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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.

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

DEPARTMENT OF THE TREASURY

2 CFR Part 1000

Uniform Administrative Requirements, Cost Principles, and Audit

Requirements for Federal Awards; Technical Amendment

AGENCY: Department of the Treasury.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment makes nonsubstantive corrections in the Department's conforming regulations under the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

DATES: *Effective* June 2, 2021.

FOR FURTHER INFORMATION CONTACT:

Blossom Butcher-Sumner, Attorney Advisor (Banking & Finance), Office of the General Counsel, 202-622-0451.

SUPPLEMENTARY INFORMATION: On January 27, 2016 (81 FR 4573), the Department adopted as a final rule the Office of Management and Budget's (OMB) regulations for all Federal award-making agencies, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance), with minor deviations to make the Uniform Guidance consistent with existing Department policy. Treasury's regulations are codified at 2 CFR part 1000.

On August 13, 2020 (85 FR 49506), OMB adopted revisions to the Uniform Guidance. Among other things, in the final rule, OMB redesignated 2 CFR 200.336 as 2 CFR 200.337. This change results in an incorrect section numeration and cross-reference in the Department's regulations that is corrected in this technical amendment.

List of Subjects in 2 CFR Part 1000

Accounting, Administrative practice and procedure, Auditing, Audit requirements, Cost principles, Cooperative agreements, Grant

programs, Reporting and recordkeeping requirements.

Accordingly, the Treasury Department amends 2 CFR part 1000 as follows:

Title 2—Grants and Agreements

Chapter X—Department of Treasury

PART 1000—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

■ 1. The authority citation for part 1000 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 301; 2 CFR part 200.

§ 1000.336 [Redesignated as § 1000.337]

■ 2. Redesignate § 1000.336 as § 1000.337 and revise it to read as follows:

§ 1000.337 Access to records.

The right of access under 2 CFR 200.337 shall not extend to client information held by attorneys or federally authorized tax practitioners under the Low Income Taxpayer Clinic program.

Blossom Butcher-Sumner,
Attorney Advisor (Banking & Finance).

[FR Doc. 2021-11574 Filed 6-1-21; 8:45 am]

BILLING CODE 4810-AK-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0135; Project Identifier MCAI-2020-01044-R; Amendment 39-21554; AD 2021-10-21]

RIN 2120-AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2019-07-07 for various Airbus Helicopters Deutschland GmbH (Airbus Helicopters) Model MBB-BK117 and Model BO-105 helicopters. AD 2019-07-07 required removing certain part numbered swashplate bellows (bellows) from

service, cleaning and inspecting certain parts, and depending on the inspection results removing certain parts from service, applying torque, and repetitively inspecting the swashplate assembly (swashplate). This AD retains certain requirements of AD 2019-07-07, expands the installation prohibition, adds additional inspections, and updates the applicable service information. The FAA is issuing this AD to address an unsafe condition on these products.

DATES: This AD is effective July 7, 2021.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of July 7, 2021.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>. You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For more information on the availability of this material at the FAA, call (817) 222-5110. It is also available on the internet at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0135.

Examining the AD Docket

You may examine the AD docket on the internet at <https://www.regulations.gov> in Docket No. FAA-2021-0135; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, any service information that is incorporated by reference, any comments received, and other information. The street address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Matt Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation & Rotorcraft Unit,

FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email Matthew.Fuller@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2019-07-07, Amendment 39-19618 (84 FR 16394, April 19, 2019) (AD 2019-07-07). AD 2019-07-07 applied to Airbus Helicopters Model BO-105A, BO-105C, BO-105S, BO105LS A-3, MBB-BK 117A-1, MBB-BK 117A-3, MBB-BK 117A-4, MBB-BK 117B-1, MBB-BK 117B-2, MBB-BK 117C-1, MBB-BK 117C-2, and MBB-BK 117D-2 helicopters. The NPRM published in the **Federal Register** on March 10, 2021 (86 FR 13665). The NPRM proposed to require, within 50 hours time-in-service, removing the affected bellows from the swashplate, cleaning and inspecting the support tube for scratches, and depending on the inspection results reworking the cylindrical area. The NPRM proposed to require inspecting the clamp for corrosion, damage, and incorrect installation, and depending on the inspection results, removing the clamp from service or reinstalling the clamp correctly and applying a torque. The NPRM also proposed to require inspecting each ball bearing for corrosion, and depending on the inspection results, removing each ball bearing from service. The NPRM proposed to require inspecting the deflection ring for foreign objects by removing the lockwire, screws, and the outer deflection ring and removing any foreign objects.

Additionally, the NPRM proposed to require, within 400 hours TIS, inspecting the swashplate for foreign objects and excessive bearing rolling friction. Finally, the NPRM proposed to prohibit installing a bellows P/N 105-10113.05, P/N 4619305044, P/N 4638305043, or P/N B623M20X2240, or a gearbox with a bellows P/N 105-10113.05, P/N 4619305044, or P/N 4638305043 on any helicopter.

EASA AD 2016-0142, dated July 19, 2016, which was revised to EASA AD 2016-0142R1, dated April 12, 2018, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Model MBB-BK117 A-1, MBB-BK117 A-3, MBB-BK117 A-4, MBB-BK117 B-1, MBB-BK117 B-2, MBB-BK117 C-1, MBB-BK117 C-2, and MBB-BK117 C-2e helicopters, all serial numbers (S/Ns), and Model BO105 A, BO105 C, BO105 D, BO105 S, and BO105 LS A-3 helicopters, all variants, all S/Ns. EASA advises of

several reports of a lower clamp found missing from the bellows and damaging the swashplate bearing ring before becoming detached. EASA states that an investigation showed that over-torqueing can damage the clamp, which may have caused the clamp to become loose and detach. EASA further advises that this condition, if not addressed, could result a detached clamp, which could damage the swashplate and pitch link or strike the tail rotor, resulting in loss of control of the helicopter.

Accordingly, EASA AD 2016-0142R1 requires removing the bellows, and performing modifications, inspections, and corrective actions in accordance with the applicable service information for your helicopter. EASA AD 2016-0142R1 also prohibits the installation of certain part-numbered bellows or any gearbox with certain part-numbered bellows on any helicopter.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or the determination of the costs.

Conclusion

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA of the unsafe condition described in its AD. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these helicopters.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin ASB (ASB) BO105-40A-107 for Model BO105C-series, D-series and S-series helicopters; ASB BO105 LS-40A-12 for Model BO-105LS A-3 helicopters; ASB MBB-BK117-40A-115 for Model MBB-BK 117 A-1, MBB-BK 117 A-3, MBB-BK 117 A-4, MBB-BK 117 B-1, MBB-BK 117 B-2, and MBB-BK 117 C-1 helicopters; and ASB MBB-BK117 C-2-62A-007 for Model MBB-BK 117 C-2 helicopters, each Revision 5 and dated July 25, 2017. The FAA also reviewed Airbus Helicopters ASB MBB-BK117 D-2-62A-003, Revision 3, dated July 25, 2017, for Model MBB-BK 117 D-2 helicopters. This service information specifies removing the bellows and repetitively inspecting the swashplate.

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

Differences Between This AD and the EASA AD

The EASA AD requires compliance within different time intervals for some actions than what this AD requires. The EASA AD allows a non-cumulative tolerance of 10 percent that may be applied to the compliance times, and this AD does not. This AD applies to Model MBB-BK 117D-2 helicopters while the EASA AD does not. The EASA AD applies to Model BO-105D helicopters, while this AD does not. The EASA AD requires reporting corrosion to Airbus Helicopters while this AD does not.

Costs of Compliance

The FAA estimates that this AD affects 211 helicopters of U.S. Registry. Labor rates are estimated at \$85 per work-hour. Based on these numbers, the FAA estimates that operators may incur the following costs in order to comply with this AD.

Inspecting the swashplate assembly takes about 3 work-hours for an estimated cost of \$255 per helicopter and \$53,805 for the U.S. fleet per inspection cycle.

Repairing a scratched support tube takes about 3 work-hours for an estimated cost of \$255 per helicopter.

Replacing a corroded or damaged clamp takes about 2 work-hours and parts cost about \$8 for a cost of \$178 per helicopter.

Replacing corroded ball bearings takes about 4 work-hours and parts cost about \$3,000 for a cost of \$3,340 per helicopter.

Removing foreign objects from the outer deflection ring takes about 2 work-hours for an estimated cost of \$170 per helicopter.

Authority for This Rulemaking

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

The FAA is issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: General requirements. Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and

procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

- (1) Is not a "significant regulatory action" under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by:
 - a. Removing Airworthiness Directive (AD) 2019-07-07, Amendment 39-19618 (84 FR 16394, April 19, 2019); and
 - b. Adding the following new AD:

2021-10-21 Airbus Helicopters

Deutschland GmbH: Amendment 39-21554; Docket No. FAA-2021-0135; Project Identifier MCAI-2020-01044-R.

(a) Effective Date

This airworthiness directive (AD) is effective July 7, 2021.

(b) Affected ADs

This AD replaces AD 2019-07-07, Amendment 39-19618 (84 FR 16394, April 19, 2019) (2019-07-07).

(c) Applicability

This AD applies to Airbus Helicopters Deutschland GmbH Model BO-105A, BO-105C, BO-105S, BO105LS A-3, MBB-BK 117A-1, MBB-BK 117A-3, MBB-BK 117A-4, MBB-BK 117B-1, MBB-BK 117B-2, MBB-BK 117C-1, MBB-BK 117C-2, and MBB-BK 117D-2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6200, Main Rotor System.

(e) Unsafe Condition

This AD was prompted by a lower clamp found missing from the swashplate bellows (bellows) and damaging the swashplate bearing ring before becoming detached. The FAA is issuing this AD to prevent a loose bellows clamp. The unsafe condition, if not addressed, could result in loss of the bellows, contact of the bellows with the main rotor blades, main rotor mast, and tail rotor, and subsequent loss of helicopter control.

(f) Compliance

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

(g) Required Actions

- (1) Within 50 hours time-in-service (TIS) after the effective date of this AD:

(i) Remove from service bellows part number (P/N) 105-10113.05, P/N 4638305043, P/N 4619305044, or P/N B623M20X2240 from the swashplate assembly (swashplate).

(ii) Clean and inspect the support tube for scratches as depicted in Detail 11, Figure 6 of Airbus Helicopters Alert Service Bulletin ASB (ASB) BO105-40A-107 (ASB BO105-40A-107); or Detail 11, Figure 5 of ASB BO105 LS-40A-12 (ASB BO105 LS 40A-12); or Detail 11, Figure 5 of ASB MBB-BK117-40A-115, (ASB MBB-BK117-40A-115); or Detail 11, Figure 5 of ASB MBB-BK117 C-2-62A-007 (ASB MBB-BK117 C-2-62A-007), each Revision 5 and dated July 25, 2017; or Detail 11, Figure 5 of ASB MBB-BK117 D-2-62A-003, Revision 3, dated July 25, 2017 (ASB MBB-BK117 D-2-62A-003); as applicable to your model helicopter. If there are scratches on the support tube, before further flight, rework the cylindrical area to a max depth of 0.1 mm with a polishing cloth #400 or equivalent polishing cloth. The reworked area must not exceed 10 mm in width or 3 cm² in area, the minimum separation between any adjacent reworked areas must be 30 mm, and total reworked areas must not exceed 10 percent of the cylindrical area.

(iii) Inspect the clamp for corrosion and correct installation.

Note 1 to paragraph (g)(1)(iii): A figure of the clamp is depicted in Detail 9, Figure 6 of ASB BO105-40A-107; or Detail 9, Figure 5 of ASB BO105 LS-40A-12, ASB MBB-BK117-40A-115, or ASB MBB-BK117 C-2-62A-007; or Detail 9, Figure 5 of ASB MBB-BK117 D-2-62A-003; as applicable to your model helicopter.

(A) If there is corrosion on the clamp, before further flight remove the clamp from service.

(B) If the clamp is incorrectly installed, before further flight install the clamp correctly on the shield as depicted in Detail 10, Figure 6 of ASB BO105-40A-107; or Detail 10, Figure 5 of ASB BO105 LS-40A-12, ASB MBB-BK117-40A-115, or ASB MBB-BK117 C-2-62A-007; or Detail 10, Figure 5 of ASB MBB-BK117 D-2-62A-003; as applicable to your model helicopter.

(C) Apply a torque between 0.5 Nm and 0.7 Nm to the screw and install lockwire as depicted in Detail 8, Figure 6 of ASB BO105-40A-107; or Detail 8, Figure 5 of ASB BO105 LS-40A-12, ASB MBB-BK117-40A-115, or ASB MBB-BK117 C-2-62A-007; or Detail 8, Figure 5 of ASB MBB-BK117 D-2-62A-003; as applicable to your model helicopter.

(iv) Inspect each ball bearing for corrosion. If there is corrosion on any ball bearing, before further flight, remove the ball bearing from service.

(v) Inspect the area under the deflection ring for foreign objects by removing the lock wire, removing the screws, and removing the outer deflection ring. If there are any foreign objects, remove the foreign objects with a lint-free cloth.

(2) Within 400 hours TIS after the effective date of this AD, after complying with the actions in paragraph (g)(1) of this AD, and thereafter at intervals not to exceed 400 hours TIS, inspect the swashplate by following the Accomplishment Instructions, paragraph 3.B.4 of ASB BO105-40A-107; or paragraph 3.B.3 of ASB BO105 LS-40A-12, ASB MBB-BK117-40A-115, ASB MBB-BK117 C-2-62A-007, or ASB MBB-BK117 D-2-62A-003; as applicable to your model helicopter.

(3) After May 24, 2019 (the effective date of AD 2019-07-07), do not install a bellows P/N 105-10113.05, P/N 4619305044, or P/N 4638305043, or a gearbox with a bellows P/N 105-10113.05, P/N 4619305044, or P/N 4638305043 on any helicopter.

(4) As of the effective date of this AD, do not install a bellows P/N B623M20X2240 on any helicopter.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (i)(1) of this AD. Information may be emailed to: 9-AVS-AIR-730-AMOC@faa.gov.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(i) Related Information

(1) For more information about this AD, contact Matt Fuller, AD Program Manager, Operational Safety Branch, Airworthiness Products Section, General Aviation & Rotorcraft Unit, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222-5110; email 9-AVS-AIR-730-AMOC@faa.gov.

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2016-0142R1, dated April 12, 2018. You may view the EASA AD on the internet at <https://www.regulations.gov> in Docket No. FAA-2021-0135.

(j) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin ASB (ASB) BO105-40A-107, Revision 5, dated July 25, 2017.

(ii) Airbus Helicopters ASB BO105 LS-40A-12, Revision 5, dated July 25, 2017.

(iii) Airbus Helicopters ASB MBB-BK117-40A-115, Revision 5, dated July 25, 2017.

(iv) Airbus Helicopters ASB MBB-BK117 C-2-62A-007, Revision 5, dated July 25, 2017.

(v) Airbus Helicopters ASB MBB-BK117 D-2-62A-003, Revision 3, dated July 25, 2017.

(3) For service information identified in this AD, contact Airbus Helicopters, 2701 N Forum Drive, Grand Prairie, TX 75052; telephone (972) 641-0000 or (800) 232-0323; fax (972) 641-3775; or at <https://www.airbus.com/helicopters/services/technical-support.html>.

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N-321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222-5110.

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

Issued on May 5, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-11444 Filed 6-1-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2021-0223; Project Identifier AD-2020-00539-A; Amendment 39-21550; AD 2021-10-17]

RIN 2120-AA64

Airworthiness Directives; Mooney International Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Mooney International Corporation (Mooney) Model M20V airplanes. This AD was prompted by reports of short circuit and arcing of the alternator main power cable in the engine compartment. This condition, if unaddressed, could result in a fire hazard, loss of engine thrust control, and reduced control of the airplane. This AD requires inspecting the alternator main power cable and the exhaust crossover tube for damage, replacing damaged parts as necessary, and installing an additional alternator cable clamp. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective July 7, 2021.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 7, 2021.

ADDRESSES: For service information identified in this final rule, contact Mooney International Corporation, 165 Al Mooney Road, North Kerrville, TX 78028; phone: (800) 456-3033; email: support@mooney.com. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148. It is also available at <https://www.regulations.gov> by searching for and locating Docket No. FAA 2021-0223.

Examining the AD Docket

You may examine the AD docket at <https://www.regulations.gov> by searching for and locating Docket No. FAA-2021-0223; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jacob Fitch, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: (817) 222-4130; fax: (817) 222-5245; email: jacob.fitch@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would

apply to certain serial-numbered Mooney Model M20V airplanes. The NPRM published in the **Federal Register** on March 9, 2021 (86 FR 13502; corrected March 17, 2021, 86 FR 14554). The NPRM was prompted by reports of short circuit and arcing of the alternator main power cable in the engine compartment. Mooney determined the alternator main power cable was incorrectly positioned with slack in the cable and allowed contact between the alternator main power cable and turbocharger right-hand (RH) exhaust crossover tube. In one instance, this contact caused arcing of the alternator main power cable and created a hole in the RH exhaust crossover tube, which may result in a fire hazard. A damaged crossover tube may also decrease effectiveness of the turbochargers and cause complete loss of engine power at higher altitudes (above 9,000 ft. above sea level). In the NPRM, the FAA proposed to require inspecting the alternator main power cable and the exhaust crossover tube and modifying the alternator main power cable routing by installing an additional alternator cable clamp, part number (P/N) MS21919WCJ6. This condition, if not addressed, could result in an inflight fire and loss of engine thrust control, which may lead to reduced control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the costs.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products. This AD is adopted as proposed in the NPRM.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Mooney International Corporation Service Bulletin M20-340C, dated February 14, 2020. The service information specifies inspecting the alternator main power cable and the exhaust crossover tube for damage and replacing damaged parts as necessary. The service information also contains procedures for modifying the alternator main power cable routing by installing an additional alternator cable clamp, P/N MS21919WCJ6.

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

Costs of Compliance

The FAA estimates that this AD affects 18 airplanes of U.S. registry.

The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect the cable and exhaust crossover tube for damage.	.5 work-hour × \$85 per hour = \$42.50	\$0	\$42.50	\$765
Install additional cable clamp .....	.5 work-hour × \$85 per hour = \$42.50	10	52.50	945

The FAA estimates the following costs to do any necessary replacements that would be required based on the

results of the inspection. The agency has no way of determining the number of

airplanes that might need these replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace alternator main power cable	8 work-hours × \$85 per hour = \$680	\$1,000	\$1,680
Replace exhaust crossover tube	8 work-hours × \$85 per hour = \$680	2,500	3,180

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

- (1) Is not a “significant regulatory action” under Executive Order 12866,
- (2) Will not affect intrastate aviation in Alaska, and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2021–10–17 Mooney International Corporation: Amendment 39–21550; Docket No. FAA–2021–0223; Project Identifier AD–2020–00539–A.

(a) Effective Date

This airworthiness directive (AD) is effective July 7, 2021.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Mooney International Corporation Model M20V airplanes, serial numbers 33–0001 through 33–0018, certificated in any category.

(d) Subject

Joint Aircraft System Component Code 2400, Electrical Power System.

(e) Unsafe Condition

This AD was prompted by reports of short circuit and arcing of the alternator main power cable in the engine compartment. The FAA is issuing this AD to prevent arcing of the alternator main power cable in the engine compartment. This condition, if not addressed, could result in an inflight fire and loss of engine thrust control, which may lead to reduced control of the airplane.

(f) Compliance

Comply with this AD before further flight after the effective date of this AD, unless already done.

(g) Required Actions

(1) Inspect the alternator main power cable and the exhaust crossover tube for burn marks, chafing, holes, and cracks, and replace any cable and crossover tube that has a burn mark, chafing, a hole, or a crack.

(2) Install an additional alternator cable clamp part number MS21919WCJ6 and ensure correct routing of the alternator main power cable by following steps 1.5. through 1.9. of the Instructions in Mooney International Corporation Service Bulletin M20–340C, dated February 14, 2020.

(h) Special Flight Permit

A special flight permit may be issued with the following limitations:

- (1) Flights must not carry passengers;
- (2) Operation in daytime visual meteorological conditions only;
- (3) Straight and level flight must be maintained;
- (4) Operation in areas of known turbulence prohibited; and
- (5) Altitude limited to 9,000 ft. above sea level.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Fort Worth ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in Related Information.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(j) Related Information

For more information about this AD, contact Jacob Fitch, Aviation Safety Engineer, Fort Worth ACO Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: (817) 222-4130; fax: (817) 222-5245; email: jacob.fitch@faa.gov.

(k) Material Incorporated by Reference

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

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

(i) Mooney International Corporation Service Bulletin M20-340C, dated February 14, 2020.

(ii) [Reserved]

(3) For Mooney International Corporation service information identified in this AD, contact Mooney International Corporation, 165 Al Mooney Road, North Kerrville, TX 78028; phone: (800) 456-3033; email: support@mooney.com.

(4) You may view this service information at FAA, Airworthiness Products Section, Operational Safety Branch, 901 Locust, Kansas City, MO 64106. For information on the availability of this material at the FAA, call (816) 329-4148.

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

Issued on May 5, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021-11443 Filed 6-1-21; 8:45 am]

BILLING CODE 4910-13-P

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

[Docket No. FAA-2021-0062 Airspace Docket No. 20-ASO-21]

RIN 2120-AA66

Amendment of Area Navigation (RNAV) Route T-207; in the Vicinity of Cecil, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends low altitude RNAV route T-207 in Florida by removing the Cecil, FL (VQQ), VOR from the route description due to the planned decommissioning of that VOR. The removal does not affect navigation along the route.

DATES: Effective date 0901 UTC, August 12, 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/. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:**Authority for This Rulemaking**

The FAA's authority to issue rules regarding aviation safety is found in

Title 49 of the United States Code, Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it improves the efficiency of the NAS by lessening the dependency on ground-based navigation aids.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA-2021-0062 in the **Federal Register** (86 FR 12866; March 5, 2021) amending low altitude RNAV route T-207 by removing the Cecil, FL, VOR from the route description. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States Area Navigation routes are published in paragraph 6011 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 RNAV route listed in the document will be subsequently published 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 action amends 14 CFR part 71 by amending low altitude RNAV route T-207 by removing the Cecil, FL (VQQ), VOR from the route description. This action is necessary due to the planned decommissioning of the Cecil VOR. The Cecil VOR is located along a straight segment of T-207 between the CARRA, FL, Fix, and the MONIA, FL, Fix. The VOR is not a required component for navigating on T-207. Removal of the Cecil VOR does not affect the alignment of, or navigation along, T-207.

In addition, all latitude/longitude coordinates in the route description are updated to the hundredths of a second place for greater navigation accuracy.

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. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not a “significant rule” under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that 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 airspace action of amending the low altitude area navigation route T–207 due to the decommissioning of the Cecil, FL, VOR qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an

environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

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 6011 United States Area Navigation Routes.

* * * * *

T–207 ORMOND BEACH, (OMN) TO WAYCROSS, GA (AYS) [AMENDED]

Ormond Beach, FL (OMN)	VORTAC	(Lat. 29°18'11.71" N, long. 81°06'45.71" W)
CARRA, FL	Fix	(Lat. 29°43'50.91" N, long. 81°36'29.10" W)
MONIA, FL	Fix	(Lat. 30°28'49.00" N, long. 82°02'53.44" W)
Waycross, GA (AYS)	VORTAC	(Lat. 31°16'09.93" N, long. 82°33'23.20" W)

* * * * *

Issued in Washington, DC, on May 25, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–11425 Filed 6–1–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0042; Airspace Docket No. 20–AEA–13]

RIN 2120–AA66

Amendment VOR Federal Airway V–487; Eastern New York and Northern Vermont

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends VOR Federal airway V–487 in the vicinity of Glens Falls, NY, and Burlington, VT. The change substitutes a radial from the Burlington, VT, VOR/DME (BTV), in place of a radial from the Glens Falls,

NY, VOR/DME (GFL) that is used to define a navigation fix along the route. Additionally, this action removes segments of V–487 between Burlington, VT, and St Jean, Canada. These changes are necessary due to the decommissioning of the Glens Falls, NY, VOR/DME, and the decommissioning of the St Jean, Canada, VOR/DME (YJN).

DATES: Effective date 0901 UTC, August 12, 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/. For further information, you can contact

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA-2021-0042 in the **Federal Register** (86 FR 12865; March 5, 2021), amending VOR Federal airway V-487, in eastern New York and northern Vermont. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.11E dated July 21, 2020, and effective September 15, 2020, which is incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document will be subsequently published 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 action amends 14 CFR part 71 by amending VOR Federal airway V-487 in the vicinity of Glens Falls, NY, and Burlington, VT. The change substitutes a radial from the Burlington, VT, VOR/DME, in place of the Glens Falls, NY, VOR/DME radial, that defines the ENSON, VT, navigation fix. Currently, the ENSON, VT, navigation fix is defined by the intersection of the Cambridge, NY, VOR/DME (CAM) 002° radial, and the Glens Falls, NY, VOR/DME 032° radial.

This change is necessary because the Glens Falls VOR/DME has been decommissioned and is no longer in service. As amended, the ENSON fix is defined by the intersection of the Burlington, VT, 187°, and the Cambridge, NY 002° radials. This change does not affect navigation along that portion of V-487.

Additionally, this action removes the segment of V-487 that extends between the Burlington, VT, VOR/DME, and the St Jean, Canada VOR/DME due to the decommissioning of the St Jean VOR/DME. The amended route V-487 extends between LaGuardia, NY, and Burlington, VT.

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. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that 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 airspace action of amending VOR Federal airway V-487 due to the decommissioning of the Glens Falls, NY, VOR/DME, and the decommissioning of the St Jean, Canada, VOR/DME, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and Procedures, paragraph 5-6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5-2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. Accordingly, the FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V-487 [Amended]

From LaGuardia, NY; Bridgeport, CT; INT Bridgeport 343° and Cambridge, NY, 189° radials; Cambridge; INT Burlington, VT, 187° and Cambridge 002° radials; Burlington.

* * * * *

Issued in Washington, DC, on May 25, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021-11429 Filed 6-1-21; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 37 and 38

[Docket Nos. RM05-5-029 and RM05-5-030; Order No. 676-J]

Standards for Business Practices and Communication Protocols for Public Utilities

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations to incorporate by reference the latest version (Version 003.3) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). The WEQ Version 003.3 Standards include, in their entirety, the WEQ-023 Modeling Business Practice Standards contained in the WEQ Version 003.1 Standards, which address the technical issues affecting Available Transfer Capability (ATC) and Available Flowgate Capability (AFC) calculation for wholesale electric transmission services, with the addition of certain revisions and corrections. The Commission also revises its regulations to provide that transmission providers must avoid unduly discriminatory and preferential treatment in the calculation of ATC.

DATES: *Effective date:* This rule is effective August 2, 2021.

Incorporation by reference: The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of August 2, 2021. The incorporation by reference of certain other publications listed in this rule was approved by the Director of the Federal Register as of April 27, 2020.

Compliance date: Public utilities must make a compliance filing to comply with the requirements of this final rule through eTariff twelve months after implementation of the WEQ Version 003.2 Standards, but no earlier than October 27, 2022. Compliance filings for cybersecurity and Parallel Flow Visualization standards are due March 2, 2022.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

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1. The Federal Energy Regulatory Commission (Commission) is amending its regulations under the Federal Power

Act (FPA) ¹ to incorporate by reference into its regulations as mandatory enforceable requirements, the latest

version (Version 003.3) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North

¹ 16 U.S.C. 791a, et seq. (2018).

American Energy Standards Board (NAESB), filed with the Commission on March 30, 2020 (March 30 Filing). The WEQ Version 003.3 Standards build upon an earlier version of the standards that the Commission previously included and incorporated by reference into its regulations at 18 CFR parts 2 and 38, respectively, in Order No. 676–I.²

2. The WEQ Version 003.3 Standards include newly created standards as well as modifications to existing standards developed through the NAESB Business Practice Standards development or minor correction processes. The WEQ Version 003.3 Standards include revisions related to the surety assessment on cybersecurity performed by Sandia National Laboratories (Sandia) designed to strengthen the practices and cybersecurity protections established within the standards. NAESB also revised its Open Access Same-Time Information System (OASIS) suite of standards,³ including revisions to support new OASIS functionality that will allow for the posting of third party offers of planning redispatch services as well as providing additional information regarding the curtailment of firm transmission service. In addition, the WEQ Version 003.3 Standards include revisions to the NAESB WEQ–023 Modeling Business Practice Standards. The Commission also revises 18 CFR 37.6(b)(2)(i) to codify that the calculation of Available Transfer Capability (ATC) must be conducted in manner that is transparent, consistent with system conditions and outages for the relevant timeframe, and not unduly discriminatory or preferential.

I. Background

A. NAESB and Past Standards

3. NAESB is a non-profit standards development organization established in late 2001 (as the successor to the Gas Industry Standards Board (GISB), which was established in 1994) and serves as an industry forum for the development of business practice standards and communication protocols for the wholesale and retail natural gas and electricity industry sectors. Since 1995, NAESB's predecessor GISB and subsequently NAESB itself have been accredited members of the American

National Standards Institute (ANSI), complying with ANSI's requirements that its standards reflect a consensus of the affected industries.⁴

4. NAESB's standards include business practices intended to standardize and streamline the transactional processes of the natural gas and electric industries, as well as communication protocols and related standards designed to improve the efficiency of communication within each industry. NAESB supports all three "quadrants" of the gas and electric industries: wholesale gas, wholesale electric, and retail markets.⁵ All participants in the gas and electric industries are eligible to join NAESB and participate in standards development.

5. NAESB develops its standards under a consensus process so that the standards draw support from a wide range of industry members. NAESB's procedures are designed to ensure that all persons choosing to participate can have input into the development of a standard, regardless of whether they are members of NAESB, and each standard NAESB adopts must be supported by a consensus of the relevant industry segments. Standards that fail to gain consensus support are not adopted. NAESB's consistent practice has been to submit a report to the Commission after it has revised existing business practice standards or has developed and adopted new business practice standards. NAESB's standards are initially voluntary standards, which become mandatory for public utilities upon incorporation by reference by the Commission.

6. NAESB filed its WEQ Version 003.2 Business Practices Standards (WEQ Version 003.2 Standards) on December 8, 2017 (December 8 Filing), in Docket No. RM05–5–027.⁶ After consideration of the December 8 Filing, the Commission issued the WEQ Version

003.2 NOPR on May 16, 2019, wherein the Commission proposed to revise its regulations to incorporate by reference the WEQ Version 003.2 Standards, with certain enumerated exceptions.⁷ The Commission announced that NAESB's WEQ–023 Modeling Business Practice Standards would be addressed separately, proposing only to incorporate by reference the WEQ–023 Modeling Business Practice Standards that were moved from the WEQ–001 OASIS Business Practice Standards by the changes made to the WEQ Version 003.1 Standards.⁸

7. On February 4, 2020, the Commission issued Order No. 676–I, in which it amended its regulations under the FPA to incorporate by reference into its regulations as mandatory enforceable requirements, with certain enumerated exceptions, the WEQ Version 003.2 Standards. The WEQ Version 003.2 Standards included the changes proposed in WEQ Version 003.1 Standards, which were the subject of an earlier notice of proposed rulemaking.⁹ All of these standards, except for the WEQ–022 and WEQ–023 Business Practice Standards, update and replace standards that the Commission previously incorporated by reference in Order No. 676–H.

8. Among the NAESB Business Practice Standards incorporated by reference in Order No. 676–I, the Commission incorporated the WEQ–022 Electric Industry Registry (EIR) Business Practice Standards, but did not incorporate by reference in its entirety the WEQ–023 Modeling Business Practice Standards. The Commission only incorporated by reference the WEQ–023 Modeling Business Practice Standards that were moved from the WEQ–001 OASIS Business Practice Standards by the changes made to the WEQ Version 003.1 Standards.¹⁰ The Commission also did not adopt the NOPR proposal to incorporate by

⁴ Prior to the establishment of NAESB in 2001, the Commission's development of business practice standards for the wholesale electric industry was aided by two *ad hoc* industry working groups established during the rulemaking proceeding that resulted in issuance of Order No. 889 and the creation of the OASIS, while GISB's efforts involved the development of business practice standards for the wholesale natural gas industry. Once formally established, NAESB took over the standards development previously handled by GISB and by the electric working groups.

⁵ The retail gas quadrant and the retail electric quadrant were combined into the retail markets quadrant. NAESB continues to refer to these working groups as "quadrants" even though there are now only three quadrants.

⁶ See Docket No. RM05–5–027, Report of the North American Energy Standards Board on Wholesale Electric Quadrant Business Practice Standards Version 003.2 under RM05–5 (Dec. 8, 2017) (NAESB WEQ Version 003.2 Report).

⁷ See *Standards for Bus. Practices & Comm'n Protocols for Pub. Utils.*, Notice of Proposed Rulemaking, 84 FR 24050 (May 16, 2019), 167 FERC ¶ 61,127 (2019) (WEQ Version 003.2 NOPR).

⁸ WEQ Version 003.2 NOPR, 167 FERC ¶ 61,127 at P 12. See also *Standards for Bus. Practices & Comm'n Protocols for Pub. Utils.*, Notice of Proposed Rulemaking, 81 FR 49580 (Jul. 28, 2016), 156 FERC ¶ 61,055, at P 42 (2016) (WEQ Version 003.1 NOPR).

⁹ NAESB filed the WEQ Version 003.1 Standards on October 26, 2015 (October 2015 Filing). See, e.g., WEQ Version 003.1 NOPR, 156 FERC ¶ 61,055.

¹⁰ The following WEQ–023 Modeling Business Practice Standards were incorporated by reference in Order No. 676–I: WEQ–023–5; WEQ–023–5.1; WEQ–023–5.1.1; WEQ–023–5.1.2; WEQ–023–5.1.2.1; WEQ–023–5.1.2.2; WEQ–023–5.1.2.3; WEQ–023–5.1.3; WEQ–023–5.2; WEQ–023–6; WEQ–023–6.1; WEQ–023–6.1.1; WEQ–023–6.1.2; and WEQ–023–A Appendix A.

² *Standards for Bus. Practices & Comm'n Protocols for Pub. Utils.*, Order No. 676–I, 85 FR 10,571 (Feb. 25, 2020), 170 FERC ¶ 61,062 (2020).

³ The OASIS suite of standards are the WEQ–001 OASIS Business Practice Standards, the WEQ–002 OASIS Standards and Communication Protocols Business Practice Standards, the WEQ–003 OASIS Data Dictionary Business Practice Standards, and the WEQ–013 OASIS Implementation Guide Business Practice Standards.

reference NAESB's latest version of the WEQ-006 Manual Time Error Correction Business Practice Standards.

B. Summary of NAESB WEQ Version 003.3

9. On March 30, 2020, NAESB filed the WEQ Version 003.3 Standards.¹¹ The WEQ Version 003.3 Standards build upon the standards included in the WEQ Version 003.2 Standards. After consideration of the March 30 Filing, the Commission issued the WEQ Version 003.3 NOPR on July 16, 2020, wherein the Commission proposed to incorporate the WEQ Version 003.3 Standards, with certain enumerated exceptions.¹²

10. NAESB's WEQ Version 003.3 Standards include newly created standards as well as modifications to existing standards developed through the NAESB Business Practice Standards development or minor correction processes.¹³ The WEQ Version 003.3 Standards also include additions and revisions to the NAESB WEQ-023 Modeling Business Practice Standards, which the Commission addresses herein.

11. The WEQ Version 003.3 Standards include revisions related to the surety assessment on cybersecurity performed by Sandia. NAESB responded to a U.S. Department of Energy (DOE) request that NAESB act on an expedited basis to ensure the WEQ cybersecurity standards developed in response to the surety assessment were included in the WEQ Version 003.3 Standards.¹⁴ NAESB reports that the changes strengthen the practices and cybersecurity protections established within the standards by aligning security requirements with other cybersecurity guidelines, mitigating potential vulnerabilities, and incorporating more secure communication and encryption methodologies.

12. In support of directives contained in Order No. 890,¹⁵ NAESB also revised the OASIS suite of standards. The WEQ

Version 003.3 Standards include additions and revisions to support new OASIS functionality that will allow for the posting of third party offers of planning redispatch services (WEQ-001-13.2) as well as providing additional information regarding the curtailment of firm transmission service (WEQ-001-28) prescribed in the OASIS suite of standards.¹⁶ In response to Order No. 676-I, NAESB also revised the standards as necessary to conform with the Commission's *Dynergy* policy, and stated that any standards from these efforts will be incorporated into future versions of the WEQ Business Practice Standards.¹⁷

13. The WEQ Version 003.3 Standards also include changes that were made to support consistency with the North American Electric Reliability Corporation (NERC) Reliability Standards, including NERC's retirement of the NERC Interchange Scheduling and Coordination Reliability Standards and retirement of the NERC Modeling, Data, and Analysis Reliability Standards. NAESB coordinated with NERC to make modifications and revisions pertaining to electronic tagging (e-Tagging),¹⁸ and to the calculation of ATC and AFC.¹⁹

14. The WEQ Version 003.3 Standards also include additions, revisions, and reservations made to the WEQ-008 Transmission Load Relief (TLR)—Eastern Interconnection Business Practice Standards, which NAESB advises completes the standards development effort for the Parallel Flow Visualization (PFV) enhanced congestion management process (PFV Standards).²⁰ The PFV Standards are the culmination of a multi-year coordination effort between NAESB, NERC, and the Eastern Interconnect Data Sharing Network (EIDSN), Inc.,²¹

and the standards are designed to improve upon the congestion management procedures for the Eastern Interconnection through the use of real-time data in calculations for transmission loading relief obligations.

15. Moreover, as part of the standards development process, NAESB made five additional revisions to the OASIS suite of standards that were not made in response to Commission orders.²² First, NAESB modified the OASIS suite of standards to improve OASIS query functionalities. Second, NAESB modified the OASIS suite of standards for new OASIS functionality to fully document all encumbrances to unconditional firm transmission service, such as untagged pseudo-ties. Third, NAESB modified the OASIS suite of standards to expand notice functionality and establish standards for providing dynamic notification to transmission customers of the renewal deadline for rollover rights for point-to-point transmission service. Fourth, NAESB modified WEQ-001 OASIS Business Practice Standards for use of Next Hour Market Service and the 0-NX transmission product codes. Fifth, NAESB modified the OASIS suite of standards to modify Network Integration Transmission Service (NITS) requirements. Finally, NAESB revised the OASIS suite of standards to make three minor corrections.²³

16. The WEQ Version 003.3 Standards include the WEQ-023 Modeling Business Practice Standards that provide technical details concerning the calculation of ATC for wholesale electric transmission services. The WEQ-023 Modeling Business Practice Standards address aspects of certain of the NERC MOD A Reliability Standards relating to modeling, data and analysis that are included in the NERC's proposed retirement of its MOD A Reliability Standards.

II. Discussion

A. Overview

17. NAESB's WEQ Version 003.3 Standards, which we are incorporating by reference in this final rule, include modifications, reservations, and/or

Transmission Owners, and Balancing Authorities, EIDSN, Inc. manages the Electric Information Network (EInet), a data-sharing network for its members to promote the reliable and efficient operation of the Eastern and Quebec Interconnections. See EIDSN, Inc., *Our Mission*, at <https://eidsn.org/>.

²² NAESB WEQ Version 003.3 Report, Transmittal at 5.

²³ Minor corrections were made to the WEQ-001 OASIS Business Practice Standards and the WEQ-003 OASIS Data Dictionary Business Practice Standards.

¹¹ See NAESB WEQ Version 003.3 Report (filed March 30, 2020).

¹² *Standards for Bus. Practices & Comm'n Protocols for Pub. Utils.*, 85 FR 55201 (Sept. 4, 2020) 172 FERC ¶ 61,047 (2020) (WEQ Version 003.3 NOPR).

¹³ See NAESB WEQ Version 003.3 Report, Transmittal at 1-2.

¹⁴ *Id.* at 3-4.

¹⁵ *Preventing Undue Discrimination & Preference in Transmission Serv.*, Order No. 890, 72 FR 12266 (Mar. 15, 2007), 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 73 FR 2984 (Jan. 16, 2008), 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 74 FERC 12540 (Mar. 25 2009), 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 74 FERC 61511 (Nov. 25, 2009), 129 FERC ¶ 61,126 (2009).

¹⁶ NAESB WEQ Version 003.3 Report, Transmittal at 4. WEQ-001-13.2 adds new Third Party Offers for Planning Redispatch Services Business Practice Standards to allow for posting of third-party offers of planning redispatch services. WEQ-001-28 adds new Curtailment Posting Requirements Business Practice Standards for the posting of additional information on OASIS regarding firm transmission curtailments.

¹⁷ In *Dynergy Power Marketing, Inc.*, 99 FERC ¶ 61,054 (2002) (*Dynergy*), the Commission established its policy on a customer's right to keep its contractual rights to point-to-point firm transmission service on the original path it has reserved while the customer's request for a redirect is pending.

¹⁸ With respect to e-Tagging, NAESB also modified the WEQ-004 Coordinate Interchange Business Practice Standards' Commercial Timing Tables to clarify commercial timing requirements.

¹⁹ NAESB WEQ Version 003.3 Report, Transmittal at 4.

²⁰ *Id.*

²¹ Comprised of North American Reliability Coordinators, Transmission Operators,

additions to the following set of existing standards:²⁴

WEQ	Business practice standards
000	Abbreviations, Acronyms, and Definition of Terms.
001	Open Access Same-Time Information System (OASIS).
002	OASIS Standards and Communication Protocols (S&CP).
003	OASIS S&CP Data Dictionaries.
004	Coordinate Interchange.
008	Transmission Loading Relief (TLR)—Eastern Interconnection Business Practice Standards.
013	OASIS Implementation Guide.
023	Modeling.

18. The specific NAESB standards that we are incorporating by reference in this final rule establish a set of business practice standards and communication protocols for the electric industry that will continue to enable industry members to achieve efficiencies by streamlining utility business and transactional processes and communication procedures. All of these standards, except for portions of the WEQ–023 Modeling Business Practice Standards, update and replace standards that the Commission previously incorporated by reference in Order No. 676–1.

19. As the Commission has explained in prior orders, NAESB approved the standards under its consensus procedures.²⁵ Adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself must conduct business under these standards, the Commission's regulations should reflect those standards that have the widest

²⁴ See NAESB WEQ Version 003.3 Report, Transmittal at 3.

²⁵ *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676–H, 79 FR 56939 (Sept. 24, 2015), 148 FERC ¶ 61,205, at P 21, n.27 (2014). (“WEQ’s procedures ensure that all industry members can have input into the development of a business practice standard, whether or not they are members of NAESB, and each standard it adopts is supported by a consensus of the seven industry segments: Transmission, generation, marketer/brokers, distribution/load serving entities, end users, independent grid operators/planners, and technology services. Under the WEQ process, for a standard to be approved, it must receive a supermajority vote of 67 percent of the members of the WEQ’s Executive Committee with support from at least 40 percent of each of the seven industry segments. For final approval, 67 percent of the WEQ’s general membership must ratify the standards.”).

possible support. In section 12(d) of the National Technology Transfer and Advancement Act of 1995, Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, to carry out policy objectives or activities.²⁶

B. Issues Raised by Commenters

20. Comments in response to the WEQ Version 003.3 NOPR were filed by four commenters. Commenters expressed general support for the Commission’s proposals,²⁷ and no comments opposed the basic direction of the NOPR, although some commenters took issue with specific details of the NOPR proposal. Specifically, commenters raised discrete concerns regarding the WEQ–023 Business Practice Standards and the Commission’s proposed regulatory text regarding non-discriminatory ATC calculations. Commenters also commented on whether the Commission should require industry to implement WEQ Version 003.2 prior to WEQ Version 003.3, or instead should cancel the implementation obligation of WEQ Version 003.2 and require implementation of all accepted WEQ Version 003.3 Business Practice Standards (including WEQ 003.2 changes) within 18 months. We will incorporate by reference into the Commission’s regulations all of the WEQ Version 003.3 Standards and amend the regulatory text at § 37.6(b)(2)(i) as described below. We will separately discuss each of the issues raised by commenters.

1. Changes to OASIS

a. Background

21. Order No. 890 requires transmission providers to post to OASIS “all circumstances and events contributing to the need for a firm service curtailment, specific services and customers curtailed (including the transmission provider’s own retail loads), and the duration of the curtailment.”²⁸ As the Commission explained in the NOPR, NAESB made additional modifications to the OASIS suite of standards, as well as consistency changes to WEQ–000 Abbreviations, Acronyms, and Definition of Terms Business Practice

²⁶ Public Law 104–113, 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

²⁷ The ISO/RTO Council specifically endorsed the WEQ Version 003.3 NOPR proposal to incorporate by reference business practice standards necessary to effectuate the PFV enhanced congestion management process. ISO/RTO Council Comments at 2, 4–5.

²⁸ Order No. 890, 118 FERC ¶ 61,119 at P 1627.

