULR of 10 percent or greater, subject to the transition provisions in paragraph (d)(8) of this section;

(ii) Has total off-balance sheet exposures of 25 percent or less of its total assets;

(iii) Has the sum of total trading assets and total trading liabilities of 5 percent or less of its total assets; and

(iv) Has the sum of total goodwill, including goodwill that meets the definition of excluded goodwill, and total other intangible assets, including intangible assets that meet the definition of excluded other intangible assets, of 2 percent or less of its total assets.

(3) *Calculation of Qualifying Criteria.* Each of the qualifying criteria in paragraph (d)(2) of this section is calculated based on data reported in the Call Report as of the end of the most recent calendar quarter.

(4) *Calculation of the CCULR.* A qualifying complex credit union opting into the CCULR framework under this paragraph (d) calculates its CCULR in the same manner as its net worth ratio under § 702.2.

(5) *Opting into the CCULR Framework.* (i) A qualifying complex credit union may opt into the CCULR framework by completing the applicable reporting requirements of its Call Report.

(ii) A qualifying complex credit union can opt into the CCULR framework at the end of each calendar quarter.

(6) *Opting Out of the CCULR Framework.* (i) A qualifying complex credit union may voluntarily opt out of the framework with prior written notification to the appropriate Regional Director or the Director of the Office of National Examinations and Supervision.

(ii) The notification must be submitted at least 30 days before the end of the calendar quarter that the credit union will report its risk-based capital ratio under paragraphs (a) through (c) of this section.

(iii) The notification must include:

(A) A statement of intent explaining why the qualifying complex credit union is opting out of the CCULR framework.

(B) A copy of board meeting minutes showing that the credit union's board of directors was notified of the CCULR framework opt out election.

(C) The calendar quarter that the qualifying complex credit union will begin calculating its risk-based capital ratio under paragraphs (a) through (c) of this section. The earliest a complex credit union may begin calculating a risk-based capital ratio is the calendar quarter it submits its notification.

(D) A risk-based capital ratio calculation Call Report schedule that includes the required information for a complex credit union calculating its risk-based capital ratio under paragraphs (a) through (c) of this section. The data must be as of the end of the most recent calendar quarter.

(7) *Treatment when ceasing to meet the qualifying complex credit union requirements.* (i) If a qualifying complex credit union that has opted into the CCULR framework ceases to meet the qualifying criteria in paragraph (d)(2) of this section, the credit union has two calendar quarters (grace period) either to satisfy the requirements to be a qualifying complex credit union or to calculate its risk-based capital ratio under paragraphs (a) through (c) of this section.

(ii) The grace period begins at the end of the calendar quarter in which the credit union no longer satisfies the criteria to be a qualifying complex credit union. The grace period ends on the last day of the second consecutive calendar quarter following the beginning of the grace period.

(iii) During the grace period, the credit union continues to be treated as a qualifying complex credit union for the purpose of this part and must continue calculating and reporting its CCULR, unless the qualifying complex credit union has opted out of using the CCULR framework under paragraph (d)(6) of this section. The qualifying complex credit union also continues to be considered to have met the capital ratio requirements for the well capitalized capital category under § 702.102(a)(1). However, if the qualifying complex credit union has a CCULR of less than seven percent it will not be considered to have met the capital ratio requirements for the well capitalized capital category under § 702.102(a)(1) and its capital classification is determined by its net worth ratio.

(iv)(A) A qualifying complex credit union that is likely to not meet the

requirements to be a qualifying complex credit union by the end of the grace period must submit written notification to the appropriate Regional Director or the Director of the Office of National Examinations and Supervision. The notification must be submitted at least 30 days before the end of the grace period and state that the credit union may cease to meet the requirements to be a qualifying complex credit union.

(B) The notification must provide the reason for the potential disqualification.

(C) The notification must include a copy of the board meeting minutes showing that the credit union's board of directors was notified that the credit union might cease to meet the qualifying complex credit union requirements.

(D) The notification must include a risk-based capital ratio calculation Call Report schedule that includes the required information for a credit union calculating its risk-based capital ratio under paragraphs (a) through (c) of this section. The data must be as of the end of the most recent calendar quarter.

(v) A qualifying complex credit union that ceases to meet the qualifying criteria in paragraph (d)(2) of this section as a result of a merger or acquisition has no grace period and must comply with the risk-based capital ratio under paragraphs (a) through (c) of this section in the quarter it ceases to be a qualifying complex credit union.

(8) *Transition Provisions.* (i) From January 1, 2022, to December 31, 2022, a complex credit union that has opted into the CCULR framework under paragraph (d)(5) of this section, must have a CCULR of 9 percent or greater.

(ii) From January 1, 2023, to December 31, 2023, a complex credit union that has opted into the CCULR framework under paragraph (d)(5) of this section, must have a CCULR of 9.5 percent or greater.

(iii) After January 1, 2024, a complex credit union that has opted into the CCULR framework under paragraph (d)(5) of this section, must have a CCULR of 10 percent or greater.

(e) *Reservation of Authority.* The NCUA may require a complex credit union that otherwise would meet the definition of a qualifying complex credit union to comply with the risk-based capital ratio under paragraphs (a) through (c) of this section if the NCUA determines that the complex credit union's capital requirements under paragraph (d) of this section are not commensurate with its risks. Any credit union required to comply with the risk-based capital ratio under this paragraph (e), would be permitted a minimum of a two-quarter grace period before being

subject to risk-based capital requirements.

**§ 702.111 [Amended]**

■ 7. In § 702.111, amend paragraph (c)(1)(i) by removing “risk-based capital ratio” and adding in its place “risk-based capital measure”.

**PART 703—INVESTMENT AND DEPOSIT ACTIVITIES**

■ 8. The authority citation for part 703 continues to read as follows:

**Authority:** 12 U.S.C. 1757(7), 1757(8), 1757(15).

**§ 703.2 [Amended]**

■ 9. In § 703.2, amend the definition of “Net worth” by removing “§ 702.2(f)” and adding in its place “§ 702.2”.

**§ 703.13 [Amended]**

■ 11. In § 703.13, revise paragraph (d)(3)(iii) by removing “net worth classification” and adding in its place “capital classifications” and removing

“or, if subject to a risk-based net worth (RBNW) requirement under part 702 of this chapter, has remained “well capitalized” for the six (6) immediately preceding quarters after applying the applicable RBNW requirement”.

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