Standards. NAESB’s changes to the standards included modifications to existing templates and the creation of two new templates to provide the mechanism for transmission providers to post the required additional information regarding the curtailment of firm transmission service, including the curtailment of non-firm transmission service that preceded any firm transmission curtailments.

22. The information needed to meet the posting requirements is contained in two separate tools: The Interchange Distribution Calculator (IDC) tool for the Eastern Interconnection, managed by EIDSN, Inc., and the Enhanced Curtailment Calculator (ECC) tool for the Western Interconnection, managed by the California Independent System Operator. Although both the IDC and ECC tools produce information to be posted to OASIS in accordance with the standards, NAESB states that its members determined that the need for a mechanism to transfer data from the tools to OASIS should be addressed as part of any industry implementation rather than through standards modifications.

b. Comments

23. The ISO/RTO Council states that it supports an automated mechanism to transfer data from the IDC/ECC tools to the firm transmission curtailment templates.²⁹ The ISO/RTO Council states that it currently is unclear whether firm curtailment information must be posted manually prior to the implementation of an automated data transfer mechanism.³⁰ The ISO/RTO Council contends that manually populating firm curtailment data into the templates is administratively burdensome and introduces the potential for human (data entry) error, and automated data transfer results in a more reliable, accurate and equitable posting process.³¹ The ISO/RTO Council requests that the Commission clarify that manual postings will not be required as an interim means to achieve compliance while the automated data transfer mechanism is being developed per the implementation schedule for the WEQ Version 003.3 Standards.

c. Commission Determination

24. Because of the importance of posting information regarding firm curtailments, we will not delay implementation while industry develops a more automated data transfer mechanism. NAESB states that its

²⁹ ISO/RTO Council Comments at 13.

³⁰ *Id.*

³¹ *Id.*

members determined that the need for a mechanism to transfer data from the tools to OASIS should be addressed as part of any industry implementation rather than as part of the standards modifications. While we encourage the industry to develop automated tools as quickly as possible, we agree that this effort should be independent from the development and implementation of the standards.

2. Incorporation of WEQ-023 Standards 1.4 and 1.4.1

a. Background

25. The WEQ-023 Business Practice Standards include two new standards related to contract path management not previously included in the NERC MOD A Reliability Standards. These two Business Practice Standards, WEQ-023-1.4 and WEQ-023-1.4.1, limit the amount of firm transmission service granted on an ATC Path and limit the interchange schedule (both firm and non-firm) between balancing authority areas to the contract path limit for that given path, respectively.³²

b. Comments

26. Bonneville Power Administration (Bonneville) and the ISO/RTO Council ask the Commission to decline to incorporate by reference these Standards. Bonneville asserts that the WEQ-023-1.4 and WEQ-023-1.4.1 Business Practice Standards need further refinement by the industry before they are ready for incorporation by reference, if at all. Bonneville states that these Standards appear to be inconsistent with how Bonneville and other transmission service providers and system operators in the Western Interconnection operate their systems. Bonneville explains that, for itself and others, an ATC Path is allowed to be overscheduled up to twenty minutes prior to flow, at which point interruptions of non-firm service,

³² WEQ-023 1.4 states, “[e]ach Transmission Service Provider shall not grant a request for Firm Transmission Service on an ATC Path that serves as an interface with another BAA if the net of the Firm Transmission Service transactions into and out of the Transmission Service Provider’s BAA would exceed the sum of the Facility Ratings of Tie Facilities, to which Transmission Service Providers mutually agree they have the right to use Tie Facilities that comprise the ATC Path, between the two BAAs.”

WEQ-023 1.4.1 states, “[e]ach Transmission Service Provider shall limit the Interchange Schedule (both Firm and non-Firm) of the reservations on an ATC path into and out of Transmission Service Provider’s BAA on an interface with another BAA such that the Net Interchange Schedule does not exceed the sum of the Facility Ratings of Tie Facilities, to which Transmission Service Providers mutually agree they have the right to use the Tie Facilities that comprise the ATC Path, between the two BAAs.

curtailments, or economic dispatches, are then performed to ensure that path limits are not exceeded. Bonneville further states that this practice allows it to maximize transmission utilization including the integration of variable resources scheduled within the hour, and that these requirements, if incorporated by reference as drafted, would restrict energy supply and transmission availability.³³

27. Bonneville contends that its concerns with Business Practice Standards WEQ-023-1.4 and 1.4.1 are particularly relevant in light of the recent heat wave events of August and September 2020 in California. Bonneville asserts that eliminating the practice of over-scheduling until the final twenty minutes prior to flow on transmission facilities such as the California-Oregon Intertie could artificially restrict energy supply and transmission availability.³⁴

28. The ISO/RTO Council joins Bonneville in opposing WEQ-023-1.4 and 1.4.1 Business Practice Standards, stating that requiring transmission service providers to assume all firm transmission service reservations will be used in full, without accounting for the transmission customer’s scheduling activity, “will undoubtedly result in less efficient use of the transmission system.” The ISO/RTO Council also expresses concern that under system conditions which include the sudden, unexpected outage or de-rate of a transmission facility associated with an ATC path, there may not be sufficient time to adjust posted ATC or modify the current interchange, which could lead to a violation of the requirement.³⁵

29. The ISO/RTO Council notes that WEQ-023-1.4 and 1.4.1 Business Practice Standards were initially rejected by the NAESB Business Practices Subcommittee, and that the ISO/RTO Council and other entities, including PJM Interconnection LLC, Midcontinent Independent System Operator, Inc., Southwest Power Pool, Electric Reliability Council Of Texas, Inc., and the Independent Electricity System Operator of Ontario, raised concerns that remain unresolved.³⁶

c. Commission Determination

30. We incorporate by reference all of the WEQ-023 Modeling Business Practice Standards. The WEQ-023 Business Practice Standards were filed in October 2015 and were the product of an extensive development process by

³³ Bonneville Comments at 4.

³⁴ *Id.* at 5.

³⁵ ISO/RTO Council Comments at 9.

³⁶ *Id.*

a NAESB subcommittee with the necessary expertise to address the relevant technical issues. Although WEQ-023-1.4 and 1.4.1 Business Practice Standards were not in NERC’s MOD A Reliability Standards, they were proposed to help address differences in how contract paths are treated that would have existed among the three methods for calculating ATC: Rated System Path Methodology, Area Interchange Methodology, and Flowgate Methodology. Declining to adopt these standards at this point could potentially loosen the requirements for non-discriminatory calculation of ATC and may require changes to specific standards regarding particular contract paths. Given the deliberately broad nature of these standards, the record does not show that current business practices, such as a response to a sudden de-rate or outage referenced by the ISO/RTO Council, would necessarily be considered a violation of the standards.

31. Moreover, a consensus of the industry approved these standards with Bonneville, MISO and ISO-NE voting in favor at the WEQ stakeholders meeting, while no ISO/RTO and only one utility voted in opposition. In reviewing these standards, the Commission relies heavily on the consensus expertise of the NAESB membership.³⁷ Concerns with the NAESB Business Practice Standards therefore should be raised within the NAESB process, and the industry should seek to resolve any issues therein and, if they cannot, the parties need to provide a factual record for the Commission to consider the issue.³⁸

32. Bonneville and the ISO/RTO Council have raised concerns with whether implementation of these standards in all cases will result in a loss of scheduling flexibility without the risk of overscheduling. We therefore remind these parties that, as further discussed in P 41, we remain open to examining requests for waivers of these standards when utilities make compliance filings.³⁹ Such requests

³⁷ *Standards for Business Practices of Interstate Natural Gas Pipelines*; Order No. 587, 61 FR 39,053, 39057 (July 26, 1996), FERC Stats. & Regs. ¶ 31,038, at 30,059 (1996) (cross-referenced at 76 FERC ¶ 61042) (“Since it is the industry that must operate under these standards, deferring to the considered judgment of the consensus of the industry is both reasonable and appropriate.”).

³⁸ See *Standards for Bus. Practices of Interstate Nat. Gas Pipelines*, Order No. 587-G, 63 FR 20072, 20076-80 (Apr. 23, 1998), FERC Stats. & Regs. ¶ 31,062, at 30,668-74 (1998) (cross-referenced at 83 FERC ¶ 61,029) (Commission resolved issue on which NAESB’s predecessor, the Gas Industry Standards Board, could not reach consensus).

³⁹ Order No. 676-H, 148 FERC ¶ 61,205 at P 80.

should explain why the filing parties believe their current practices violate the standards and why their practices should be considered equal or superior to the standards in preventing overscheduling while providing for more flexibility or other benefits in scheduling. We urge NAESB to consider the issues raised by Bonneville and the ISO/RTO Council and whether revisions to these standards are warranted. The Commission also is mindful of the consideration of the potential benefits of maximizing the use of transmission when appropriate, without compromising reliability, and maintaining flexibility to maximize transmission utilization as conditions change, and has scheduled a workshop that may consider these issues.⁴⁰

3. Changes to the Regulatory Text

a. Background

33. The Commission sought comment on proposed additional regulatory text in 18 CFR 37.6 (information to be posted on the OASIS) stating that transmission provider ATC calculations must be transparent, consistent, and not unduly discriminatory or preferential. Specifically, the Commission proposed to make the revisions indicated below to the regulatory text in 18 CFR 37.6(b)(2)(i):

Information used to calculate any posting of ATC and TTC must be dated and time-stamped and all calculations shall be performed according to consistently applied methodologies referenced in the Transmission Provider's transmission tariff and shall be based on Commission-approved [Reliability Standards,] *business practice and electronic communication standards, and related implementation documents*, as well as current industry practices, standards and criteria. *Transmission Providers shall calculate ATC and TTC in coordination with and consistent with capability and usage on neighboring systems, calculate system capability using factors derived from operations and planning data for the time frame for which data are being posted (including anticipated outages), and update ATC and TTC calculations as inputs change. Such calculations shall be conducted in a manner that is transparent, consistent, and not unduly discriminatory or preferential.*⁴¹

⁴⁰ *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, Notice of Workshop, RM20-10-000 & AD19-19-000 (Apr. 15, 2021). The workshop is scheduled for September 10, 2021.

⁴¹ Additions to the regulatory text are indicated by *italics*. Deletions from the regulatory text are indicated by [brackets.]

34. The NOPR explained that “this proposed regulation, in conjunction with the WEQ-023 Modeling Business Practice Standards, will help ensure that all transmission customers will be treated fairly when seeking alternative power supplies, and will provide for comparable and not unduly discriminatory or preferential treatment of native load customers and transmission service customers.”⁴² The Commission also sought comment on whether it should develop new regulations outside of the NAESB standards development process “to maintain the current level of detail related to ATC calculations; if so, what level of detail those regulations should have.”⁴³

b. Comments

35. Four commenters oppose the Commission's proposed changes to the regulatory text. No commenters filed in support of the proposal. Bonneville and the Edison Electric Institute (EEI) assert that the Commission's proposed language is unnecessary. Bonneville further asserts that the regulatory changes circumvent the NAESB process sanctioned by the Commission for the development of standards, and that the Commission's regulations are not the appropriate place to address technical details involving the calculation of ATC and TTC. In particular, Bonneville maintains that the Commission's proposed language includes ambiguous references to technical concepts such as “factors derived from operations and planning data” in the calculation of ATC and TTC.⁴⁴ EEI contends that revisions should occur through NAESB's standard development process, and that the directives in Order No. 890 and related provisions in the pro forma OATT are sufficient to ensure that ATC calculation is consistent and non-discriminatory. EEI also notes that in Order No. 890, the Commission acknowledged its reliance on NAESB for the development of business practice standards.⁴⁵

36. The ISO/RTO Council disagrees with the concerns expressed in the NOPR about the opportunity for discriminatory practices and transmission provider discretion in the

⁴² WEQ Version 003.3 NOPR, 172 FERC ¶ 61,047 at P 49 (citing *Mandatory Reliability Standards for the Calculation of Available Transfer Capability, Capacity Benefit Margins, Transmission Reliability Margins, Total Transfer Capability, & Existing Transmission Commitments & Mandatory Reliability Standards for the Bulk-Power Sys.*, Order No. 729, 74 FR 64884 (Dec. 8, 2009), 129 FERC ¶ 61,155, at P 2 (2009)).

⁴³ *Id.*

⁴⁴ Bonneville Comments at 3.

⁴⁵ EEI Comments at 3.

calculation of ATC and AFC, stating that the WEQ-023 Modeling Business Practice Standards “were extensively vetted through NAESB's industry-wide standards development process where any comments received regarding the lesser degree of detail in the standards were successfully addressed prior to NAESB ratification.”⁴⁶ The ISO/RTO Council contends that the WEQ-023 Modeling Business Practice Standards ensure non-discriminatory practices and limit transmission provider discretion by requiring each transmission service provider to publish its ATC calculation methodology, and to describe its methodology in its ATC implementation document such that, given the same information used by the transmission service provider, the ATC calculations are reproducible and can be validated.⁴⁷

37. Similarly, Open Access Technology International, Inc. (OATI) maintains that the NAESB standards development process is the best way to draft standards through an open, transparent, and industry participant driven process. It states that standards developed through this process would help the Commission avoid the imposition of unintentional and unnecessary regulatory changes.⁴⁸ All four commenters agree that, if the Commission determines that the WEQ-023 Modeling Business Practice Standards are insufficient, it should encourage NAESB to provide additional details and specific standards to address those shortcomings.

c. Commission Determination

38. We adopt the NOPR proposal, with certain revisions. We recognize that commenters oppose adding these criteria to the Commission's regulations, but after consideration of their arguments we continue to believe that revisions to the Commission's regulations are necessary to ensure that transmission provider ATC calculations are transparent, consistent with anticipated system conditions and outages for the relevant timeframe, and not unduly discriminatory or preferential. However, in response to concerns raised in comments, we will not include detailed technical criteria in the regulations, but we will instead include the fundamentals of Order No. 890 requirements for calculating ATC, which is consistent with what the Commission proposed in the NOPR. The

⁴⁶ ISO/RTO Council Comments at 7.

⁴⁷ *Id.* at 7-8.

⁴⁸ OATI Comments at 5.

regulatory text will read as shown below.⁴⁹

Information used to calculate any posting of ATC and TTC must be dated and time-stamped and all calculations shall be performed according to consistently applied methodologies referenced in the Transmission Provider's transmission tariff and shall be based on Commission-approved [Reliability Standards,] *business practice and electronic communication standards, and related implementation documents*, as well as current industry practices, standards and criteria. *Such calculations shall be conducted in a manner that is transparent, consistent with anticipated system conditions and outages for the relevant timeframe, and not unduly discriminatory or preferential.*

39. The revised regulatory text properly references the WEQ Business Practice Standards in place of the NERC Mod A Reliability Standards that have been proposed for retirement. It also includes in the regulation Order No. 890's fundamental requirement that transmission provider ATC calculations must be transparent, consistent with anticipated system conditions and outages for the relevant timeframe, and not unduly discriminatory or preferential, but without introducing specific technical concepts that may be subject to differing interpretations.⁵⁰ We adopt this regulatory text because it has the advantage of removing the most objectionable language opposed by commenters while including the fundamental requirements in Order No. 890, including that the determination of ATC must not be unduly discriminatory or preferential.

40. Commenters do not indicate a need at this time for additional ATC standards or for the Commission to develop further regulations outside of the NAESB standards development process. The industry, through the NAESB process, should continue to consider further refinements to these standards to improve the accuracy of these calculations.

III. Waiver Requests and Implementation Issues

A. Waiver Requests

1. Comments

41. The ISO/RTO Council asks the Commission to continue to acknowledge in its final rule that, consistent with Commission precedent and currently-effective policy, each public utility may seek as part of its compliance filing waiver of new or revised standards in

⁴⁹ Additions to the current regulatory text at 18 CFR 37.6(b)(2)(i) are indicated by *italics*. Deletions to the regulatory text are indicated by [brackets.]

⁵⁰ See, e.g., Order No. 890, 118 FERC ¶ 61,119 at P 2.

the WEQ Version 003.3 Standards, and renewal of existing waivers previously granted by the Commission. The ISO/RTO Council requests a similar clarification be included in the final rule for this proceeding.⁵¹

2. Commission Determination

42. Public utilities may seek waiver of the standards for newly developed or newly revised standards and for the renewal of existing waivers. Our policy on when these waivers will be granted or denied is not being changed in this final rule. The Commission has previously stated that if a public utility asserts that its circumstances warrant a continued waiver of the regulations, the public utility may file a request for a waiver wherein the public utility can detail the circumstances that it believes warrant a waiver.⁵² In its request for continued waiver, the public utility must include the date, docket number, and explanation for why the waiver was initially granted by the Commission. The Commission will decide on any such waiver request on a case-by-case basis, and absent a Commission-approved waiver, compliance with the standards is required by all public utilities.

B. Implementation

1. NOPR Proposal

43. In the WEQ Version 003.3 NOPR, the Commission proposed to implement the WEQ Version 003.3 Standards, other than those related to cybersecurity, under an 18-month implementation timeline. The Commission requested comments on how best to proceed with the implementation of the remaining WEQ 003.3 Standards, including the standards related to PFV and those related to OASIS. Specifically, the Commission requested comments on whether the Commission should require the industry to implement WEQ Version 003.2 prior to WEQ Version 003.3, or, alternatively, cancel the implementation obligation of WEQ Version 003.2 and instead require implementation of all accepted WEQ Version 003.3 Standards, including the WEQ Version 003.2 Standards, within 18 months.⁵³

⁵¹ ISO/RTO Council Comments at 13–14.

⁵² See *Standards for Business Practices and Communication Protocols for Public Utilities*, Order No. 676–E, 74 FERC 63288 (Dec. 3, 2009), 129 FERC ¶ 61,162, at P 107 (2009).

⁵³ This would include all WEQ Version 003.3 Standards except for the WEQ cybersecurity standards which have an earlier implementation timeline, as discussed in the NOPR, as well as the implementation of the NAESB ATC-related standards contained in WEQ–023, which will be coordinated with the retirement of the NERC MOD A Reliability Standards.

2. Comments

44. Bonneville, EEI and OATI states the WEQ Version 003.2 Standards and the WEQ Version 003.3 Standards should have distinct, sequential implementation timelines that are separate and do not overlap.⁵⁴ Bonneville states work is underway within the industry to implement the WEQ Version 003.2 Standards which should not be interrupted due to the Commission's adoption of the WEQ Version 003.3 Standards.⁵⁵ EEI states the implementation of the different versions simultaneously are not necessarily simple upgrades, and OASIS updates, training and testing are required for successful implementation.⁵⁶ OATI states separate implementation schedules will prevent wasted industry effort and cost.⁵⁷

45. OATI states that the Commission's proposed 18 month implementation period for the WEQ Version 003.3 Standards should begin after the implementation period for WEQ Version 003.2 Standards ends.⁵⁸ Bonneville, however, recommends a shorter implementation period of at least 12 months, also starting no sooner than the final compliance deadline for the WEQ Version 003.2 Standards.⁵⁹ The ISO/RTO Council also supports an implementation date in October 2022 for the WEQ Version 3.3 Standards and recommends that the Commission provide public utilities with the option of implementing the WEQ Version 003.2 Standards either: (a) In October 2021 under the current implementation timeline for the WEQ Version 003.2 Standards and prior to WEQ Version 003.3 Standards; or (b) in October 2022 simultaneously with the WEQ Version 003.3 Standards.⁶⁰ The ISO/RTO Council states that the Commission should also permit parties to submit a single compliance filing and intended implementation schedule for both WEQ Version 003.2 Standards and WEQ Version 003.3 Standards.⁶¹

46. The ISO/RTO Council also requests that the PFV Standards be implemented on an expedited timeline similar to the timeframe for the WEQ cybersecurity standards that is separate from the rest of the proposed modifications in the WEQ Version 003.3

⁵⁴ Bonneville Comments at 5; EEI Comments at 2–3, 6; OATI Comments at 2.

⁵⁵ Bonneville Comments at 5.

⁵⁶ EEI Comments at 6.

⁵⁷ OATI Comments at 3.

⁵⁸ *Id.* at 4.

⁵⁹ Bonneville Comments at 5.

⁶⁰ ISO/RTO Council Comments at 3.

⁶¹ *Id.* at 11–12.

Standards.⁶² The ISO/RTO Council states that the PFV Standards' enhanced congestion process will more accurately account for internal flows (*i.e.*, network and native load calculations) by incorporating the use of real-time data into relief obligations calculated by the IDC.

47. Moreover, the ISO/RTO Council requests that the Commission ensure that the implementation timeline account for any external dependencies and system changes beyond a public utility's control but necessary for a public utility's implementation and compliance with the WEQ Version 003.3 Standards.⁶³ For example, Bonneville and the ISO/RTO Council reference new requirements for posting TLR curtailment on a public utilities' OASIS. This new TLR requirement necessitates certain changes to and/or information sourced from the Interchange Distribution Calculator/Enhanced Curtailment Calculator (IDC/ECC) tools⁶⁴ in order to coordinate with the OASIS system enhancements.⁶⁵ With respect to the modification of WEQ-001 addressing the OASIS curtailment postings, which requires data from the ECC tool to meet the posting requirements, Bonneville states the implementation timeline should be at least six months from the time that a mechanism is made available to access data from the ECC.⁶⁶

3. Commission Determination

48. The Commission recognized in the WEQ Version 003.3 NOPR the potential for confusion through implementation of Version 003.3 either immediately after or simultaneously with Version 003.2 implementation. In light of

commenters' explanations as to the time needed and complexities involved to plan and complete the tasks associated in implementing the WEQ Version 003.2 Standards, we will not require the two implementation timelines for the WEQ Version 003.2 Standards and the WEQ Version 003.3 Standards to run concurrently. Accordingly, public utilities will continue to implement the changes incorporated by reference in Order No. 676-I, for the WEQ Version 003.2 Standards, under the current implementation timeline ending October 2021.⁶⁷ For the WEQ Version 003.3 Standards incorporated by reference in this final rule,⁶⁸ we conclude that a 15-month implementation period, beginning after the completion of the implementation timeline for the WEQ Version 003.2 Standards, is sufficient for implementation of the WEQ Version 003.3 Standards.⁶⁹ As a result, public utilities will submit two compliance filings: the compliance filing for the WEQ Version 003.2 Standards will remain due July 27, 2021, with implementation no earlier than October 27, 2021, and the compliance filing for the WEQ Version 003.3 Standards, which we incorporate by reference in this final rule, will be due 12 months after implementation of the WEQ Version 003.2 Standards, or no earlier than October 27, 2022. Again, the Commission will determine an implementation date for the WEQ Version 003.3 Standards following the acceptance of the compliance filings, no earlier than three months following their submission (*i.e.*, not before January 27, 2023), resulting in a 15-month implementation period. We decline to

adopt the ISO/RTO Council's proposal to require both the WEQ Version 003.2 Standards and the WEQ Version 003.3 Standards to be incorporated using the same timeline, with both due to be implemented by October 2022. Delaying the current implementation timeline for the WEQ Version 003.2 Standards could result in additional industry effort and complicate implementation of the WEQ Version 003.3 Standards.

49. As noted above, for the revisions related to the surety assessment on cybersecurity performed by Sandia, which were included in the WEQ Version 003.3 Standards,⁷⁰ we will require industry filers to submit compliance filings for these revised WEQ cybersecurity standards nine months after the publication of a final rule in this proceeding, with implementation required no sooner than three months after compliance filings are submitted to the Commission, for a total implementation period of at least 12 months from the issuance of this final rule. Moreover, we agree with the ISO/RTO Council request that the PFV Standards be implemented on the same expedited timeline provided for the WEQ cybersecurity standards, that is, separate and apart from the implementation of the rest of the proposed modifications in the WEQ Version 003.3 Standards. As a result, we will require industry filers to also submit compliance filings for the PFV Standards, nine months after the publication of this final rule, with implementation required no sooner than three months after compliance filings are submitted to the Commission, for a total implementation period of at least twelve months.

50. SUMMARY OF COMPLIANCE FILINGS AND IMPLEMENTATION DEADLINES

Business practice standards	Compliance filings due	Implementation date
WEQ Version 003.3 ⁷¹	12 months after implementation of the WEQ Version 003.2 Standards, or no earlier than October 27, 2022.	No earlier than 3 months following compliance filings submission (no earlier than January 27, 2023).
Cybersecurity	9 months after publication of this final rule in the Federal Register .	No sooner than 12 months after publication of this final rule in Federal Register .
PFV	9 months after publication of this final rule in the Federal Register .	No sooner than 12 months after publication of this final rule in Federal Register .

⁶² *Id.* at 2, 5, 11.

⁶³ *Id.* at 12.

⁶⁴ Specifically, the WEQ-001-28 business practice standard defines new requirements for posting TLR curtailment information on a public utility's OASIS website, and IDC changes required before a public utility may implement and comply with the PFV Standards.

⁶⁵ Bonneville Comments at 5-6; ISO/RTO Council Comments at 12.

⁶⁶ Bonneville Comments at 5-6.

⁶⁷ On April 3, 2020, the Commission granted an extension of time for public utilities to make the compliance filings required by Order No. 676-I. By

this extension, the deadline for public utilities required to make a compliance filing through e-Tariff is extended from May 25, 2020, up to and including July 27, 2021. In its order(s) on compliance filings, the Commission will determine an implementation date for all utilities, including utilities whose tariffs incorporate each version of the NAESB standards, without modification, when the version is accepted by the Commission, no sooner than three months following the submission of compliance filings (*i.e.*, October 27, 2021). See *Notice of Extension of Time* at 2, Docket No. RM05-5-028 (issued Apr. 3, 2020).

⁶⁸ With two exceptions for the WEQ cybersecurity standards and PFV Standards, as described in P 49.

⁶⁹ By providing a fifteen-month implementation period, we account for any external dependencies and system changes beyond the control of a public utility but necessary for a public utility's implementation and compliance with the WEQ Version 003.3 Standards. However, if a public utility is unable to comply with the fifteen-month implementation timeline, it may file a request for extension of time. The Commission will consider such requests on a case-by-case basis.

⁷⁰ For the specific WEQ cybersecurity standards to be implemented under this separate timeline, please see Appendix I.

51. In keeping with the prior practice that the Commission adopted in Order No. 676–H, we are requiring public utilities and those entities with reciprocity tariffs to modify their open access transmission tariffs (OATT) to include the WEQ standards that we are incorporating by reference. In order to comply with this final rule, public utilities and entities with reciprocity tariffs must make a compliance filing through eTariff no later than 90 days from the date the final rule is published in the **Federal Register**, using an indeterminate effective date (12/31/9998) for the tariff records. The Commission will establish an effective date for the tariff changes in the order(s) on the compliance filings no earlier than five months from the date the final rule is published in the **Federal Register**.⁷² Should any public utility that has previously been granted a waiver of the regulations believe that its circumstances warrant a continued waiver, the public utility may file a request for a waiver wherein the public utility can detail the circumstances that it believes warrant a waiver.⁷³ In its request for continued waiver, the public utility must include the date, docket number of the order(s) previously granting the waiver(s), and an explanation for why the waiver(s) was initially granted by the Commission. Any waiver requests must be filed at the same time with the public utility's compliance filing or in a separate FPA section 205 filing.

IV. Notice of Use of Voluntary Consensus Standards

52. Office of Management and Budget Circular A–119 (section 11) (Feb. 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule stating whether the adopted

⁷¹ These include all of the WEQ Version 003.3 Standards except for the Business Practice Standards that address the cybersecurity and parallel flow visualization, as discussed in the body of this final rule.

⁷² As we explained in Order No. 676–H, 148 FERC ¶ 61,205 at n.26, to the extent a public utility's OASIS obligations are administered by an independent system operator (ISO) or regional transmission operator (RTO) and are not covered in the public utility's OATT, the public utility will not need to modify its OATT to include the OASIS standards. Such a public utility will, however, be required to comply with these standards unless granted a waiver by the Commission. The business practice standards that we incorporate by reference into our regulations in this final rule govern the terms and conditions that public utilities must include in their OATTs and the transactions that entities enter with public utilities under these OATTs must be in accordance with the incorporated standards.

⁷³ Order No. 676–E, 129 FERC ¶ 61,162 at P 107.

standard is a voluntary consensus standard or a government-unique standard. In this final rule, the Commission is incorporating by reference voluntary consensus standards adopted by NAESB's WEQ.

V. Incorporation by Reference

53. The Office of the Federal Register requires agencies incorporating material by reference in final rules to discuss, in the preamble of the final rule, the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials.⁷⁴ The regulations also require agencies to summarize, in the preamble of the final rule, the material it incorporates by reference. The standards we are incorporating by reference in this final rule⁷⁵ can be summarized as follows:

54. The WEQ–000 Abbreviations, Acronyms, and Definition of Terms Business Practice Standards provide a single location for all abbreviations, acronyms, and defined terms referenced in the WEQ Business Practice Standards. These standards provide common nomenclature for terms within the wholesale electric industry, thereby reducing confusion and opportunities for misinterpretation or misunderstandings among industry participants.

55. The WEQ–001 OASIS Business Practice Standards define the general and specific transaction processing requirements and related business processes required for OASIS. The standards detail requirements related to standard terminology for transmission and ancillary services, attribute values defining transmission service class and type, ancillary and other services definitions, OASIS registration procedures, procurement of ancillary and other services, path naming, next hour market service, identical transmission service requests, redirects, resales, transfers, OASIS postings, procedures for addressing ATC or AFC methodology questions, rollover rights, conditional curtailment option reservations, auditing usage of Capacity Benefit Margin, coordination of requests for service across multiple transmission systems, consolidation, preemption and right-of-first refusal process, and NITS requests.

56. The WEQ–002 OASIS Standards and Communication Protocols Business Practice Standards define the technical

⁷⁴ 1 CFR 51.5. See Incorporation by Reference, 79 FR 66267 (Nov. 7, 2014).

⁷⁵ WEQ–000 Version 003.1 and WEQ–006 Version 003.1 were previously approved for incorporation by reference and continue to be referenced without change.

standards for OASIS. These standards detail network architecture requirements, information access requirements, OASIS and point-to-point interface requirements, implementation, and NITS interface requirements.

57. The WEQ–003 OASIS Data Dictionary Business Practice Standards define the data element specifications for OASIS.

58. The WEQ–004 Coordinate Interchange Business Practice Standards define the commercial processes necessary to facilitate interchange transactions via Request for Interchange and specify the arrangements and data to be communicated by the entity responsible for authorizing the implementation of such transactions (the entities responsible for balancing load and generation).

59. The WEQ–005 Area Control Error (ACE) Equation Special Cases Business Practice Standards define commercial based requirements regarding the obligations of a balancing authority to manage the difference between scheduled and actual electrical generation within its control area. Each balancing authority manages its ACE in accordance with the NERC Reliability Standards. These standards detail requirements for jointly owned utilities, supplemental regulation service, and load or generation transfer by telemetry.

60. The WEQ–007 Inadvertent Interchange Payback Business Practice Standards define the methods in which inadvertent energy is paid back, mitigating the potential for financial gain through the misuse of paybacks for inadvertent interchange. Inadvertent interchange is interchange that occurs when a balancing authority cannot fully balance generation and load within its area. The standards allow for the repayment of any imbalances through bilateral in-kind payback, unilateral in-kind payback, or other methods as agreed to.

61. The WEQ–008 Transmission Loading Relief—Eastern Interconnection Business Practice Standards define the business practices for cutting transmission service during a TLR event. These standards detail requirements for the use of interconnection-wide TLR procedures, interchange transaction priorities for use with interconnection-wide TLR procedures, and the Eastern Interconnection procedure for physical curtailment of interchange transactions.

62. The WEQ–011 Gas/Electric Coordination Business Practice Standards define communication protocols intended to improve coordination between the gas and electric industries in daily operational

communications between transportation service providers and gas-fired power plants. The standards include requirements for communicating anticipated power generation fuel for the upcoming day as well as any operating problems that might hinder gas-fired power plants from receiving contractual gas quantities.

63. The WEQ-012 Public Key Infrastructure (PKI) Business Practice Standards establish the cybersecurity framework for parties partaking in transactions via a transmission provider's OASIS or e-Tagging system. The NAESB PKI framework secures wholesale electric market electronic commercial communications via encryption of data and the electronic authentication of parties to a transaction through the use of a digital certificate issued by a NAESB certified certificate authority. The standards define the requirements for parties utilizing the digital certificates issued by the NAESB certificate authorities.

64. The WEQ-013 OASIS Implementation Guide Business Practice Standards detail the implementation of the OASIS Business Practice Standards. The standards detail requirements related to point-to-point OASIS transaction processing, OASIS template implementation, preemption and right-of-first-refusal processing, NITS application and modification of service processing, and secondary network transmission service.

65. The WEQ-015 Measurement and Verification of Wholesale Electricity Demand Response Business Practice Standards define a common framework for transparency, consistency, and accountability applicable to the measurement and verification of wholesale electric market demand response practices. The standards describe performance evaluation methodology and criteria for the use of equipment, technology, and procedures to quantify the demand reduction value—the measurement of reduced electrical usage by a demand resource.

66. The WEQ-021 Measurement and Verification of Energy Efficiency Products Business Practice Standards define a common framework for transparency, consistency, and accountability applicable to the measurement and verification of wholesale electric market energy efficiency practices. The standards establish energy efficiency measurement and verification criteria and define requirements for energy efficiency resource providers for the measurement and verification of energy efficiency products and services offered in the wholesale electric markets.

67. The WEQ-022 EIR Business Practice Standards define the business requirements for entities utilizing the NAESB managed EIR, a wholesale electric industry tool that serves as the central repository for information needed in the scheduling of transmission through electronic transactions. The standards describe the roles within EIR, registration requirements, and cybersecurity.

68. The WEQ-023 Modeling Business Practice Standards specify the requirements for calculation of ATCs and AFCs using the methodology selected. In the event of a conflict between these Business Practice Standards and the Transmission Service Provider's tariff or FERC approved seams agreement(s), the tariff or FERC approved seams agreement(s) shall have precedence.⁷⁶

69. Copies of the standards incorporated by reference may be obtained from NAESB, whose offices are located at 801 Travis Street, Suite 1675, Houston, TX 77002, Phone: (713) 356-0060. NAESB's website can be accessed at <https://www.naesb.org>. Once COVID restrictions are lifted, copies of the standards may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE, Washington, DC 20426, Phone: (202) 502-8371, <https://www.ferc.gov>.

70. NAESB is a private, consensus standards developer that develops voluntary wholesale and retail standards related to the energy industry. The procedures utilized by NAESB make its standards reasonably available to those affected by the Commission's regulations.⁷⁷ Participants can join

⁷⁶ The suites of NAESB business practice standards we are not incorporating by reference in this final rule are: (1) The WEQ-009 Standards of Conduct for Electric Transmission Providers, which NAESB has eliminated as they duplicate the Commission's regulations; (2) the WEQ-010 Contracts Related Business Practice Standards that establish model contracts for the wholesale electric industry, which the Commission has not incorporated as they are not mandatory; (3) the WEQ-014 WEQ/WGQ eTariff Related Business Practice Standards, which provide an implementation guide describing the various mechanisms, data tables, code values/reference tables, and technical specifications used in the submission of electronic tariff filings to the Commission, which the Commission has not incorporated as these submittals are governed by the Commission's eTariff regulations; and (4) the WEQ-016, WEQ-017, WEQ-018, WEQ-019, and WEQ-020 Business Practice Standards that were developed as part of the Smart Grid implementation and which the Commission adopted as non-mandatory guidance in 18 CFR 2.27 (2019). See Order No. 676-H, 148 FERC ¶ 61,205; Order No. 676-L, 170 FERC ¶ 61,062, at n.102.

⁷⁷ As a private, consensus standards developer, NAESB needs the funds obtained from its membership fees and sales of its Individual

NAESB, for an annual membership cost of \$8,000, which entitles them to full participation in NAESB and enables them to obtain these standards at no additional cost.⁷⁸ Non-members may obtain the Individual Standards Manual or Booklet for \$250 per manual or booklet.⁷⁹ Non-members also may obtain the complete set of Business Practice Standards on USB flash drive for \$2,000. NAESB also provides a free electronic read-only version of the standards for a three-business day period or, in the case of a regulatory comment period, through the end of the comment period.⁸⁰ In addition, NAESB considers requests for waivers of the charges on a case-by-case basis based on need.

VI. Information Collection Statement

71. The following collection of information contained in this final rule is subject to review by the Office of Management and Budget (OMB) under section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d).⁸¹ OMB's regulations require approval of certain information collection requirements imposed by agency rules.⁸² Upon approval of a collection(s) of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

72. The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

73. The following burden estimate is based on the projected costs for the industry to implement the new and revised business practice standards

Standards Manual or Booklet to finance the organization. The parties affected by these Commission regulations generally are highly sophisticated and have the means to acquire the information they need to effectively participate in Commission proceedings.

⁷⁸ NAESB, *NAESB Membership Application*, <https://www.naesb.org/pdf4/naesbapp.pdf>.

⁷⁹ NAESB, *NAESB Materials Order Form*, <https://www.naesb.org/pdf/ordrform.pdf>.

⁸⁰ Procedures for non-members to evaluate work products before purchasing are available at https://www.naesb.org/misc/NAESB_Nonmember_Evaluation.pdf.

⁸¹ 44 U.S.C. 3507(d).

⁸² 5 CFR 1320.11.

adopted by NAESB and proposed to be incorporated by reference in this final

rule.⁸³ The NERC Compliance Registry, as of March 5, 2021, identifies

approximately 162 entities in the United States that are subject to this final rule.

DOCKET NOS. RM05–5–029 AND RM05–05–030

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden (hrs.) & cost (\$) per response	Total annual burden hrs. & total annual cost (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)
FERC–516E	162	1	162	6 hrs.; \$498	972 hrs.; \$80,676.
FERC–717	162	1	162	30 hrs.; \$2,490	4,860 hrs.; \$403,380.
Total .....	.....	.....	324	\$2,988	5,832 hrs.; \$484,056.

Costs to Comply with Paperwork Requirements:

The estimated annual costs are as follows:

FERC–516E: 162 entities × 1 response/entity (6 hours/response × \$83.00/hour) = \$80,676.

FERC–717: 162 entities × 1 response/entity (30 hours/response × \$83.00/hour) = \$403,380.

Titles: FERC–516E, Electric Rate Schedule and Tariff Filings and FERC–717, Standards for Business Practices and Communication Protocols for Public Utilities.

Action: Final rule.

OMB Control Nos: 1902–0290 (FERC–516E) and 1902–0173 (FERC–717).

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: One-time.

Necessity of the Information: This rule will amend its regulations to incorporate by reference the latest version (Version 003.3) of the Standards for Business Practices and Communication Protocols for Public Utilities adopted by the Wholesale Electric Quadrant (WEQ) of the North American Energy Standards Board (NAESB). WEQ Version 003.3 includes standards developed in accordance with recommendations of the Department of Energy sponsored cybersecurity surety assessment of the NAESB Business Practice Standards that was conducted in 2019. Additional standards were developed in response to the directives from FERC Order No. 890, such as the standards developed to support Parallel Flow Visualization, intended to improve congestion management procedures for the Eastern Interconnection. The WEQ Version 003.3 Standards also include, in their entirety, the WEQ–023 Modeling Business Practice Standards contained in the WEQ Version 003.1 Standards, which address the technical issues

affecting ATC and AFC calculation for wholesale electric transmission services, with the addition of certain revisions and corrections. The revisions made by NAESB in the WEQ Version 003.3 Standards are designed to aid public utilities with the consistent and uniform implementation of requirements promulgated by the Commission as part of the *pro forma* Open Access Transmission Tariff.

Internal review: The Commission has reviewed NAESB's proposal and has made a preliminary determination that the proposed revisions are both necessary and useful. In addition, the Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements.

74. Interested persons may obtain information on the reporting requirements by contacting the Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street NE, Washington, DC 20426 [Attention: Ellen Brown, email: DataClearance@ferc.gov, phone: (202) 502–8663].

VII. Environmental Analysis

75. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.⁸⁴ The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.⁸⁵ The actions adopted here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering analysis, and dissemination, and for sales, exchange, and transportation of

natural gas and electric power that requires no construction of facilities. Therefore, an environmental assessment is unnecessary and has not been prepared in this final rule.

VIII. Regulatory Flexibility Act

76. The Regulatory Flexibility Act of 1980 (RFA)⁸⁶ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA does not mandate any particular outcome in a rulemaking. It only requires consideration of alternatives that are less burdensome to small entities and an agency explanation of why alternatives were rejected.

77. The Small Business Administration (SBA) revised its size standards (effective January 22, 2014) for electric utilities from a standard based on megawatt hours to a standard based on the number of employees, including affiliates. Under SBA's standards, some transmission owners will fall under the following category and associated size threshold: electric bulk power transmission and control, at 500 employees.⁸⁷ The Commission estimates that 24 of the 162 respondents are small or 14.8 percent of the respondents affected by this final rule.

78. The Commission estimates that the impact on these entities is consistent with the paperwork burden of \$2,988 per entity used above.⁸⁸ The Commission does not consider \$2,988 to be a significant economic impact. Based on the above, the Commission certifies that implementation of the proposed Business Practice Standards will not have a significant impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required.

⁸³ Commission staff estimates that industry is similarly situated in terms of hourly cost (wages plus benefits). Based on the Commission average cost (wages plus benefits) for 2020, \$83.00/hour is used.

⁸⁴ *Regulations Implementing the Nat'l Env'tl Pol'y Act*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

⁸⁵ 18 CFR 380.4.

⁸⁶ 5 U.S.C. 601–612.

⁸⁷ 13 CFR 121.201, Sector 22 (Utilities), NAICS code 221121 (Electric Bulk Power Transmission and Control).

⁸⁸ 36 hours at \$83.00/hour = \$2,988.

IX. Document Availability

79. 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 FERC's Home Page (<https://www.ferc.gov>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

80. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

81. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202)502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

X. Effective Date and Congressional Notification

82. These regulations are effective August 2, 2021. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996. The Final Rule will be submitted to the Senate, House, and Government Accountability Office.

List of Subjects

18 CFR Part 37

Electric power, Electric utilities.

18 CFR Part 38

Business practice standards, Electric utilities, Incorporation by reference, Reporting and recordkeeping requirements.

By the Commission.
Issued: May 20, 2021.

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends parts 37 and 38, chapter I, title 18, Code of Federal Regulations, as follows:

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS

■ 1. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 2. Amend § 37.6 by revising paragraph (b)(2)(i) to read as follows:

§ 37.6 Information to be posted on the OASIS.

* * * * *

(b) * * *

(2) * * *

(i) Information used to calculate any posting of ATC and TTC must be dated and time-stamped and all calculations shall be performed according to consistently applied methodologies referenced in the Transmission Provider's transmission tariff and shall be based on Commission-approved Reliability Standards, business practice and electronic communication standards, and related implementation documents, as well as current industry practices, standards and criteria. Such calculations shall be conducted in a manner that is transparent, consistent with anticipated system conditions and outages for the relevant timeframe, and not unduly discriminatory or preferential.

* * * * *

PART 38—STANDARDS FOR PUBLIC UTILITY BUSINESS OPERATIONS AND COMMUNICATIONS

■ 3. The authority citation for part 38 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

■ 4. Revise § 38.1 to read as follows:

§ 38.1 Incorporation by reference of North American Energy Standards Board Wholesale Electric Quadrant standards.

(a) Any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce or for the sale of electric energy at wholesale in interstate commerce and any non-public utility that seeks voluntary compliance with jurisdictional transmission tariff reciprocity conditions must comply with the business practice and electronic communication standards promulgated by the North American Energy Standards Board (NAESB) Wholesale Electric Quadrant (WEQ) that are incorporated by reference in paragraph (b) of this section.

(b)(1) The material incorporated by reference in this section was approved by the Director of the Federal Register

in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. All approved material may be inspected at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street NE, Washington, DC 20426, Tel: (202) 502-8371, www.ferc.gov, and is available from the sources listed in paragraph (b)(2) of this section. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fedreg.legal@nara.gov, or go to: <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

(2) North American Energy Standards Board (NAESB), 801 Travis Street, Suite 1675, Houston, TX 77002, Tel: (713) 356-0060. NAESB's website is at <https://www.naesb.org/>. The NAESB WEQ Business Practice Standards; Standards and Models the Commission incorporates by reference are as follows:

- (i) WEQ-000, Abbreviations, Acronyms, and Definition of Terms (WEQ Version 003.1, September 30, 2015) (including only the definitions of Interconnection Time Monitor, Time Error, and Time Error Correction);
- (ii) WEQ-000, Abbreviations, Acronyms, and Definition of Terms (WEQ Version 003.3, March 30, 2020);
- (iii) WEQ-001, Open Access Same-Time Information Systems (OASIS), (WEQ Version 003.3, March 30, 2020);
- (iv) WEQ-002, Open Access Same-Time Information Systems (OASIS) Business Practice Standards and Communication Protocols (S&CP), (WEQ Version 003.3, March 30, 2020);
- (v) WEQ-003, Open Access Same-Time Information Systems (OASIS) Data Dictionary, (WEQ Version 003.3, March 30, 2020);
- (vi) WEQ-004, Coordinate Interchange (WEQ Version 003.3, March 30, 2020);
- (vii) WEQ-005, Area Control Error (ACE) Equation Special Cases (WEQ Version 003.3, March 30, 2020);
- (viii) WEQ-006, Manual Time Error Correction (WEQ Version 003.1, Sept. 30, 2015);
- (ix) WEQ-007, Inadvertent Interchange Payback (WEQ Version 003.3, March 30, 2020);
- (x) WEQ-008, Transmission Loading Relief (TLR)—Eastern Interconnection (WEQ Version 003.3, March 30, 2020);
- (xi) WEQ-011, Gas/Electric Coordination (WEQ Version 003.3, March 30, 2020);
- (xii) WEQ-012, Public Key Infrastructure (PKI) (WEQ Version 003.3, March 30, 2020);
- (xiii) WEQ-013, Open Access Same-Time Information Systems (OASIS)

Implementation Guide, (WEQ Version 003.3, March 30, 2020);
 (xiv) WEQ–015, Measurement and Verification of Wholesale Electricity Demand Response (WEQ Version 003.3, March 30, 2020);

(xv) WEQ–021, Measurement and Verification of Energy Efficiency Products (WEQ Version 003.3, March 30, 2020);
 (xvi) WEQ–022, Electric Industry Registry (WEQ Version 003.3, March 30, 2020); and

(xvii) WEQ–023, Modeling. (WEQ Version 003.3, March 30, 2020).

Note: The following appendix will not be published in the Code of Federal Regulations

Appendix I

STANDARDS AFFECTED BY THE REVISIONS TO IMPLEMENT RECOMMENDATIONS FOLLOWING SANDIA’S SURETY ASSESSMENT ON CYBERSECURITY

Standard	Revisions
WEQ–000–1	
Deleted seven abbreviations/acronyms	DNS—Domain Name Service. IPCP—Internet Protocol Control Protocol. NTP—Network Time Protocol. PPP—Point to Point Protocol. SLIP—Serial Line Internet Protocol. SNMP—Simple Network Management Protocol. SSL—Secure Sockets Layer.
Added one abbreviation/acronym	OWASP—Open Web Application Security Project.
WEQ–001	
Revised one standard	WEQ–001–13.1.3.3.
WEQ–002	
Revised 14 standards	WEQ–002–2.3. WEQ–002–2.4. WEQ–002–4.2.1.1. WEQ–002–4.2.1.2. WEQ–002–4.2.1.3. WEQ–002–4.2.2. WEQ–002–5. WEQ–002–5.1.1. WEQ–002–5.1.2. WEQ–002–5.1.3. WEQ–002–5.6. WEQ–002–101.2.3.1. WEQ–002–101.3.3.2. WEQ–002–101.3.3.3.

[FR Doc. 2021–11352 Filed 6–1–21; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 154, 260, and 284

[Docket Nos. RM18–11–002 and RP18–415–002; Order No. 849–B]

Interstate and Intrastate Natural Gas Pipelines; Rate Changes Relating to Federal Income Tax Rate American Forest & Paper Association

AGENCY: Federal Energy Regulatory Commission, Department of Energy.
ACTION: Final rule.

SUMMARY: Order No. 849 adopted procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable

rates in light of the income tax reductions provided by the Tax Cuts and Jobs Act and the Commission’s revised policy and precedent concerning tax allowances to address the double recovery issue identified by *United Airlines, Inc. v. FERC*. These procedures also allowed interstate natural gas pipelines to voluntarily reduce their rates. In this final rule, the Commission finds that there are no more expected filings that will make use of these special procedures, which are uniquely tied to the Tax Cuts and Jobs Act, and that all existing proceedings under these procedures have closed. Therefore, the Commission removes the procedures from the Code of Federal Regulations as obsolete.

DATES: This rule is effective August 2, 2021.

FOR FURTHER INFORMATION CONTACT:

Vince Mareino (Legal Information), Office of the General Counsel, 888 First

Street NE, Washington, DC 20426, (202) 502–6167, Vince.Mareino@ferc.gov.

Laura Kane (Technical Information), Office of Energy Market Regulation, 888 First Street NE, Washington, DC 20426, (202) 502–8653, Laura.Kane@ferc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

1. On July 18, 2018, the Commission issued a final rule¹ (Order No. 849) adopting procedures for determining which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of the income tax reductions provided by the Tax Cuts and Jobs Act² and the Commission’s Revised Policy

¹ *Interstate & Intrastate Nat. Gas Pipelines; Rate Changes Relating to Fed. Income Tax Rate*, Order No. 849, 83 FR 36672 (July 30, 2018), 164 FERC ¶ 61,031 (2018).

² An Act to provide for reconciliation pursuant to titles II and V of the concurrent resolution on the budget for fiscal year 2018, Public Law 115–97, 131 Stat. 2054 (2017) (Tax Cuts and Jobs Act).

Statement³ and precedent⁴ concerning tax allowances to address the double recovery issue identified by *United Airlines, Inc. v. FERC*.⁵ These procedures also allowed interstate natural gas pipelines to voluntarily reduce their rates. On April 18, 2019, the Commission denied all outstanding requests for rehearing and reaffirmed the Commission's determinations in Order No. 849 (Order No. 849-A).⁶

2. Order No. 849 established a requirement, pursuant to sections 10 and 14(a) of the Natural Gas Act (NGA),⁷ that all interstate natural gas companies with cost-based stated rates that filed a 2017 FERC Form No. 2 or 2-A must file the FERC Form No. 501-G informational filing for the purpose of evaluating the impact of the Tax Cuts and Jobs Act and the *United Airlines* Issuances on interstate natural gas pipelines' revenue requirements. In addition to the FERC Form No. 501-G filing requirement, the Commission provided four options for each interstate natural gas pipeline to make a filing to address the changes to the pipeline's recovery of tax costs or explain why no action is needed: (1) A limited NGA section 4⁸ rate reduction filing (Option 1), (2) a commitment to file a general section 4 rate case or prepackaged settlement in the near future (Option 2), (3) an explanation why no rate change is needed (Option 3), and (4) no action (Option 4). These procedures were intended to encourage natural gas pipelines to voluntarily reduce their rates to the extent the tax changes result in their over-recovering their cost of service, while also providing the Commission and stakeholders information necessary to take targeted actions under NGA section 5⁹ where necessary to achieve just and reasonable rates.

3. Order No. 849 made three changes to the Code of Federal Regulations. First, new § 260.402 of the Commission's regulations established the FERC Form No. 501-G filing

requirement described above.¹⁰ Second, new § 154.404 of the Commission's regulations established the regulations necessary to govern Option 1, the limited NGA section 4 rate reduction filings.¹¹ Options 2, 3, and 4 above did not require any change in regulations, as they could proceed under preexisting regulatory authority. Third, new § 284.123(i) of the Commission's regulations provided procedures for section 311 of the National Gas Policy Act of 1978 (NGPA)¹² and Hinshaw¹³ pipelines to establish fair and equitable rates for their interstate services.¹⁴

II. Discussion

4. In Order No. 849, the Commission identified 129 interstate natural gas pipelines with cost-based rates that were required to file the FERC Form No. 501-G, codified in § 260.402. As of the date of Order No. 849-A, the Commission had received filings from all 129 identified pipelines.¹⁵ As of April 15, 2021, all of these FERC Form No. 501-G filings have been accepted for filing, and the proceedings terminated. Because Order No. 849 established a one-time reporting requirement tied to a past event, it would not apply to any new pipelines that may enter the market in the future. Therefore, the regulations implemented in Order No. 849 are no longer needed, and we hereby remove § 260.402 from the Commission's regulations.

5. Eleven pipelines chose Option 1, codified in § 154.404. Under Option 1, pipelines could only choose to make these limited NGA section 4 rate reduction filings at the time of their FERC Form No. 501-G filings. Just as no new FERC Form No. 501-G filings are possible, likewise no new filings under § 154.404 are possible.

6. For any of these limited NGA section 4 rate reduction filings that proceeded to hearing, § 154.404 also governs the process by which these hearings are adjudicated, so it would not have been reasonable to remove § 154.404 before all the existing hearings concluded, either with the acceptance of a settlement or with the publication of an Initial Decision. There are no remaining dockets that are either in an

Option 1 hearing or eligible to be set for an Option 1 hearing. As a result, the regulations governing this type of limited NGA section 4 rate reduction filings are no longer needed. We shall therefore remove § 154.404 of the Commission's regulations.

7. Order No. 849 also established separate regulations under § 284.123(i) to address the unique jurisdictional situation of section 311 and Hinshaw pipelines, which have their interstate rates regulated by the Commission, but which are primarily regulated at the state level. Under pre-existing policy, the Commission reviews the rates of section 311 and Hinshaw pipelines every five years on a rolling basis.¹⁶ Section 284.123(i), in brief, provided a mechanism to lower these pipelines' interstate rates *prior* to their five-year review, in the event that state government regulators also adjusted their rates in light of the recent changes in tax code and tax policy. In the three-and-a-half years from the passage of the Tax Cuts and Jobs Act in November 2017 until the present, almost all section 311 and Hinshaw pipelines have either come before the Commission for their five-year review, or have come before the Commission for an out-of-cycle rate review, whether due to § 284.123(i), voluntary action, or the other requirements of section 284 of the Commission's regulations that can compel an out-of-cycle rate review. The Commission, through its own review, finds it is unlikely that the remaining section 311 and Hinshaw pipelines will trigger § 284.123(i), and in any event all are due for their five-year review in the near future under the Commission's pre-existing policy. As a result, the special circumstances presented by the Tax Cuts and Jobs Act that required § 284.123(i) are no longer present. We shall therefore remove § 284.123(i) of the Commission's regulations.

III. Regulatory Requirements

A. Information Collection Statement

8. The Paperwork Reduction Act¹⁷ requires each Federal agency to seek and obtain the Office of Management and Budget's (OMB) approval before undertaking a collection of information (including reporting, record keeping, and public disclosure requirements)

³ *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 81 FR 94366 (Dec. 23, 2016), 162 FERC ¶ 61,227 (Revised Policy Statement), *order on reh'g*, 83 FR 12362 (March 21, 2018), 164 FERC ¶ 61,030 (2018) (Revised Policy Statement Rehearing).

⁴ *SFPP, L.P.*, Opinion No. 511-C, 162 FERC ¶ 61,228, at P 9 (2018).

⁵ 827 F.3d 122 (D.C. Cir. 2016) (*United Airlines*). For purposes of this order, the Revised Policy Statement, *United Airlines*, and Opinion No. 511-C will collectively be referred to as "*United Airlines* Issuances."

⁶ *Interstate & Intrastate Nat. Gas Pipelines; Rate Changes Relating to Fed. Income Tax Rate*, Order No. 849-A, 84 FR 17739 (April 26, 2019), 167 FERC ¶ 61,051 (2019).

⁷ 15 U.S.C. 717i(a), 717m(a).

⁸ 15 U.S.C. 717c.

⁹ 15 U.S.C. 717d.

¹⁰ 18 CFR 260.402.

¹¹ 18 CFR 154.404.

¹² 15 U.S.C. 3371.

¹³ Section 1(c) of the NGA, 15 U.S.C. 717(c), exempts from the Commission's NGA jurisdiction those pipelines which transport gas in interstate commerce if: (1) They receive natural gas at or within the boundary of a state, (2) all the gas is consumed within that state, and (3) the pipeline is regulated by a state Commission. This is known as the Hinshaw exemption.

¹⁴ 18 CFR 284.123(i).

¹⁵ Order No. 849-A, 167 FERC ¶ 61,051 at P 4.

¹⁶ *Contract Reporting Requirements of Intrastate Nat. Gas Cos.*, Order No. 735, 75 FR 29404 (May 26, 2010), 131 FERC ¶ 61,150, at P 96, *order on reh'g*, Order No. 735-A, 75 FR 80685 (Dec. 23, 2010), 133 FERC ¶ 61,216 (2010); *see also Hattiesburg Indus. Gas Sales, L.L.C.*, 134 FERC ¶ 61,236 (2011) (imposing a five-year rate review requirement on Hattiesburg Industrial Gas Sales, L.L.C.).

¹⁷ 44 U.S.C. 3501-3521.

directed to ten or more persons or contained in a rule of general applicability. OMB regulations require approval of certain information collection requirements contemplated by final rules (including deletion, revision, or implementation of new requirements). Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of a rule will not be penalized for failing to respond to the collection of information unless the collection of information displays a valid OMB control number. The following discussion describes and analyzes the collection of information to be deleted by this final rule.

9. Public Reporting Burden: In this final rule, the Commission eliminates FERC Form No. 501-G¹⁸ (One-time Report on Rate Effect of the Tax Cuts

and Jobs Act). This final rule eliminates an existing data collection, FERC-501G (OMB Control No. 1902-0302). Order No. 849 (in Docket No. RM18-11-000) allowed the Commission to determine which jurisdictional natural gas pipelines may be collecting unjust and unreasonable rates in light of the recent reduction in the corporate income tax rate in the Tax Cuts and Jobs Act and changes to the Commission's income tax allowance policies following the *United Airlines* decision. FERC Form No. 501-G collected information as to whether the pipeline was a pass-through entity. FERC Form No. 501-G collected income and balance sheet statement financial data from all NGA pipelines that have stated cost-based rates on file with the Commission. NGA pipelines whose rates were examined in a general rate case under section 4 of the NGA or in an investigation under section 5 of the

NGA were not required to file FERC Form No. 501-G.

10. The Commission identified 129 interstate natural gas pipelines with cost-based rates that were required to file the adopted FERC Form No. 501-G. Interstate natural gas pipelines had four options as to how to address the results of the formula contained in the FERC Form No. 501-G. Each option has a different burden profile and a different cost per response. Companies made their own business decisions as to which option they selected. This final rule eliminates FERC Form No. 501-G which reduces burden on all applicants.

11. All burden from FERC Form No. 501-G has already been incurred. For informational purposes, the previous estimate of burden and cost for the now-complete FERC Form No. 501-G collection follows.

FERC-501G—RATE CHANGES RELATING TO FEDERAL CORPORATE INCOME TAX RATE FOR INTERSTATE NATURAL GAS PIPELINES, TO BE ELIMINATED BY THE FINAL RULE IN DOCKET NO. RM18-11-002

	Respondents (1)	Responses per respondent (2)	Total responses (1) * (2) = (3)	Average burden hour per response (4)	Average cost per response (5)	Total burden hours (1) * (4) = (6)	Total cost (\$) (1) * (5) = (7)
Interstate Natural Gas Pipelines With Cost-Based Rates							
FERC Form No. 501-G, One-time Report (reduction) ¹⁹	129	1	* 129	* 9 hrs.	* \$756	* 1,161	* \$97,524
Optional Response							
No Response (reduction)	51	0	0	0	0	0	0
Case for no change (reduction)	62	1	62	5	420	310	26,040
Limited Sec 4 filing (reduction) ²⁰	15	1	15	6	504	90	7,560
General Sec. 4 filing (reduction) ²¹	1	1	1	²² 512	42,968	512	42,968
NGPA Section 311 and Hinshaw Pipelines With Cost-Based Rates							
NGPA rate filing (reduction) ²³	²⁴ 15	1	15	24	2,015	360	30,225
Total, To Be Eliminated by RM18-11-002	²⁵ 144	.....	* 222	.....	.....	* 2,433	* 204,317

* (reduction).

12. This final rule eliminates all information collection and recordkeeping requirements associated with RM18-11-000. The removal of the FERC-501G eliminates the estimated

annual information collection burden (2,433 hours) and cost (\$204,317) associated with FERC-501G (OMB Control No. 1902-0302).

B. Environmental Analysis

13. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement

¹⁸ FERC-501G has also been referenced as FERC Form No. 501-G.

¹⁹ 18 CFR 260.402 (as revised).

²⁰ 18 CFR 154.404 (as revised).

²¹ 18 CFR 154.312.

²² The estimate for hours is based on the estimated average hours per response for the FERC-545 (OMB Control No. 1902-0154), with general NGA section 4, 18 CFR 154.312 filings weighted at a ratio of 20 to one.

²³ 18 CFR 284.123(i) (as revised).

²⁴ Estimate of number of respondents assumes that states will act within one year to reduce NGPA section 311 and Hinshaw pipeline rates to reflect the Tax Cuts and Jobs Act.

²⁵ Number of unique respondents = (One-time Report) + (NGPA rate filing).

for any action that may have a significant adverse effect on the human environment.²⁶ The actions taken here fall within categorical exclusions in the Commission's regulations for rules regarding information gathering, analysis, and dissemination.²⁷ Therefore, an environmental review is unnecessary and has not been prepared in this rulemaking.

C. Regulatory Flexibility Act

14. The Regulatory Flexibility Act of 1980 (RFA)²⁸ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The RFA mandates consideration of regulatory alternatives that accomplish the stated objectives of a rulemaking while minimizing any significant economic impact on a substantial number of small entities. In lieu of preparing a regulatory flexibility analysis, an agency may certify that a final rule will not have a significant economic impact on a substantial number of small entities.²⁹ In Order No. 849, the Commission found that the institution of the new regulations would not have a significant impact on a substantial number of small entities.³⁰ Most of the natural gas pipelines regulated by the Commission do not fall within the RFA's definition of a small entity.³¹ For the same reasons, removing these regulations will not have a significant impact on a substantial number of small entities.

D. Document Availability

15. 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>). At this time, the Commission has suspended access to the Commission's Public Reference Room due to the President's March 13, 2020 proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19).

²⁶ *Regulations Implementing the National Environmental Policy Act of 1969*, Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. ¶ 30,783 (1987) (cross-referenced at 41 FERC ¶ 61,284).

²⁷ See 18 CFR 380.4(a)(2)(ii) and (a)(5).

²⁸ 5 U.S.C. 601-612.

²⁹ 5 U.S.C. 605(b).

³⁰ Order No. 849, 164 FERC ¶ 61,031 at P 296.

³¹ In Order No. 849, the Commission determined 3.9% of the total potential NGA respondents and 5.1% of the total NGPA section 311 and Hinshaw pipelines could be considered a small entity. Eliminating the filing requirement would eliminate any burden and cost from FERC-501G for small and large entities.

16. From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

17. User assistance is available for eLibrary and the Commission's website during normal business hours from FERC Online Support at 202-502-6652 (toll free at 1-866-208-3676) or email at ferconlinesupport@ferc.gov, or the Public Reference Room at (202) 502-8371, TTY (202) 502-8659. Email the Public Reference Room at public.referenceroom@ferc.gov.

E. Effective Date and Congressional Notification

18. These regulations are effective August 2, 2021. This rule does not alter the substantive rights or interests of any interested persons, and it merely removes certain outdated and nonessential natural gas regulations from the Commission's body of regulations on a prospective basis. Therefore, prior notice and comment under section 4 of the Administrative Procedure Act (APA)³² are unnecessary. The Commission has determined that this rule is not a "major rule" as defined in section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects

18 CFR Part 154

Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Issued: May 20, 2021.

Kimberly D. Bose,
Secretary.

In consideration of the foregoing, the Commission amends parts 154, 260, & 284, chapter I, title 18, *Code of Federal Regulations*, as follows:

³² 5 U.S.C. 553(b).

PART 154—RATE SCHEDULES AND TARIFFS

■ 1. The authority citation for part 154 continues to read as follows:

Authority: 15 U.S.C. 717-717w; 31 U.S.C. 9701; 42 U.S.C. 7102-7352.

§ 154.404 [Removed]

■ 2. Remove § 154.404.

PART 260—STATEMENTS AND REPORTS (SCHEDULES)

■ 3. The authority citation for part 260 continues to read as follows:

Authority: 15 U.S.C. 717-717w, 3301-3432; 42 U.S.C. 7101-7352.

§ 260.402 [Removed]

■ 4. Remove § 260.402.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

■ 5. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717-717z, 3301-3432; 42 U.S.C. 7101-7352; 43 U.S.C. 1331-1356.

§ 284.123 [Amended]

■ 6. In § 284.123, remove paragraph (i).

[FR Doc. 2021-11353 Filed 6-1-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA-658]

Schedules of Controlled Substances: Placement of Remimazolam in Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.
ACTION: Final rule.

SUMMARY: This final rule adopts, without change, an interim final rule with request for comments published in the **Federal Register** on October 6, 2020, placing the substance remimazolam, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible, in schedule IV of the Controlled Substances Act. With the issuance of this final rule, DEA maintains remimazolam, including its salts, isomers, and salts of isomers whenever the existence of such salts,

isomers, and salts of isomers is possible, in schedule IV of the Controlled Substances Act.

DATES: The effective date of this rulemaking is July 2, 2021.

FOR FURTHER INFORMATION CONTACT:

Terrence L. Boos, Drug and Chemical Evaluation Section, Diversion Control Division, Drug Enforcement Administration; Telephone: 571-776-2265.

SUPPLEMENTARY INFORMATION:

Background and Legal Authority

On October 6, 2020, the Drug Enforcement Administration (DEA), pursuant to 21 U.S.C. 811(j), published an interim final rule (IFR) [85 FR 63014] to make remimazolam (including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible), a schedule IV controlled substance(s). See 21 CFR 1308.14(c)(51) (DEA Controlled Substance Code 2846).

Over time, alternative chemical names have been used to describe this same specific substance. In the preamble to the IFR, DEA provided “4*H*-imidazo[1,2-*a*][1,4]benzodiazepine-4-propionic acid, 8-bromo-1-methyl-6-(2-pyridinyl)-(4*S*)-methyl ester, benzenesulfonate (1:1) and also, methyl 3-[(4*S*)-8-bromo-1-methyl-6-pyridin-2-yl-4*H*-imidazo[1,2-*a*][1,4]benzodiazepin-4yl]propanoate benzenesulfonic acid”¹ as the chemical names of remimazolam, which refer to the benzenesulfonic acid salt of remimazolam. Since DEA controlled remimazolam and its salts, isomers, and salts of isomers in schedule IV by publication of the IFR, DEA believes it is more appropriate to include chemical names consistent with the free base of this substance, namely “4*H*-imidazo[1,2-*a*][1,4]benzodiazepine-4-propionic acid, 8-bromo-1-methyl-6-(2-pyridinyl)-(4*S*)-methyl ester and methyl 3-[(4*S*)-8-bromo-1-methyl-6-pyridin-2-yl-4*H*-imidazo[1,2-*a*][1,4]benzodiazepin-4yl]propanoate” in the preamble of this final rule. It bears emphasis that the chemical that is the subject of this final rule is the same substance that was the subject of the IFR. DEA simply is using alternative chemical descriptions to refer to that same substance in this preamble.

Remimazolam is a new molecular entity with central nervous system depressant properties, and the Food and Drug Administration (FDA), in July 2020, approved the use of BYFAVO

(Remimazolam) as an intravenous medication for the induction and maintenance of procedural sedation in adults undergoing procedures lasting 30 minutes or less. The IFR to schedule remimazolam provided opportunity for interested persons to submit comments, as well as file a request for hearing or waiver of hearing, on or before November 5, 2020. DEA did not receive any requests for hearing or waiver of hearing.

Comments Received

In response to the IFR, DEA received three comments, from one individual and two anonymous sources. One commenter supported schedule IV placement; the second commenter suggested placement in schedule III instead; and the third commenter expressed views on a non-DEA rulemaking. DEA will not summarize or respond to this last comment as it was outside the scope of this rulemaking.

Schedule IV Placement

An anonymous commenter briefly expressed that schedule IV was the appropriate schedule for remimazolam based on the data from clinical trials conducted, limited side effects, and its better performance as compared to similar substances such as midazolam.

DEA Response: DEA determined in the IFR, and re-affirms in this final rule, that remimazolam meets the criteria under 21 U.S.C. 812(b)(4) for schedule IV control. As described by the Department of Health and Human Services (HHS),² and in DEA’s August 2020 eight-factor analysis, remimazolam demonstrated abuse potential similar to midazolam, a schedule IV depressant. DEA appreciates the support for this rulemaking.

Schedule III Placement

One individual commenter expressed concerns with DEA’s placement of remimazolam in schedule IV and instead suggested placing remimazolam in schedule III. The commenter briefly discussed the pharmacology of remimazolam and noted that both HHS and DEA stated the abuse potential and public health risk of remimazolam is similar to schedule IV benzodiazepines. However, the commenter stated that remimazolam induced “positive euphoria related responses in [a] human abuse potential study leading to dependence to relative drugs in schedule III” and recommended

classifying remimazolam as schedule III “due to FDA placing a black box warning label on benzodiazepines and the numerous studies illustrating [the abuse and misuse of benzodiazepines] within the public communities.” The commenter noted that schedule III provided more restrictions and could protect the public from harm. The individual summarized four reference articles related to the historic medical use and abuse of prescription benzodiazepines, diversion and trafficking of licit and illicit benzodiazepines, and the serious adverse effects that may occur with misuse and abuse of benzodiazepines, including an increase in benzodiazepine-related deaths. Further, the commenter believed that the opioid epidemic has overshadowed the benzodiazepines misuse and abuse, but suggested that benzodiazepines and opioids are working “in tandem wreaking havoc in the lives of many” and that “creating a strong foundation through classification of drugs can place precedent in ensuring the health and safety of American citizens.”

DEA Response: DEA considered the commenter’s position; however, does find placement in schedule IV to be appropriate for remimazolam. As discussed briefly in the background and legal authority section above, and in more detail in the IFR [85 FR 63014, 63015–63016], FDA approved the New Drug Application (NDA) for BYFAVO (remimazolam), and HHS provided DEA with a scientific and medical evaluation and a scheduling recommendation for control of remimazolam in schedule IV. Pursuant to 21 U.S.C. 811(j), the scheduling recommendation by HHS and FDA approval of the NDA necessitated DEA’s review and its own determination for the scheduling action (to first issue the IFR and subsequently to issue this final rule) in accordance with 21 U.S.C. 811(b). DEA considered HHS’ scientific and medical evaluation and scheduling recommendation, and all other relevant data and concurred with HHS’ recommendation that remimazolam has low potential of abuse relative to substances in schedule III and therefore supported—and continues to support through this final rule—placement of remimazolam in schedule IV. DEA notes that under 21 U.S.C. 811(b), HHS’s recommendation shall be binding on the Administrator of DEA (as delegated by the Attorney General) as to any scientific or medical considerations involved in three of the eight factors specified in 21 U.S.C. 811(c) (*i.e.*, factors pertaining to the substance’s actual or relative potential for abuse, its history

¹ The Department of Health and Human Services also referred to the substance by these chemical names in its April 2020 scientific and medical evaluation and scheduling recommendation.

² Basis for the Recommendation to Control Remimazolam and Its Salts in Schedule IV of the Controlled Substances Act. Department of Health and Human Services. April 15, 2020. Received by DEA on July 10, 2020.

and current pattern of abuse, and the scope, duration, and significance of abuse). Regarding the commenter's public safety concerns with remimazolam's placement in schedule IV, there is still significant oversight for schedule IV drugs. For both the IFR and this final rule, DEA made the findings required under 21 U.S.C. 812(b)(4) for the placement of remimazolam in schedule IV.

Requirements for Handling Remimazolam

As indicated above, remimazolam has been a schedule IV controlled substance by virtue of an IFR issued by DEA in October 2020. Thus, this final rule does not alter the regulatory requirements applicable to handlers of remimazolam that have been in place since that time. Nonetheless, for informational purposes, we restate here those requirements. Remimazolam is subject to the Controlled Substances Act's (CSA) schedule IV regulatory controls and administrative, civil, and criminal sanctions applicable to the manufacture, distribution, reverse distribution, dispensing, importing, exporting, research, and conduct of instructional activities and chemical analysis with, and possession involving schedule IV substances, including, but not limited to, the following:

1. *Registration.* Any person who handles (manufactures, distributes, reverse distributes, dispenses, imports, exports, engages in research, or conducts instructional activities or chemical analysis with, or possesses) remimazolam, or who desires to handle remimazolam, must be registered with DEA to conduct such activities pursuant to 21 U.S.C. 822, 823, 957, and 958 and in accordance with 21 CFR parts 1301 and 1312. Any person who intends to handle remimazolam, and is not registered with DEA, must submit an application for registration and may not continue to handle remimazolam unless DEA has approved that application for registration, pursuant to 21 U.S.C. 822, 823, 957, and 958, and in accordance with 21 CFR parts 1301 and 1312. These registration requirements, however, are not applicable to patients (end users) who possess remimazolam pursuant to a lawful prescription.

2. *Disposal of stocks.* Any person who does not desire or is not able to maintain a schedule IV registration must surrender all quantities of currently held remimazolam or may transfer all quantities of remimazolam to a person registered with DEA in accordance with 21 CFR part 1317, in addition to all other applicable Federal, State, local, and tribal laws.

3. *Security.* Remimazolam is subject to schedule III–V security requirements for DEA registrants and it must be handled and stored in accordance with 21 CFR 1301.71–1301.77. Non-practitioners handling remimazolam must also comply with the employee screening requirements of 21 CFR 1301.90–1301.93.

4. *Labeling and Packaging.* All labels, labeling, and packaging for commercial containers of remimazolam must comply with 21 U.S.C. 825 and 958(e), and be in accordance with 21 CFR part 1302.

5. *Inventory.* Since October 6, 2020, every DEA registrant who possesses any quantity of remimazolam must take an inventory of remimazolam on hand, pursuant to 21 U.S.C. 827 and 958, and in accordance with 21 CFR 1304.03, 1304.04, and 1304.11.

6. *Records and Reports.* DEA registrants must maintain records and submit reports for remimazolam, pursuant to 21 U.S.C. 827, 832(a), and 958(e), and in accordance with 21 CFR 1301.74(b) and (c) and parts 1304, 1312, and 1317.

7. *Prescriptions.* All prescriptions for remimazolam, or products containing remimazolam, must comply with 21 U.S.C. 829, and be issued in accordance with 21 CFR parts 1306 and 1311, subpart C.

8. *Manufacturing and Distributing.* In addition to the general requirements of the CSA and DEA regulations that are applicable to manufacturers and distributors of schedule IV controlled substances, such registrants should be advised that (consistent with the foregoing considerations) any manufacturing or distribution of remimazolam may only be for the legitimate purposes consistent with the drug's labeling, or for research activities authorized by the Federal Food, Drug, and Cosmetic Act and the CSA.

9. *Importation and Exportation.* All importation and exportation of remimazolam must be in compliance with 21 U.S.C. 952, 953, 957, and 958, and in accordance with 21 CFR part 1312.

10. *Liability.* Any activity involving remimazolam not authorized by, or in violation of, the CSA or its implementing regulations, is unlawful, and may subject the person to administrative, civil, and/or criminal sanctions.

Regulatory Analyses

Administrative Procedure Act

This final rule, without change, affirms the amendment made by the IFR that is already in effect. Section 553 of

the Administrative Procedure Act (APA) (5 U.S.C. 553) generally requires notice and comment for rulemakings. However, 21 U.S.C. 811(j) provides that in cases where a certain new drug is (1) approved by HHS and (2) HHS recommends control in CSA schedule II–V, DEA shall issue an IFR scheduling the drug within 90 days. Additionally, subsection (j) specifies that the rulemaking shall become immediately effective as an IFR without requiring DEA to demonstrate good cause. DEA issued an IFR on October 6, 2020, and solicited public comments on that rule. Subsection (j) further provides that after giving interested persons the opportunity to comment and to request a hearing, the Attorney General, as delegated to the Administrator of DEA, shall issue a final rule in accordance with the scheduling criteria of 21 U.S.C. 811(b) through (d) and 812(b). DEA is now responding to the comments submitted by the public and issuing the final rule in accordance with subsection (j).

Executive Orders 12866 (Regulatory Planning and Review) and 13563 (Improving Regulation and Regulatory Review)

In accordance with 21 U.S.C. 811(a) and (j), this scheduling action is subject to formal rulemaking procedures performed “on the record after opportunity for a hearing,” which are conducted pursuant to the provisions of 5 U.S.C. 556 and 557. The CSA sets forth procedures and criteria for scheduling a drug or other substance. Such actions are exempt from review by the Office of Management and Budget (OMB) pursuant to section 3(d)(1) of Executive Order (E.O.) 12866 and the principles reaffirmed in E.O. 13563.

Executive Order 12988, Civil Justice Reform

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of E.O. 12988 to eliminate drafting errors and ambiguity, minimize litigation, provide a clear legal standard for affected conduct, and promote simplification and burden reduction.

Executive Order 13132, Federalism

This rulemaking does not have federalism implications warranting the application of E.O. 13132. The rule does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This rule does not have tribal implications warranting the application of E.O. 13175. It does not have substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612) applies to rules that are subject to notice and comment under section 553(b) of the APA. As noted in the above discussion regarding the applicability of the APA, DEA was not required to publish a general notice of proposed rulemaking. Consequently, the RFA does not apply.

Unfunded Mandates Reform Act of 1995

In accordance with the Unfunded Mandates Reform Act (UMRA) of 1995, 2 U.S.C. 1501 *et seq.*, DEA has determined that this action would not result in any Federal mandate that may result “in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more (adjusted annually for inflation) in any 1 year.” Therefore, neither a Small Government Agency Plan nor any other action is required under UMRA of 1995.

Paperwork Reduction Act of 1995

This action does not impose a new collection of information requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3521. This action would not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Congressional Review Act (CRA)

This rule is not a major rule as defined by the CRA, 5 U.S.C. 804. However, pursuant to the CRA, DEA is submitting a copy of this final rule to both Houses of Congress and to the Comptroller General.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Reporting and recordkeeping requirements.

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ Accordingly, the IFR amending 21 CFR part 1308, which published on October 6, 2020 (85 FR 63014), is adopted as final without change.

D. Christopher Evans,
Acting Administrator.

[FR Doc. 2021–11512 Filed 6–1–21; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 723, 724, 845, and 846

[Docket ID: OSM 2021–001; S1D1S
SS08011000 SX064A000 212S180110;
S2D2S SS08011000 SX064A00 21XS501520]

RIN 1029–AC79

Civil Monetary Penalty Inflation Adjustments

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), and Office of Management and Budget (OMB) guidance, this rule adjusts for inflation the level of civil monetary penalties assessed under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

DATES: Effective June 2, 2021.

FOR FURTHER INFORMATION CONTACT: Kathleen G. Vello, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, Mail Stop 4558, Washington, DC 20240; Telephone (202) 208–1908. Email: kvello@osmre.gov.

SUPPLEMENTARY INFORMATION:

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 - A. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015
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I. Background

A. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015

Section 518 of SMCRA, 30 U.S.C. 1268, authorizes the Secretary of the Interior to assess civil monetary penalties (CMPs) for violations of SMCRA. The Office of Surface Mining Reclamation and Enforcement’s (OSMRE) regulations implementing the CMP provisions of section 518 are located in 30 CFR parts 723, 724, 845, and 846. We are adjusting CMPs in six sections—30 CFR 723.14, 723.15, 724.14, 845.14, 845.15, and 846.14.

On November 2, 2015, the President signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114–74) (2015 Act) into law. The 2015 Act, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (codified as amended at 28 U.S.C. 2461 note), requires Federal agencies to promulgate rules to adjust the level of CMPs to account for inflation. The 2015 Act required an initial “catch-up” adjustment. OSMRE published the initial adjustment in the **Federal Register** on July 8, 2016 (81 FR 44535), and the adjustment took effect on August 1, 2016. The 2015 Act also requires agencies to publish annual inflation adjustments in the **Federal Register** no later than January 15 of each year. These adjustments are aimed at maintaining the deterrent effect of civil penalties and furthering the policy goals of the statutes that authorize the penalties. Further, the 2015 Act provides that agencies must adjust civil monetary penalties “notwithstanding section 553 of [the Administrative Procedure Act (APA)].” Therefore, “the public procedure the APA generally requires—notice, an opportunity for comment, and a delay in effective date—is not required for agencies to issue regulations implementing the annual adjustment.” December 23, 2020, Memorandum for the Heads of Executive Departments and Agencies (M–21–10) from Russell T. Vought,

Director, Office of Management and Budget, *Implementation of Penalty Inflation Adjustments for 2021*,

Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (OMB Memorandum), at 3.

Pursuant to SMCRA and the 2015 Act, this final rule reflects the statutorily required CMP adjustments as follows:

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
30 CFR 723.14	1	\$68	\$69
	2	137	139
	3	206	208
	4	274	277
	5	342	346
	6	411	416
	7	479	485
	8	546	552
	9	616	623
	10	685	693
	11	752	761
	12	821	831
	13	888	898
	14	958	969
	15	1,028	1,040
	16	1,095	1,108
	17	1,163	1,177
	18	1,233	1,248
	19	1,301	1,316
	20	1,369	1,385
	21	1,438	1,455
	22	1,506	1,524
	23	1,574	1,593
	24	1,642	1,661
	25	1,711	1,731
	26	2,054	2,078
	27	2,396	2,424
	28	2,736	2,768
	29	2,949	2,984
	30	3,423	3,463
	31	3,764	3,808
	32	4,106	4,155
	33	4,449	4,502
	34	4,791	4,848
	35	5,133	5,194
	36	5,475	5,540
	37	5,819	5,888
	38	6,160	6,233
	39	6,502	6,579
	40	6,843	6,924
	41	7,188	7,273
	42	7,529	7,618
	43	7,870	7,963
	44	8,213	8,310
	45	8,555	8,656
	46	8,898	9,003
	47	9,239	9,348
	48	9,583	9,696
	49	9,924	10,041
	50	10,266	10,387
	51	10,607	10,732
	52	10,952	11,081
	53	11,294	11,427
	54	11,635	11,773
	55	11,979	12,121
	56	12,320	12,466
	57	12,661	12,811
	58	13,003	13,157
	59	13,347	13,505
	60	13,688	13,850
	61	14,030	14,196
	62	14,373	14,543
	63	14,716	14,890
	64	15,058	15,236
	65	15,399	15,581
	66	15,743	15,929
	67	16,084	16,274
	68	16,426	16,620

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
	69	16,768	16,966
	70	17,112	17,314
30 CFR 723.15(b) (Assessment of separate violations for each day) .....	.....	2,566	2,596
30 CFR 724.14(b) (Individual civil penalties) .....	.....	17,112	17,314
30 CFR 845.14	1	68	69
	2	137	139
	3	206	208
	4	274	277
	5	342	346
	6	411	416
	7	479	485
	8	546	552
	9	616	623
	10	685	693
	11	752	761
	12	821	831
	13	888	898
	14	958	969
	15	1,028	1,040
	16	1,095	1,108
	17	1,163	1,177
	18	1,233	1,248
	19	1,301	1,316
	20	1,369	1,385
	21	1,438	1,455
	22	1,506	1,524
	23	1,574	1,593
	24	1,642	1,661
	25	1,711	1,731
	26	2,054	2,078
	27	2,396	2,424
	28	2,736	2,768
	29	2,949	2,984
	30	3,423	3,463
	31	3,764	3,808
	32	4,106	4,155
	33	4,449	4,502
	34	4,791	4,848
	35	5,133	5,194
	36	5,475	5,540
	37	5,819	5,888
	38	6,160	6,233
	39	6,502	6,579
	40	6,843	6,924
	41	7,188	7,273
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	44	8,213	8,310
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	55	11,979	12,121
	56	12,320	12,466
	57	12,661	12,811
	58	13,003	13,157
	59	13,347	13,505
	60	13,688	13,850
	61	14,030	14,196
	62	14,373	14,543
	63	14,716	14,890
	64	15,058	15,236
	65	15,399	15,581
	66	15,743	15,929
	67	16,084	16,274
	68	16,426	16,620

CFR citation	Points (where applicable)	Current penalty dollar amounts	Adjusted penalty dollar amounts
	69	16,768	16,966
	70	17,112	17,314
30 CFR 845.15(b) (Assessment of separate violations for each day) .....	.....	2,566	2,596
30 CFR 846.14(b) (Individual civil penalties) .....	.....	17,112	17,314

In the chart above, there are no numbers listed in the “Points” column relative to 30 CFR 723.15(b), 30 CFR 724.14(b), 30 CFR 845.15(b), and 30 CFR 846.14(b) because those regulatory provisions do not set forth numbers of points. For those provisions, the current regulations only set forth the dollar amounts shown in the chart in the “Current Penalty Dollar Amounts” column; the adjusted amounts, which we are adopting in this rule, are shown in the “Adjusted Penalty Dollar Amounts” column.

B. Calculation of Adjustments

OMB issued guidance on the 2021 annual adjustments for inflation. See OMB Memorandum (December 23, 2020). The OMB Memorandum notes that the 1990 Act defines “civil monetary penalty” as “any penalty, fine, or other sanction that . . . is for a specific monetary amount as provided by Federal law; or . . . has a maximum amount provided for by Federal law; and . . . is assessed or enforced by an agency pursuant to Federal law; and . . . is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts” *Id.* at 2. It further instructs that agencies “are to adjust ‘the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, for each civil monetary penalty by the cost-of-living adjustment.’” *Id.* The 1990 Act, as amended by the 2015 Act, and the OMB Memorandum specify that the annual inflation adjustments are based on the percent change between the Consumer Price Index for all Urban Consumers (the CPI-U) published by the Department of Labor for the month of October in the year of the previous adjustment, and the October CPI-U for the preceding year. The recent OMB Memorandum specified that the cost-of-living adjustment multiplier for 2021, not seasonally adjusted, is 1.01182 (the October 2020 CPI-U (260.388) divided by the October 2019 CPI-U (257.346) = 1.01182). OSMRE used this guidance to identify applicable CMPs and calculate the required inflation adjustments. The 1990 Act, as amended by the 2015 Act, specifies that any resulting increases in CMPs must be rounded according to a

stated rounding formula and that the increased CMPs apply only to violations that occur after the date that the increases take effect.

Generally, OSMRE assigns points to a violation as described in 30 CFR 723.13 and 845.13. The CMP owed is based on the number of points received, ranging from one point to 70 points. For example, under our existing regulations in 30 CFR 845.14, a violation totaling 70 points would amount to a \$17,112 CMP. To adjust this amount, we multiply \$17,112 by the 2020 inflation factor of 1.01182, resulting in a raw adjusted amount of \$17,314.26. Because the 2015 Act requires us to round any increase in the CMP amount to the nearest dollar, in this case a violation of 70 points would amount to a new CMP of \$17,314. Pursuant to the 2015 Act, the increases in this final rule apply to CMPs assessed after the date the increases take effect, even if the associated violation predates the applicable increase.

C. Effect of the Rule in Federal Program States and on Indian Lands

OSMRE directly regulates surface coal mining and reclamation operations within a State or on Tribal lands if the State or Tribe does not obtain its own approved program pursuant to sections 503 or 710(j) of SMCRA, 30 U.S.C. 1253 or 1300(j). The increases in CMPs contained in this rule will apply to the following Federal program States: Arizona, California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for those States appear at 30 CFR parts 903, 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. Under 30 CFR 750.18, the increases in CMPs also apply to Indian lands under the Federal program for Indian lands.

D. Effect of the Rule on Approved State Programs

As a result of litigation, see *In re Permanent Surface Mining Regulation Litigation*, No. 79–1144, Mem. Op. (D.D.C. May 16, 1980), 19 Env’t Rep. Cas. (BNA) 1477, State regulatory programs are not required to mirror all of the penalty provisions of our

regulations. Thus, this rule has no effect on CMPs in States with SMCRA primacy.

II. Procedural Matters

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

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that agency regulations exclusively implementing the annual inflation adjustments are not significant, provided they are consistent with the OMB Memorandum. Because this final rule exclusively implements the annual inflation adjustments, is consistent with the OMB Memorandum, and will have an annual impact of less than \$100 million, it is not significant under Executive Order 12866.

Executive Order 13563 reaffirms the principles of Executive Order 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 Executive Order 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. Executive Order 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, to the extent permitted by statute.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires an agency to prepare a regulatory flexibility analysis for all rules unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The RFA applies only to rules for which an agency is required to first publish a proposed rule. See 5 U.S.C. 603(a) and 604(a). The Federal Civil Penalties

Inflation Adjustment Act Improvements Act of 2015 requires agencies to adjust civil penalties annually for inflation “notwithstanding section 553 [of the Administrative Procedure Act].” Thus, no proposed rule will be published, and the RFA does not apply to this rulemaking.

C. Small Business Regulatory Enforcement Fairness Act

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

- (a) 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 United States-based enterprises to compete with foreign-based enterprises.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or Tribal governments, or the private sector, of more than \$100 million per year. 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 (Executive Order 12630)

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

F. Federalism (Executive Order 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 (Executive Order 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 (Executive Order 13175 and Departmental Policy)

The Department of the Interior strives to strengthen its government-to-government relationship with Tribes through a commitment to consultation with Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department’s consultation policy, under Departmental Manual Part 512, Chapters 4 and 5, and under the criteria in Executive Order 13175 and have determined that it has no substantial direct effects on Federally-recognized Tribes or Alaska Native Claims Settlement Act (ANCSA) Corporations, and that consultation under the Department’s Tribal consultation policy is not required.

I. Paperwork Reduction Act

This rule does not contain information collection requirements, and a submission to the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is not required. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

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 rule is covered by a categorical exclusion. This rule is excluded from the requirement to prepare a detailed statement because it is a regulation of an administrative nature. (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 Energy Supply, Distribution, and Use (Executive Order 13211)

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

L. Clarity of This Regulation

We are required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of

June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

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

If you believe that we have not met these requirements in issuing this final rule, please contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. Your comments should be as specific as possible in order to help us determine whether any future revisions to the rule are necessary. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

M. Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554).

N. Administrative Procedure Act

We are issuing this final rule without prior public notice or opportunity for public comment. As discussed above, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 requires agencies to publish adjusted penalties annually. Under the 2015 Act, the public procedure that the Administrative Procedure Act generally requires—notice, an opportunity for comment, and a delay in the effective date—is not required for agencies to issue regulations implementing the annual adjustments required by the 2015 Act. *See* OMB Memorandum, M–21–10, at 3.

List of Subjects

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedure, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Glenda H. Owens,
Deputy Director, Office of Surface Mining Reclamation and Enforcement.

For the reasons given in the preamble, the Department of the Interior amends 30 CFR parts 723, 724, 845, and 846 as set forth below.

PART 723—CIVIL PENALTIES

■ 1. The authority citation for part 723 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 2. Revise the table in § 723.14 to read as follows:

§ 723.14 Determination of amount of penalty.

* * * * *

TABLE 1 TO § 723.14

Points	Dollars
1	69
2	139
3	208
4	277
5	346
6	416
7	485
8	552
9	623
10	693
11	761
12	831
13	898
14	969
15	1,040
16	1,108
17	1,177
18	1,248
19	1,316
20	1,385
21	1,455
22	1,524
23	1,593
24	1,661
25	1,731
26	2,078
27	2,424
28	2,768
29	2,984
30	3,463
31	3,808
32	4,155
33	4,502
34	4,848
35	5,194
36	5,540
37	5,888
38	6,233
39	6,579
40	6,924
41	7,273
42	7,618
43	7,963

TABLE 1 TO § 723.14—Continued

Points	Dollars
44	8,310
45	8,656
46	9,003
47	9,348
48	9,696
49	10,041
50	10,387
51	10,732
52	11,081
53	11,427
54	11,773
55	12,121
56	12,466
57	12,811
58	13,157
59	13,505
60	13,850
61	14,196
62	14,543
63	14,890
64	15,236
65	15,581
66	15,929
67	16,274
68	16,620
69	16,966
70	17,314

■ 3. In § 723.15, revise introductory text of paragraph (b) to read as follows:

§ 723.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,596 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

■ 4. The authority citation for part 724 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 5. In § 724.14, revise the first sentence of paragraph (b) to read as follows:

§ 724.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed \$17,314 for each violation. * * *

PART 845—CIVIL PENALTIES

■ 6. The authority citation for part 845 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, 31 U.S.C. 3701, Pub. L. 100–202, and Pub. L. 100–446.

■ 7. Revise the table in § 845.14 to read as follows:

§ 845.14 Determination of amount of penalty.

* * * * *

TABLE 1 TO § 845.14

Points	Dollars
1	69
2	139
3	208
4	277
5	346
6	416
7	485
8	552
9	623
10	693
11	761
12	831
13	898
14	969
15	1,040
16	1,108
17	1,177
18	1,248
19	1,316
20	1,385
21	1,455
22	1,524
23	1,593
24	1,661
25	1,731
26	2,078
27	2,424
28	2,768
29	2,984
30	3,463
31	3,808
32	4,155
33	4,502
34	4,848
35	5,194
36	5,540
37	5,888
38	6,233
39	6,579
40	6,924
41	7,273
42	7,618
43	7,963
44	8,310
45	8,656
46	9,003
47	9,348
48	9,696
49	10,041
50	10,387
51	10,732
52	11,081
53	11,427
54	11,773
55	12,121
56	12,466
57	12,811
58	13,157
59	13,505
60	13,850
61	14,196

TABLE 1 TO § 845.14—Continued

Points	Dollars
62	14,543
63	14,890
64	15,236
65	15,581
66	15,929
67	16,274
68	16,620
69	16,966
70	17,314

■ 8. In § 845.15, revise introductory text of paragraph (b) to read as follows:

§ 845.15 Assessment of separate violations for each day.

* * * * *

(b) In addition to the civil penalty provided for in paragraph (a) of this section, whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order or as subsequently extended pursuant to section 521(a) of the Act, 30 U.S.C. 1271(a), a civil penalty of not less than \$2,596 will be assessed for each day during which such failure to abate continues, except that:

* * * * *

PART 846—INDIVIDUAL CIVIL PENALTIES

■ 9. The authority citation for part 846 continues to read as follows:

Authority: 28 U.S.C. 2461, 30 U.S.C. 1201 *et seq.*, and 31 U.S.C. 3701.

■ 10. In § 846.14, revise the first sentence of paragraph (b) to read as follows:

§ 846.14 Amount of individual civil penalty.

* * * * *

(b) The penalty will not exceed \$17,314 for each violation. * * *

[FR Doc. 2021-11301 Filed 6-1-21; 8:45 am]

BILLING CODE 4310-05-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 30

[EPA-HQ-OA-2018-0259; FRL-10024-32-ORD]

RIN 2080-AA15

Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information; Implementation of Vacatur

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is removing the regulatory provisions associated with the final rule Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information. This action effectuates the vacatur of the final rule ordered by the United States District Court for the District of Montana. It is also responsive to the Executive order entitled “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” signed on January 20, 2021.

DATES: This final rule is effective May 28, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-HQ-OA-2018-0259 All documents in the docket are listed on the <http://www.regulations.gov> website. Although listed in the index, some information may not be publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Bennett Thompson, Office of Science Advisor, Policy and Engagement (8104R), Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (202) 564-1071; email address: osp_staff@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action removes requirements for how the EPA considers the availability of dose-response data underlying its pivotal science used in its significant regulatory actions and influential scientific information. The EPA recognizes any entity interested in submitting studies to EPA or how EPA evaluates and considers science in EPA regulations may be interested in this final rule.

B. Why is EPA issuing this action?

The EPA is removing the regulatory provisions associated with the final rule “Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information” (86 FR 469, January 6, 2021), herein referred to as

the “2021 final rule” (Ref. 1). This action effectuates the vacatur of the final rule ordered by the United States District Court for the District of Montana in *Environmental Defense Fund et al. v. EPA*, No. 21-cv-00003 (D. Mon. Feb. 1, 2021) (*EDF v. EPA*).

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause under section 553(b)(B) to issue this final rule without prior proposal and opportunity for comment because this action undertakes the ministerial tasks of removing regulatory provisions vacated by the court in *EDF v. EPA* (Ref. 2).

As a matter of law, the order issued by the court in *EDF v. EPA* on February 1, 2021 vacated the 2021 final rule. It is, therefore, unnecessary to provide notice and an opportunity for comment on this action, which carries out the court’s orders by removing the 2021 final rule from 40 CFR part 30.

In addition, EPA finds that it has good cause to make these revisions immediately effective upon publication under section 553(d) of the Administrative Procedure Act, 5 U.S.C. 553(d). Section 553(d) provides that final rules shall not become effective until 30 days after publication in the **Federal Register** “except . . . as otherwise provided by the agency for good cause.” The purpose of this provision is to “give affected parties a reasonable time to adjust their behavior before the final rule takes effect.” *Omnipoint Corp. v. Fed. Comm’n Comm’n*, 78 F.3d 620, 630 (D.C. Cir. 1996); see also *United States v. Gavrilovic*, 551 F.2d 1099, 1104 (8th Cir. 1977) (quoting legislative history). Thus, in determining whether good cause exists to waive the 30-day delay, an agency should, “balance the necessity for immediate implementation against principles of fundamental fairness which require that all affected persons be afforded a reasonable amount of time to prepare for the effective date of its ruling.” *Gavrilovic*, 551 F.2d at 1105. EPA has determined that there is good cause under section 553(d) for making this final rule effective immediately because this action merely implements the court order vacating the 2021 final rule. Delaying the effectiveness of this rule further would prolong the period of time between the change in the law (*i.e.*, the court’s vacatur) and the

corresponding update to the regulations, without providing the corresponding benefit underlying the 30-day delay. Minimizing that time period would reduce the possibility of confusion for the public. Accordingly, EPA is making this rule effective immediately upon publication.

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

EPA promulgated the 2021 final rule pursuant to its housekeeping authority, which EPA gained through the Reorganization Plan No. 3 of 1970, 84 Stat. 2086 (July 9, 1970), which created the EPA. The Reorganization Plan established the Administrator as "head of the agency," transferred functions and authorities of various agencies and Executive departments to the EPA, including the authority to promulgate regulations to carry out the transferred functions, including a housekeeping authority to promulgate procedural, but not substantive, rules. However, the rule was vacated and remanded in light of the court's conclusion that the 2021 final rule constituted a substantive rule, and therefore the EPA lacked authorization to promulgate the 2021 final rule pursuant to its housekeeping authority. This action to implement the vacatur is being taken pursuant to the court's order (Ref. 2).

II. Background of the Vacated 2021 Final Rule

A. Summary of the Key Requirements in the 2021 Final Rule

The 2021 final rule established how the EPA would have considered the availability of dose-response data underlying pivotal science used in its significant regulatory actions and influential scientific information (Ref. 1). When promulgating significant regulatory actions or developing influential scientific information for which the conclusions are driven by the quantitative relationship between the amount of dose or exposure to a pollutant, contaminant, or substance and an effect, the 2021 final rule would have required that the EPA give greater consideration to studies where the underlying dose-response data are available in a manner sufficient for independent validation. The 2021 final rule also would have required the EPA to identify and make publicly available the science that serves as the basis for informing a significant regulatory action at the proposed rule stage to the extent practicable; included additional requirements for the peer review of pivotal science; and provided criteria for the Administrator to exempt certain

studies from the requirements of the rule.

B. Litigation, Vacatur and Court Mandate

On January 11, 2021 the plaintiffs Environmental Defense Fund and others (EDF) filed a complaint in the U.S. District Court for the District of Montana (Ref. 3). Among other allegations, EDF contended that the 2021 final rule was substantive and therefore unlawful to promulgate under the EPA's housekeeping authority, which only permits promulgation of procedural rules. The plaintiffs further argued that the EPA lacked good cause to make the rule effective immediately. On January 27, 2021, the court issued a partial summary judgment ruling that the 2021 final rule was substantive because it failed to provide the EPA with procedural direction but instead narrowly limited the agency's discretion to consider certain scientific research when conducting future rulemakings. The court reasoned that by determining how the Agency weighs particular scientific evidence, the 2021 final rule determined outcomes rather than process. The court further ruled that EPA did not have good cause to make the 2021 final rule effective immediately and held that the effective date for the rule was 30 days after publication, or February 5, 2021 (Ref. 4). Based on the district court's conclusion that the final rule constituted a substantive rather than a procedural rule, EPA lacked authority to promulgate the final rule under its housekeeping authority. Given the court's decision, the EPA filed an unopposed motion to vacate and remand the rule (Ref. 5). On February 1, 2021, the court granted the motion vacating the 2021 final rule and remanding it to the EPA (Ref. 2). This action effectuates the court order vacating the 2021 final rule.

III. Effective Date

This final rule will become effective upon publication in the **Federal Register**.

IV. References

1. U.S. EPA. Strengthening Transparency in Pivotal Science Underlying Significant Regulatory Actions and Influential Scientific Information; Rule, 86 FR 469 (January 6, 2021) (FRL-10019-07-ORD), available at <https://www.federalregister.gov/documents/2021/01/06/2020-29179/strengthening-transparency-in-pivotal-science-underlying-significant-regulatory-actions-and>.

2. *EDF vs. EPA*, Case No. 4:21-cv-00003-BMM, United States District

Court for the District of Montana, Order (February 1, 2021), available at https://www.epa.gov/sites/production/files/2021-02/documents/vacatur_and_remand_final_order_case_421-cv-00003-bmm.pdf.

3. *EDF vs. EPA*, Case No. 4:21-cv-00003-BMM, United States District Court for the District of Montana, Complaint (January 11, 2021).

4. *EDF vs. EPA*, Case No. 4:21-cv-00003-BMM, United States District Court for the District of Montana, Order on Partial Motion (January 27, 2021).

5. *EDF vs. EPA*, Case No. 4:21-cv-00003-BMM-JTJ, United States District Court for the District of Montana, Defendants' Unopposed Motion for Vacatur and Remand (January 31, 2021).

V. Statutory and Executive Orders Reviews

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB recommendations have been documented in the docket. The EPA does not anticipate that this rulemaking will have an economic impact on regulated entities.

B. Paperwork Reduction Act (PRA)

This action does not contain any information collection activities and therefore does not impose an information collection burden under the PRA.

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the Agency has invoked the APA "good cause" exemption under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the

relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

This action does not have tribal implications as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2–202 of the Executive order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not a “significant energy action” within the meaning of Executive Order 13211. It is not likely to have a significant adverse effect on the supply, distribution or use of energy, and it has not otherwise been designated as a significant energy action by the Administrator of the Office of Information and Regulatory Affairs (OIRA).

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards.

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

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and the EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 30

Environmental protection, Administrative practice and procedure, Reporting and recordkeeping requirements.

Michael S. Regan,
Administrator.

PART 30—[REMOVED AND RESERVED]

■ For the reasons set forth in the preamble and under the authority of the court order in *Environmental Defense Fund et al. v. EPA*, No. 21–cv–00003 (D. Mon. Feb. 1, 2021) (*EDF v. EPA*), the EPA removes and reserves 40 CFR part 30.

[FR Doc. 2021–11317 Filed 5–28–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[[EPA–R07–OAR–2019–0711; FRL–10024–22–Region 7]

Air Plan Approval; Missouri; Construction Permits By Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving selected revisions to a Missouri State rule in the State Implementation Plan (SIP) that establishes a process and standardized conditions under which certain types of sources can construct and operate in lieu of going through the State’s formal construction permitting process. The EPA is approving rule revisions that include modifications to the operating conditions for crematories and animal incinerators, adjustments to sulfur limits on Number 2 diesel oil for consistency with Federal limits, removal of “restrictive” words, addition of definitions specific to the rule, and other minor edits. At this time, the agency is not acting on revisions that conflict with an EPA regulation related to disposal of pharmaceuticals collected in drug take-back programs. The EPA’s approval of the State’s other rule revisions is being done in accordance with the requirements of the Clean Air Act (CAA).

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

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R07–OAR–2019–0711. All documents in the docket are listed on

the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

FOR FURTHER INFORMATION CONTACT: Wendy Vit, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219 at (913) 551–7697, or by email at vit.wendy@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “us,” and “our” refer to the EPA. This section provides additional information by addressing the following:

Table of Contents

- I. What is being addressed in this action?
- II. Have the requirements for approval of the SIP revision been met?
- III. The EPA’s Response to Comments
- IV. What action is the EPA taking?
- V. Incorporation by Reference
- VI. Statutory and Executive Order Reviews

I. What is being addressed in this action?

The EPA is taking final action to approve selected revisions to 10 Code of State Regulations (CSR) 10–6.062 in the Missouri SIP. The revised State rule was submitted by the State of Missouri on March 7, 2019 and became effective on March 30, 2019. The submission requested revisions to the SIP that include: (1) Expanding the materials that crematories and animal incinerators are allowed to burn from 100% human and animal remains to 90% human and animal remains with up to 10% illegal and waste pharmaceutical drugs, (2) modifying operating conditions for crematories and animal incinerators, (3) adjusting sulfur limits on Number 2 diesel oil for consistency with Federal limits, (4) removing “restrictive” words, (5) adding definitions specific to the rule, and (6) making other minor edits. The EPA is finalizing this action because certain revisions to this State rule meet the applicable requirements of the Clean Air Act. EPA is not acting on the State rule revisions that would allow crematories and animal incinerators to burn up to 10% by weight of illegal and waste pharmaceuticals.

II. Have the requirements for approval of the SIP revision been met?

The State's submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The State provided public notice of the revisions from August 1, 2018, to October 4, 2018, and held a public hearing on September 27, 2018. The State received and addressed four comments from three sources, including the EPA. In addition, as explained in the proposal (85 FR 3304, January 21, 2020) and in more detail in the EPA's technical support document (TSD), which is part of this docket, the revision meets the substantive SIP requirements of the CAA, including section 110 and the implementing regulations.

III. The EPA's Responses to Comments

The public comment period on the EPA's proposed rule opened January 21, 2020, the date of its publication in the **Federal Register**, and closed on February 20, 2020. During this period, the EPA received comments from two commenters, which are addressed below.

Comment 1: One commenter submitted several comments regarding revisions in 10 CSR 10–6.062 paragraph (3)(B)2. and subparagraph (3)(B)2.A. that would expand the materials which crematories and animal incinerators are allowed to burn from 100% human and animal remains to 90% human and animal remains with up to 10% illegal and waste pharmaceutical drugs. The comments raise multiple approvability issues. First, the commenter states the EPA failed to provide any analysis or basis for its assertion that allowing crematories and animal incinerators to burn up to 10% pharmaceuticals would not impact the stringency of the SIP or air quality. Second, the commenter states the EPA applied faulty logic in relying on the Commercial and Industrial Solid Waste Incinerator (CISWI) rule's exemption for pathological waste incinerators that burn 90% pathological waste. The commenter contends that the 90% cutoff in the CISWI rule is not a 10% catch-all burn-what-you-will provision, rather it is intended to distinguish those units designed and used primarily for pathological material destruction from other units. There is no CISWI rule provision that allows for the other 10% of the material to be illegal and waste pharmaceutical drugs. Third, the commenter said the EPA's analysis fails to recognize that incineration of

pharmaceutical drugs may be subject to other federal regulations under sections 112 or 129 of the Clean Air Act or the Resource Conservation and Recovery Act (RCRA) depending on their contents. Finally, the commenter states the EPA failed to analyze whether allowing crematories and animal incinerators to burn pharmaceuticals would increase hazardous air pollutant emissions to such an extent that the source would exceed the major source threshold and therefore not be eligible for the construction permit-by-rule per 10 CSR 10–6.062(1)(A).

Response to Comment 1: Because of the issues raised in these comments, the EPA is not acting on the revised language that would allow crematories and animal incinerators to burn up to 10% by weight of illegal and waste pharmaceuticals. Missouri added these provisions as a means of disposing materials collected from drug take-back events and programs. However, the revisions in the State's rule conflict with requirements related to drug take-back programs established by the EPA's final regulation, Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine (84 FR 5816, February 22, 2019). Specifically, the requirements for drug take-back programs codified at 40 CFR 266.506, list five types of permitted combustors that must be used to destroy waste pharmaceuticals, and crematoriums and animal incinerators are not included on the list for this purpose. The EPA explains in the preamble of the final hazardous waste pharmaceuticals rule that crematories and animal incinerators are not allowed to be used for disposal of materials collected from drug take-back programs because these units typically do not use air pollution control devices to limit toxic air pollutants such as mercury and dioxins and furans. In addition to the hazardous waste pharmaceuticals rule, there may be other state and federal regulations applicable to crematories and animal incinerators. Missouri has represented to the EPA that it is in the process of revising 10 CSR 10–6.062 to remove the problematic language allowing crematories and animal incinerators to burn illegal and waste pharmaceutical drugs. As evidence of Missouri's rulemaking to revise 10 CSR 10–6.062, the rulemaking report summarizing the changes Missouri plans to make is included in this docket.

Comment 2: The commenter states that Missouri's rule lacks necessary enforceability provisions. For instance, the commenter states that the rule is not clear whether the demonstration of 99.9% combustion efficiency applies to

sources that rely on manufacturer's specifications, and it is incomplete because it does not specify what pollutants must be demonstrated to meet the 99.9% combustion efficiency. In addition, the commenter states that the compliance provisions for stack tests and opacity limit requirements fail to identify the appropriate test methods. The commenter says the rule also lacks provisions that apply to owners that follow manufacturers specifications. Finally, the commenter states that the recordkeeping and reporting provisions are inadequate.

Response to Comment 2: To apply for a Missouri permit-by-rule, an applicant completes an application. The application form contains the conditions of operation, including methods of compliance. The applicant signs the form to accept the conditions. This becomes the final permit issued by the Missouri Department of Natural Resources.¹ It is EPA's understanding that Missouri is in the process of updating the application form to reflect the changes made in this revision to the State rule.

The revised rule language clearly specifies the following two compliance demonstration options for crematories and animal incinerators: (1) Operate in accordance with manufacturer's specifications or (2) demonstrate a 99.9% combustion efficiency. Higher combustion efficiencies minimize the products of incomplete combustion and associated air pollutants.

The EPA reviewed a number of Missouri construction permits for crematories and animal incinerators that have been issued through the State's formal construction permitting process in accordance with the SIP-approved rule, 10 CSR 10–6.060 *Construction Permits Required*. The revised compliance options and enforceability provisions in 10 CSR 10–6.062 for crematories and animal incinerators are consistent with the language in the permits for these units that have been issued under 10 CSR 10–6.060.

The rule language regarding opacity and reporting and recordkeeping requirements was not materially revised from the provisions in the previously approved SIP. The EPA did not intend to solicit comments on the rule requirements that the state did not materially change in this rulemaking. The agency initially approved 10 CSR 10–6.062 in 2006 (71 FR 38997, July 11, 2006), and the opacity and reporting and recordkeeping provisions have not

¹ Missouri's permit-by-rule application forms may be found here <https://dnr.mo.gov/forms/#AirPollution>.

been revised since then. Courts have indicated that actions, such as the action taken on this rule, do not reopen issues on which the agency was not seeking comment. *Sierra Club v. EPA*, 551 F.3d 1019, 1024 (D.C. Cir. 2008) (citing *Am. Iron & Steel Inst. v. EPA*, 886 F.2d 390, 397 (D.C. Cir. 1989)) (“Under the reopening doctrine, the time for seeking review starts anew where the agency reopens an issue by holding out the unchanged section as a proposed regulation, offering an explanation for its language, soliciting comments on its substance, and responding to the comments in promulgating the regulation in its final form.”); *Appalachian Power v. EPA*, 251 F.3d 1026 (D.C. Cir. 2004).² There are no known issues with the enforcement of this rule. Therefore, the EPA is finalizing this SIP revision.

Comment 3: The commenter stated that the EPA failed to provide a basis for proposing to approve the addition of eleven (11) definitions in section (2) of the rule. The commenter states it appears that the EPA is assuming that previously approved definitions can be moved into the rule. The commenter finds that it is unclear why the definition of “incinerator” was moved into this rule because it covers refuse material and open burning. The commenter also states that the definition of “construction” moved into this rule does not match the definition of construction in the permitting rule that the owner/operator seeks exemption from [10 CSR 10–6.060] and the reason for the difference is not explained. Additionally, the commenter notes that the definition of “printing” differs from the section that covers printing operations (paragraph (3)(B)1.), which is more encompassing. Finally, the commenter states the definition of “closed container” speaks to requirements regarding spilling and leaking the contents and fails to require that the closed container prevents volatile organic compound (VOC) fugitives.

Response to Comment 3: As explained in detail in the TSD, the definitions inserted into 10 CSR 10–6.062 section

² *ARTBA v. EPA*, 588 F.3d 1109 at 1114 (rewriting a rule in plain language does not reopen); *Kennecott Utah Copper Corp. v. U.S. Dept. of the Interior*, 88 F.3d 1191 at 1220 (no reopener where agency “merely re-worded the provision” with “no meaningful difference”); *Columbia Falls Aluminum Co. v. EPA*, 139 F.3d 914, 920 (D.C. Cir. 1998) (dictum) (no reopener where agency action “merely republished an existing rule”); cf. also *Pub. Citizen v. Nuclear Regulatory Com.*, 901 F.2d 147, 150 (D.C. Cir. 1990) (“where an agency’s actions show that it has not merely republished an existing rule in order to propose minor changes to it, but has reconsidered the rule and decided to keep it in effect, challenges to the rule are in order”).

(2) are the same definitions included in the SIP-approved 10 CSR 10–6.020 *Definitions and Common Reference Tables*, and therefore there is no change to the stringency of the SIP. As explained above, the EPA did not intend to solicit comments on the portions of the rule that the State did not materially change in this rulemaking. Furthermore, the addition of these general definitions in section (2) of the rule does not impact any of the rule’s conditions or requirements. The provisions in the permit-by-rule for each source category covered by 10 CSR 10–6.062 contain greater specificity related to usage of the terms.

Comment 4: An anonymous commenter recommended that the revisions not be approved. The commenter stated that instead more stringent protections and regulations with penalties should be put in place to better protect the environment and public.

Response to Comment 4: The permit-by-rule for each source category in subsection (3)(B) of the rule includes enforcement provisions. In addition, subsection (3)(C) includes provisions for revoking a permit-by-rule and penalties for non-compliance, and section (4) includes reporting and recordkeeping requirements. There are no known issues with the enforcement of this rule. For the reasons stated above and in the proposal, the EPA has determined that the rule revisions comply with the requirements of the Clean Air Act.

IV. What action is the EPA taking?

The EPA is approving all revisions from the March 30, 2019, State effective date version of 10 CSR 10–6.062 into the Missouri SIP, except for revisions to paragraph (3)(B)2. and subparagraph (3)(B)2.A. We are taking final action after consideration of the comments received from two commenters on the notice of proposed rulemaking.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Missouri Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA’s approval, and will be incorporated by reference in the next update to the SIP compilation.³

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using

³ 62 FR 27968, May 22, 1997.

practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller

General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference,

Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 21, 2021.

Edward H. Chu,

Acting Regional Administrator, Region 7.

For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

- 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

- 2. In § 52.1320, the table in paragraph (c) is amended by revising the entry “10–6.062” to read as follows:

§ 52.1320 Identification of plan.

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
*	*	*	*	*
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
*	*	*	*	*
10–6.062	Construction Permits By Rule.	3/30/2019	6/2/2021, [insert Federal Register citation].	EPA is approving all revisions from the 3/30/2019 State effective date version of 10 CSR 10–6.062, except for paragraph (3)(B)2. and subparagraph (3)(B)2.A.
*	*	*	*	*

* * * * *
 [FR Doc. 2021–11244 Filed 6–1–21; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2021–0006; FRL–10024–50–Region 1]

Air Plan Approval; Maine; Removal of Reliance on Reformulated Gasoline in the Southern Counties of Maine

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State

Implementation Plan (SIP) revision submitted by the State of Maine. This revision incorporates Maine’s statute repealing the State’s requirement for the sale of federal reformulated gasoline (RFG) in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln Counties (hereinafter referred to as the “southern Maine counties”) into the Maine SIP. The intended effect of this action is to approve the SIP revision and approve, but not incorporate into the SIP, the corresponding noninterference demonstration. At this time, EPA is not removing the requirement for the sale of federal RFG

in the applicable southern Maine counties as that is the subject of a separate petition to the EPA Administrator submitted on August 20, 2020. The Administrator intends to act on that petition in the near future. This action is being taken in accordance with the Clean Air Act.

DATES: This rule is effective on July 2, 2021.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2021-0006. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at <https://www.regulations.gov> or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID-19.

FOR FURTHER INFORMATION CONTACT: John Rogan, Air Quality Branch, U.S. Environmental Protection Agency, EPA Region 1, 5 Post Office Square—Suite 100, (Mail code 05-2), Boston, MA 02109-3912, tel. (617) 918-1645, email rogan.john@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Table of Contents

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

I. Background and Purpose

On March 25, 2021 (86 FR 15844), EPA published a Notice of Proposed Rulemaking (NPRM) for the State of Maine.

The NPRM proposed approval of Maine's SIP revision incorporating Maine's revisions to C.M.R. ch. 119 *Motor Vehicle Fuel Volatility Limits* that remove the State's requirement for the sale of RFG in the southern Maine

counties, and also proposed approval of Maine's statute at 38 M.R.S. § 585-N as amended by Public Law 2019, c. 55, § 1, which repealed the State's requirement for the sale of RFG in the southern Maine counties effective November 1, 2020.

The formal SIP revision was submitted by Maine on August 20, 2020. Other specific requirements to opt-out of the federal RFG requirements and the rationale for EPA's proposed action are explained in the NPRM and will not be restated here. Three public comments were received on the NPRM.

II. Response to Comments

EPA received three comments during the comment period. The three comments support EPA's proposal to approve Maine's SIP revision.

III. Final Action

EPA is approving the August 20, 2020 SIP revision and approving, but not incorporating into the SIP, the State's corresponding noninterference demonstration.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference into Maine's SIP Maine's revisions to C.M.R. ch. 119 *Motor Vehicle Fuel Volatility Limits* that remove the State's requirement for the sale of RFG in the southern Maine counties and is also approving into Maine's SIP Maine's statute at 38 M.R.S. § 585-N as amended by Public Law 2019, c. 55, § 1, which repealed the State's requirement for the sale of RFG in the southern Maine counties, as described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these documents generally available through <https://www.regulations.gov> and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the State implementation plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

¹ 62 FR 27968 (May 22, 1997).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have

tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by August 2, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 24, 2021.

Deborah Szaro,

Acting Regional Administrator, EPA Region 1.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart U—Maine

■ 2. In § 52.1020(c), amend the table by revising the entry “Chapter 119”; and by adding new State citation for “38 M.R.S. § 585–N as amended by Public Law 2019, c. 55, § 1” at the end of the table to read as follows:

§ 52.1020 Identification of plan.

* * * * *
(c) * * *

EPA-APPROVED MAINE REGULATIONS

State citation	Title/subject	State effective date	EPA approval date and citation ¹	Explanations
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
Chapter 119	Motor Vehicle Fuel Volatility Limit.	July 15, 2015	June 2, 2021 [Insert Federal Register citation].	Removes references from the SIP for the requirement to sell reformulated gasoline in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln counties.
* * * * *	* * * * *	* * * * *	* * * * *	* * * * *
38 M.R.S. § 585–N as amended by Public Law 2019, c. 55, § 1.	Reformulated gasoline	November 1, 2020	June 2, 2021 [Insert Federal Register citation].	Repeals the section of the statute which requires retailers in York, Cumberland, Sagadahoc, Androscoggin, Kennebec, Knox and Lincoln counties in Maine to only sell reformulated gasoline.

[FR Doc. 2021–11320 Filed 6–1–21; 8:45 a.m.]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2021–0148; FRL–10024–30–Region 9]

Designation of Areas for Air Quality Planning Purposes; California; San Diego County Ozone Nonattainment Area; Reclassification to Severe

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Under the Clean Air Act (CAA or “Act”), the Environmental Protection Agency (EPA) is taking final action to approve a request from the State of California to reclassify the San Diego County ozone nonattainment area from “Serious” to “Severe” for the 2008 ozone National Ambient Air Quality Standards (NAAQS) and from “Moderate” to “Severe” for the 2015 ozone NAAQS. The EPA is also finalizing our action to reclassify in the same manner as state land, reservation areas of Indian country and any other area of Indian country within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the boundaries of the San Diego County ozone nonattainment area. The new applicable attainment dates for the San

Diego County ozone nonattainment area are as expeditious as practicable but no later than July 20, 2027, for the 2008 ozone NAAQS, and August 3, 2033, for the 2015 ozone NAAQS. With respect to Severe state implementation plan (SIP) element submittal dates that have passed, the EPA is approving a deadline of no later than 12 months from the effective date of this rule for submittal of revisions to the San Diego County portion of the California SIP to meet additional requirements for Severe ozone nonattainment areas to the extent that such revisions have not already been submitted.

DATES: This rule is effective on July 2, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID

No. EPA-R09-OAR-2021-0148. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. **FOR FURTHER INFORMATION CONTACT:** T. Khoi Nguyen, Air Planning Office (AIR-2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4120, or by email at nguyen.thien@epa.gov.

Table of Contents

- I. Summary of the Proposed Action
- II. Public Comments and EPA Responses
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I. Summary of the Proposed Action

On April 8, 2021, the EPA proposed to grant a request by the California Air Resources Board (CARB) to voluntarily reclassify the San Diego County nonattainment area from Serious to Severe¹ for the 2008 ozone NAAQS and from Moderate to Severe for the 2015 ozone NAAQS.²

With respect to Severe SIP element submittal dates that have passed, the EPA also proposed to establish a deadline of no later than 12 months from the effective date of reclassification for submittal of revisions to the San Diego County portion of the California SIP to meet additional requirements for Severe ozone nonattainment areas to the extent that such revisions have not already been submitted. With respect to the section 185 fee program, upon reclassification to Severe, we indicated that the deadline for submittal would be July 20, 2022, for the 2008 ozone

¹ Throughout this document and in our proposed rule, we use the term “Severe” to refer to Severe areas that have up to 15 years to attain the ozone standards. The ozone area designation tables in 40 CFR part 81 specify “Severe-15” to distinguish such areas from “Severe-17” areas, which are Severe areas that have up to 17 years to attain the ozone standards.

² 86 FR 18227 (April 8, 2021).

NAAQS and August 3, 2028, for the 2015 ozone NAAQS pursuant to the EPA’s SIP Requirements Rules (SRR) for the 2008 and 2015 ozone NAAQS.³ Upon reclassification, we noted that the new attainment dates for the San Diego County ozone nonattainment area would be as expeditiously as practicable, but no later than July 20, 2027, for the 2008 ozone NAAQS and August 3, 2033, for the 2015 ozone NAAQS. Further, as indicated in our proposed notice, the reformulated gasoline requirement will continue to apply within San Diego County upon reclassification to Severe.⁴

In addition, the EPA also proposed to reclassify reservation areas of Indian country and any other area of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction within the San Diego County nonattainment area as Severe nonattainment for the 2008 and 2015 ozone NAAQS.⁵ Although eligible tribes may seek the EPA’s approval of relevant tribal programs under the CAA, we noted that none of the affected tribes would be required to submit an implementation plan as a result of this reclassification.

Please see our April 8, 2021 proposed rule for additional background and a more detailed explanation of our proposed action.

II. Public Comments and EPA Responses

The public comment period on the proposed rule opened on April 8, 2021, the date of its publication in the **Federal Register**, and closed on May 10, 2021. During this period, the EPA did not receive any comments on our proposed action.

³ The EPA promulgated the SRR for the 2008 and 2015 ozone NAAQS at 40 CFR part 52, subpart AA and subpart CC, respectively.

⁴ 86 FR 18227, 18229.

⁵ The tribes are identified in 40 CFR 81.305 and 86 FR 18227, 18229: Barona Group of Capitan Grande of Mission Indians of the Barona Reservation, Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, Capitan Grande Band of Diegueno Mission Indians of California, Ewiiapaayp Band of Kumeyaay Indians, Lipay Nation of Santa Ysabel, Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, Jamul Indian Village of California, La Jolla Band of Luiseno Indians, La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, Los Coyotes Band of Cahuilla and Cupeno Indians, Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, Pala Band of Mission Indians, Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation, Rincon Band of Luiseno Mission Indians of the Rincon Reservation, San Pasqual Band of Diegueno Mission Indians of California, Sycuan Band of the Kumeyaay Nation, and Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation.

III. Final Action

For the reasons discussed in detail in the proposed rule and summarized herein, the EPA is approving the request by CARB to reclassify the San Diego County ozone nonattainment area to Severe for the 2008 and 2015 ozone NAAQS. The EPA is also reclassifying reservation areas of Indian country, and any other area of Indian country within it where the EPA or a tribe has demonstrated that the tribe has jurisdiction, located within the boundaries of the San Diego County ozone nonattainment area consistent with the reclassification of state lands (i.e., to Severe). Lastly, the EPA is setting a deadline for submittal of SIP revisions to address the Severe area requirements for San Diego County, to the extent that such revisions have not already been submitted, of no later than one year from the effective date of this rule.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this final action is not a “significant regulatory action” and therefore is not subject to Executive Order 12866. With respect to lands under state jurisdiction, voluntary reclassifications under CAA section 181(b)(3) of the CAA are based solely upon requests by the state, and the EPA is required under the CAA to grant them. These actions do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by reclassification, reclassification does not impose a materially adverse impact under Executive Order 12866. With respect to Indian country, reclassifications do not establish deadlines for air quality plans or plan revisions. For these reasons, this final action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001).

In addition, I certify that this final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and that this final rule does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), because the EPA is

required to grant requests by states for voluntary reclassifications and such reclassifications in and of themselves do not impose any federal intergovernmental mandate, and because tribes are not subject to implementation plan submittal deadlines that apply to states as a result of reclassifications.

Executive Order 13175 (65 FR 67249, November 9, 2000) requires the EPA to develop an accountable process to ensure “meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.” “Policies that have tribal implications” are defined in section 1(a) of the Executive Order to include regulations that have “substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.” Several Indian tribes have areas of Indian country located within the boundary of the San Diego County ozone nonattainment areas.

The EPA implements federal CAA programs, including reclassifications, in these areas of Indian country consistent with our discretionary authority under sections 301(a) and 301(d)(4) of the CAA. The EPA has concluded that this final rule might have tribal implications for the purposes of E.O. 13175 but would not impose substantial direct costs upon the tribes, nor would it preempt tribal law. This final rule does affect implementation of new source review for new or modified major stationary sources proposed to be located in the areas of Indian country that are being reclassified, and might affect projects proposed in these areas that require federal permits, approvals, or funding. Such projects are subject to the requirements of the EPA’s general conformity rule, and federal permits, approvals, or funding for the projects may be more difficult to obtain because of the lower de minimis thresholds triggered by reclassification.

Given the potential implications, the EPA contacted tribal officials early in the process of developing our proposed rule to provide an opportunity to have meaningful and timely input into its development. On December 11, 2020, we sent letters to leaders of the 17 tribal governments representing 18 areas of Indian country in the nonattainment area offering government-to-government consultation and seeking input on how we could best communicate with the tribes on this rulemaking effort. On January 12, 2021, we received a response from one tribe requesting a

webinar on this matter on behalf of a few tribes. We held this informational webinar on January 22, 2021. Additionally, we received responses from three tribes requesting formal government-to-government consultation. The consultation letters and the information and notes from the webinar and the three government-to-government consultations are included in the docket for this action. The EPA has carefully considered the views expressed by the tribes.

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. This final reclassification action relates to ozone, a pollutant that is regional in nature, and is not the type of action that could result in the types of local impacts addressed in Executive Order 12898.

This final action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, nor 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). This final action does not alter the relationship, or the distribution of power and responsibilities established in the CAA.

This final rule also is not subject to Executive Order 13045, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because the EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation.

Reclassification actions do not involve technical standards and thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This final rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 2, 2021. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Ozone, Wilderness areas.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 24, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends 40 CFR part 81 as follows:

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

- 1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart C—Section 107 Attainment Status Designations

- 2. Section 81.305 is amended by revising the entry for “San Diego County, CA” in the table titled “California—2008 8-Hour Ozone NAAQS [Primary and Secondary],” and by revising the entry for “San Diego

County, CA” in the table titled
 “California—2015 8-Hour Ozone

NAAQS [Primary and Secondary]” to
 read as follows:

§ 81.305 California.
 * * * * *

CALIFORNIA—2008 8-HOUR OZONE NAAQS
 [Primary and Secondary]

Designated area	Designation		Classification	
	Date ¹	Type	Date ¹	Type
* * * San Diego County, CA San Diego County: Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation. ³ Campo Band of Diegueno Mission Indians of the Campo Indian Reservation. ³ Capitan Grande Band of Diegueno Mission Indians of California. ³ Ewiiapaayp Band of Kumeyaay Indians. ³ Iipay Nation of Santa Ysabel. ³ Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation. ³ Jamul Indian Village of California. ³ La Jolla Band of Luiseno Indians. ³ La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation. ³ Los Coyotes Band of Cahuilla and Cupeno Indians. ³ Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation. ³ Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation. ³ Pala Band of Luiseno Mission Indians of the Pala Reservation. ³ Pauma Band of Luiseno Mission Indians of the Pauma and Yuima Reservation. ³ Rincon Band of Luiseno Mission Indians of the Rincon Reservation. ³ San Pasqual Band of Diegueno Mission Indians of California. ³ Sycuan Band of the Kumeyaay Nation. ³ Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians. ³	Nonattainment ..	July 2, 2021	Severe-15.
* * *	*	*	*	*

¹ This date is July 20, 2012, unless otherwise noted.

² Excludes Indian country located in each area, unless otherwise noted.

³ Includes Indian country of the tribe listed in this table located in the identified area. Information pertaining to areas of Indian country in this table is intended for CAA planning purposes only and is not an EPA determination of Indian country status or any Indian country boundary. EPA lacks the authority to establish Indian country land status, and is making no determination of Indian country boundaries, in this table.

* * * * *

CALIFORNIA—2015 8-HOUR OZONE NAAQS
 [Primary and Secondary]

Designated area ¹	Designation		Classification	
	Date ²	Type	Date ²	Type
* * * San Diego County, CA ² San Diego County: ² Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation. Campo Band of Diegueno Mission Indians of the Campo Indian Reservation. Capitan Grande Band of Diegueno Mission Indians of California. Ewiiapaayp Band of Kumeyaay Indians. Iipay Nation of Santa Ysabel.	Nonattainment ..	July 2, 2021	Severe-15.

CALIFORNIA—2015 8-HOUR OZONE NAAQS—Continued
[Primary and Secondary]

Table with 5 columns: Designated area 1, Designation Date 2, Designation Type, Classification Date 2, Classification Type. Lists various Indian reservations in California.

1 Includes any Indian country in each county or area, unless otherwise specified. EPA is not determining the boundaries of any area of Indian country in this table, including any area of Indian country located in the larger designation area. The inclusion of any Indian country in the designation area is not a determination that the state has regulatory authority under the Clean Air Act for such Indian country.

2 This date is August 3, 2018, unless otherwise noted.

* * * * *
[FR Doc. 2021-11524 Filed 6-1-21; 8:45 am]
BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 141

[EPA-HQ-OW-2021-0079; FRL 10022-49-OW]

Expedited Approval of Alternative Test Procedures for the Analysis of Contaminants Under the Safe Drinking Water Act; Analysis and Sampling Procedures

Correction

In rule document 2021-10974 appearing on pages 28277 through 28290 in the issue of Wednesday, May 26, 2021, make the following correction:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS [CORRECTED]

1. On page 28285, in the table entitled "ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.23 (k)(1)", in the second row from the bottom of the page "pH", in columns four, five and six, "4500-H + B" should read, "4500-H + B"

2. On page 28286, in the table entitled "ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24 (e)(1)", in the first column entitled "Contaminant", the twenty-fourth line, "." should read, "Alachlor."

3. On page 28286, in the table entitled "ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24 (e)(1)", in the first column entitled "Contaminant", the twenty-fourth line, the third row "." should read, "525.3 24"

4. On page 28286, in the table entitled "ALTERNATIVE TESTING METHODS FOR CONTAMINANTS LISTED AT 40 CFR 141.24 (e)(1)", in the first column entitled "Contaminant", the twenty-eighth row, beneath "Carbofuran" currently reads, "." and should read, "Chlordane".

[FR Doc. C1-2021-10974 Filed 6-1-21; 8:45 am]
BILLING CODE 0099-10-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 417, 422, 423, 455 and 460

[CMS-4190-F3]

RIN 0938-AT97

Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All Inclusive Care for the Elderly; Corrections

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

ACTION: Final rule; correction and correcting amendment.

SUMMARY: This document corrects technical and typographical errors in the final rule that appeared in the January 19, 2021 Federal Register titled "Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare

Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All Inclusive Care for the Elderly.” The effective date of the final rule was March 22, 2021.

DATES: This document is effective June 2, 2021.

FOR FURTHER INFORMATION CONTACT: Cali Diehl, (410) 786-4053 or Christopher McClintick, (410) 786-4682—General Questions.

Kimberlee Levin, (410) 786-2549—Part C Issues.

Lucia Patrone, (410) 786-8621—Part D Issues.

Kristy Nishimoto, (206) 615-2367—Beneficiary Enrollment and Appeals Issues.

Danielle Blaser, (410) 786-3487—Program Integrity Issues.

Tobey Oliver, (202) 260-1113—D-SNP Appeals and Grievances.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2021-00538 of January 19, 2021 (86 FR 5864), the final rule titled “Medicare and Medicaid Programs; Contract Year 2022 Policy and Technical Changes to the Medicare Advantage Program, Medicare Prescription Drug Benefit Program, Medicaid Program, Medicare Cost Plan Program, and Programs of All Inclusive Care for the Elderly”, there were technical errors that are identified and corrected in this correcting amendment.

II. Summary of Errors

A. Summary of Errors in the Preamble

On pages 5870, 5895, 5950, 5975, 5983, 5985, 5987, 6007, 6016, and 6088, we made inadvertent grammatical and typographical errors.

On page 5938, in our discussion of tiering exceptions requests and the complaint tracking module, we inadvertently included an incorrect link.

On pages 5962 and 6058, we made typographical errors in several regulatory citations.

On pages 5977 and 5990, made typographical errors in cross-references to other sections of the final rule.

On page 6062, in our discussion of the information collection requirements (ICRs) regarding beneficiaries’ education on opioid risks and alternative treatments (§ 423.128), we mistakenly referred to “Part D sponsors” rather than “Part D parent organizations.”

B. Summary of Errors in the Regulations Text

On page 6094, in the amendatory instructions for § 422.101, we

inadvertently omitted changes that would move existing paragraph (f)(2)(vi) to paragraph (f)(3)(i). This error caused a duplication of those paragraphs. Therefore, we are removing paragraph (f)(2)(vi) to correct this error.

On page 6103, we inadvertently changed the format in the regulation text for § 422.760(b)(3)(ii)(C) that was inconsistent with the language in § 423.760(b)(3)(ii)(C). In addition, we made a typographical error in § 422.760(b)(3)(ii)(A).

On page 6120, in the regulation text for § 423.568(j)(2) and (3) and (k), we inadvertently use language applicable to MA plans instead of Part D plan sponsors.

On page 6128, in the regulations text for § 423.2267, we inadvertently misnumbered a paragraph.

III. Waiver of Proposed Rulemaking and Delay in Effective Date

Under 5 U.S.C. 553(b) of the Administrative Procedure Act (APA), the agency is required to publish a notice of the proposed rule in the **Federal Register** before the provisions of a rule take effect. Specifically, 5 U.S.C. 553 requires the agency to publish a notice of the proposed rule in the **Federal Register** that includes a reference to the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. Further, 5 U.S.C. 553 requires the agency to give interested parties the opportunity to participate in the rulemaking through public comment before the provisions of the rule take effect. Similarly, section 1871(b)(1) of the Act requires the Secretary to provide for notice of the proposed rule in the **Federal Register** and provide a period of not less than 60 days for public comment for rulemaking to carry out the administration of the Medicare program under title XVIII of the Act. In addition, section 553(d) of the APA, and section 1871(e)(1)(B)(i) of the Social Security Act (the Act) mandate a 30-day delay in effective date after issuance or publication of a rule. Sections 553(b)(B) and 553(d)(3) of the APA provide for exceptions from the notice and comment and delay in effective date APA requirements. In cases in which these exceptions apply, sections 1871(b)(2)(C) and 1871(e)(1)(B)(ii) of the Act, also provide exceptions from the notice and 60-day comment period and delay in effective date requirements of the Act. Section 553(b)(B) of the APA and section 1871(b)(2)(C) of the Act authorize an agency to dispense with normal rulemaking requirements for good cause if the agency makes a

finding that the notice and comment process are impracticable, unnecessary, or contrary to the public interest. In addition, both section 553(d)(3) of the APA and section 1871(e)(1)(B)(ii) of the Act allow the agency to avoid the 30-day delay in effective date where such delay is contrary to the public interest and an agency includes a statement of support.

We believe that this correcting document does not constitute a rule that would be subject to the notice and comment or delayed effective date requirements of the APA or section 1871 of the Act. This correcting document corrects technical errors in the preamble and regulations text of the final rule but does not make substantive changes to the policies that were adopted in the final rule. As a result, this correcting document is intended to ensure that the information in the final rule accurately reflects the policies adopted in that final rule.

In addition, even if this were a rule to which the notice and comment procedures and delayed effective date requirements applied, we find that there is good cause to waive such requirements. Undertaking further notice and comment procedures to incorporate the corrections in this document into the final rule or delaying the effective date would be contrary to the public interest because it is in the public’s interest to ensure that final rule accurately reflects our policies. Furthermore, such procedures would be unnecessary, as we are not altering payment eligibility or benefit methodologies or policies, but rather, simply implementing correctly the policies that we previously proposed, received comment on, and subsequently finalized. This correcting document is intended solely to ensure that the final rule accurately reflects these policies. Therefore, we believe we have good cause to waive the requirements for notice and comment and delay of effective date.

IV. Correction of Errors in the Preamble

In FR Doc. 2021-00538, published in the **Federal Register** of January 19, 2021, beginning on page 5864, the following corrections are made:

1. On page 5870, second column of the table, first paragraph, line 3, the phrase “he RTBTI” is corrected to read “The RTBT”.

2. On page 5895, third column, second full paragraph, line 6, the terms “thatthis” are corrected to read “that this”.

3. On page 5938, second column, second full paragraph, lines 8 through 10, the website link “<https://>

www.cms.gov/files/document/cy2020part-d-reportingrequirements.pdf is corrected to read "<https://www.cms.gov/files/document/cy2020part-d-reporting-requirements082719.pdf>".

4. On page 5950, third column, third full paragraph, lines 23 and 24, the phrase "will become" is corrected to "became".

5. On page 5962, third column, second partial paragraph, line 7, the citation "§ 422.509 or § 423.510" is corrected to read "§ 422.510 or § 423.509".

6. On page 5975, first column, fifth paragraph, line 18, the word "reward" is corrected to read "rewards".

7. On page 5977, third column, second full paragraph, line 19, the phrase "Section IIC" is corrected to read "Section III.C."

8. On page 5983, second column, first partial paragraph, line 37, the word "provider" is corrected to read "provides".

9. On page 5985, third column, first full paragraph, line 6, the word "are" is corrected to read "is".

10. On page 5987, first column, second partial paragraph, line 17, the word "of" is corrected to read "or".

11. On page 5990, second column, first full paragraph, line 25, the reference "section D." is corrected to read "section V.D."

12. On page 6007, first column, second partial paragraph, lines 26 and 27, the phrase "used evaluating" is corrected to read "use in evaluating".

13. On page 6016, first column, first full paragraph, line 1, the word "toe" is corrected to read "to".

14. On page 6058, third column, first full paragraph, line 4:

a. The reference "0938–10396" is corrected to "0938–1154".

b. The reference "CMS–1154" is corrected to read "CMS–10396".

15. On page 6062, first column, first full paragraph, line 1, "288 Part D sponsors" is corrected to read "288 Part D parent organizations".

16. On page 6088, second column, first full paragraph, line 12, "positon" is corrected to "position".

List of Subjects

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 423

Administrative practice and procedure, Emergency medical services,

Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

Accordingly, 42 CFR parts 422 and 423 are corrected by making the following correcting amendments:

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 continues to read as follows:

Authority: 42 U.S.C. 1302 and 1395hh.

§ 422.101 [Amended]

■ 2. Section 422.101 is amended by removing paragraph (f)(2)(vi).

■ 3. Section 422.760 is amended as follows:

■ a. In paragraph (b)(3)(ii)(A) by removing the word "increases" and adding in its place the phrase "are increased".

■ b. By revising paragraph (b)(3)(ii)(C).
The revision reads as follows:

§ 422.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(C) CMS tracks the calculation and accrual of the standard minimum penalty and aggravating factor amounts and announces them on an annual basis.

* * * * *

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 4. The authority citation for part 423 continues to read as follows:

Authority: 42 U.S.C. 1302, 1306, 1395w–101 through 1395w–152, and 1395hh.

§ 423.568 [Amended]

■ 5. Section 423.568 is amended as follows:

■ a. In paragraph (j)(2) by removing the phrase "MA organization" and adding in its place the phrase "Part D plan sponsor".

■ b. In paragraph (j)(3) by removing the term "reconsideration" adding in its place the term "redetermination".

■ c. In paragraph (k) by removing the term "redetermination" adding in its place the term "coverage determination".

§ 423.2267 [Amended]

■ 6. Section 423.2267 is amended by redesignating paragraph (e)(13)(ii)(H) as paragraph (e)(13)(ii)(G).

Dated: May 25, 2021.

Karuna Seshasai,

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

[FR Doc. 2021–11446 Filed 6–1–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107

RIN 2105–AE99

Civil Penalty Amounts; Correction

AGENCY: Department of Transportation (DOT or the Department).

ACTION: Final rule; technical correction.

SUMMARY: In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, DOT published a final rule on May 3, 2021 to provide the 2021 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. This rule corrects an error in that rulemaking resulting from an inaccurate amendatory instruction. The rule does not change any civil penalty amounts established in the final rule published on May 3, 2021.

DATES: Effective June 2, 2021.

FOR FURTHER INFORMATION CONTACT:

Elizabeth Kohl, Attorney-Advisor, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Ave. SE, Washington, DC 20590, elizabeth.kohl@dot.gov.

SUPPLEMENTARY INFORMATION: This rule corrects an error in DOT's final rule, published on May 3, 2021 (86 FR 23241) in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, providing the 2021 inflation adjustment to civil penalty amounts that may be imposed for violations of certain DOT regulations. Specifically, in amendatory instruction 19., DOT specified removal of "July 31, 2019" from appendix A to subpart D of 49 CFR 107, and replacement with "May 3, 2021". The instruction should instead have directed removal of "January 11, 2021" and replacement with "May 3, 2021". DOT publishes this final rule to effectuate that change.

Regulatory Analysis and Notices

DOT has determined that all of the regulatory reviews and analyses conducted in support of the May 3, 2021 final rule remain unchanged as a result of this final rule.

List of Subjects in 49 CFR Part 107

Administrative practices and procedure, Hazardous materials transportation, Packaging and containers, Penalties, Reporting and recordkeeping requirements.

Accordingly, the Department of Transportation amends 49 CFR part 107 with the following technical correction:

PART 107—[AMENDED]

■ 1. The authority citation for part 107 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; Pub. L. 101–410 Section 4; Pub. L. 104–121 Sections 212–213; Pub. L. 104–134 Section 31001; Pub. L. 114–74 Section 4 (28 U.S.C. 2461 note); 49 CFR 1.81 and 1.97; 33 U.S.C. 1321.

Appendix A to Subpart D of Part 107 [Amended]

■ 2. In appendix A to subpart D of part 107, in the second paragraph of section B. “Penalty Increases for Multiple Counts,” remove “January 11, 2021” and add in its place “May 3, 2021”.

Signed in Washington, DC, on or about May 24, 2021.

John E. Putnam,

Acting General Counsel.

[FR Doc. 2021–11283 Filed 6–1–21; 8:45 am]

BILLING CODE P

Proposed Rules

Federal Register

Vol. 86, No. 104

Wednesday, June 2, 2021

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2021-0416; Airspace Docket No. 21-ANM-30]

RIN 2120-AA66

Proposed Revocation of Jet Route J-591; Bellingham, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke jet route J-591 in the vicinity of Bellingham, WA due to actions of NAVCANADA revoking the entire route in Canada, effective February 25, 2021.

DATES: Comments must be received on or before July 19, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590; telephone: (800) 647-5527, or (202) 366-9826. You must identify FAA Docket No. FAA-2021-0416; Airspace Docket No. 21-ANM-30 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: fedreg.legal@nara.gov or go to <https://>

www.archives.gov/federal-register/cfr/ibr-locations.html.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (U.S.C.), Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA-2021-0416; Airspace Docket No. 21-ANM-30) and be submitted in triplicate to the Docket Management Facility (see **ADDRESSES** section for address and phone number). You may also submit comments through the internet at <https://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to FAA

Docket No. FAA-2021-0416; Airspace Docket No. 21-ANM-30." The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA's web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

NAVCANADA is in the process of revoking airways in Canada that are underutilized. The Aeronautical Information Regulation and Control

(AIRAC), issue 53 published on December 31, 2020 identified J-591 as being revoked effective February 25, 2021. A seven mile portion of that route navigates into the NAS, terminating at Whatcom VHF omnidirectional range beacon and tactical air navigation system (VORTAC) in Bellingham, WA. Since the rest of the route in Canada has been revoked, there is no need to retain the small portion from the Canadian border to the Whatcom VORTAC.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke jet route J-591, due to NAVCANADA's actions revoking the route in Canada. The proposed change is outlined below.

J-591: J-591 is currently published in FAA Order 7400.11E to navigate between Whatcom, WA; to Kelowna, BC, Canada. The FAA proposes to revoke the route in its entirety.

Jet routes are published in paragraph 2004, 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 ATS route listed in this document would be subsequently removed from the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not "significant" as defined in Department of Transportation (DOT) Regulatory Policies and Procedures; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, "Environmental Impacts: Policies and Procedures" prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 2004 Jet Routes.

* * * * *

J-591 [Remove]

From Whatcom, WA; to Kelowna, BC, Canada. The segment within Canada is excluded.

* * * * *

Issued in Washington, DC, on May 25, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021-11423 Filed 6-1-21; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2021-0414; Airspace Docket No. 21-AAL-25]

RIN 2120-AA66

Proposed Revocation of Colored Federal Airway Red-4 (R-4) in Central Alaska

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to revoke Colored Federal airway R-4 in central Alaska due to the scheduled decommissioning of the Bear Creek (BCC) Non-Directional Beacon (NDB) on December 2, 2021.

DATES: Comments must be received on or before July 19, 2021.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12-140, Washington, DC 20590; telephone: (800) 647-5527, or (202) 366-9826. You must identify FAA Docket No. FAA-2021-0414; Airspace Docket No. 21-AAL-25 at the beginning of your comments. You may also submit comments through the internet at <https://www.regulations.gov>.

FAA Order 7400.11E, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11E at NARA, email: fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT: Christopher McMullin, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code (U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify both docket numbers (FAA Docket No. FAA–2021–0414; Airspace Docket No. 21–AAL–25) and be submitted in triplicate to the Docket Management Facility (see “ADDRESSES” section for address and phone number). You may also submit comments through the internet at <https://www.regulations.gov>.

Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: “Comments to FAA Docket No. FAA–2021–0414; Airspace Docket No. 21–AAL–25.” The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded through the internet at <https://www.regulations.gov>. Recently published rulemaking documents can also be accessed through the FAA’s web page at https://www.faa.gov/air_traffic/publications/airspace_amendments/.

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Western Service Center, Federal Aviation Administration, 2200 South 216th St., Des Moines, WA 98198.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020. FAA Order 7400.11E is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11E lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA completed a study in February 2021 on a request to decommission the BCC NDB in Tanana, AK. The FAA determined that the BCC NDB decommissioning was warranted due to the increased cost and difficulty in maintaining the equipment. The high costs stem from no longer being supported by FAA logistics or the manufacturer. Fabrication of parts for the equipment is time consuming and is not cost effective.

The effects of decommissioning the BCC NDB would be minimal on general aviation, since it does not support any instrument approaches. BCC NDB does, however, support Federal Colored Airway R–4, which navigates between Bear Creek and the Chena, AK NDB. Federal Colored Airway R–4’s route closely parallels VOR Federal Airways V–488 and V–531, and United States Area Navigation routes T–225 and T–229, which should provide pilots an acceptable alternative.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to revoke Colored Federal airway R–4, due to the decommissioning of BCC NDB. The proposed change is outlined below.

R–4: R–4 currently navigates between the Chena, AK, NDB and the Bear Creek, AK, NDB. The FAA proposes to revoke the route in its entirety.

Colored Federal airways are published in paragraph 6009(b), 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 Colored Federal airway route listed in this document would be subsequently removed from the Order.

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

Regulatory Notices and Analyses

The FAA has determined that this proposed regulation only involves an established body of technical

regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a “significant regulatory action” under Executive Order 12866; (2) is not “significant” as defined in Department of Transportation (DOT) Regulatory Policies and Procedures; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, “Environmental Impacts: Policies and Procedures” prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11E, Airspace Designations and Reporting Points, dated July 21, 2020, and effective September 15, 2020, is amended as follows:

Paragraph 6009(b) Colored Federal Airways.

* * * * *

R–4 [Remove]

From Chena, AK, NDB; to Bear Creek, AK, NDB.

* * * * *

Issued in Washington, DC, on May 25, 2021.

George Gonzalez,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021-11422 Filed 6-1-21; 8:45 am]

BILLING CODE 4910-13-P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[3084-AB15]

Energy Labeling Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) proposes updates to comparability ranges and sample labels for central air conditioners in the Energy Labeling Rule (“Rule”).

DATES: Comments must be received on or before August 2, 2021.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Comment Submissions part of the **SUPPLEMENTARY INFORMATION** section below. Write “CAC Range Updates (16 CFR part 305) (Matter No. R611004)” on your comment, and file it online at <https://www.regulations.gov>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail it to: Federal Trade Commission, Office of the Secretary, Suite CC-5610 (Annex J), 600 Pennsylvania Avenue NW, Washington, DC 20580; or deliver your comment to: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome (202-326-2889), Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Energy Labeling Rule

The Commission issued the Energy Labeling Rule (“Rule”) in 1979,¹ pursuant to the Energy Policy and Conservation Act of 1975 (“EPCA”).² The Rule requires energy labeling for

major home appliances and other consumer products to help consumers compare the energy usage and costs of competing models. It also contains labeling requirements for refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room and portable air conditioners, furnaces, central air conditioners, heat pumps, plumbing products, lighting products, ceiling fans, and televisions.

The Rule requires manufacturers to attach yellow EnergyGuide labels to many of the covered products and prohibits retailers from removing these labels or rendering them illegible. In addition, it directs sellers, including retailers, to post label information on websites and in paper catalogs from which consumers can order products. EnergyGuide labels for most covered products contain three main disclosures: Estimated annual energy cost, a product’s energy consumption or energy efficiency rating as determined by Department of Energy (“DOE”) test procedures, and a comparability range displaying the highest and lowest energy costs or efficiency ratings for all similar models. Under the Rule, the Commission periodically updates comparability range and annual energy cost information based on manufacturer data submitted pursuant to the Rule’s reporting requirements.³

II. Proposed Updated Ranges for Central Air Conditioners

The Commission proposes to update the comparability ranges for central air conditioners to ensure manufacturers have information available for the upcoming transition to new efficiency descriptors required by DOE. On February 12, 2021 (86 FR 9274), the Commission published conforming Rule amendments reflecting new DOE efficiency descriptors on central air conditioner labels to ensure the Rule’s consistency with DOE requirements, which become effective on January 1, 2023.⁴ In the February Rule, the Commission stated it would update ranges in appendices H and I, and the sample labels in appendix L, once new efficiency numbers became available. The Commission now proposes to amend the range tables (appendices H and I) and sample labels in the Rule (appendix L) using new information from the Air-Conditioning, Heating, &

Refrigeration Institute (AHRI) and DOE staff input.⁵ As the Commission stated in its February 2021 Rule (86 FR at 9279), manufacturers may begin using the new range information prior to January 1, 2023, in a manner consistent with DOE guidance once the FTC issues the final updates to appendices H and I.

III. Paperwork Reduction Act

The current Rule contains recordkeeping, disclosure, testing, and reporting requirements that constitute information collection requirements as defined by 5 CFR 1320.3(c), the definitional provision within the Office of Management and Budget (OMB) regulations that implement the Paperwork Reduction Act (PRA). OMB has approved the Rule’s existing information collection requirements through December 31, 2022 (OMB Control No. 3084-0069). The proposed amendments do not change the substance or frequency of the recordkeeping, disclosure, or reporting requirements and, therefore, do not require further OMB clearance.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601–612, requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendment on small entities. The RFA requires that the Commission provide an Initial Regulatory Flexibility Analysis (“IRFA”) with a proposed rule unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605. As explained elsewhere in this document, the proposed amendments merely update the Rule’s appendices to include revised comparability ranges and sample labels for central air conditioners based on more recent data. The proposed amendments do not significantly change the substance or frequency of the recordkeeping, disclosure, or reporting requirements. Thus, the amendments will not have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605. The Commission has concluded, therefore, that a regulatory flexibility analysis is not necessary, and certifies, under Section 605 of the RFA (5 U.S.C. 605(b)), that the proposed amendments will not have a significant economic impact on a substantial number of small entities.

⁵ AHRI is a trade association representing central air conditioner manufacturers.

¹ 44 FR 66466 (Nov. 19, 1979).

² 42 U.S.C. 6294. EPCA also requires the Department of Energy (“DOE”) to develop test procedures that measure how much energy appliances use, and to determine the representative average cost a consumer pays for different types of energy.

³ 16 CFR 305.10.

⁴ In 2017, DOE announced changes to the rating methods and associated efficiency descriptors for central air conditioners (e.g., from “Seasonal Energy Efficiency Ratio (SEER)” to “Seasonal Energy Efficiency Ratio 2 (SEER2)”). 82 FR 1786 (Jan. 6, 2017); and 82 FR 24211 (May 26, 2017).

V. Communications by Outside Parties to the Commissioners or Their Advisors

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding, from any outside party to any Commissioner or Commissioner’s advisor, will be placed on the public record. See 16 CFR 1.26(b)(5).

VI. Comment Submissions

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before August 2, 2021. Write “CAC Range Updates (16 CFR part 305) (Matter No. R611004)” on your comment. Your comment, including your name and your state, will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of the public health emergency in response to the COVID–19 outbreak and the agency’s heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comment online through the <https://www.regulations.gov> website. To ensure the Commission considers your online comment, please follow the instructions on the web-based form.

If you file your comment on paper, write “CAC Range Updates (16 CFR part 305) (Matter No. R611004)” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC–5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, please submit your paper comment to

the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else’s Social Security number; date of birth; driver’s license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any “[t]rade secret or any commercial or financial information which . . . is privileged or confidential”—as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled “Confidential,” and must comply with FTC Rule § 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule § 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot

redact or remove it unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule § 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments it receives on or before August 2, 2021. For information on the Commission’s privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

VII. Other Matters

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).

Proposed Rule Language

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

For the reasons stated above, the Commission proposes to amend part 305 of title 16 of the Code of Federal Regulations as follows:

PART 305—ENERGY AND WATER USE LABELING FOR CONSUMER PRODUCTS UNDER THE ENERGY POLICY AND CONSERVATION ACT (“ENERGY LABELING RULE”)

- 1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

- 2. Revise appendix H to part 305 to read as follows:

Appendix H to Part 305—Cooling Performance for Central Air Conditioners

Manufacturer’s rated cooling capacity (btu’s/hr)	Range of SEER2’s	
	Low	High
Single Package Units		
Central Air Conditioners (Cooling Only): All capacities	13.4	19
Heat Pumps (Cooling Function): All capacities	13.4	19
Split System Units		
Central Air Conditioner models allowed only in northern states (listed in § 305.20(g)(13)) (Cooling Only): All capacities	13.4	27
Central Air Conditioner models allowed in all states (Cooling Only):		
All capacities	13.8	27
Heat Pumps (Cooling Function): All capacities	14.3	42
Small-duct, high-velocity Systems	12	15

Manufacturer's rated cooling capacity (btu's/hr)	Range of SEER2's	
	Low	High
Space-Constrained Products		
Central Air Conditioners (Cooling Only): All capacities	11.7	13.7
Heat Pumps (Cooling Function): All capacities	11.9	13.8

■ 3. Revise appendix I to part 305 to read as follows:

Appendix I to Part 305—Heating Performance and Cost for Central Air Conditioners

Manufacturer's rated heating capacity (btu's/hr.)	Range of HSPF2's	
	Low	High
Single Package Units		
Heat Pumps (Heating Function): All capacities	6.7	8.4
Split System Units		
Heat Pumps (Heating Function): All capacities	7.5	14.6
Small-duct, high-velocity Systems	6.1	7.5
Space-Constrained Products		
Heat Pumps (Heating Function): All capacities	6.3	6.5

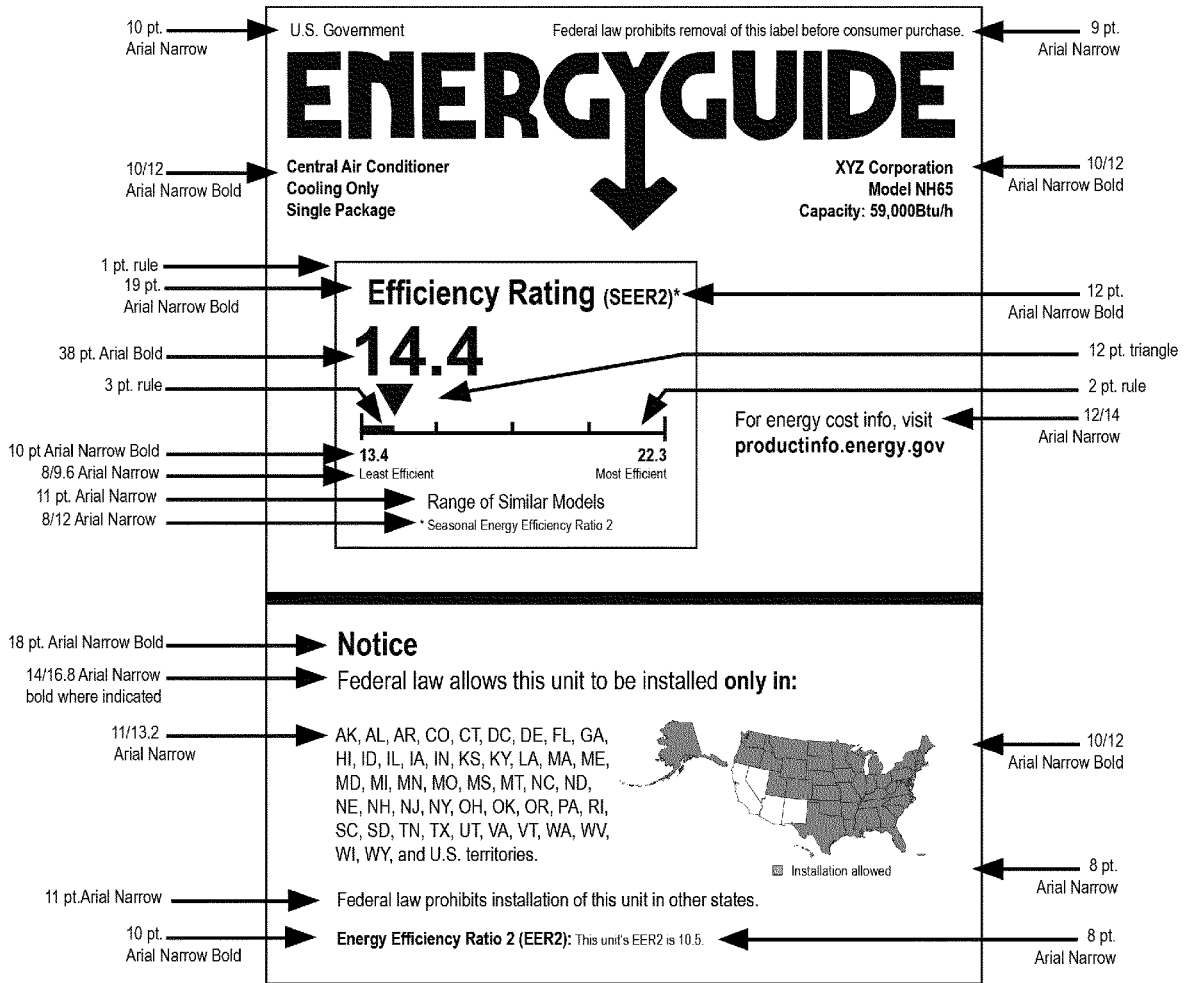
■ 4. Amend appendix L to part 305 by revising Prototype Label 3, Prototype

Label 4, Sample Label 7, and Sample Label 8 to read as follows:

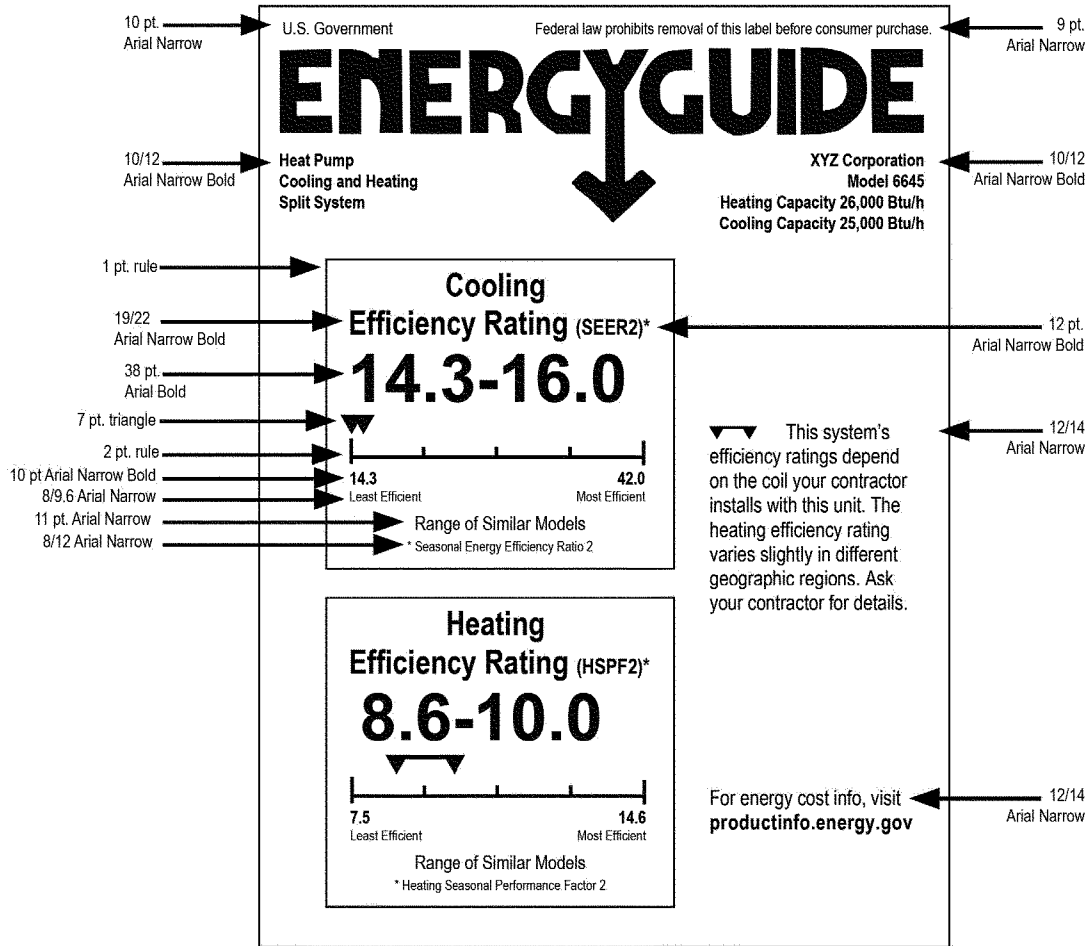
Appendix L to Part 305—Sample Labels

* * * * *

BILLING CODE 6750-01-P



Prototype Label 3 – Single-Package Central Air Conditioner



Prototype Label 4 – Split-system Heat Pump

* * * * *

U.S. Government Federal law prohibits removal of this label before consumer purchase.

ENERGYGUIDE

**Heat Pump
Cooling and Heating
Split System**

**XYZ Corporation
Model 6645
Heating Capacity 26,000 Btu/h
Cooling Capacity 25,000 Btu/h**

**Cooling
Efficiency Rating (SEER2)***

14.3-16.0

Range of Similar Models
* Seasonal Energy Efficiency Ratio 2

**Heating
Efficiency Rating (HSPF2)***

8.6-10.0

Range of Similar Models
* Heating Seasonal Performance Factor 2

▼▼ This system's efficiency ratings depend on the coil your contractor installs with this unit. The heating efficiency rating varies slightly in different geographic regions. Ask your contractor for details.

For energy cost info, visit productinfo.energy.gov

Sample Label 8 – Split-system Heat Pump

BILLING CODE 6750-01-C

* * * * *

By direction of the Commission.

April J. Tabor,
Secretary.

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

**Dissenting Statement of Commissioner
Christine S. Wilson**

Today the Commission announces required changes to the Energy Labeling Rule but makes no other changes to the Rule. Since 2015, the Commission has sought comment on provisions of this Rule at least three times, and has made numerous amendments.¹ This

¹ See 81 FR 62861 (Sept. 12, 2016) (seeking comment on proposed amendments regarding

piecemeal approach has clarified the Rule's requirements—and I appreciate FTC staff's efforts to keep this Rule clear and current—but the Commission can and should do more. For the reasons described below, I dissent.

portable air conditioners, ceiling fans, and electric water heaters); 84 FR 9261 (Mar. 14, 2019) (proposing amendments to organize the Rule's product descriptions); 85 FR 20218 (Apr. 10, 2020) (seeking comment on proposed amendments regarding central and portable air conditioners).

I have repeatedly urged the Commission² to seek comment on the more prescriptive aspects of this Rule. As I have noted in prior statements, the Rule includes highly prescriptive requirements detailing the trim size dimensions for labels, including the precise width (between 5¹/₄" to 5¹/₂") and length (between 7³/₈" and 7⁵/₈"); the number of picas for the copy set (between 27 and 29); the type style (Arial) and setting; the weight of the paper stock on which the labels are printed (not less than 58 pounds per 500 sheets or equivalent); and a suggested minimum peel adhesive capacity of 12 ounces per square inch.³ For example, the label example attached to the Rule specifies not only the categories of information to be displayed, but also the precise font and point size in which that information is to be printed. For example, the cooling efficiency number must appear in 38 pt. Arial Narrow Bold. And while the phrase "US Government" at the top must be printed in 10 pt. Arial Narrow, the text next to it that reads "Federal law prohibits removal of this label before consumer purchase" must be printed in 9 pt. Arial Narrow. See Attachment 1 (Labeling Requirements).

The Energy Labeling Rule exemplifies the era in which it was created. The FTC promulgated the Rule in the 1970s, an era when the agency was engaged in prolific and highly prescriptive rulemaking.⁴ As I have

noted previously,⁵ no area of commerce was too straightforward or mundane to escape the Commission's notice:

- The Trade Regulation Rule concerning Deception as to Non-Prismatic and Partially Prismatic Instruments Being Prismatic Binoculars⁶ addressed failures to disclose "instruments having bulges on the tubes which simulate prismatic instruments are not prismatic instruments or do not contain complete prism systems" and provided detailed definitions of six types of binoculars and field glasses.

- The Trade Regulation Rule concerning Failure to Disclose that Skin Irritation May Result from Washing or Handling Glass Fiber Curtains and Draperies included a Commission conclusion that "the failure to disclose that skin irritation may result from body contact with glass fiber drapery and curtain fabrics, and clothing or other articles which have been washed with such glass fiber products or in containers previously used for washing such products when that container has not been cleansed of glass particles, has the capacity and tendency to mislead and deceive purchasers and prospective purchasers and to divert business from competitors whose products may be washed or handled without the resulting irritation."⁷

- The Guides for the Ladies' Handbag Industry addressed the use of the terms "scuffproof," "scratchproof," "scuff resistant," and "scratch resistant;" representations that a product is colored,

Standard of Unfairness, 11 Akron Law Rev. 1 (1978) (explaining that the judicial reversals of FTC regulations resulted from a failure to establish an adequate legal basis for the regulations), available at: <https://ideaexchange.uakron.edu/akronlawreview/vol11/iss1/1/>.

² See Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018) (expressing my view that the Commission should seek comment on the prescriptive labeling requirements), <https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed>; See Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Oct. 22, 2019) (urging the Commission to seek comment on the labeling requirements), https://www.ftc.gov/system/files/documents/public_statements/1551786/r611004_wilson_dissent_energy_labeling_rule.pdf.

³ See 16 CFR 305.13 and 305.20.

⁴ See, e.g., Timothy J. Muris, Paper: Will the FTC's Success Continue?, George Mason Law & Economics No. 18 (Sept. 24, 2018) (discussing the successes and failures of the FTC's enforcement efforts including the aggressive rulemaking activities in the 1970s), available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3254294; Timothy J. Muris, Rules Without Reason, AEI J. on Gov't and Society (Sept/Oct. 1982) (describing failed FTC rulemaking proceedings), available at: <https://www.cato.org/sites/cato.org/files/serials/files/regulation/1982/9/v6n5-4.pdf>; Teresa Schwartz, Regulating Unfair Practices Under The FTC Act: The Need For a Legal

⁵ See Concurring Statement of Commissioner Christine S. Wilson, Amplifier Rule (Dec. 17, 2020), https://www.ftc.gov/system/files/documents/public_statements/1585038/csw_amplifier_rule_stmt_11192020.pdf; Dissenting Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 10, 2018), <https://www.ftc.gov/public-statements/2018/12/dissenting-statement-commissioner-christine-s-wilson-notice-proposed>.

⁶ 16 CFR 402, https://www.ftc.gov/sites/default/files/documents/federal_register_notices/trade-regulation-rule-concerning-deception-non-prismatic-and-partially-prismatic-instruments-being/950523non-prismatic.pdf.

⁷ 16 CFR 413.3(c), https://www.ftc.gov/sites/default/files/documents/federal_register_notices/trade-regulation-rule-deceptive-advertising-and-labeling-size-tablecloths-and-related-products-16/950523advertisingandlabelingasto.pdf.

finished or dyed with aniline dye or otherwise dyed, embossed, grained, processed, finished or stitched in a certain manner; and required disclosures to be made with respect to a product's composition.⁸

In March 2020, we sought comment on some of the more prescriptive provisions of the Energy Labeling Rule⁹ and received many interesting and thoughtful comments.¹⁰ Rather than act on these comments or proposals, though, the Commission chose to finalize only proposals necessary to conform to Department of Energy changes.¹¹ Again today, the Commission chooses to make minor changes necessary for conformity but fails to conduct a full review of the Rule to consider removing all dated and prescriptive provisions, and to consider the recent comments suggesting changes.

The Commission last conducted a full review of the Energy Labeling Rule in 2015. Under our 10-year regulatory review schedule, the next review is scheduled for 2025. Nothing, however, prevents the Commission from conducting this review now. I again urge the Commission to act on the comments we received last year, eliminate the more prescriptive aspects of the Rule, and maximize the positive impact of this Rule for consumers. If we are statutorily mandated to maintain this Rule, we should endeavor to make it beneficial for consumers and competition.

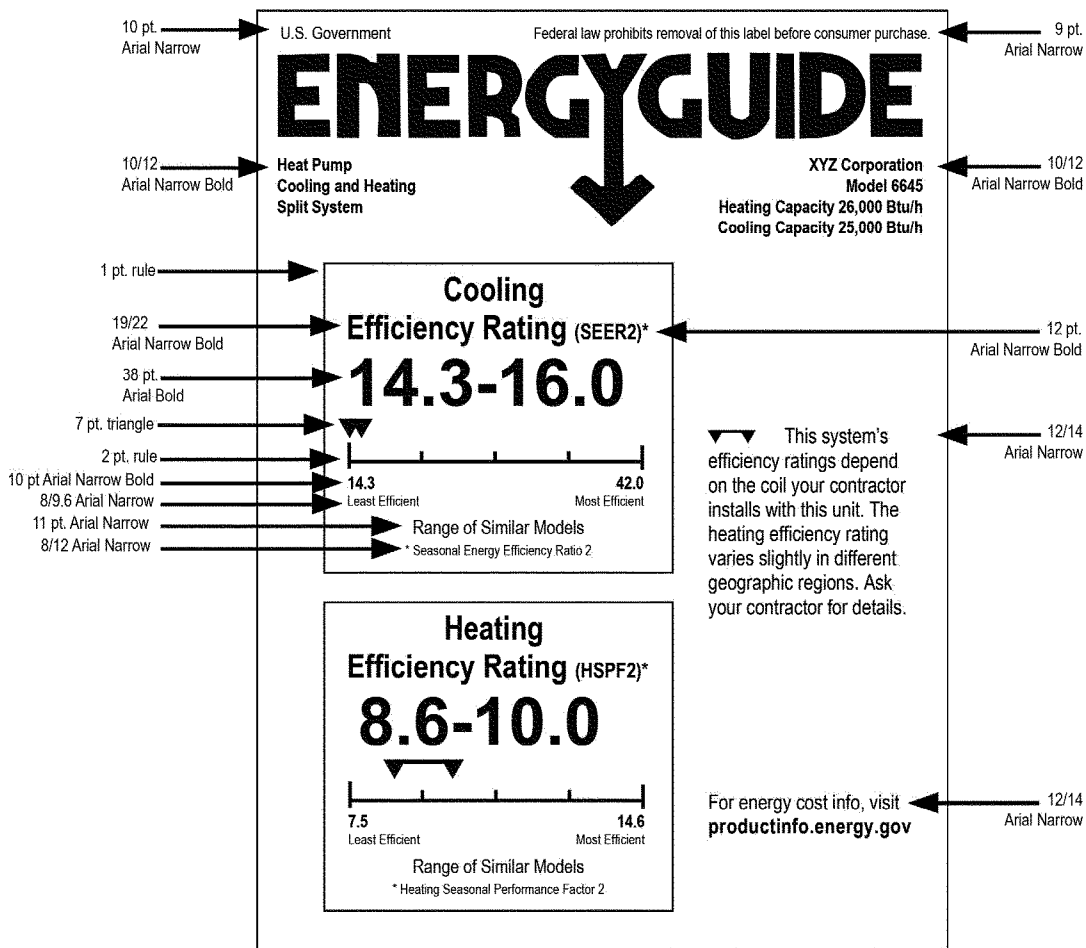
⁸ 16 CFR 247, https://www.ftc.gov/sites/default/files/documents/federal_register_notices/guides-luggage-and-related-products-industry-guides-shoe-content-labeling-and-advertising-and-guides/950918luggageandrelatedproducts.pdf.

⁹ See Concurring Statement of Commissioner Christine S. Wilson on the Notice of Proposed Rulemaking: Energy Labeling Rule (Mar. 20, 2020), https://www.ftc.gov/system/files/documents/public_statements/1569815/r611004_wilson_statement_energy_labeling.pdf.

¹⁰ See, e.g., Air-Conditioning, Heating and Refrigeration Institute (AHRI) Comment (#33-09), available at: <https://www.regulations.gov/document?D=FTC-2020-0033-0009>; Association of Home Appliance Manufacturers (AHAM) Comment (#33-04), available at: <https://www.regulations.gov/document?D=FTC-2020-0033-0004>; Goodman Manufacturing Comment (#33-08), available at: <https://www.regulations.gov/document?D=FTC-2020-0033-0008>.

¹¹ See Dissenting Statement of Commissioner Christine S. Wilson on Notice of Proposed Rulemaking: Energy Labeling Rule (Dec. 22, 2020), https://www.ftc.gov/system/files/documents/public_statements/1585242/commission_wilson_dissenting_statement_energy_labeling_rule_final12-22-2020revd2.pdf.

Attachment 1



[FR Doc. 2021-11498 Filed 6-1-21; 8:45 a.m.]

BILLING CODE 6750-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 121

[EPA-HQ-OW-2021-0302; FRL-10023-97-OW]

Notice of Intention To Reconsider and Revise the Clean Water Act Section 401 Certification Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent.

SUMMARY: In accordance with Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis (Executive Order 13990), the U.S. Environmental Protection Agency (EPA) announces its intention to reconsider

and revise the Clean Water Act Section 401 Certification Rule. In addition, EPA will initiate a series of stakeholder outreach sessions and invite written feedback on how to revise the requirements for water quality certifications under the Clean Water Act. EPA intends to revise the Clean Water Act Section 401 Certification Rule in a manner that is well informed by stakeholder input on the rule's substantive and procedural components; is better aligned with the cooperative federalism principles that have been central to the effective implementation of the Clean Water Act; and is responsive to the national objectives outlined in President Biden's Executive Order 13990.

DATES: Written feedback must be received on or before August 2, 2021.

ADDRESSES: You may send written feedback, identified by Docket ID No.

EPA-HQ-OW-2021-0302, by any of the following methods:

- *Federal eRulemaking Portal:* <https://www.regulations.gov/> (our preferred method). Follow the online instructions for submitting written feedback.

- *Email:* OW-Docket@epa.gov. Include Docket ID No. EPA-HQ-OW-2021-0302 in the subject line of the message.

Instructions: All submissions received must include the Docket ID Number. Written feedback received may be posted without change to <https://www.regulations.gov/>, including any personal information provided. 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 written feedback 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>.

FOR FURTHER INFORMATION CONTACT:

Lauren Kasperek, Oceans, Wetlands and Communities Division, Office of Water (4502–T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460; telephone number: (202) 564–3351; email address: cwa401@epa.gov.

SUPPLEMENTARY INFORMATION: Clean Water Act (CWA) Section 401 provides states¹ and tribes² with a powerful tool to protect the quality of their waters from adverse impacts resulting from federally licensed or permitted projects. Under CWA Section 401, a federal agency may not issue a license or permit to conduct any activity that may result in any discharge into navigable waters, unless the state or tribe where the discharge would originate either issues a CWA Section 401 water quality certification finding “that any such discharge will comply with the applicable provisions of Sections 301, 302, 303, 306, and 307” of the CWA, or certification is waived. 33 U.S.C. 1341(a)(1). When granting a CWA Section 401 certification, states and tribes are directed by CWA Section 401(d) to include conditions, including “effluent limitations and other limitations, and monitoring requirements” that are necessary to assure that the applicant for a federal license or permit will comply with applicable provisions of CWA Sections 301, 302, 306, and 307, and with “any other appropriate requirement of State law.” *Id.* at 1341(d).

EPA promulgated implementing regulations for water quality certification (1971 regulation)³ prior to the 1972 amendments to the Federal Water Pollution Control Act (commonly known as the Clean Water Act or CWA), which created Section 401. In 2020, EPA revised these regulations found at

40 CFR part 121. Clean Water Act Section 401 Certification Rule (“401 Certification Rule”), 85 FR 42210 (July 13, 2020).

On January 20, 2021, President Biden signed Executive Order 13990 directing federal agencies to review rules issued in the prior four years that are, or may be, inconsistent with the policy stated in the order. Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis, Executive Order 13990, 86 FR 7037 (published January 25, 2021, signed January 20, 2021). The order provides that “[i]t is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.” *Id.* at 7037, Section 1. The order “directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.” *Id.* “For any such actions identified by the agencies, the heads of agencies shall, as appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.” *Id.* at 7037, Section 2(a). The 401 Certification Rule was identified for review under the Executive Order. See Fact Sheet: List of Agency Actions for Review, available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/20/fact-sheet-list-of-agency-actions-for-review/> (last visited on April 26, 2021).

EPA has completed its initial review of the 401 Certification Rule and determined that it will propose revisions to the rule through a new rulemaking effort. The agency has considered the following factors in making this determination, including but not limited to: The text of CWA Section 401; Congressional intent and the cooperative federalism framework of CWA Section 401; concerns raised by stakeholders about the 401 Certification Rule, including implementation related

feedback; the principles outlined in the Executive Order; and issues raised in ongoing litigation challenges to the 401 Certification Rule. As described below, the agency has identified substantial concerns with a number of provisions of the 401 Certification Rule that relate to cooperative federalism principles and CWA Section 401’s goal of ensuring that states are empowered to protect their water quality.

Agencies have inherent authority to reconsider past decisions and to revise, replace, or repeal a decision to the extent permitted by law and supported by a reasoned explanation. *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) (“*Fox*”); *Motor Vehicle Manufacturers Ass’n of the United States, Inc. v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29, 42 (1983) (“*State Farm*”). Importantly, such a revised decision need not be based upon a change of facts or circumstances. A revised decision based “on a reevaluation of which policy would be better in light of the facts” is “well within an agency’s discretion” *National Ass’n of Home Builders v. EPA*, 682 F.3d 1032, 1038 (D.C. Cir. 2012) (citing *Fox*, 556 U.S. at 514–15).

EPA does not intend to replace the 401 Certification Rule with the 1971 regulation. Instead, EPA plans to reconsider and revise the 401 Certification Rule consistent with the principles outlined in the Executive Order and the agency’s legal authority. Additionally, EPA seeks to revise the rule in a manner that promotes efficiency and certainty in the certification process, that is well-informed by stakeholder input on the 401 Certification Rule’s substantive and procedural components, and that is consistent with the cooperative federalism principles central to CWA Section 401.

Questions for Consideration

The issues EPA intends to reconsider include, but are not limited to, whether the rule appropriately considers cooperative federalism principles central to CWA Section 401. EPA has substantial concerns about whether portions of the rule impinge on those principles. EPA also intends to reconsider whether certain procedural components of the rule improve, or impede, the certification and licensing/permitting processes. To assist in its development of a proposed revision, EPA is considering specific provisions of the rule for potential revision. EPA welcomes feedback related to key issues identified during implementation of the 401 Certification Rule, including but not limited to, the following:

¹ The CWA defines “state” as “a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.” 33 U.S.C. 1362(3).

² Tribes refers to tribes that have been approved for “treatment in a manner similar to a State” status for CWA Section 401. See 33 U.S.C. 1377(e).

³ 36 FR 22487, November 25, 1971, redesignated at 37 FR 21441, October 11, 1972, further redesignated at 44 FR 32899, June 7, 1979.

1. *Pre-filing meeting requests.* The rule requires project proponents to submit a “pre-filing meeting request” to certifying authorities at least 30 days prior to submitting a certification request. 40 CFR 121.4. EPA is interested in the utility of the pre-filing meeting process to date, including but not limited to, whether the pre-filing meetings have improved or increased early stakeholder engagement, whether the minimum 30 day timeframe should be shortened in certain instances (*e.g.*, where a certifying authority declines to hold a pre-filing meeting), and how certifying authorities have approached pre-filing meeting requests and meetings to date.

2. *Certification request.* The rule defines a certification request as “a written, signed, and dated communication that satisfies the requirements of [section] 121.5(b) or (c).” *Id.* at 121.1(c). Among other issues, EPA is concerned that the rule constrains what states and tribes can require in certification requests, potentially limiting state and tribal ability to get information they may need before the CWA Section 401 review process begins. EPA is interested in stakeholder input on this definition and the elements of a certification request contained at 40 CFR 121.5, including but not limited to, the sufficiency of the elements described in 40 CFR 121.5(b) and (c), and whether stakeholders have experienced any process improvements or deficiencies by having a single defined list of required certification request components applicable to all certification actions.

3. *Reasonable period of time.* CWA Section 401 requires a certifying authority to act on a certification request within a defined time period known as the “reasonable period of time.” The rule requires the federal licensing or permitting agency to determine the reasonable period of time using a series of factors, provided that the time does not exceed one year from the date a certifying authority receives a certification request. *Id.* at 121.6. Additionally, the rule allows federal agencies to extend the reasonable period of time within that one year time period at a certifying authority or project proponent’s request, but does not allow certifying authorities to take any other action to extend or modify the reasonable period of time. *Id.* Among other issues, EPA is concerned that the rule does not allow state and tribal authorities a sufficient role in setting the timeline for reviewing certification requests and limits the factors that federal agencies may use to determine the reasonable period of time. EPA is

seeking stakeholder input on the process for determining and modifying the reasonable period of time, including but not limited to, whether additional factors should be considered by federal agencies when setting the reasonable period of time, whether other stakeholders besides federal agencies have a role in defining and extending the reasonable period of time, and any implementation challenges or improvements identified through application of the rule’s requirements for the reasonable period of time.

4. *Scope of certification.* The rule limits the scope of certification, which includes both the scope of certification review under CWA Section 401(a) and the scope of certification conditions under CWA Section 401(d), to “assuring that a discharge from a Federally licensed or permitted activity will comply with water quality requirements.” *Id.* at 121.3. The rule defines “water quality requirements,” as the “applicable provisions of [sections] 301, 302, 303, 306, and 307 of the Clean Water Act, and state or tribal regulatory requirements for point source discharges into waters of the United States.” *Id.* at 121.1(n). Among other issues, EPA is concerned that the rule’s narrow scope of certification and conditions may prevent state and tribal authorities from adequately protecting their water quality. EPA is seeking stakeholder input on the rule’s interpretation of the scope of certification and certification conditions, and the definition of “water quality requirements” as it relates to the statutory phrase “other appropriate requirements of state law,” including but not limited to, whether the agency should revise its interpretation of scope to include potential impacts to water quality not only from the “discharge” but also from the “activity as a whole” consistent with Supreme Court case law, whether the agency should revise its interpretation of “other appropriate requirements of State law,” and whether the agency should revise its interpretation of scope of certification based on implementation challenges or improvements identified through the application of the newly defined scope of certification.

5. *Certification actions and federal agency review.* The rule provides that certifying authorities may take one of four actions on a certification request, including granting certification, granting certification with conditions, denying certification, or waiving certification. *See id.* at 121.7, 121.9. The rule requires that certifying authorities include specific information when granting certification, granting certification with

conditions or denying certification. *Id.* at 121.7(c)–(e). Additionally, the rule requires federal agencies to review certifying authority actions to determine whether they comply with the procedural requirements of CWA Section 401 and the 401 Certification Rule. *Id.* at 121.9. Among other issues, EPA is concerned that a federal agency’s review may result in a state or tribe’s certification or conditions being permanently waived as a result of nonsubstantive and easily fixed procedural concerns identified by the federal agency. EPA is seeking stakeholder input on the certification action process steps, including but not limited to, whether there is any utility in requiring specific components and information for certifications with conditions and denials, whether it is appropriate for federal agencies to review certifying authority actions for consistency with procedural requirements or any other purpose, and if so, whether there should be greater certifying authority engagement in the federal agency review process including an opportunity to respond to and cure any deficiencies, whether federal agencies should be able to deem a certification or conditions as “waived,” and whether, and under what circumstances, federal agencies may reject state conditions.

6. *Enforcement.* The rule provides that federal agencies are responsible for enforcing certification conditions that are incorporated into a federal license or permit. *Id.* at 121.11(c). The rule does not provide a role for certifying authorities to enforce certification conditions under federal law. Additionally, the rule restates the statutory provision that provides certifying authorities with the ability to inspect certified projects prior to their initial operation. *Id.* at 121.11(a). EPA is interested in stakeholder feedback on enforcement of CWA Section 401, including but not limited to, the roles of federal agencies and certifying authorities in enforcing certification conditions, whether the statutory language in CWA Section 401 supports certifying authority enforcement of certification conditions under federal law, whether the CWA citizen suit provision applies to Section 401, and the rule’s interpretation of a certifying authority’s inspection opportunities.

7. *Modifications.* The rule removed the 1971 regulation’s provision that allowed for modifications where agreed upon by the certifying authority, federal agency, and EPA. *See* 85 FR 42220 (July 13, 2020). Additionally, the rule prevents certifying authorities from extending the reasonable period time

unilaterally, including but not limited to, the use of conditions intended to reopen a certification (“reopeners”). Among other issues, EPA is concerned that the rule’s prohibition of modifications may limit the flexibility of certifications and permits to adapt to changing circumstances. EPA is interested in stakeholder feedback on modifications and “reopeners,” including but not limited to, whether the statutory language in CWA Section 401 supports modification of certifications or “reopeners,” the utility of modifications (e.g., specific circumstances that may warrant modifications or “reopeners”), and whether there are alternate solutions to the issues that could be addressed by certification modifications or “reopeners” that can be accomplished through the federal licensing or permitting process.

8. *Neighboring jurisdictions.* The rule addresses the so-called “neighboring jurisdiction” process in CWA Section 401(a)(2), including interpreting the timeframe in which a federal agency must notify EPA for purposes of Section 401(a)(2) and providing process requirements for the agency’s analysis and the neighboring jurisdictions’ review and response. EPA is interested in stakeholder feedback on the neighboring jurisdiction process, including but not limited to, whether the agency should elaborate in regulatory text or preamble on considerations informing its analysis under CWA Section 401(a)(2), whether the agency’s decision whether to make a determination under CWA Section 401(a)(2) is wholly discretionary, and whether the agency should provide further guidance on the Section 401(a)(2) process that occurs after EPA makes a “may affect” determination.

9. *Data and other information.* EPA is interested in receiving any data or information from stakeholders about the application of the 401 Certification Rule, including but not limited to, impacts of the rule on processing certification requests, impacts of the rule on certification decisions, and whether any major projects are anticipated in the next few years that could benefit from or be encumbered by the 401 Certification Rule’s procedural requirements. Additionally, EPA is interested in stakeholder feedback about existing state CWA Section 401 procedures, including whether the agency should consider the extent to which any revised rule might conflict with existing state CWA Section 401 procedures and place a burden on those states to revise rules in the future.

10. *Implementation coordination.* EPA is interested in hearing from stakeholders about facilitating implementation of any rule revisions. For example, given the relationship between federal provisions and state processes for water quality certification, should EPA consider specific implementation timeframes or effective dates to allow for adoption and integration of water quality provisions at the state level. Similarly, EPA is interested in receiving feedback on whether concomitant regulatory changes should be proposed and finalized simultaneously by relevant federal agencies (e.g., the Army Corps of Engineers, Federal Energy Regulatory Commission) so that implementation of revised water certification provisions would be more effectively coordinated and would avoid circumstances where regulations could be interpreted as inconsistent with one another.

Outreach

EPA is aware that CWA Section 401 and the 401 Certification Rule are of interest to many states, tribes, federal agencies, project proponents, and the public because of the relationship between water quality certifications and federal licensing and permitting processes. As a result, EPA wants to ensure that it has the opportunity to consider stakeholder input prior to revising the 401 Certification Rule. EPA intends to have multiple webinar-based listening sessions to solicit feedback on potential approaches to revise the 401 Certification Rule. During these listening sessions, EPA will provide background information on the prior rulemaking effort. Stakeholders will have the opportunity to provide input to EPA on the topics provided above and any other relevant information on the 401 Certification Rule for the agency’s consideration. Information on the listening session dates, times, and registration instructions will be made available on EPA’s website, located at <https://www.epa.gov/cwa-401>. Persons or organizations wishing to provide verbal input during a listening session will be selected on a first-come, first-served basis, with consideration given to hearing from different stakeholder groups. Due to the expected number of participants, individuals will be asked to limit their oral presentation to three minutes. Further instructions on signing up and participating in listening sessions will be made available on EPA’s website above at a later date. Supporting materials and written feedback from those who do not have an

opportunity to speak can be submitted to the docket as described above.

Michael S. Regan,
Administrator.

[FR Doc. 2021–11513 Filed 6–1–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[RTID 0648–XA696]

Fisheries Off West Coast States; West Coast Salmon Fisheries; Amendment 21 to the Pacific Coast Salmon Fishery Management Plan

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

ACTION: Announcement of availability of fishery management plan amendment; request for comments.

SUMMARY: The Pacific Fishery Management Council (Council) has submitted Amendment 21 to the Pacific Coast Salmon Fishery Management Plan (FMP) to the Secretary of Commerce for review. If approved, Amendment 21 would set an annual Chinook salmon abundance threshold below which the Council and NMFS would implement specific management measures, through the annual ocean salmon management measures, to limit ocean salmon fishery impacts on the availability of Chinook salmon as prey for endangered Southern Resident killer whales (SRKW).

DATES: Comments on Amendment 21 must be received by August 2, 2021.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0006, by the following method:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov and enter NOAA–NMFS–2021–0006 in the Search box. Click the “Comment” icon, complete the required fields, and enter or attach your comments.

Instructions: Comments must be submitted by the above method to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be

posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter "N/A" in the required fields if you wish to remain anonymous).

The draft FMP, as amended through Amendment 21, with notations showing how Amendment 21 would change the FMP, if approved, is available on the NMFS website at <https://www.fisheries.noaa.gov/action/amendment-21-pacific-coast-salmon-fishery-management-plan>.

The Council and NMFS prepared a draft Environmental Assessment. An electronic copy of this document may be obtained from the West Coast Regional Office website at <https://www.fisheries.noaa.gov/west-coast/laws-and-policies/west-coast-regional-environmental-policy-act-documents>.

FOR FURTHER INFORMATION CONTACT:
Jeromy Jording at 360-763-2268.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the exclusive economic zone (EEZ) (3–200 nautical miles) (5.6–370.4 kilometers) off Washington, Oregon, and California are managed under the Pacific Coast Salmon Fishery Management Plan (FMP). The Magnuson-Stevens Fishery Conservation and Management Act (MSA) requires that each regional fishery management council submit any FMP or plan amendment it prepares to NMFS for review and approval, disapproval, or partial approval by the Secretary of Commerce (Secretary). The MSA also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notice that the FMP or amendment is available for public review and comment. This document announces that proposed Amendment 21 to the FMP is available

for public review and comment. NMFS will consider the public comments received during the comment period described above in determining whether to approve, partially approve, or disapprove Amendment 21 to the FMP.

Amendment 21 was developed by the Council to address impacts of the fisheries managed under the FMP on Chinook salmon as prey for the SRKW distinct population segment of *Orcinus orca*, which is listed as endangered under the Endangered Species Act (ESA). The development of Amendment 21 was informed by the risk assessment prepared by the Council's ad hoc SRKW Workgroup.¹ The risk assessment identified Chinook salmon as the primary prey of SRKW. Chinook salmon, as well as coho salmon, are targeted in ocean salmon fisheries managed under the FMP. The Workgroup also identified a range of potential management measure the Council could take to limit ocean salmon fishery impacts to Chinook salmon prey availability for SRKW. The Council considered the Workgroup recommendations in the development of Amendment 21.

If approved, Amendment 21 would establish a threshold for annual Chinook salmon abundance below which additional management measures would be implemented to limit the effects of the fisheries on SRKW. This low abundance threshold is defined as October 1 projections of Chinook salmon abundance in the area from the U.S./Canada border to Cape Falcon, OR, prior to salmon fisheries occurring in the EEZ (referred to as time step 1 (TS1)). If an annual forecast for this abundance is less than the arithmetic mean of the seven lowest years of TS1 starting abundance during the period 1992–2016 (1994–1996, 1998–2000 and 2007), currently calculated as 966,000 Chinook salmon, management responses

¹ The SRKW Workgroup's risk assessment report can be found on the Council's website: <https://www.pcouncil.org/documents/2020/05/e-2-srkw-workgroup-report-1-pacific-fishery-management-council-salmon-fishery-management-plan-impacts-to-southern-resident-killer-whales-risk-assessment-electronic-only.pdf/>.

would be implemented through the annual management measures for ocean salmon fisheries. The management measures include a limit on the annual quota in non-tribal commercial fisheries north of Cape Falcon, Oregon, shifting quota for Chinook salmon catch north of Cape Falcon, Oregon, from the spring time period when the available information indicates the whales experience greater overlap with salmon fisheries to the summer time period, and time and area closures in times and areas for which current data indicate greater foraging use by the killer whales (see proposed FMP language for detail). The goal for the Amendment 21 management responses is to limit ocean salmon fishery impacts on foraging opportunities for SRKW on Chinook salmon in years of low Chinook salmon abundance. Management measures implemented under Amendment 21 would be applied in concert with measures designed to meet other requirements of the FMP including conservation objectives and annual catch limits for specific salmon stocks and stock complexes.

Because Amendment 21 will be implemented through the annual management measures for the ocean salmon fishery, NMFS is not promulgating an implementing rule at this time.

All comments received by the end of the comment period on Amendment 21 (see **DATES** and **ADDRESSES** above) will be considered in the Secretary's decision to approve, disapprove, or partially approve this amendment. To be considered in this decision, comments must be received by close of business on the last day of the comment period; that does not mean postmarked or otherwise transmitted by that date.

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

Dated: May 26, 2021.

Jennifer M. Wallace,

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

[FR Doc. 2021-11540 Filed 6-1-21; 8:45 am]

BILLING CODE 3510-22-P

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Notice of an Extension or Revision of a Currently Approved Information Collection

AGENCY: Office of the Assistant Secretary for Civil Rights, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Office of the Assistant Secretary for Civil Rights (OASCR) to request a renewal of a currently approved information collection. OASCR will use the information collected to collect the race, ethnicity, and gender (REG) of all program applicants and participants by county and State.

DATES: Comments on this notice must be received by August 2, 2021 to be assured of consideration.

ADDRESSES: Office of the Assistant Secretary for Civil Rights/Office of Compliance, Policy, and Training invites interested persons to submit comments on this notice. Comments may be submitted by one of the following methods:

Federal eRulemaking Portal: This website provides the ability to type short comments directly into the comment field on this web page or attach a file for lengthier comments. Go to <http://www.regulations.gov>. Follow the on-line instructions at that site for submitting comments.

Mail, including CD-ROMs, etc.: Send to Docket Clerk, 1400 Independence Avenue SW, Washington, DC 20250-3700, Mailstop 9401.

Hand- or courier-delivered submittals: Deliver to 1400 Independence Avenue SW, Washington, DC 20250-3700, Mailstop 9401.

Instructions: All items submitted by mail or electronic mail must include the Office of the Assistant Secretary for Civil Rights/Office of Compliance,

Policy, and Training, Docket No. 0503-0022, Comments received in response to this docket will be made available for public inspection and posted without change, including any personal information, to <http://www.regulations.gov>.

Docket: For access to background documents or comments received, go to the Office of the Assistant Secretary for Civil Rights, Center for Civil Rights Operations, Docket Room at 1400 Independence Avenue SW, Washington, DC 20250-3700, Mailstop 9401, between 8:00 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact Denise A. Banks, Executive Director, Center for Civil Rights Operations, Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, DC 20250, (202) 401-7654 or Denise.Banks@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 15 Subpart D—Data Collection Requirement.

OMB Number: 0503-0022.

Expiration Date of Approval: July 31, 2021.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Currently, Section 14006 of the 2008 Farm Bill requires the Secretary of Agriculture to annually compile for each county and State in the United States program application and participation rate data regarding socially disadvantaged farmers or ranchers for each program of USDA that serves agricultural producers or landowners. This requirement only applies to FSA, NRCS, RD, and RMA. These four agencies use the voluntary data collection form approved by OMB that is attached as a cover page to the application forms for programs that provide services to agriculture producers, farmers and ranchers. In addition, all remaining USDA agencies with conducted programs (Animal and Plant Health Inspection Service, and Foreign Agricultural Service) were required to develop a strategy for collecting voluntary REG data from individuals for their respective federally conducted programs by utilizing the same OMB approved form. Applicants and program participants of these programs and activities provide this

data on a voluntary basis. These strategies will be reviewed and approved by OASCR, who will also provide oversight and monitoring of the collection of this data through its compliance activities.

If the REG data is not collected on applicants and participants in USDA federally conducted programs, USDA will not be able to collect and report demographic data on its applicants and program participants. In addition, USDA would not be able to determine if programs and services are reaching and meeting the needs of the public, beneficiaries, partners, and other stakeholders based on demographic data.

Failure to collect this information will also have a negative impact on USDA's outreach and compliance activities. This could result in an inability to equitably deliver programs and services to applicants and producers, and ultimately an inability to hold the agencies accountable.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average two minutes per response.

Respondents: Producers, applicants, and USDA customers.

Estimated Number of Respondents: 1,200.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 40 hours.

Comments are invited on: (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) 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Denise A. Banks, Executive Director, Center for Civil Rights Operations, Office of the Assistant Secretary for Civil Rights. All comments received will be available for

public inspection during regular business hours at the same address.

All responses 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.

Winona Lake Scott,

*Associate Assistant Secretary for Civil Rights,
Office of the Assistant Secretary for Civil Rights.*

[FR Doc. 2021–11597 Filed 6–1–21; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2021–0026]

Notice of Request for Revision to and Extension of Approval of an Information Collection; Movement of Plants and Plant Products From Hawaii and the Territories

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Revision to and extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request a revision to and extension of approval of an information collection associated with the regulations for the interstate movement of fruits and vegetables from Hawaii and the Territories.

DATES: We will consider all comments that we receive on or before August 2, 2021.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to www.regulations.gov. Enter APHIS–2021–0026 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2021–0026, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at regulations.gov or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m.,

Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the movement of plants and plant products from Hawaii and the Territories, contact Mr. Marc Phillips, Senior Regulatory Policy Specialist, PPQ, APHIS, USDA, 4700 River Road Unit 133, Riverdale, MD 20737; (301) 851–2114. For information on the information collection, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Movement of Plants and Plant Products From Hawaii and the Territories.

OMB Control Number: 0579–0346.

Type of Request: Revision to and extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

In 7 CFR part 318, under the regulations in “Subpart A—Regulated Articles from Hawaii and the Territories” (§§ 318.13–1 through 318.13–17), APHIS prohibits or restricts the interstate movement of fruits and vegetables into the continental United States from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands to prevent plant pests and noxious weeds from being introduced into and spread within the continental United States.

The regulations contain requirements for a performance-based process for approving the interstate movement of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more designated phytosanitary measures and for acknowledging pest-free areas. These requirements involve information collection activities, including limited permits, inspections to issue limited permits, inspections of production areas, transit permits, compliance agreements, inspection and certification, labeling for fruits and vegetables produced in pest free areas, written requests for facility approvals, trapping

and surveillance, and recordkeeping. In addition, the activities of packaging, marking, identification, and certification of sweet potatoes from Hawaii are also included.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public burden for this collection of information is estimated to average 0.21 hours per response.

Respondents: Wholesalers and producers of fruits and vegetables; growers, shippers, and exporters in Hawaii, U.S. Territories, and State plant regulatory officials; and irradiation facility personnel.

Estimated annual number of respondents: 283.

Estimated annual number of responses per respondent: 55.

Estimated annual number of responses: 15,673.

Estimated total annual burden on respondents: 3,286 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 27th day of May 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–11555 Filed 6–1–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service**

[Docket No. APHIS–2018–0066]

Notice of Decision To Add Taxa of Plants for Planting That Are Quarantine Pests or Hosts of Quarantine Pests to the Lists of Plants for Planting Whose Importation Is Not Authorized Pending Pest Risk Analysis

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public of our decision to add 26 taxa of plants for planting that are quarantine pests (weeds), all Myrtaceae taxa (when destined to Hawaii), and 43 other taxa of plants for planting that are hosts of 17 quarantine pests, to our lists of plants for planting whose importation is now not authorized pending pest risk analysis. A previous notice made datasheets available for public comment that listed the evidence we used to determine that the taxa are quarantine pests or hosts of quarantine pests. This notice responds to the comments we received and announces final versions of the datasheets.

DATES: The changes to the lists will be made on July 2, 2021.

FOR FURTHER INFORMATION CONTACT: Dr. Indira Singh, Botanist, Plants for Planting Policy, IRM, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; *Indira.Singh@usda.gov*; (301) 851–2020.

SUPPLEMENTARY INFORMATION:**Background**

Under the regulations in “Subpart H—Plants for Planting” (7 CFR 319.37–1 through 319.37–23, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) prohibits or restricts the importation of plants for planting to prevent the introduction of quarantine pests into the United States. Quarantine pest is defined in § 319.37–1 as a plant pest or noxious weed that is of potential economic importance to the United States and not yet present in the United States, or present but not widely distributed and being officially controlled.

The regulations in § 319.37–4(a) provide for the listing of plants for planting whose importation is not authorized pending pest risk analysis (NAPPRA) in order to prevent the introduction of quarantine pests into the

United States. Those regulations establish two lists of taxa whose importation is NAPPRA: A list of taxa of plants for planting that are quarantine pests, and a list of taxa of plants for planting that are hosts of quarantine pests. Paragraph (b) of § 319.37–4 describes the process for adding plant taxa to the NAPPRA category.

In accordance with that process, on November 25, 2019, we published in the **Federal Register** (84 FR 64825–64826, Docket No. APHIS–2018–0066) a notice¹ that announced our determination that 26 taxa of plants for planting are quarantine pests, and that all Myrtaceae taxa (when destined to Hawaii) and 43 other taxa of plants for planting are hosts of 18² quarantine pests. The notice also made available datasheets that detail the scientific evidence we evaluated in making the determination that the taxa are quarantine pests or hosts of a quarantine pest and are being added to the NAPPRA category.

We solicited comments concerning the notice and the datasheets for 60 days ending January 24, 2020, and extended the deadline for comments until February 25, 2020. We received 132 comments from producers, importers, industry groups, conservationists, scientists, plant pathologists, ecologists, administrators, teachers, students, and private citizens. This notice responds to the comments we received and announces the final versions of the datasheets.

Most commenters supported our addition of Myrtaceae³ propagative material to Hawaii to the NAPPRA list because of the risk posed to important tree species, particularly ohia (*Metrosideros polymorpha*), which is part of the native ecosystem and provides habitat for threatened and endangered animal species. Most commenters expressed no concerns with the other taxa we proposed to add to the NAPPRA list. Commenter concerns are addressed below by topic.

NAPPRA Lists

One commenter stated that *Crocoshmia*, *Pterocarya*, *Tectona*, *Cassia*, *Abies*, and many other species that APHIS designates as NAPPRA do not appear on the APHIS NAPPRA website

¹ To view the notice, datasheets, and comments we received, go to www.regulations.gov and enter APHIS–2018–0066 in the Search field.

² The number of pests in the initial notice was 18, but is 17 in this notice, as the Bambusoideae taxa was subsequently removed from the quarantine pest list for reasons explained in this notice.

³ Myrtaceae is a host of *Austropuccinia psidii*, which is a quarantine pest only for the State of Hawaii.

and that the only place where plant taxa are designated as NAPPRA is in the USDA Plants for Planting Manual. The commenter suggested that APHIS make a comprehensive list of all NAPPRA plants, with pests of concern for each, so that the reasons why a previously approved plant can no longer come in are made clear to the public.

All NAPPRA plants are listed in chapter 6 of the USDA Plants for Planting Manual. The APHIS website also lists the NAPPRA weeds and hosts of quarantine pests of Round 1, Round 2, and Round 3.⁴ A 2018 final rule⁵ moved about 120 plant genera, including *Abies*, *Cassia*, *Crocoshmia*, *Poaceae*, and all herbaceous *Fabaceae* from the Prohibited List in § 319.37–2(a) to the NAPPRA category. We intend to update our APHIS website to have a complete list of taxa restricted through NAPPRA notices.

Another commenter noted that hosts cited in a 2013 Asian longhorned beetle (ALB)/citrus longhorned beetle (CLB) Federal Order⁶ were included in a revised Federal Order but not added to the NAPPRA tables on the APHIS website.

The commenter is correct. The 2013 ALB/CLB Federal Order added *Cunninghamia*, *Pterocarya*, and *Tectona* as hosts of *Anoplophora chinensis*. We will update the Round 1 table on the APHIS website accordingly.

One commenter suggested that APHIS go to ports where non-native invasive species are likely to enter the United States and locate and remove all such pests 500 acres inland from the site. The commenter stated that this “Early Detection and Rapid Response (EDRR)” has been successful in the past.

The purpose of EDRR is to detect, identify, assess, and make a rapid response to verified new domestic infestations that are determined to be invasive. The purpose of listing plants on NAPPRA is to prevent entry of unwanted plants and pests at United States ports of entry. Domestic issues involving new invasive species are therefore beyond the scope of this NAPPRA notice.

NAPPRA Exemptions

In some cases, APHIS exempts imports of plants that are hosts of quarantine pests from NAPPRA

⁴ The NAPPRA lists can be viewed at https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/permits/plants-and-plant-products-permits/plants-for-planting/ct_nappra.

⁵ 83 FR 11845–11867, Docket No. APHIS–2008–0011.

⁶ DA–2013–18, “Importation of Host Material of *Anoplophora chinensis* and *A. glabripennis*,” May 9, 2013.

requirements when there is significant trade of that plant between the exporting country and the United States. We allow such importation based on inspection findings indicating that the imported plants are generally pest free and from which the risk of introducing quarantine pests is low.

One commenter stated that Canada should be exempt from NAPPRA requirements for imports of *Cestrum* spp. and *Gynura* spp. on the basis of existing significant trade between Canada and the United States. The commenter cited import data indicating the number of plants exported to the United States under the US/Canada Greenhouse Grown Plant Certification Program.

Based on the information cited by the commenter, we have determined that Canada meets the threshold for significant trade with the United States and is exempt from NAPPRA requirements for *Cestrum* spp. and *Gynura* spp.

Similarly, a commenter stated that Guatemala should be exempt from NAPPRA requirements for *Zea* spp. seeds based on significant trade with the United States. Another commenter provided import data for *Pennisetum glaucum* (*Cenchrus americanus*) millet seeds from Chile and requested a significant trade exemption from NAPPRA requirements for this commodity.

Based upon significant trade history documented by the United States importers and provided by the national plant protection organization of Guatemala since the publication of the notice⁷ in the **Federal Register** on June 19, 2017, we agree with the commenter and have determined that *Zea* spp. from Guatemala meets the threshold to be considered exempt from NAPPRA listing. As is the case with *Zea* spp., additional documentation from United States importers (and confirmed by APHIS data) has demonstrated significant trade history of *Pennisetum glaucum* seeds from Chile. Therefore, as stated in the notice we published on November 25, 2019,⁸ we are exempting *Pennisetum glaucum* from Chile and *Zea* spp. from Guatemala from NAPPRA restrictions.

One commenter asked APHIS to allow for the opportunity to have the NAPPRA lists reviewed if the industry subsequently finds and can document that a history of significant trade exists

between the exporting country and the United States.

If data can be provided for significant trade between the United States and the exporting country, we will re-evaluate the NAPPRA status of the taxon for that country.

Imports of Myrtaceae Cut Flowers and Greenery Into Hawaii

Many commenters stated that restrictions on Myrtaceae cut flowers and greenery are also needed for effective protection of Hawaii, and that port-of-entry inspections have not been successful in saving Hawaii from the introduction of pests and pathogens.

Some commenters noted that cut foliage can transmit plant diseases and that its importation into Hawaii constitutes a gap with respect to phytosanitary protection. One such commenter noted that cut greens are suspected to have been the original pathway for *Austropuccinia psidii* to enter Hawaii, adding that the disease has been intercepted by State inspectors on greenery shipped from Florida.

APHIS understands that cut flowers and greenery are a potential pathway for the entry of several pests and pathogens. While imported plants that pose a threat to Hawaii will be added to the NAPPRA lists, cut flowers and greenery are not regulated under “Subpart H—Plants for Planting,” but rather a different subpart, “Subpart P—Cut Flowers,” and are thus outside the scope of this notice. Separate regulatory action is required to address that pathway.

A commenter noted that we did not propose to add *Ceratocystis lukuohia* and *Ceratocystis huliohia* to NAPPRA. The commenter added that these pests are killing ohia trees in Hawaii and asked that APHIS publish a new proposal to add these species to the list.

When a plant taxon is placed on NAPPRA, its importation becomes restricted. While our determination to list Myrtaceae in NAPPRA was based on it being a host of myrtle rust (*Austropuccinia psidii*), we will base future decisions on pest risk assessments that address all quarantine pests and pathogens associated with Myrtaceae, including *Ceratocystis* spp.

Potential Economic Effects

Two commenters in the State of Hawaii expressed concern that the addition of the Myrtaceae family to the NAPPRA list would have a negative impact on their floral businesses.

One commenter, a wholesale flower importer, stated that local farms are unable to provide the volume that the industry requires, and that insufficient time exists for the floral industry in

Hawaii to prepare for the proposed changes. Another commenter representing a flower bouquet business asked us to reconsider listing *Eucalyptus*, a member of the Myrtaceae family, under NAPPRA for plants destined for Hawaii.

The underlying principle of the NAPPRA lists is to safeguard U.S. agriculture with the least possible effect on trade. While the addition of taxa to the NAPPRA lists may make it more difficult for Hawaiian business to obtain Myrtaceae plants from other countries, the economic impact is outweighed by the potentially devastating effects of introducing quarantine pests into Hawaii on agriculture, forests, and endangered species. We also note that the commenters’ primary concern was not with NAPPRA, but with parallel restrictions imposed by the State of Hawaii on the interstate movement of Myrtaceae plants into Hawaii from other State and territories.

Another commenter urged APHIS to consider broader bans of living plant material to and from Hawaii. With the ongoing introduction of new plants, insects, and pathogens into Hawaii, the commenter stated that the current framework and methodology for inspecting imported and exported plant materials is untenable.

We are making no changes based on the comments, as we consider the current framework for inspections adequate to manage phytosanitary risk. Taxa added to the NAPPRA list are only prohibited entry to the United States if they are determined to be quarantine pests or until a pest risk analysis is conducted that has identified appropriate mitigation measures to prevent the introduction of quarantine pests for which they are hosts.

Bambusoideae

We are removing the Poaceae subfamily Bambusoideae taxa from the NAPPRA quarantine pest list as the subfamily is already regulated under NAPPRA for *Ustilago sharaiana* and other quarantine pests.

General Comments

One commenter noted that some of the plant taxa included in the proposal that APHIS names as being vulnerable to various pests or pathogens are invasive in the United States, namely *Syzygium jambos*, Bambusoideae, and *Euonymus*, and asked if this is an appropriate priority.

The commenter’s concern about *Syzygium jambos* and *Euonymus* being invasive has been addressed through restricting their importation into the United States by listing them as

⁷ 82 FR 27786–27792, Docket No. APHIS–2012–0076.

⁸ 84 FR 64825–64826, Docket No. APHIS–2018–0066.

NAPPRA. Bambusoideae has been deleted from this notice as it is already regulated under NAPPRA.

A commenter stated that the NAPPRA listing of Elm mottle virus (EMoV) does not clarify whether the purpose is to protect North American elm species or other hosts, such as hydrangea and lilac.

The listing of EMoV is for all hosts, including lilac (*Syringa*), which is listed in this notice, and *Hydrangea*, which is already on the NAPPRA list.

Comment Period

A commenter needed more time to develop a response and requested that we extend the comment period.

We extended the comment period for an additional 30 days.

Therefore, in accordance with the regulations in § 319.37–4, we are adding 26 taxa of plants for planting that are quarantine pests (weeds), and all Myrtaceae taxa (when destined to Hawaii) and 43 other taxa of plants for planting that are hosts of 17 quarantine pests whose importation is now NAPPRA. We are exempting *Zea* spp. from Guatemala, *Pennisetum glaucum* (syn. *Cenchrus americanus*) from Chile, and *Gynura* spp. and *Cestrum* spp. from Canada from the NAPPRA listing. We are also adding *Jasminum* spp. plants for planting from South Africa to NAPPRA, and *Catharanthus* spp. plants for planting from Canada to NAPPRA.

A complete list of taxa added to the NAPPRA list and the restrictions placed on their importation can be found on the APHIS website at https://www.aphis.usda.gov/aphis/ourfocus/planthealth/import-information/permits/plants-and-plant-products-permits/plants-for-planting/ct_nappra.

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).

Authority: 7 U.S.C. 1633 and 7701–7772 and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 27th day of May 2021.

Mark Davidson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2021–11559 Filed 6–1–21; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers Used for Publication of Legal Notices in the Southwestern Region: Arizona, New Mexico, and Parts of Oklahoma and Texas

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all Ranger Districts, Grasslands, Forests, and the Regional Office of the Southwestern Region to publish legal notices. The intended effect of this action is to inform interested members of the public which newspapers the Forest Service will use to publish notices of proposed actions, notices of decision, and notices of opportunity to file an objection. This will provide the public with constructive notice of Forest Service proposals and decisions, provide information on the procedures to comment or object, and establish the date that the Forest Service will use to determine if comments or objections were timely.

DATES: Publication of legal notices in the listed newspapers will begin on the date of this publication and continue until further notice.

ADDRESSES: Roxanne Turley, Regional Administrative Review Coordinator, Forest Service, Southwestern Region; 333 Broadway SE, Albuquerque, NM 87102–3498.

FOR FURTHER INFORMATION CONTACT: Roxanne Turley, Regional Administrative Review Coordinator; (505) 842–3178 or roxanne.turley@usda.gov.

SUPPLEMENTARY INFORMATION: The administrative procedures at 36 CFR parts 218 and 219 require the Forest Service to publish notices in a newspaper of general circulation. The content of the notices is specified in 36 CFR parts 218 and 219. In general, the notices will identify: The decision or project by title or subject matter; the name and title of the official making the decision; how to obtain additional information; and where and how to file comments or objections. The date the notice is published will be used to establish the official date for the beginning of the comment or objection period. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper of record and which publication date shall be used for calculating the time period to file comment or an objection.

Southwestern Regional Office

Regional Forester

—Notices of Availability for Comment and Decisions and Objections affecting National Forest System Lands in the State of New Mexico for any projects of Region-wide impact, or for any projects affecting more than one National Forest or National Grassland in New Mexico:—*“Albuquerque Journal”*, Albuquerque, New Mexico.

—Regional Forester Notices of Availability for Comment and Decisions and Objections affecting National Forest System lands in the State of Arizona for any projects of Region-wide impact, or for any projects affecting more than one National Forest in Arizona:—*“The Arizona Republic”*, Phoenix, Arizona.

—Regional Forester Notices of Availability for Comment and Decisions and Objections affecting National Grasslands in New Mexico, Oklahoma, and Texas are listed by Grassland and location as follows:

Kiowa National Grassland—*“Union County Leader”*, Clayton New Mexico

Rita Blanca National Grassland in Cimarron County, Oklahoma—*“Boise City News”*, Boise City, Oklahoma

Rita Blanca National Grassland in Dallam County, Texas—*“The Dalhart Texan”*, Dalhart, Texas

Black Kettle National Grassland in Roger Mills County, Oklahoma—*“Cheyenne Star”*, Cheyenne, Oklahoma

Black Kettle National Grassland in Hemphill County, Texas—*“The Canadian Record”*, Canadian, Texas

McClellan Creek National Grassland in Gray County, Texas—*“The Pampa News”*, Pampa, Texas

—Regional Forester Notices of Availability for Comment and Decisions and Objections affecting only one National Forest or National Grassland unit will appear in the newspaper of record elected by each National Forest or National Grassland, as listed below.

Arizona National Forests

Apache-Sitgreaves National Forests

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Alpine Ranger District, Black Mesa Ranger District, Lakeside Ranger District, and Springerville Ranger District are published in:—*“The White Mountain Independent”*, Apache County, Arizona.

Clifton Ranger District Notices are published in:—“*Copper Era*”, Clifton, Arizona.

Coconino National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Mogollon Rim Ranger District, and Flagstaff Ranger District are published in:—“*Arizona Daily Sun*”, Flagstaff, Arizona.

Red Rock Ranger District Notices are published in:—“*Red Rock News*”, Sedona, Arizona.

Coronado National Forest

Notices for Availability for Comments, Decisions and Objections by the Forest Supervisor and Santa Catalina Ranger District are published in:—“*The Arizona Daily Star*”, Tucson, Arizona.

Douglas Ranger District Notices for projects occurring within the Chiricahua and Dragoon Mountain Ranges (the Chiricahua and Dragoon Ecosystem Management Areas) are published in:—“*Herald/Review*”, Sierra Vista, Arizona; notices for projects occurring within the Peloncillo Mountain Range (the Peloncillo Ecosystem Management Area) are published in:—“*Hidalgo County Herald*”, Lordsburg, New Mexico.

Nogales Ranger District Notices are published in:—“*Nogales International*”, Nogales, Arizona.

Sierra Vista Ranger District Notices are published in:—“*Herald/Review*”, Sierra Vista, Arizona.

Safford Ranger District Notices are published in:—“*Eastern Arizona Courier*”, Safford, Arizona.

Kaibab National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, North Kaibab Ranger District, Tusayan Ranger District, and Williams Ranger District Notices are published in:—“*Arizona Daily Sun*”, Flagstaff, Arizona.

Prescott National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Bradshaw Ranger District, and Chino Valley Ranger District are published in:—“*Daily Courier*”, Prescott, Arizona.

Verde Ranger District Notices are published in:—“*Verde Independent*”, Cottonwood, Arizona.

Tonto National Forest

Notices for Availability for Comments, Decisions, and Objections by Forest Supervisor, Cave Creek Ranger District, and Mesa Ranger District are

published in:—“*Arizona Capitol Times*”, in Phoenix, Arizona.

Globe Ranger District Notices are published in:—“*Arizona Silver Belt*”, Globe, Arizona.

Payson Ranger District, Pleasant Valley Ranger District and Tonto Basin Ranger District Notices are published in:—“*Payson Roundup*”, Payson, Arizona.

New Mexico National Forests

Carson National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Camino Real Ranger District, Tres Piedras Ranger District, and Questa Ranger District are published in:—“*The Taos News*”, Taos, New Mexico.

Canjilon Ranger District and El Rito Ranger District Notices are published in:—“*Rio Grande Sun*”, Espanola, New Mexico.

Jicarilla Ranger District Notices are published in:—“*Farmington Daily Times*”, Farmington, New Mexico.

Cibola National Forest and National Grasslands

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor affecting lands in New Mexico, except the National Grasslands are published in:—“*Albuquerque Journal*”, Albuquerque, New Mexico.

Forest Supervisor Notices affecting National Grasslands in New Mexico, Oklahoma and Texas are published by grassland and location as follows:

- Kiowa National Grassland in Colfax, Harding, Mora and Union Counties, New Mexico published in:—“*Union County Leader*”, Clayton, New Mexico
- Rita Blanca National Grassland in Cimarron County, Oklahoma published in:—“*Boise City News*”, Boise City, Oklahoma
- Rita Blanca National Grassland in Dallam County, Texas published in:—“*The Dalhart Texan*”, Dalhart, Texas
- Black Kettle National Grassland, in Roger Mills County, Oklahoma published in:—“*Cheyenne Star*”, Cheyenne, Oklahoma
- Black Kettle National Grassland, in Hemphill County, Texas, published in:—“*The Canadian Record*”, Canadian, Texas
- McClellan Creek National Grassland published in:—“*The Pampa News*”, Pampa, Texas.
- Kiowa National Grassland published in:—“*Union County Leader*”, Clayton, New Mexico.

Mt. Taylor Ranger District notices are published in:—“*Cibola County Beacon*”, Grants, New Mexico.

Magdalena Ranger District notices are published in:—“*El Defensor-Chieftain*”, Socorro, New Mexico.

Mountainair Ranger District notices are published in:—“*The Independent*”, Edgewood, New Mexico.

Sandia Ranger District notices are published in:—“*Albuquerque Journal*”, Albuquerque, New Mexico.

Gila National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Quemado Ranger District, Reserve Ranger District, Glenwood Ranger District, Silver City Ranger District and Wilderness Ranger District are published in:—“*Silver City Daily Press*”, Silver City, New Mexico.

Black Range Ranger District notices are published in:—“*Sierra County Sentinel*”, Truth or Consequences, New Mexico.

Lincoln National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor and the Sacramento Ranger District are published in:—“*Alamogordo Daily News*”, Alamogordo, New Mexico.

Guadalupe Ranger District Notices are published in:—“*Carlsbad Current Argus*”, Carlsbad, New Mexico.

Smokey Bear Ranger District Notices are published in:—“*Ruidoso News*”, Ruidoso, New Mexico.

Santa Fe National Forest

Notices for Availability for Comments, Decisions and Objections by Forest Supervisor, Coyote Ranger District, Cuba Ranger District, Espanola Ranger District, Jemez Ranger District and Pecos-Las Vegas Ranger District are published in:—“*Albuquerque Journal*”, Albuquerque, New Mexico.

Dated: May 26, 2021.

Barnie Gyant,

Associate Deputy Chief, NFS.

[FR Doc. 2021-11558 Filed 6-1-21; 8:45 am]

BILLING CODE 3411-15-P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Request To Conduct a New Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the National Agricultural Statistics Service (NASS) to seek approval to conduct a new information collection to gather data related to the use of agroforestry practices.

DATES: Comments on this notice must be received by August 2, 2021 to be assured of consideration.

ADDRESSES: You may submit comments, identified by docket number 0535-NEW, by any of the following methods:

- *Email:* ombofficer@nass.usda.gov.

Include docket number above in the subject line of the message.

- *E-fax:* (855) 838-6382.

- *Mail:* Mail any paper, disk, or CD-ROM submissions to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250-2024.

- *Hand Delivery/Courier:* Hand deliver to: David Hancock, NASS Clearance Officer, U.S. Department of Agriculture, Room 5336 South Building, 1400 Independence Avenue SW, Washington, DC 20250-2024.

FOR FURTHER INFORMATION CONTACT:

Kevin L. Barnes, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720-2707. Copies of this information collection and related instructions can be obtained without charge from David Hancock, NASS—OMB Clearance Officer, at (202) 690-2388 or at ombofficer@nass.usda.gov.

SUPPLEMENTARY INFORMATION:

Title: National Agroforestry Survey.

OMB Control Number: 0535-NEW.

Type of Request: Intent to seek approval to create a new information collection for a period of three years.

Abstract: The survey will collect data whether the operator uses any of five agroforestry practices typically used for conservation: Windbreaks, Silvopasture, Riparian Forest Buffers, Alley Cropping, as well as Forest Farming & Multi-story Cropping.

Windbreaks are linear plantings of trees and shrubs designed to provide economic, environmental and community benefits. The primary purpose of most windbreaks is to slow the wind which creates a more beneficial condition for soils, crops, livestock, wildlife and people.

Silvopasture is the deliberate integration of trees and grazing livestock operations on the same land. These systems are intensively managed for both forest products and forage,

providing both short- and long-term income sources.

A riparian forest buffer is an area adjacent to a stream, lake, or wetland that contains a combination of trees, shrubs, and/or other perennial plants and is managed differently from the surrounding landscape, primarily to provide conservation benefits.

Forest farming is the cultivation of high-value crops under the protection of a managed tree canopy. In some parts of the world, this is called multi-story cropping and when used on a small scale in the tropics it is sometimes called home gardening.

Alley cropping is defined as the planting of rows of trees and/or shrubs to create alleys within which agricultural or horticultural crops are produced. The trees may include valuable hardwood veneer or lumber species; fruit, nut or other specialty crop trees/shrubs; or desirable softwood species for wood fiber production.

NASS would plan and conduct the survey and deliver access to a dataset or responses to approved staff from USDA-Forestry Service, who will publish the results of the survey. This project is conducted as a cooperative effort with the U.S. Department of Agriculture's Forestry Service—National Agroforestry Center. Funding for this survey is being provided by the U.S. Department of Agriculture's Forestry Service—National Agroforestry Center.

Authority: These data will be collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985 as amended, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents. This Notice is submitted in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-113, 44 U.S.C. 3501, *et seq.*) and Office of Management and Budget regulations at 5 CFR part 1320.

NASS also complies with OMB Implementation Guidance, "Implementation Guidance for Title V of the E-Government Act, Confidential Information Protection and Statistical Efficiency Act of 2002 (CIPSEA)," **Federal Register**, Vol. 72, No. 115, June 15, 2007, p. 33362.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 50 minutes per response. NASS plans to mail out publicity materials with the questionnaires to inform respondents of the importance of this survey. NASS will also use a single mailing and internet data collection tools, followed

up with phone and limited personal enumeration of non-respondents to increase response rates and to minimize data collection costs.

Respondents: Farmers and Ranchers who reported using agroforestry practices on the 2017 Census of Agriculture.

Estimated Number of Respondents: 11,800.

Estimated Total Annual Burden on Respondents: 9,500 hours.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, through the use of appropriate automated, electronic, mechanical, technological, or other forms of information technology collection methods.

All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Signed at Washington, DC, May 20, 2021.

Kevin L. Barnes,

Associate Administrator.

[FR Doc. 2021-11537 Filed 6-1-21; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Office of Partnerships and Public Engagement

Advisory Committee on Minority Farmers; Meeting

AGENCY: Office of Partnerships and Public Engagement, USDA.

ACTION: Notice of conference call meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the Department of Agriculture and the Federal Advisory Committee Act (FACA), that a public teleconference of the Advisory Committee on Minority Farmers (ACMF) will be held to discuss USDA outreach, technical assistance, and capacity building for and with minority farmers; the implementation of the Socially Disadvantaged and Veteran Farmer and Rancher Grant Program (2501 Program); and methods of

maximizing the participation of minority farmers and ranchers in the U.S. Department of Agriculture; and to plan mechanisms for best providing advice to the Secretary on the issues outlined above.

DATES: The public portion of the conference call will be held on Wednesday, June 9, 2021 at 3:00–3:45 p.m. Central Standard Time (CST).

Public Call-In Information

The conference begins at 1:00 p.m. Central Time on June 9, 2021; you may join the conference 10 minutes prior.

Step 1: Dial into the conference.

Dial-in: 888–251–2949 or 215–861–0694.

Access Code: 5416488#.

Need an international dial-in number?

Step 2: Join the conference on your computer.

Entry Link: <https://ems8.intellor.com/login/838969>.

When you access the entry link above, you will be provided a choice—to install the WebEx plug-in for your preferred browser or to join the web conference using a temporary path. Either option is acceptable.

Need technical assistance?

Audio Connection: 1–888–796–6118.

WebEx Connection: 1–888–793–6118.

Public Comments: Written comments for the Committee's consideration may be submitted to email: ACMF@usda.gov. Written comments must be received by June 8th, 2021.

Availability of Materials for the Meeting: General information about the ACMF as well as any updates concerning the meeting announced in this notice, may be found on the ACMF website at <https://www.usda.gov/partnerships/advisory-committee-on-minority-farmers>.

Accessibility: USDA is committed to ensuring that all persons are included in our programs and events. If you are a person with a disability and require reasonable accommodations to participate in this meeting Please contact Eston Williams at Eston.Williams@usda.gov or (202) 596–0226.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern Standard Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

General information about the committee can also be found at <https://www.usda.gov/partnerships/advisory-committee-on-minority-farmers>. Any member of the public wishing to obtain

information concerning this public meeting may contact Eston Williams, Designated Federal Officer (DFO), at Eston.Williams@usda.gov or at (202) 596–0226.

SUPPLEMENTARY INFORMATION:

Background: The Committee was established in the U.S. Department of Agriculture pursuant to section 14008 of the Food Conservation and Energy Act of 2008, Public Law 110–246, 122 Stat. 1651, 2008 (7 U.S.C. 2279).

The Committee works in the interest of the public to ensure socially disadvantaged farmers have equal access to USDA programs. The Committee advises the Secretary on the implementation of section 2501 of the Food, Agriculture, Conservation, and Trade Act of 1990; methods of maximizing the participation of minority farmers and ranchers in U.S. Department of Agriculture programs; and civil rights activities within the Department, as such activities relate to participants in such programs.

Dated: May 25, 2021.

Cikena Reid,

USDA Committee Management Officer.

[FR Doc. 2021–11595 Filed 6–1–21; 8:45 am]

BILLING CODE 3412–88–P

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Notice of Funding Availability; Pandemic Cover Crop Program

AGENCY: Federal Crop Insurance Corporation, and Risk Management Agency, USDA.

ACTION: Notification of funding availability.

SUMMARY: The Risk Management Agency (RMA), on behalf of the Federal Crop Insurance Corporation (FCIC), is announcing the availability of funding under the Pandemic Cover Crop Program (PCCP) to help agricultural producers impacted by the effects of the COVID–19 outbreak. Given cover crop cultivation requires sustained, long-term investments to improve soil health and gain other agronomic benefits, the economic challenges due to the pandemic made maintaining cover cropping systems financially challenging for many producers. For the 2021 crop year, PCCP premium support is available to eligible producers for eligible insured acres on a spring crop insurance policy on which the producer planted a qualifying cover crop during the 2021 crop year.

FOR FURTHER INFORMATION CONTACT:

David Zanoni, Senior Underwriter, david.zanoni@usda.gov, 816–926–6142.

SUPPLEMENTARY INFORMATION:

Background

This notice of funding availability specifies the terms and conditions of PCCP. PCCP provides premium support to eligible producers who planted and reported to Farm Service Agency (FSA) a qualifying cover crop on acreage insured under a spring crop insurance policy during the 2021 crop year. Funds from Division N of the Consolidated Appropriations Act, 2021, (Pub. L. 116–260) will be used for this notice of funding availability.

Definitions

Approved Insurance Provider (AIP) means a legal entity that has entered into a reinsurance agreement with FCIC for the applicable reinsurance year and is authorized to sell and service policies or plans of insurance under the Federal Crop Insurance Act.

Crop insurance policy means an insurance policy reinsured by FCIC under the provisions of the Federal Crop Insurance Act, as amended. It does not include private plans of insurance.

Crop year means the period within which the insured crop is normally grown and is designated by the calendar year in which the insured crop is normally harvested.

Eligible insured acres means insured acres on which the producer planted a qualifying cover crop during the 2021 crop year, as reported on the CLU(s) to FSA via a completed and signed Form 578-Report of Acreage on or before June 15, 2021, which may be prior to FSA's acreage reporting date, and reported the same CLU(s) on their crop insurance acreage report by the applicable Federal crop insurance acreage reporting date for a 2021 crop year spring crop insurance policy.

Eligible producer means a producer meeting all of the eligibility requirements for PCCP.

FCIC means the Federal Crop Insurance Corporation, a wholly owned Government Corporation of USDA that administers the Federal crop insurance program.

FSA means the Farm Service Agency, USDA.

FSA Common Land Unit (CLU) means the smallest unit of land that has a permanent, contiguous boundary, common land cover and land management, common owner, and common producer association.

Insured crop means a crop for which the participant has purchased a crop insurance policy from an AIP.

Insured acres means the participant's share of insurable acreage that is insured in accordance with a crop insurance policy purchased from an AIP.

PCCP means Pandemic Cover Crop Program.

Person means a person as defined in 7 CFR 457.8(1).

Qualifying cover crop means any of the four types of cover crops: (1) Cereals and other grasses; (2) legumes; (3) brassicas; and (4) other non-legume broadleaves, and mixtures of two or more cover crop species planted at the same time. For the purposes of PCCP, an insured crop is not considered a qualifying cover crop.

RMA means the Risk Management Agency, USDA.

Spring crop means insured crops reported for the 2021 crop year with a Federal crop insurance acreage reporting date of April 15, 2021, to August 15, 2021, in accordance with the crop insurance policy.

USDA means United States Department of Agriculture.

Eligibility for PCCP

For the 2021 crop year, to be eligible for premium support under PCCP, the participant must be a person who is eligible to receive Federal benefits and who has purchased a crop insurance policy for a spring crop from an AIP for insured acres on which the participant planted and reported a qualifying cover crop during the 2021 crop year. Cover crops must be specifically reported to FSA via the Form-578 with the corresponding crop code. Potential participants that are uncertain of whether their cover crop was reported to the FSA are encouraged to contact their local FSA county office (farmers.gov/service-locator). Only acreage reports that are filed or amended prior to June 15 will be considered for the program.

Participants who are in violation of Highly Erodible Land or Wetlands Conservation (16 U.S.C. 3811–12, and 3821) are not eligible for premium support under PCCP.

A person is not eligible to receive benefits under PCCP if at any time that person is determined to be ineligible for crop insurance.

Whole Farm Revenue Protection, Supplemental Coverage Option, Enhanced Coverage Option, and Hurricane Insurance Protection—Wind Index policies or endorsements are not eligible for PCCP. Stacked Income Protection Plan (STAX) and Margin Protection (MP) policies are only eligible for PCCP when insured as a standalone policy. STAX and MP

endorsements to underlying policies are not eligible for PCCP.

Calculating and Accounting PCCP Amounts

For the 2021 crop year, for eligible insured acres covered under a spring crop insurance policy, the amount under PCCP for each insured acre will be \$5, calculated on a CLU basis, with a maximum equal to the amount of premium owed by the insured. Amounts under PCCP are limited to the full amount of premium owed by the insured for the eligible insured acres on a CLU basis. If the full amount under PCCP would result in a negative premium balance for the insured on a CLU basis, PCCP amounts will be limited to the full amount of premium owed on a CLU basis. If the eligible insured acres are amended for any reason, such as an overreporting of insured acres, the amount under PCCP will be based on the eligible insured acres after any such amendment.

Where state premium subsidy programs are also applicable, if the full amount of the premium support under the state premium subsidy program and PCCP would result in a negative premium balance for the insured on a CLU basis, state premium subsidy would be applied first toward premium owed. PCCP would be applied second, up to the full amount of producer premium owed on a CLU basis.

The amount under PCCP will not be paid directly to participants. FCIC and AIPs will account for the amount when calculating total producer premium due. AIPs will adjust participant bills accordingly. All bills still follow the same terms and conditions specified in the crop insurance policy, regardless of PCCP amounts. The payment limitations in 7 CFR 760.1507 are not applicable to PCCP.

PCCP premium support will be provided via premium billing adjustments by the applicable RMA premium billing date for the insured crop. RMA will obtain cover crop records from FSA and determine eligibility such that eligible producers do not need to take any additional specific action through their crop insurance agent to enroll in the PCCP. In the event that any PCCP amount is determined to be incorrect, the amount will be recalculated until the 2021 reinsurance year annual settlement date of October 7, 2022, unless otherwise specified by the Administrator. After that date, the amount will be final except in cases of misrepresentation, fraud, scheme, or device.

Paperwork Reduction Act Requirements

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control numbers 0563–0053.

Environmental Review

In general, the environmental impacts of programs are to be considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347) and the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508). FCIC conducts programs and activities that have been determined to have no individual or cumulative effect on the human environment. As specified in 7 CFR 1b.4, FCIC is categorically excluded from the preparation of an Environmental Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this notice will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this notice serves as documentation of the programmatic environmental compliance decision.

Federal Assistance Programs

The title and number of the Federal assistance programs, as found in the Catalog of Federal Domestic Assistance, to which this document applies is 10.450—Crop Insurance.

USDA Non-Discrimination Policy

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

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American

Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

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

Richard Flournoy,

Acting Administrator, Risk Management Agency.

[FR Doc. 2021-11603 Filed 6-1-21; 8:45 am]

BILLING CODE 3410-08-P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS-21-MFH-0008]

Notice of Solicitation of Applications for the Section 533 Housing Preservation Grants for Fiscal Year 2021

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Housing Service (RHS), a Rural Development agency (Agency) of the United States Department of Agriculture (USDA), announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. This action is taken to comply with Agency regulations which requires the Agency to announce the opening and closing dates for receipt of pre-applications for HPG funds from eligible applicants. The Agency will publish the amount of funding on its website at: <https://www.rd.usda.gov/programs-services/housing-preservation-grants>. Expenses incurred in developing pre-applications will be at the applicant's risk.

DATES: The closing deadline for receipt of all paper pre-applications in response to this Notice is 5:00 p.m., local time for each Rural Development State Office on July 7, 2021. If submitting the pre-application in electronic format, the closing deadline for receipt is 5:00 p.m. Eastern Daylight Time on July 19, 2021.

Rural Development State Office locations can be found at: <http://www.rd.usda.gov/contact-us/state-offices>. RHS will not consider any pre-application that is received after the closing deadline. Applicants intending to mail pre-applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by the United States Postal Service or private mailer does not constitute delivery. Facsimile (FAX) and postage due pre-applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Bonnie Edwards-Jackson, Finance and Loan Analyst, Multi-Family Housing Production and Preservation Division, telephone (202) 690-0759 (voice) (this is not a toll-free number) or (800) 877-8339 (TDD-Federal Information Relay Service) or via email at bonnie.edwards@usda.gov.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency Name: Rural Housing Service, USDA.

Funding Opportunity Title: Housing Preservation Grants.

Announcement Type: Notice.

Catalog of Federal Domestic

Assistance Number: 10.433.

A. Program Description

The HPG program is a grant program, authorized under 42 U.S.C. 1490m and implemented at 7 CFR part 1944, subpart N, which provides qualified public agencies, private non-profit organizations including, but not limited to, Faith-Based and neighborhood partnerships, and other eligible entities; grant funds to assist low- and very low-income homeowners in repairing and rehabilitating their homes in rural areas. In addition, the HPG program assists cooperative housing complexes and rental property owners in rural areas in repairing and rehabilitating their units if they agree to make such units available to very low- and low-income persons. Rental property owners can include Section 515 rental properties if the eligibility requirements for the HPG program are met. In accordance with 7 CFR 1944.663, rental property owners must agree to make the units repaired or rehabilitated available for occupancy to

very low- or low-income persons for a period of not less than five years. The minimum five-year restriction to rent the very low- and low-income tenants will only apply to the units that are repaired with the HPG funding. Any units within the property that were not repaired with HPG funding will not be subject to the five-year restriction.

B. Federal Award Information

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from one to two years, depending on available funds and demand. No maximum or minimum grant levels have been established at the National level. In accordance with 7 CFR 1944.652, coordination and leveraging of funding for repair and rehabilitation activities with housing and community development organizations or activities operating in the same geographic area are expected, but not required. Applicants should contact the Rural Development State Office to determine the allocation for their state.

The amount of funding available for the HPG program may be found at the following link: <http://www.rd.usda.gov/programs-services/housing-preservation-grants>. In addition, the Consolidated Appropriations Act, 2021 (Pub. L. 116-260) established a set-aside for grants located in Rural Economic Area Partnership Zones (REAP Zones). The State Office will indicate on the list submitted to the National Office if the pre-application is eligible for the REAP Zones set-aside. The National Office will then compile a national list, rank the REAP Zones applicants based on the point allocations set forth in this **Federal Register** Notice, and distribute the HPG REAP Zones set-aside starting with the highest scoring eligible HPG REAP Zones applicants. Other funds will be distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Program Funds." Decisions on funding will be based on pre-application scores. Anyone interested in submitting a pre-application for funding under this program is encouraged to consult the Rural Development website, <http://www.rd.usda.gov/programs-services/housing-preservation-grants>, periodically for updated information regarding the status of funding authorized for this program.

The commitment of program dollars will be made to selected applicants that have fulfilled the necessary requirements for obligation.

C. Eligibility Information

1. *Eligible Applicants.* Eligible entities for these competitively awarded grants include State and local Governments; non-profit corporations, which may include, but not be limited to Faith-Based and community organizations; federally recognized Indian Tribes; and consortia of eligible entities. HPG applicants who were previously selected for HPG funds are eligible to submit new pre-applications to apply for FY 2021 HPG program funds. More eligibility requirements can be found at 7 CFR 1944.658, 1944.661, 1944.662 and 1944.686.

2. *Cost Sharing or Matching.* Pursuant to 7 CFR 1944.652, grantees are expected to coordinate and leverage funding for repair and rehabilitation activities; as well as replacement housing, with housing and community development organizations or activities operating in the same geographic area. While HPG funds may be leveraged with other resources, cost sharing or matching is not a requirement for the HPG applicant as the HPG applicant would not be denied an award of HPG funds if all other project selection criteria have been met.

3. *Other.* Awards made under this Notice are subject to the provisions contained in the Consolidated Appropriations Act, 2021 (Pub. L. 116–260) sections 744 and 745, Division E “Financial Services and General Government Appropriations Act, 2021, Title VII “General Provisions—Government-wide,” regarding Corporate Felony Convictions and Corporate Federal Tax Delinquencies. To comply with these provisions, only applicants that are or propose to be, corporations will submit this form as part of their pre-application. Form AD–3030, “Representations Regarding Felony Conviction and Tax Delinquent Status for Corporate Applicants,” can be found here: <http://www.ocio.usda.gov/document/ad3030>.

D. Pre-Application and Submission Information

1. *Address to Request Pre-application Package:* Applicants wishing to submit a paper pre-application in response to this Notice must contact the Rural Development State Office serving the State of the proposed HPG housing project in order to receive further information and copies of the paper pre-application package. You may find the addresses and contact information for each State Office following this link: <http://www.rd.usda.gov/contact-us/state-offices>. Rural Development will date, and time stamp incoming paper

pre-applications to evidence timely receipt and; upon request, will provide the applicant with a written acknowledgment of receipt (due to Covid–19, if submitting a paper pre-application, applicants must contact the applicable State Office to confirm mailing instructions). You may access the electronic grant pre-application for Housing Preservation Grants at: <http://www.grants.gov>.

2. *Content and Form of Pre-application:* 7 CFR part 1944, subpart N provides details on what information must be contained in the pre-application package. Entities wishing to apply for assistance should contact the Rural Development State Office to receive further information, the State allocation of funds, and copies of the pre-application package. Unless otherwise noted, applicants wishing to apply for assistance must make its statement of activities available to the public for comment. The applicant(s) must announce the availability of its statement of activities for review in a newspaper of general circulation in the project area and allow at least 15 days for public comment. The start of this 15-day period must occur no later than 16 days prior to the last day for acceptance of pre-applications by the United States Department of Agriculture (USDA)—Rural Development. Federally recognized Indian Tribes, pursuant to 7 CFR 1944.674, are exempt from the requirement to consult with local leaders including announcing the availability of its statement of activities for review in a newspaper.

All applicants will file an original copy of Standard Form (SF)–424, “Application for Federal Assistance,” and supporting information with the appropriate Rural Development State Office. This form may be found on the USDA eForms website (<https://forms.sc.egov.usda.gov/eForms/welcomeAction.do?Home>). A pre-application package; including SF–424, is available in any Rural Development State Office. All pre-applications shall be accompanied by the following information which Rural Development will use to determine the applicant’s eligibility to undertake the HPG program and to evaluate the pre-application under the project selection criteria of 7 CFR 1944.679.

(a) A statement of activities proposed by the applicant for its HPG program as appropriate to the type of assistance the applicant is proposing, including:

(1) A complete discussion of the type of and conditions for financial assistance for housing preservation, including whether the request for assistance is for a homeowner assistance

program, a rental property assistance program, or a cooperative assistance program.

(2) The process for selecting recipients for HPG assistance, determining housing preservation needs of the dwelling, performing the necessary work, and monitoring/inspecting work performed.

(3) A description of the process for coordinating with other public and private organizations and programs that provide assistance in rehabilitation of historic properties in accordance with 7 CFR 1944.673.

(4) The development standard(s) the applicant will use for the housing preservation work; and, if not the Rural Development standards for existing dwellings, the evidence of its acceptance by the jurisdiction where the grant will be implemented.

(5) The time schedule for completing the program.

(6) The staffing required to complete the program.

(7) The estimated number of very low- and low-income minority and non-minority persons the grantee will assist with HPG funds; and, if a rental property or cooperative assistance program, the number of units and the term of restrictive covenants on their use for very low- and low-income.

(8) The geographical area(s) to be served by the HPG program.

(9) The annual estimated budget for the program period based on the financial needs to accomplish the objectives outlined in the proposal. The budget should include proposed direct and indirect administrative costs; such as personnel, fringe benefits, travel, equipment, supplies, contracts, and other cost categories, detailing those costs for which the grantee proposes to use the HPG grant separately from non-HPG resources, if any. The applicant budget should also include a schedule (with amounts) of how the applicant proposes to draw HPG grant funds, *i.e.*, monthly, quarterly, lump sum for program activities, etc.

(10) A copy of an indirect cost proposal when the applicant has another source of Federal funding in addition to the Rural Development HPG program.

(11) A brief description of the accounting system to be used.

(12) The method of evaluation to be used by the applicant to determine the effectiveness of its program which encompasses the requirements for quarterly reports to Rural Development in accordance with 7 CFR 1944.683(b) and the monitoring plan for rental properties and cooperatives (when

applicable) according to 7 CFR 1944.689;

(13) The source and estimated amount of other financial resources to be obtained and used by the applicant for both HPG activities and housing development and/or supporting activities.

(14) The use of program income; if any, and the tracking system used for monitoring same.

(15) The applicant's plan for disposition of any security instruments held by them as a result of its HPG activities in the event of its loss of legal status.

(16) Any other information necessary to explain the proposed HPG program; and

(17) The outreach efforts outlined in 7 CFR 1944.671(b).

(b) Complete information about the applicant's experience and capacity to carry out the objectives of the proposed HPG program.

(c) Evidence of the applicant's legal existence, including, in the case of a private non-profit organization; which may include, but not be limited to, Faith-Based and community organizations; a copy of, or an accurate reference to, the specific provisions of State law under which the applicant is organized; a certified copy of the applicant's Articles of Incorporation and Bylaws or other evidence of corporate existence; certificate of incorporation for applicants other than public bodies; evidence of good standing from the State when the corporation has been in existence one year or more; and the names and addresses of the applicant's members, directors and officers. If other organizations are members of the applicant-organization, or the applicant is a consortium, pre-applications should be accompanied by the names, addresses, and principal purpose of the other organizations. If the applicant is a consortium, documentation showing compliance with paragraph (4)(ii) under the definition of "organization" in 7 CFR 1944.656 must also be included.

(d) For a private non-profit entity; which may include, but not be limited to, Faith-Based and community organizations, the most recent audited statement and a current financial statement dated and signed by an authorized officer of the entity showing the amounts and specific nature of assets and liabilities together with information on the repayment schedule and status of any debt(s) owed by the applicant.

(e) A brief narrative statement which includes information about the area to be served and the need for improved housing (including both percentage and

the actual number of both low-income and low-income minority households and substandard housing), the need for the type of housing preservation assistance being proposed, the anticipated use of HPG resources for historic properties, the method of evaluation to be used by the applicant in determining the effectiveness of its efforts.

(f) A statement containing the component for alleviating any overcrowding as defined by 7 CFR 1944.656.

(g) A signed copy of the documentation in accordance with 7 CFR 1944.673 (as a companion to (a)(3) above).

(h) The applicant must submit written statements and related correspondence reflecting compliance with 7 CFR 1944.674(a) and (c) regarding consultation with local Government leaders in the preparation of its program and the consultation with local and State Government pursuant to the provisions of Executive Order 12372.

(i) The applicant is to make its statement of activities available to the public for comment prior to submission to Rural Development pursuant to 7 CFR 1944.674(b). The pre-application must contain a description of how the comments (if any were received) were addressed.

(j) The applicant must submit an original and one copy of Form RD 400-1, "Equal Opportunity Agreement" and Form RD 400-4, "Assurance Agreement" in accordance with 7 CFR 1944.676.

Applicants should review 7 CFR part 1944, subpart N for a comprehensive list of all application requirements.

3. *System for Awards Management:* All program applicants must be registered in the System for Awards Management (SAM) prior to submitting a pre-application, unless determined exempt under 2 CFR 25.110. You may register in SAM at no cost at <https://sam.gov/SAM/>. Recipients must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. The applicant must ensure that the information in the database is current, accurate and complete. Applicants must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

4. *Intergovernmental Review:* In accordance with 7 CFR 1944.674, the HPG program is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local

officials. Applications from Federally recognized Indian tribes are not subject to this requirement.

5. *Funding Restrictions:* There are no limits on proposed direct and indirect costs. Expenses incurred in developing pre-applications will be at the applicant's risk.

6. *Other Submission Requirements:* USDA is participating as a partner in the Government-wide *Grants.gov* website. Housing Preservation Grants [Catalog of Federal Domestic Assistance #10.433] is one of the programs included at this website. If you are an applicant under the HPG program, you may submit your pre-application to the Agency in either electronic or paper format. Please be mindful that the pre-application deadline for electronic format differs from the deadline for paper format. The electronic format deadline will be based on Eastern Daylight Time. The paper format deadline is local time for each Rural Development State Office.

Users of *Grants.gov* will be able to download a copy of the pre-application package, complete it offline, and then upload and submit the pre-application via the *Grants.gov* site. You may not email an electronic copy of a grant pre-application to USDA Rural Development; however, the Agency encourages your participation in *Grants.gov*.

The following are useful tips and instructions on how to use the website:

- When you enter the *Grants.gov* website, you will find information about submitting an application electronically through the website as well as the hours of operation. USDA-Rural Development strongly recommends that you do not wait until the pre-application deadline date to begin the application process through *Grants.gov*. To use *Grants.gov*, applicants must have a DUNS number. The DUNS number can be obtained at no cost via a toll-free request line at (866) 705-5711.
- You may submit all documents electronically through the website, including all information typically included on the pre-application for HPG, and all necessary assurances and certifications.

- After you electronically submit your pre-application through the website, you will receive an automatic acknowledgement from *Grants.gov* that contains a *Grants.gov* tracking number.

- RHS may request that you provide original signatures on forms at a later date.

- If you experience technical difficulties on the closing date and are unable to meet the 5:00 p.m. (Eastern Daylight Time) deadline, print out your pre-application and submit it to your

State Office; you must meet the closing date and local time deadline.

- Please note that you must locate the downloadable pre-application package for this program by the CFDA Number or FedGrants Funding Opportunity Number, which can be found at <http://www.grants.gov>.

Please Note: If you receive a grant award under this Notice, USDA reserves the right to post all information that is not protected by the Privacy Act submitted as part of the pre-application/application package on a public website with free and open access to any member of the public.

E. Pre-Application Review Information

1. *Criteria.* All paper pre-applications for Section 533 HPG funds must be filed with the appropriate Rural Development State Office and all paper or electronic pre-applications must meet the requirements of this Notice and 7 CFR part 1944, subpart N. Pre-applications determined not eligible and/or not meeting the selection criteria will be notified by the Rural Development State Office.

2. *Review and Selection Process.* The Rural Development State Offices will utilize the following threshold project selection criteria for applicants in accordance with 7 CFR 1944.679:

(a) Providing a financially feasible program of housing preservation assistance. "Financially feasible" is defined as proposed assistance which will be affordable to the intended recipient or result in affordable housing for very low- and low-income persons.

(b) Serving eligible rural areas with a concentration of substandard housing for households of very low- and low-income.

(c) Being an eligible applicant as defined in 7 CFR 1944.658.

(d) Meeting the requirements of consultation and public comment in accordance with 7 CFR 1944.674.

(e) Submitting a complete pre-application as outlined in 7 CFR 1944.676.

3. *Scoring.* For applicants meeting all of the requirements listed above, the Rural Development State Offices will use weighted criteria in accordance with 7 CFR part 1944, subpart N as selection for the grant recipients. Each pre-application and its accompanying statement of activities will be evaluated and, based solely on the information contained in the pre-application, the applicant's proposal will be numerically rated on each criterion within the range provided. The highest-ranking applicant(s) will be selected based on allocation of funds available to the State.

(a) Points are awarded based on the percentage of very low-income persons that the applicant proposes to assist, using the following scale:

- (1) More than 80%: 20 points
- (2) 61% to 80%: 15 points
- (3) 41% to 60%: 10 points
- (4) 20% to 40%: 5 points
- (5) Less than 20%: 0 points

(b) The applicant's proposal may be expected to result in the following percentage of HPG fund use (excluding administrative costs) to total cost of unit preservation. This percentage reflects maximum repair or rehabilitation with the least possible HPG funds due to leveraging, innovative financial assistance, owner's contribution, or other specified approaches. Points are awarded based on the following percentage of HPG funds (excluding administrative costs) to total funds:

- (1) 50% or less: 20 points
- (2) 51% to 65%: 15 points
- (3) 66% to 80%: 10 points
- (4) 81% to 95%: 5 points
- (5) 96% to 100%: 0 points

(c) The applicant has demonstrated its administrative capacity in assisting very low- and low-income persons to obtain adequate housing based on the following:

(1) The organization or a member of its staff has at least one or more years experience successfully managing and operating a rehabilitation or weatherization type program: 10 points.

(2) The organization or a member of its staff has at least one or more years experience successfully managing and operating a program assisting very low- and low-income persons obtain housing assistance: 10 points.

(3) If the organization has administered grant programs, there are no outstanding or unresolved audit or investigative findings which might impair carrying out the proposal: 10 points.

(d) The proposed program will be undertaken entirely in rural areas outside Metropolitan Statistical Areas (MSAs) identified by Rural Development as having populations below 10,000 or in remote parts of other rural areas (*i.e.*, rural areas contained in MSAs with less than 5,000 population) as defined in 7 CFR 1944.656: 10 points.

(e) The program will use less than 20 percent of HPG funds for administration purposes:

- (1) More than 20%: Not eligible
- (2) 20%: 0 points
- (3) 19%: 1 point
- (4) 18%: 2 points
- (5) 17%: 3 points
- (6) 16%: 4 points
- (7) 15% or less: 5 points

(f) The proposed program contains a component for alleviating overcrowding as defined in 7 CFR 1944.656: 5 points.

In the event more than one pre-application receives the same amount of points, those pre-applications will then be ranked based on the actual percentage figure used for determining the points in item (a) in the "Scoring" section of this Notice (7 CFR 1944.679 (b)(1)).

Example of 1st tie-break:
Both Applicants score 80 points
Applicant X's percentage in "Scoring" section item (a) is 65%
Applicant B's percentage in "Scoring" section item (a) is 75%
Applicant B is ranked higher than Applicant X
Applicant B will be funded before Applicant X

Further, in the event that pre-applications are still tied, then those pre-applications still tied will be ranked based on the percentage figures used for determining the points in item (b) in the "Scoring" section of this Notice (7 CFR 1944.679 (b)(2)).

Example of 2nd tie-break:
Both Applicants score 80 points
Both Applicants percentage in "Scoring" section item (a) is 65%
Applicant X's percentage in "Scoring" section item (b) is 55%
Applicant B's percentage in "Scoring" section item (b) is 60%
Applicant X is ranked with a lower percentage than Applicant B
Applicant X will be funded before Applicant B

Further, 7 CFR 1944.679 (c), for applications where HPG assistance to rental properties or co-ops is proposed, those still tied will be further ranked based on the number of years the units are available for occupancy under the program (a minimum of five years is required). For this part, ranking will be based from most to least number of years.

Example of 3rd tie-break:
Both Applicants score 80 points
Both Applicants percentage in "Scoring" section item (a) is 65%
Both Applicants percentage in "Scoring" section item (b) is 55%
Applicant X's rental unit will be available for occupancy under the program for 10 years
Applicant B's rental unit will be available for occupancy under the program for 5 years
Applicant X is ranked higher than Applicant B
Applicant X will be funded before Applicant B

If any of the applicants that remain tied after the 1st and 2nd tie-breaks are

offering to assist single family owners, *then the 3rd tie-break would not be applicable*, and a lottery would be used to select the applicant to be funded.

If there is still a tie after the first two [or three, when applicable] tie-breaks, then a lottery system will be used to select the applicant to be funded. The lottery will be conducted at the National Office. The lottery will consist of the names of each pre-application with equal scores printed onto a same size piece of paper, which will then be placed into a receptacle that fully obstructs the view of the names. The Director of the Production and Preservation Division, in the presence of two witnesses, will draw a piece of paper from the receptacle. The name on the piece of paper drawn will be the applicant to be funded.

After the award selections are made, all applicants will be notified of the status of their pre-applications by mail with form AD-622 Form, "Notice of Pre-Application Review Action." Applicants will be given their review rights or appeal rights in accordance with 7 CFR 1944.682.

F. Federal Award Administration Information

1. *Federal Award Notices.* The Agency will notify; in writing, applicants whose pre-applications have been selected for funding. At the time of notification, the Agency will advise the applicant what further information and documentation is required along with a timeline for submitting the additional information. If the Agency determines it is unable to select the pre-application for funding, the applicant will be informed in writing. Such notification will include the reasons the applicant was not selected. The Agency will advise applicants, whose pre-applications did not meet eligibility and/or selection criteria, of their review rights or appeal rights in accordance with 7 CFR 1944.682.

2. *Administrative and National Policy Requirements.* Rural Development is encouraging applications for projects that will support rural areas with persistent poverty. This emphasis will support Rural Development's mission of improving the quality of life for Rural Americans and commitment to directing resources to those who most need them.

(a) The following additional requirements apply to grantees selected for this program:

- (1) Complete Form RD 1942-46 "Letter of Intent to Meet Conditions."
- (2) Complete Form RD 1940-1, "Request for Obligations of Funds."
- (3) Complete FMMI Vendor Code Request Form.

(4) Provide a copy of your organization's Negotiated Indirect Cost Rate Agreement.

(5) Certify that all work completed for the award will benefit a rural area.

(6) Certify that you will comply with the Federal Funding Accountability and Transparency Act of 2006 and report information about subawards and executive compensation.

(7) Certify that the U.S. has not obtained an outstanding judgement against your organization in a Federal Court (other than in the United States Tax Court).

(8) Execute Form SF-424B, "Assurance—Non-Construction Programs."

(9) Execute Form SF-LLL, "Disclosure Form to Report Lobbying," if applicable or certify that your organization does not lobby.

(b) The applicant must provide evidence of compliance with other federal statutes, including but not limited to the following:

(1) Debarment and suspension information is required in accordance with 2 CFR part 417 (Nonprocurement Debarment and Suspension) supplemented by 2 CFR part 180, if it applies. The section heading is "What information must I provide before entering into a covered transaction with a Federal agency?" located at 2 CFR 180.335. It is part of OMB's Guidance for Grants and Agreements concerning Government-wide Debarment and Suspension.

(2) All of your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in Subpart B of 2 CFR part 421, which adopts the Governmentwide implementation (2 CFR part 182) of the Drug-Free Workplace Act.

(3) 2 CFR parts 200 and 400 (Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards).

(4) 2 CFR part 182 (Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)) and 2 CFR part 421 (Requirements for Drug Free Workplace (Financial Assistance)).

(5) Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency." For information on limited English proficiency and agency-specific guidance, go to <http://www.lep.gov>.

The following forms for acceptance of a federal award are now collected through your registration or annual recertification in *SAM.gov* in the

Financial Assistance General Certifications and Representations section:

- Form RD 400-4, "Assurance Agreement."
- Form AD-1047, "Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions."
- Form AD-1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion. Lower Tier Covered Transactions."
- Form AD-1049, "Certification Regarding Drug-Free Workplace Requirements (Grants)."
- Form AD-3031, "Assurance Regarding Felony Conviction or Tax Delinquent Status for Corporate Applicants."

3. *Reporting.* Post-award reporting requirements can be found in the Grant Agreement. The grantee will provide an audit report or financial statements in accordance with Uniform Audit Requirements for Federal Awards at 2 CFR part 200, subpart F.

G. Paperwork Reduction Act

The reporting requirements contained in this Notice have been approved by the Office of Management and Budget under OMB Number 0575-0115.

H. Non-Discrimination Statement

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

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

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form AD-

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

(1) *Mail*: United States Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250-9410;

(2) *Fax*: (202) 690-7442; or

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

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

Chadwick Parker,

Acting Administrator, Rural Housing Service.

[FR Doc. 2021-11564 Filed 6-1-21; 8:45 am]

BILLING CODE 3410-XV-P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B-42-2021]

Foreign-Trade Zone 249—Pensacola, Florida; Application for Reorganization and Expansion Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Pensacola-Escambia County Promotion & Development Commission, grantee of FTZ 249, requesting authority to reorganize and expand the zone under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater flexibility in the designation of new subzones or “usage-driven” FTZ sites for operators/users located within a grantee’s “service area” in the context of the FTZ Board’s standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on May 26, 2021.

FTZ 249 was approved by the FTZ Board on May 23, 2001 (Board Order 1167, 66 FR 30408, June 6, 2001). The current zone includes the following sites: *Site 1* (40 acres)—Port of Pensacola, 700 S. Barracks Street, Pensacola; *Site 2* (1,400 acres)—Pensacola Regional Airport Complex, 2430 Airport Boulevard, Pensacola; *Site 3* (70 acres)—Pensacola Shipyard

Marine Complex, 700 South Myrick Street, Pensacola; *Site 4* (10 acres)—FDC Industrial Warehouse, 10 Spruce Street, Pensacola; and, *Site 5* (140 acres)—Century Industrial Park, Escambia County Road 4 and Industrial Boulevard, Century.

The grantee’s proposed service area under the ASF would be Escambia, Okaloosa and Santa Rosa Counties, Florida, as described in the application. If approved, the grantee would be able to serve sites throughout the service area based on companies’ needs for FTZ designation. The application indicates that the proposed service area is within and adjacent to the Pensacola U.S. Customs and Border Protection port of entry.

The applicant is requesting authority to reorganize its existing zone to include Sites 1, 2, 3 and 5 as “magnet” sites and that Site 4 be removed. The ASF allows for the possible exemption of one magnet site from the “sunset” time limits that generally apply to sites under the ASF, and the applicant proposes that Site 1 be so exempted. The applicant is also requesting approval of the following “usage-driven” sites for SnackCrate, Inc.: *Site 6* (1 acre)—201 East Wright Street, Pensacola; *Site 7* (1 acre)—3330 Bill Metzger Lane, Pensacola; and, *Site 8* (1 acre)—3867 Palafox Street, Pensacola. The application would have no impact on FTZ 249’s previously authorized subzone.

In accordance with the FTZ Board’s regulations, Christopher Kemp of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board’s Executive Secretary and sent to: ftz@trade.gov. The closing period for their receipt is August 2, 2021. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 16, 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. For further information, contact Christopher Kemp at Christopher.Kemp@trade.gov.

Dated: May 26, 2021.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2021-11538 Filed 6-1-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meetings

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for the upcoming public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meeting will be held on June 24, 2021, from 10:00 a.m. to 4:00 p.m., Eastern Daylight Time (EDT).

ADDRESSES: The meeting will be held via Webex.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services (OSCPBS), International Trade Administration. Telephone: 202-482-1135. Email: richard.boll@trade.gov.

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: <https://www.trade.gov/acsc>.

Matters To Be Considered: Committee members are expected to continue discussing the major competitiveness-related topics raised at the previous Committee meetings, including supply chain resilience and congestion; trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development. The Committee’s subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate other Committee business. The Office of Supply Chain, Professional & Business Services will post the final detailed agenda on its website, <https://www.trade.gov/acsc>, at least one week prior to the meeting.

The meeting is open to the public and press on a first-come, first-served basis. Space is limited. Please contact Richard

Boll, at richard.boll@trade.gov, for participation information.

Interested parties may submit written comments to the Committee at any time before and after the meeting. Parties wishing to submit written comments for consideration by the Committee in advance of this meeting should email them to richard.boll@trade.gov.

For consideration during the meeting, and to ensure transmission to the Committee prior to the meeting, comments must be received no later than 5:00 p.m. EST on June 17, 2021. Comments received after June 17, 2021, will be distributed to the Committee, but may not be considered at the meeting. The minutes of the meeting will be posted on the Committee website within 60 days of the meeting.

Eugene Alford,

Supply Chain Team Lead, Office of Supply Chain, Professional, and Business Services.

[FR Doc. 2021-11510 Filed 6-1-21; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity for appointment to serve as a District Export Council member.

SUMMARY: The Department of Commerce is currently seeking nominations of individuals for consideration for appointment by the Secretary of Commerce to serve as members of one of the 61 District Export Councils (DECs) nationwide. DECs are closely affiliated with the U.S. Export Assistance Centers (USEACs) of the U.S. and Foreign Commercial Service (US&FCS), which is part of the Global Markets unit within the International Trade Administration, and play a key role in the planning and coordination of export activities in their communities.

DATES: Nominations for individuals to a DEC must be received by the local USEAC Director by 5:00 p.m. local time on July 31, 2021.

FOR FURTHER INFORMATION CONTACT: Please contact the Director of your local USEAC for more information on DECs and the nomination process. You may identify your local USEAC by entering your zip code online at <http://export.gov/usoffices/index.asp>. For general program information, contact

Laura Barmby, National DEC Liaison, US&FCS, at (202) 482-2675.

SUPPLEMENTARY INFORMATION: District Export Councils support the mission of US&FCS by facilitating the development of an effective local export assistance network, supporting the expansion of export opportunities for local U.S. companies, serving as a communication link between the business community and US&FCS, and assisting in coordinating the activities of trade assistance partners to leverage available resources. Individuals appointed to a DEC become part of a select corps of trade professionals dedicated to providing international trade leadership and guidance to the local business community and assistance to the Department of Commerce on export development issues. DEC members are volunteers. DEC members are not special government employees. DEC members receive no compensation for their participation in DEC activities or reimbursement for travel and other personal expenses.

Nomination Process: Each DEC has a maximum membership of 35. Approximately half of the positions are open on each DEC for the four-year term that begins on January 1, 2022 and runs through December 31, 2025. All potential nominees must complete an online nomination form and consent to sharing of the information on that form with the DEC Executive Committee for its consideration, and consent, if appointed, to sharing of their contact information with other DEC members and relevant government agencies and private sector organizations with a focus on trade. Interested individuals are highly encouraged to reach out to the local USEAC Director to learn more about the DECs and to begin the application process as soon as possible. While interested individuals can submit applications prior to July 1, 2021, USEAC Directors will formally accept nominations from July 1 until July 31, 2021.

Eligibility and Appointment Criteria: Appointment is based upon an individual's international trade leadership in the local community, ability to influence the local environment for exporting, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to DEC activities. Members must be employed as exporters or export service providers or in a profession which supports U.S. export promotion efforts. Members include exporters, export service providers and others whose profession supports U.S. export

promotion efforts. DEC member appointments are made without regard to political affiliation. DEC membership is open to U.S. citizens and permanent residents of the United States. As representatives of the local exporting community, DEC Members must reside in, or conduct the majority of their work in, the territory that the DEC covers. DEC membership is not open to federal government employees. Individuals representing foreign governments, including individuals registered with the Department of Justice under the Foreign Agents Registration Act, must disclose such representation and may be disqualified if the Department determines that such representation is likely to impact the ability to carry out the duties of a DEC member or raise an appearance issue for the Department.

Selection Process: Nominations of individuals who have applied for DEC membership will be forwarded to the local USEAC Director for the respective DEC for that Director's consideration. The local USEAC Director ensures that all nominees meet the membership criteria. The local USEAC Director then, in consultation with the local DEC Executive Committee, evaluates all nominations to determine their interest, commitment, and qualifications. In reviewing nominations, the local USEAC Director strives to ensure a balance among exporters from a manufacturing or service industry and export service providers. A fair representation should be considered from companies and organizations that support exporters, representatives of local and state government, and trade organizations and associations. Membership should reflect the diversity of the local business community, encompass a broad range of businesses and industry sectors, and be distributed geographically across the DEC service area.

For current DEC members seeking reappointment, the local USEAC Director, in consultation with the DEC Executive Committee, also carefully considers the nominee's activity level during the previous term and demonstrated ability to work cooperatively and effectively with other DEC members and US&FCS staff. As appointees of the Secretary of Commerce in high-profile positions, though volunteers, DEC Members are expected to actively participate in the DEC and support the work of local US&FCS offices. Those that do not support the work of the office or do not actively participate in DEC activities will not be considered for re-nomination.

The local USEAC Director, in consultation with the local DEC Executive Committee, determines which nominees to forward to the US&FCS Office of U.S. Field for further consideration for recommendation to the Secretary of Commerce. A candidate's background and character are pertinent to determining suitability and eligibility for DEC membership. Since DEC appointments are made by the Secretary, the Department must make a suitability determination for all DEC nominees. After completion of a vetting process, the Secretary selects nominees for appointment to local DEC's. DEC members are appointed by and serve at the pleasure of the Secretary of Commerce.

Authority: 15 U.S.C. 1512 and 4721.

Laura Barmby,

District Export Council Program Manager.

[FR Doc. 2021-11560 Filed 6-1-21; 8:45 am]

BILLING CODE 3510-PP-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-051; C-570-052]

Certain Hardwood Plywood Products From the People's Republic of China: Final Results of Changed Circumstances Reviews, and Revocation of the Antidumping and Countervailing Duty Orders in Part

AGENCY: Enforcement and Compliance International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is revoking, in part, the antidumping duty (AD) and countervailing duty (CVD) orders on certain hardwood plywood products (hardwood plywood) from the People's Republic of China (China) with respect to certain finished laminated veneer lumber (LVL) door stiles and rails.

DATES: Applicable June 2, 2021.

FOR FURTHER INFORMATION CONTACT: Nicolas Mayora, 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) 482-3053.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2018, Commerce published the AD and CVD orders on hardwood plywood from China.¹ On

¹ See *Certain Hardwood Plywood Products from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value*,

April 6, 2021, Commerce published the preliminary results of changed circumstances reviews (CCRs) and revocation, in part, of the *Orders*, pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(b), with respect to LVL door stiles and rails.² We invited interested parties to comment on the *Preliminary Results*.

On April 14, 2021, we received new factual information from MJB Wood Group LLC (MJB), a U.S. importer of the subject merchandise, which was placed on the record by MJB at Commerce's request.³ On April 20, 2021, Commerce received comments from MJB and the petitioner⁴ in response to the *Preliminary Results*.⁵ On April 27, 2020, we received rebuttal comments from the petitioner.⁶

Final Results of Changed Circumstances Reviews, and Revocation of the Orders, in Part

Because no party submitted comments opposing the *Preliminary Results* of these CCRs, and the record contains no further information or evidence that weighs against the proposed partial revocations, Commerce has determined, pursuant to sections 751(d)(1) and 782(h) of the Act, and 19 CFR 351.222(g), that there are changed circumstances that warrant revocation of the *Orders*, in part. Specifically, in light of the petitioner's statement of lack of interest, and the absence of comments from any interested party addressing the issue of domestic industry support, we find that producers accounting for substantially all of the production of the

and Antidumping Duty Order, 83 FR 504 (January 4, 2018) (*AD Order*); and *Certain Hardwood Plywood Products from the People's Republic of China: Countervailing Duty Order*, 83 FR 513 (January 4, 2018) (*CVD Order*) (collectively, the *Orders*).

² See *Certain Hardwood Plywood Products from the People's Republic of China: Preliminary Results of Changed Circumstances Reviews, and Consideration of Revocation of the Antidumping and Countervailing Duty Orders in Part*, 86 FR 17774 (April 6, 2021) (*Preliminary Results*).

³ See MJB's Letter, "Changed Circumstances Reviews of Hardwood Plywood Products from the People's Republic of China: New Factual Information," dated April 14, 2021 (MJB's NFI Letter).

⁴ The petitioner is the Coalition for Fair Trade in Hardwood Plywood.

⁵ See MJB's Letter, "Changed Circumstances Reviews of Hardwood Plywood Products from the People's Republic of China: Case Brief on Preliminary Results," dated April 20, 2021 (MJB's Comments); see also Petitioner's Letter, "Hardwood Plywood Products from the People's Republic of China: Comments in Response to the Department's Preliminary Results," dated April 20, 2021 (Petitioner's Comments).

⁶ See Petitioner's Letter, "Hardwood Plywood Products from the People's Republic of China: Rebuttal Comments," dated April 27, 2021.

domestic like product to which the *Orders* pertain lack interest in the relief provided by the *Orders* with respect to LVL door stiles and rails. Accordingly, we are revoking the *Orders*, in part, with respect to certain door stiles and rails made of LVL that have a width not to exceed 50 millimeters, a thickness not to exceed 50 millimeters, and a length of less than 2,450 millimeters. The scope description below includes this exclusion language.

Scope of the Orders

The merchandise subject to these *Orders* is hardwood and decorative plywood, and certain veneered panels as described below. For purposes of this proceeding, hardwood and decorative plywood is defined as a generally flat, multilayered plywood or other veneered panel, consisting of two or more layers or plies of wood veneers and a core, with the face and/or back veneer made of non-coniferous wood (hardwood) or bamboo. The veneers, along with the core may be glued or otherwise bonded together. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP-1-2016 (including any revisions to that standard).

For purposes of this proceeding a "veneer" is a slice of wood regardless of thickness which is cut, sliced or sawed from a log, bolt, or flitch. The face and back veneers are the outermost veneer of wood on either side of the core irrespective of additional surface coatings or covers as described below.

The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers. The core may be composed of a range of materials, including but not limited to hardwood, softwood, particleboard, or medium-density fiberboard (MDF).

All hardwood plywood is included within the scope of these *Orders* regardless of whether or not the face and/or back veneers are surface coated or covered and whether or not such surface coating(s) or covers obscures the grain, textures, or markings of the wood. Examples of surface coatings and covers include, but are not limited to: Ultra violet light cured polyurethanes; oil or oil-modified or water based polyurethanes; wax; epoxy-ester finishes; moisture-cured urethanes; paints; stains; paper; aluminum; high pressure laminate; MDF; medium density overlay (MDO); and phenolic film. Additionally, the face veneer of hardwood plywood may be sanded; smoothed or given a "distressed"

appearance through such methods as hand-scraping or wire brushing. All hardwood plywood is included within the scope even if it is trimmed; cut-to-size; notched; punched; drilled; or has undergone other forms of minor processing.

All hardwood and decorative plywood is included within the scope of these *Orders*, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 x 1829 mm (48 x 72 inches), 1219 x 2438 mm (48 x 96 inches), and 1219 x 3048 mm (48 x 120 inches).

Subject merchandise also includes hardwood and decorative plywood that has been further processed in a third country, including but not limited to trimming, cutting, notching, punching, drilling, or any other processing that would not otherwise remove the merchandise from the scope of the *Orders* if performed in the country of manufacture of the in-scope product.

The scope of the *Orders* excludes the following items: (1) Structural plywood (also known as “industrial plywood” or “industrial panels”) that is manufactured to meet U.S. Products Standard PS 1–09, PS 2–09, or PS 2–10 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), and which has both a face and a back veneer of coniferous wood; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People’s Republic of China, Import Administration, *See Multilayered Wood Flooring from the People’s Republic of China*, 76 FR 76690 (December 8, 2011) (amended final determination of sales at less than fair value and antidumping duty order), and *Multilayered Wood Flooring from the People’s Republic of China*, 76 FR 76693 (December 8, 2011) (countervailing duty order), as amended by *Multilayered Wood Flooring from the People’s Republic of China: Amended Antidumping and Countervailing Duty Orders*, 77 FR 5484 (February 3, 2012); (4) multilayered wood flooring with a face veneer of bamboo or composed entirely of bamboo; (5) plywood which has a shape or design other than a flat panel, with the exception of any minor processing described above; (6) products made entirely from bamboo and

adhesives (also known as “solid bamboo”); and (7) Phenolic Film Faced Plyform (PFF), also known as Phenolic Surface Film Plywood (PSF), defined as a panel with an “Exterior” or “Exposure 1” bond classification as is defined by The Engineered Wood Association, having an opaque phenolic film layer with a weight equal to or greater than 90g/m³ permanently bonded on both the face and back veneers and an opaque, moisture resistant coating applied to the edges.

Excluded from the scope of these *Orders* are wooden furniture goods that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of these *Orders* is “ready to assemble” (RTA) furniture. RTA furniture is defined as (A) furniture packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of furniture, (2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, adhesive glues) required to assemble a finished unit of furniture, and (3) instructions providing guidance on the assembly of a finished unit of furniture; (B) unassembled bathroom vanity cabinets, having a space for one or more sinks, that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional component shape/size, painted or stained prior to importation, and stacked within a singled shipping package, except for furniture feet which may be packed and shipped separately; or (C) unassembled bathroom vanity linen closets that are imported with all unassembled hardwood and hardwood plywood components that have been cut-to-final dimensional shape/size, painted or stained prior to importation, and stacked within a single shipping package, except for furniture feet which may be packed and shipped separately.

Excluded from the scope of these *Orders* are kitchen cabinets that, at the time of importation, are fully assembled and are ready for their intended uses. Also excluded from the scope of these *Orders* are RTA kitchen cabinets. RTA kitchen cabinets are defined as kitchen cabinets packaged for sale for ultimate purchase by an end-user that, at the time of importation, includes (1) all wooden components (in finished form) required to assemble a finished unit of cabinetry, (2) all accessory parts (e.g., screws, washers, dowels, nails, handles, knobs, hooks, adhesive glues) required to assemble a finished unit of cabinetry, and (3) instructions providing guidance

on the assembly of a finished unit of cabinetry.

Excluded from the scope of these *Orders* are finished table tops, which are table tops imported in finished form with pre-cut or drilled openings to attach the underframe or legs. The table tops are ready for use at the time of import and require no further finishing or processing.

Excluded from the scope of these *Orders* are finished countertops that are imported in finished form and require no further finishing or manufacturing.

Excluded from the scope of these *Orders* are laminated veneer lumber (LVL) door and window components with (1) a maximum width of 44 millimeters, a thickness from 30 millimeters to 72 millimeters, and a length of less than 2413 millimeters (2) water boiling point exterior adhesive, (3) a modulus of elasticity of 1,500,000 pounds per square inch or higher, (4) finger-jointed or lap-jointed core veneer with all layers oriented so that the grain is running parallel or with no more than 3 dispersed layers of veneer oriented with the grain running perpendicular to the other layers; and (5) top layer machined with a curved edge and one or more profile channels throughout.

Excluded from the scope of these *Orders* are certain door stiles and rails made of LVL that have a width not to exceed 50 millimeters, a thickness not to exceed 50 millimeters, and a length of less than 2,450 millimeters.

Imports of hardwood plywood are primarily entered under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.0620; 4412.31.0640; 4412.31.0660; 4412.31.2510; 4412.31.2520; 4412.31.2610; 4412.31.2620; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4075; 4412.31.4080; 4412.31.4140; 4412.31.4150; 4412.31.4160; 4412.31.4180; 4412.31.5125; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.5235; 4412.31.5255; 4412.31.5265; 4412.31.5275; 4412.31.6000; 4412.31.6100; 4412.31.9100; 4412.31.9200; 4412.32.0520; 4412.32.0540; 4412.32.0565; 4412.32.0570; 4412.32.0620; 4412.32.0640; 4412.32.0670; 4412.32.2510; 4412.32.2525; 4412.32.2530; 4412.32.2610; 4412.32.2630; 4412.32.3125; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.3235; 4412.32.3255; 4412.32.3265;

4412.32.3275; 4412.32.3285;
4412.32.5600; 4412.32.3235;
4412.32.3255; 4412.32.3265;
4412.32.3275; 4412.32.3285;
4412.32.5700; 4412.94.1030;
4412.94.1050; 4412.94.3105;
4412.94.3111; 4412.94.3121;
4412.94.3141; 4412.94.3161;
4412.94.3175; 4412.94.4100;
4412.99.0600; 4412.99.1020;
4412.99.1030; 4412.99.1040;
4412.99.3110; 4412.99.3120;
4412.99.3130; 4412.99.3140;
4412.99.3150; 4412.99.3160;
4412.99.3170; 4412.99.4100;
4412.99.5115; and 4412.99.5710.

Imports of hardwood plywood may also enter under HTSUS subheadings 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.94.5100; 4412.94.9500; and 4412.99.9500. While the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of these *Orders* is dispositive.

Application of the Final Results of These Reviews

MJB and the petitioner have requested retroactive application of the final results of these reviews starting April 25, 2017, for the purposes of the *CVD Order*, and June 23, 2017, for purposes of the *AD Order*,⁷ *i.e.*, the dates that the preliminary determinations in the AD and CVD investigations published in the *Federal Register*. Section 751(d)(3) of the Act provides that “[a] determination under this section to revoke an order . . . shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.” Consistently, Commerce’s general practice is to instruct the U.S. Customs and Border Protection (CBP) to liquidate without regard to AD and CVD duties, and to refund any estimated deposits of those duties, on all unliquidated entries of the merchandise covered by a revocation that are not covered by the final results of an administrative review or automatic liquidation.⁸

⁷ See MJB’s Comments at 2 and Petitioner’s Comments at 2.

⁸ See, e.g., *Certain Pasta from Italy: Final Results of Countervailing Duty Changed Circumstances Review and Revocation*, In Part, 76 FR 27634 (May 12, 2011); *Stainless Steel Bar from the United Kingdom: Notice of Final Results of Changed Circumstances Review and Revocation of Order*, in Part, 72 FR 65706 (November 23, 2007); *Notice of Final Results of Antidumping Duty Changed Circumstances Review and Revocation of Order In Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Germany*, 71 FR 66163 (November

However, Commerce has exercised its discretion and deviated from this general practice if the particular facts of the case have implications for the effective date of the partial revocation selected by Commerce.⁹ Specifically, when selecting the effective date for the partial revocation, Commerce has considered factors such as the effective date proposed by the petitioner (and/or the effective date agreed to by all parties),¹⁰ the existence of unliquidated entries dating back to the requested effective date,¹¹ whether an interested party requested the effective date of the revocation,¹² and whether the requested effective date creates potential administrability issues (e.g., the products covered by the partial revocation are in the sales database used in the dumping margin calculations for a completed administrative review with a period of review that overlaps with date requested).¹³

The petitioner and MJB requested retroactive application of the final

13, 2006); *Notice of Final Results of Antidumping Duty Changed Circumstances Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada and Germany*, 71 FR 14498 (March 22, 2006); and *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination to Revoke Order in Part: Certain Cased Pencils from the People’s Republic of China*, 68 FR 62428 (November 4, 2003).

⁹ See section 751(d)(3) of the Act; and *Itochu Building Products v. United States*, 2014 WL 1363999, at *6 (CIT April 8, 2014) (*Itochu Bldg. Prod.*) (“The statutory provision, as discussed above, provides Commerce with discretion in the selection of the effective date for a partial revocation following a changed circumstances review, but that discretion may not be exercised arbitrarily so as to decide the question presented without considering the relevant and competing considerations”).

¹⁰ See, e.g., *Carbon and Certain Alloy Steel Wire Rod from Brazil, Canada, Indonesia, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Final Results of Changed Circumstances Review*, 68 FR 64079 (November 12, 2003); and *Stainless Steel Hollow Products from Sweden; Termination of Antidumping Duty Administrative Reviews, Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation In Part of Antidumping Duty Order*, 60 FR 42529 (August 16, 1995).

¹¹ See *Steel Wire Garment Hangers from the People’s Republic of China: Final Results of Changed Circumstances Review, and Revocation in Part of Antidumping Duty Order*, 74 FR 50956 (October 2, 2009); *Notice of Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order in Part; Certain Cased Pencils from the People’s Republic of China*, 71 FR 13352 (March 15, 2006); and *Stainless Steel Sheet and Strip in Coils from Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part*, 65 FR 77578 (December 12, 2000).

¹² See *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Japan: Final Results of Changed Circumstances Antidumping Duty Administrative Review and Intent To Revoke Antidumping Duty Order*, In Part, 64 FR 72315 (December 27, 1999).

¹³ See *Itochu Bldg. Prods.*, 2014 WL 1363999, at *6.

results of these reviews starting April 25, 2017, for purposes of the *CVD Order*, and June 23, 2017, for purposes of the *AD Order*.¹⁴ Both parties note that they are not aware of any unliquidated entries or pending administrative reviews that would complicate Commerce’s implementation of the revocations.¹⁵ The petitioner also states that it is not aware of any policy or legal considerations that would bar Commerce from selecting the full revocation dates, as requested.¹⁶ The petitioner and MJB further claim that not implementing the effective dates of the CCRs as requested would cause unnecessary harm to MJB.¹⁷ No other parties commented in response to the request for public comment on the effective revocation dates in the *Initiation Notice* or in our *Preliminary Results*.¹⁸

We find, based on the facts in this case, that it is appropriate to apply these partial revocations retroactively to unliquidated entries that were entered or withdrawn from warehouse, for consumption, on or after April 25, 2017, for the *CVD Order*, and June 23, 2017, for the *AD Order*, *i.e.*, the effective dates of the preliminary determinations in the AD and CVD investigations. We have determined based on the available information that there are no administrability concerns with using the effective dates as requested by the petitioner and MJB. Commerce is also not currently aware of any unliquidated entries that would complicate Commerce’s implementation of these revocations. Accordingly, we are exercising our discretion, based on the particular circumstances in these CCRs, to make the effective dates of these CCRs April 25, 2017, for the purposes of the *CVD Order* and June 23, 2017, for the purposes of the *AD Order*.

¹⁴ See Petitioner’s Comments at 1 and MJB’s Comments at 2.

¹⁵ See Petitioner’s Comments at 2; see also MJB’s Comments at 4; and MJB’s NFI Letter at 4.

¹⁶ See Petitioner’s Comments at 3.

¹⁷ See Petitioner’s Comments at 2; see also MJB’s Comments at 4; and MJB’s NFI Letter at 4.

¹⁸ See *Certain Hardwood Plywood Products from the People’s Republic of China: Initiation of Antidumping Duty and Countervailing Duty Changed Circumstances Reviews*, 86 FR 8766 (February 9, 2021) (*Initiation Notice*) (requesting interested parties to comment on these CCRs, including “comments on industry support, the proposed partial revocation language, and whether any of their entries are covered by this revocation request but enjoined from liquidation due to an injunction issued in ongoing litigation”); see also *Preliminary Results*, 86 FR at 17775–76 (stating, *inter alia*, that no interested party notified Commerce of any unliquidated entries that are covered by the revocation request but enjoined from liquidation due to an injunction issued in ongoing litigation).

Instructions to CBP

Because we determine that there are changed circumstances that warrant the revocation of the *Orders*, in part, we will instruct CBP to liquidate without regard to AD and CVD duties, and to refund any estimated AD and CVD duties, on all unliquidated entries of the merchandise covered by these partial revocations effective April 25, 2017, for purposes of the *CVD Order* and June 23, 2017, for purposes of the *AD Order*. Consistent with its recent notice,¹⁹ Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.*, within 90 days of publication).

Notification to Interested Parties

This notice serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of the APO is a sanctionable violation.

We are issuing and publishing these final results and revocation, in part, and notice in accordance with sections 751(b) and 777(i) of the Act and 19 CFR 351.216, 19 CFR 351.222(c)(3), and 19 CFR 351.222.

Dated: May 25, 2021.

Christian Marsh,

Acting Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021-11539 Filed 6-1-21; 8:45 am]

BILLING CODE 3510-DS-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XB106]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will hold a public webinar meeting, jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel.

DATES: The meeting will be held on Monday, June 21, 2021, from 1 p.m. until 4 p.m.

ADDRESSES: The meeting will be held via webinar and connection information can be accessed at: <https://www.mafmc.org/council-events/2021/joint-sfsbsb-ap-meeting-jun21>.

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674-2331; www.mafmc.org.

FOR FURTHER INFORMATION CONTACT:

Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526-5255.

SUPPLEMENTARY INFORMATION: The Mid-Atlantic Fishery Management Council's Summer Flounder, Scup, and Black Sea Bass Advisory Panel will meet via webinar jointly with the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup, and Black Sea Bass Advisory Panel. The purpose of this meeting is to discuss recent performance of the summer flounder, scup, and black sea bass commercial and recreational fisheries and develop Fishery Performance Reports. These reports will be considered by the Scientific and Statistical Committee, the Monitoring Committee, Mid-Atlantic Fishery Management Council, and Atlantic States Marine Fisheries Commission when setting 2022 and 2023 catch and landings limits and management measures for summer flounder, scup, and black sea bass.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aid should be directed to Kathy Collins,

(302) 526-5253, at least 5 days prior to the meeting date.

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

Dated: May 27, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021-11548 Filed 6-1-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648-XB136]

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting via webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold a five-day hybrid (virtual and in-person) meeting to consider actions affecting the Gulf of Mexico fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will convene Monday, June 21 through Friday, June 25, 2021, from 8:30 a.m. until 5 p.m. EDT, with the exception of Thursday, June 24, 2021 until 5:30 p.m. EDT and Friday, June 25, 2021 until 4:30 p.m. EDT.

ADDRESSES: The meeting will be a hybrid meeting offering both in-person and virtual options for attending the meeting. You may attend the meeting in-person at the Opal Key Resort and Marina, located at 245 Front Street, Key West, FL 33040. Please note, meeting attendees will be expected to follow COVID-19 safety protocols as determined by the Council and hotel. Such precautions may include daily temperature checks, masks, room capacity restrictions, and/or social distancing. If you prefer to attend virtually you can access the log-on information on our website at www.gulfcouncil.org.

Council address: Gulf of Mexico Fishery Management Council, 4107 W Spruce Street, Suite 200, Tampa, FL 33607; telephone: (813) 348-1630.

FOR FURTHER INFORMATION CONTACT: Dr. Carrie Simmons, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 348-1630.

SUPPLEMENTARY INFORMATION:

¹⁹ See Notice of Discontinuation of Policy to Issue Liquidation Instructions After 15 Days in Applicable Antidumping and Countervailing Duty Administrative Proceedings, 86 FR 3995 (January 15, 2021).

Agenda

Monday, June 21, 2021; 8:30 a.m.–5 p.m.

The meeting will begin in a *FULL COUNCIL—CLOSED SESSION* to finalize the selection of Reef Fish and Shrimp Advisory Panel Members; and, selection of Standing and Special Scientific and Statistical Committee (SSC) Members.

Committee sessions, open to the public, will begin at approximately 1 p.m. with the Shrimp Committee receiving updates on Effort Data Collection for 2021; review and discuss Draft Framework Action: Modifications to the Gulf of Mexico Federal Shrimp Fishery Effort Monitoring and Reporting; and, receive an update on the P-Sea Windplot Pilot Program.

The Administrative/Budget Committee will review and approve the Final Funded 2021 Budget; receive an overview and discuss Potential Projects for Council Funding and modifications of Statement of Operation Practices and Procedures (SOPPs) for SSC Voting Practices.

The Migratory Species Committee will review the Highly Migratory Species Amendment 13: Three-Year Review of the Individual Bluefin Quota Program that Addresses the Directed Fisheries for Bluefin Tuna, and the Incidental Catch of Bluefin by the Pelagic Longline Fishery.

Tuesday, June 22, 2021; 8:30 a.m.–5 p.m.

The Mackerel Committee will receive an update on Coastal Migratory Pelagics Landings; review and discuss Draft Amendment 32: Modifications to the Gulf of Mexico Migratory Group Cobia Catch Limits, Possession Limits, Size Limits, and Framework Procedure including recommendations from the South Atlantic Council; Draft Options Amendment 33: Modifications to the Gulf of Mexico Migratory Group King Mackerel Catch Limits and Sector Allocations; and Draft Amendment 34: Atlantic King Mackerel Catch Levels and Management Measures.

The Habitat Protection and Restoration Committee will convene to review Draft Options: Generic Essential Fish Habitat Amendment and hold a discussion session and Draft Recommendations on President Biden's E.O. 14008: Tackling the Climate Crisis at Home and Abroad, Section 216 (c): Conserving our Nation's Lands and Water.

The Red Drum Committee will receive a presentation on the Process to Modify Red Drum Management Out to 9 nm.

Wednesday, June 23, 2021; 8:30 a.m.–5 p.m.

The Reef Fish Committee will convene to review the Reef Fish Landings; discuss Final Action Item: Reef Fish Amendment 53: Red Grouper Allocations and Annual Catch Levels and Targets; receive a presentation on Greater Amberjack Historical Landings and Potential Management Actions; receive an overview and discuss the Individual Fishing Quota 5-Year Review; and Reef Fish Amendments 36B and 36C: Modifications to Individual Fishing Quota (IFQ) Programs.

Immediately following the Reef Fish Committee Virtual and In-person meeting, the Gulf of Mexico Fishery Management Council and National Oceanic and Atmospheric Administration/National Marine Fisheries Service (NOAA/NMFS) will hold an informal Question and Answer session.

Thursday, June 24, 2021; 8:30 a.m.–5:30 p.m.

The Data Collection Committee will receive an update on Southeast For-hire Electronic Reporting (SEFHIER) Program and review a Presentation: Draft Options for Electronic Reporting due to Equipment Failure.

The Sustainable Fisheries Committee will receive a Summary Report from the Joint Council Section 102 Workgroup; review SSC Recommendations on Acceptable Biological Catch (ABC) Control Rule; receive an update for Gulf of Mexico Manna Fish Farms; and, discuss the Bycatch Reduction Methodology.

Following lunch at approximately 1:30 p.m., the Council will reconvene with a Call to Order, Announcements, and Introductions; Adoption of Agenda and Approval of Minutes. The Council will receive presentations from NOAA Office of Law Enforcement (OLE); and an overview the Commercial Fish Rules Application.

The Council will hold public testimony 2:15 p.m.–5:30 p.m., EDT for comments pertaining to taking final action on Reef Fish Amendment 53: Red Grouper Allocations and Annual Catch Levels and Targets; and, comments on Executive Order #14008 Sec 216c: Conserving Our Nations Lands and Waters; and, open testimony on other fishery issues or concerns. Public comment may begin earlier than 2:15 p.m. EDT, but will not conclude before that time. Persons wishing to give public testimony virtually must sign up on the Council website on the day of public testimony. Registration for

virtual testimony closes one hour (1:15 p.m. EDT) before public testimony begins. Persons wishing to give public testimony in-person must register at the registration kiosk in the meeting room.

Friday, June 25, 2021; 8:30 a.m.–4:30 p.m.

The Council will receive committee reports from Shrimp, Administrative/Budget, Migratory Species, Mackerel, Habitat Protection and Restoration, Data Collection, Sustainable Fisheries, Reef Fish, Red Drum Management Committees, and Full Council Closed Session. The Council receive updates from the following supporting agencies: South Atlantic Fishery Management Council; Florida Law Enforcement Efforts; Gulf States Marine Fisheries Commission; U.S. Coast Guard; U.S. Fish and Wildlife Service; and Department of State.

The Council will discuss any Other Business items.

—Meeting Adjourns

The meeting will be a hybrid meeting. You may register for the webinar by visiting www.gulfcouncil.org and clicking on the Council meeting on the calendar should you choose to attend virtually instead of in-person.

The timing and order in which agenda items are addressed may change as required to effectively address the issue, and the latest version along with other meeting materials will be posted on the website as they become available.

Although other non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meeting. Actions 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 that the public has been notified of the Council's intent to take final action to address the emergency.

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

Dated: May 27, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021–11549 Filed 6–1–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration**

[RTID 0648–XB138]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Pacific Council) and its advisory entities will hold online public meetings.

DATES: The Pacific Council and its advisory entities will meet online June 21–26 and 28–30, 2021, noting there will be no meetings Sunday, June 27, 2021. The Pacific Council meeting will begin on Thursday, June 24, 2021 at 9 a.m. Pacific Daylight Time (PDT), reconvening at 8 a.m. Friday, June 25 through Saturday, June 26. The Council will reconvene Monday, June 28, through Wednesday, June 30, 2021. All meetings are open to the public, except for a Closed Session held from 8 a.m. to 9 a.m., Thursday, June 24, to address litigation and personnel matters. The Pacific Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: Meetings of the Pacific Council and its advisory entities will be webinar only.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220. Instructions for attending the meeting via live stream broadcast are given under **SUPPLEMENTARY INFORMATION**, below.

FOR FURTHER INFORMATION CONTACT: Mr. Chuck Tracy, Executive Director; telephone: (503) 820–2415 or (866) 806–7204 toll-free; or access the Pacific Council website, www.pcouncil.org for the proposed agenda and meeting briefing materials.

SUPPLEMENTARY INFORMATION: The June 24–26 and 28–30, 2021 meeting of the Pacific Council will be streamed live on the internet. The broadcasts begin initially at 9 a.m. PDT Thursday, June 24, 2021 and continue at 8 a.m. Saturday, June 26 and Monday, June 28 daily through Wednesday, June 30. No meetings are scheduled for Sunday, June 27, 2021. Broadcasts end when business for the day is complete. Only the audio portion and presentations displayed on the screen at the Pacific Council meeting will be broadcast. The

audio portion for the public is listen-only except that an opportunity for oral public comment will be provided prior to Council Action on each agenda item. You can attend the webinar online using a computer, tablet, or smart phone, using the webinar application. 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). It is recommended that you use a computer headset to listen to the meeting, but you may use your telephone for the audio-only portion of the meeting.

The following items are on the Pacific Council agenda, but not necessarily in this order. Agenda items noted as "Final Action" refer to actions requiring the Council to transmit a proposed fishery management plan, proposed plan amendment, or proposed regulations to the U.S. Secretary of Commerce, under Sections 304 or 305 of the Magnuson-Stevens Fishery Conservation and Management Act. Additional detail on agenda items, Council action, and advisory entity meeting times, are described in Agenda Item A.4, Proposed Council Meeting Agenda, and will be in the advance June 2021 briefing materials and posted on the Pacific Council website at www.pcouncil.org no later than Friday, June 4, 2021.

A. Call to Order

1. Opening Remarks
2. Roll Call
3. Executive Director's Report
4. Approve Agenda

B. Open Comment Period

1. Comments on Non-Agenda Items

C. Administrative Matters

1. Council Coordination Committee
2. Standardized Bycatch Reporting Methodology—Scoping
3. Update on Executive Order 14008
4. Marine Planning
5. Regional Operating Agreement
6. Fiscal Matters
7. Legislative Matters
8. Approval of Council Meeting Records
9. Membership Appointments and Council Operating Procedures
10. Future Council Meeting Agenda and Workload Planning

D. Habitat Issues

1. Current Habitat Issues

E. Salmon Management

1. Southern Oregon/Northern California Coast Coho Endangered Species Act (ESA) Consultation

F. Highly Migratory Species Management

1. National Marine Fisheries Service Report

2. International Management Activities
 3. Exempted Fishing Permits
 4. Drift Gillnet Fishery Bycatch Performance Report
 5. Drift Gillnet Fishery Hard Caps
- G. Groundfish Management**
1. National Marine Fisheries Service Report
 2. Fixed Gear Catch Share Review—Scoping
 3. Electronic Monitoring Update
 4. Groundfish Endangered Species Workgroup Report
 5. Adopt Stock Assessments
 6. 2023–24 Harvest Specifications and Management Measures Planning
 7. Inseason Adjustments—Final Action
- H. Coastal Pelagic Species Management**
1. National Marine Fisheries Service Report
 2. Pacific Mackerel Assessment and Management Measures
 3. Management Framework for the Central Subpopulation of Northern Anchovy

Advisory Body Agendas

Advisory body agendas will include discussions of relevant issues that are on the Pacific Council agenda for this meeting and may also include issues that may be relevant to future Council meetings. Proposed advisory body agendas for this meeting will be available on the Pacific Council website www.pcouncil.org no later than Friday, June 4, 2021.

Schedule of Ancillary Meetings**Day 1—Monday, June 21, 2021**

Scientific and Statistical Committee
Groundfish Subcommittee—8 a.m.
Budget Committee—10 a.m.
Legislative Committee—1 p.m.

Day 2—Tuesday, June 22, 2021

Habitat Committee—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.
Salmon Advisory Subpanel—8 a.m.
Salmon Technical Team—8 a.m.
Scientific and Statistical Committee
Groundfish Subcommittee—8 a.m.

Day 3—Wednesday, June 23, 2021

Habitat Committee—8 a.m.
Coastal Pelagic Species Advisory Subpanel—8 a.m.
Coastal Pelagic Species Management Team—8 a.m.
Enforcement Consultants—8 a.m.
Groundfish Advisory Subpanel—8 a.m.
Groundfish Management Team—8 a.m.
Highly Migratory Species Advisory Subpanel—8 a.m.
Highly Migratory Species Management Team—8 a.m.

Scientific and Statistical Committee—8 a.m.

Day 4—Thursday, June 24, 2021

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Coastal Pelagic Species Advisory Subpanel—8 a.m.

Coastal Pelagic Species Management Team—8 a.m.

Groundfish Advisory Subpanel—8 a.m.

Groundfish Management Team—8 a.m.

Highly Migratory Species Advisory Subpanel—8 a.m.

Highly Migratory Species Management Team—8 a.m.

Scientific and Statistical Committee—8 a.m.

Enforcement Consultants—As Necessary

Day 5—Friday, June 25, 2021

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Coastal Pelagic Species Advisory Subpanel—8 a.m.

Coastal Pelagic Species Management Team—8 a.m.

Groundfish Advisory Subpanel—8 a.m.

Groundfish Management Team—8 a.m.

Highly Migratory Species Advisory Subpanel—8 a.m.

Highly Migratory Species Management Team—8 a.m.

Enforcement Consultants—As Necessary

Day 6—Saturday, June 26, 2021

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Groundfish Advisory Subpanel—8 a.m.

Groundfish Management Team—8 a.m.

Enforcement Consultants—As Necessary

* No Meetings Scheduled for Sunday, June 27, 2021

Day 7—Monday, June 28, 2021

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Groundfish Advisory Subpanel—8 a.m.

Groundfish Management Team—8 a.m.

Enforcement Consultants—As Necessary

Day 8—Tuesday, June 29, 2021

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Groundfish Advisory Subpanel—8 a.m.

Groundfish Management Team—8 a.m.

Enforcement Consultants—As Necessary

Day 9—Wednesday, June 30, 2021

California State Delegation—7 a.m.

Oregon State Delegation—7 a.m.

Washington State Delegation—7 a.m.

Although non-emergency issues not contained in this agenda may come

before the Pacific Council for discussion, those issues may not be the subject of formal Council 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 Fishery Conservation and Management Act, provided the public has been notified of the Pacific Council's 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 at (503) 820-2412 at least 10 business days prior to the meeting date.

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

Dated: May 27, 2021.

Tracey L. Thompson,

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

[FR Doc. 2021-11547 Filed 6-1-21; 8:45 am]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 210527-0117]

RIN 0660-XC051

Software Bill of Materials Elements and Considerations

AGENCY: National Telecommunications and Information Administration, U.S. Department of Commerce.

ACTION: Notice, request for public comment.

SUMMARY: The Executive Order on Improving the Nation's Cybersecurity directs the Department of Commerce, in coordination with the National Telecommunications and Information Administration (NTIA), to publish the minimum elements for a Software Bill of Materials (SBOM). Through this Notice, following from the Executive Order, NTIA is requesting comments on the minimum elements for an SBOM, and what other factors should be considered in the request, production, distribution, and consumption of SBOMs.

DATES: Comments are due on or before June 17, 2021.

ADDRESSES: Written comments may be submitted on this document identified by NTIA-2021-0001 through

www.regulations.gov or by email to SBOM_RFC@ntia.gov. Written comments also may be submitted by mail to the National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Attn: Evelyn L. Remaley, Acting NTIA Administrator, Washington, DC 20230. For more detailed instructions about submitting comments, see the "Instructions for Commenters" section at the end of this Notice.

FOR FURTHER INFORMATION CONTACT:

Allan Friedman, National Telecommunications and Information Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Room 4725, Washington, DC 20230; telephone: (202) 482-4281; email: afriedman@ntia.gov. Please direct media inquiries to NTIA's Office of Public Affairs: (202) 482-7002; email: press@ntia.gov.

SUPPLEMENTARY INFORMATION:

Background

On May 12, 2021, the President issued Executive Order 14028, "Improving the Nation's Cybersecurity."¹ An initial step towards the Executive Order's goal of "enhancing software supply chain security" is transparency. As the Order itself notes, "the trust we place in our digital infrastructure should be proportional to how trustworthy and transparent that infrastructure is, and to the consequences we will incur if that trust is misplaced." An SBOM advances transparency in the software supply chain, similar to a "list of ingredients." NTIA is directed to publish a list of "minimum elements for an SBOM."

NTIA has played a leadership role in advocating for SBOM, convening experts from across the software world and leading discussions around the ideas of software supply chain transparency.² The goal of this Request for Comments is to seek input and feedback on NTIA's approach to developing and publishing the minimum elements of an SBOM. NTIA is committed to being open to further additions, corrections, deletions, or other changes, particularly when suggestions are well supported with

¹ Exec. Order No. 14,028 of May 12, 2021, 86 FR 26,633 (May 17, 2021).

² See David J. Redl, NTIA Launches Initiative to Improve Software Component Transparency, Nat'l Telecomm. & Info. Admin. (June 6, 2018), <https://www.ntia.doc.gov/blog/2018/ntia-launches-initiative-improve-software-component-transparency>; Allan Friedman, Dir., Cybersecurity, Nat'l Telecomm. & Info. Admin., Transparency in the Software Supply Chain: Making SBOM a Reality, Address at Black Hat USA 2019 Conference (Aug. 7, 2019).

documents, operational evidence, and support from broad-based constituencies in the software ecosystem.

Since 2018, NTIA has coordinated an open and transparent multistakeholder process on software component transparency, providing a forum in which a diverse and evolving set of experts and interested parties have been able to weigh in, share their leadership and respective visions, unpack the complex challenges of software supply chain, and propose various solutions.³ The idea of an SBOM is not new. Its roots lie in the concepts developed by noted American engineer and management consultant W. Edward Deming to build post-war industrial supply chain leadership, and over the last decade an SBOM has come to be considered vital to security by notable security experts.⁴ By providing a forum for SBOM discussions, NTIA has helped the community identify common themes, coalesce around standards, and emphasize interoperability. These discussions have led to the documentation of existing tools, products, and projects, and have helped drive further experimentation and implementation. With an emphasis on the practice of SBOM generation and use, NTIA has sought to facilitate “proof-of-concept” exercises in specific communities and sectors.⁵ NTIA has also worked across the federal government to share ideas about SBOM, seek feedback and engagement from experts in the civilian and national security community, and expand general awareness of SBOM.

What is an SBOM?

The Executive Order defines an SBOM as “a formal record containing the details and supply chain relationships of various components used in building software.” It refers to what the software assurance organization SAFECode calls “third party components.” Software is made and used by a wide range of organizations, but this diversity makes a single model for SBOM difficult. There is no one-size-fits-all approach to providing transparency for software assurance.

The Executive Order also defines SBOM in functional terms, framing its value in terms of use cases. It notes distinct but overlapping benefits that accrue to the organization that makes the software (“developers”), the organization that chooses or buys software, and those that operate software. Many of these use case benefits center around tracking known or newly identified vulnerabilities, but SBOM can also support use cases around license management and software quality/efficiency, and can lay the foundation to detect software supply chain attacks. These benefits should serve as a lodestar for designing and publishing the minimum elements of an SBOM that can be applied across the diverse software ecosystem.

Potential Elements for an SBOM

NTIA proposes a definition of the “minimum elements” of an SBOM that builds on three broad, inter-related areas: Data fields, operational considerations, and support for automation. Focusing on these three elements will enable an evolving approach to software transparency, and serve to ensure that subsequent efforts will incorporate more detail or technical advances. The information below is preliminary, and the ultimate list published by NTIA will be revised based on public input.

Data fields. To understand the third-party components that make up software, certain data about each of those components should be tracked. This “baseline component information” includes:⁶

- Supplier name
- Component name
- Version of the component
- Cryptograph hash of the component
- Any other unique identifier
- Dependency relationship
- Author of the SBOM data

Some of these data fields could be expanded. For example, the “dependency relationship” generally refers to the idea that one component is included in another component, but could be expanded to also include referencing standards, which tools were used, or how software was compiled or built. Other data fields may need more clarity, including data fields for component and supplier name. As one SBOM document notes, “[c]omponent identification is fundamental to SBOM and needs to scale globally across

diverse software ecosystems, sectors, and markets.”⁷ The challenge is that different technical communities and organizations have different approaches to determining software identity.

Operational considerations. SBOM is more than a set of data fields. Elements of SBOM include a set of operational and business decisions and actions that establish the practice of requesting, generating, sharing, and consuming SBOMs. This includes:

- Frequency. Operational considerations touch on when and where the SBOM data is generated and tracked. SBOM data could be created and stored in the repository of the source. For built software, it can be tracked and assembled at the time of build. A new build or an update to the underlying source should, in turn, create a new SBOM.

- Depth. The ideal SBOM should track dependencies, dependencies of those dependencies, and so on down to the complete graph of the assembled software. Complete depth may not always be feasible, especially as SBOM practices are still novel in some communities. When an SBOM cannot convey the full set of transitive dependencies, it should explicitly acknowledge the “known unknowns,” so that the SBOM consumer can easily determine the difference between a component with no further dependencies and a component with unknown or partial dependencies.

- Delivery. SBOMs should be available in a timely fashion to those who need them and have proper access permissions and roles in place. Sharing SBOM data down the supply chain can be thought of as comprising two parts: How the existence and availability of the SBOM is made known (advertisement or discovery) and how the SBOM is retrieved by or transmitted to those who have the appropriate permissions (access).⁸ Similar to other areas of software assurance, there will not be a one-size-fits-all approach. Anyone offering SBOMs must have some mechanism to deliver them, but this can ride on existing mechanisms. SBOM delivery can reflect the nature of the software as well: Executables that live on endpoints can store the SBOM data on disk with the compiled code, whereas embedded systems or online

³ NTIA, Multistakeholder Process on Promoting Software Component Transparency, Notice of Open Meeting, 83 FR 26,434 (June 7, 2018).

⁴ See Seth Carmody et al., Building Resilient Medical Technology Supply Chains with a Software Bill of Materials, 4 npj Digit. Med., at 1, 1–2 (2021), <https://doi.org/10.1038/s41746-021-00403-w>.

⁵ See Susan Miller, Protecting the Supply Chain with a Software Bill of Materials, GCN (Feb. 22, 2021), <https://gcn.com/articles/2021/02/22/sbom-supply-chain-security.aspx>.

⁶ See generally Framing Working Grp., Nat’l Telecomm. & Info. Admin., Framing Software Component Transparency (2019), https://www.ntia.gov/files/ntia/publications/framingsoftware_20191112.pdf (providing further information on baseline components).

⁷ Framing Working Group, Nat’l Telecomm. & Info. Admin., Software Identification Challenges and Guidance (2021), https://www.ntia.gov/files/ntia/publications/ntia_sbom_software_identity-2021mar30.pdf.

⁸ Framing Working Grp., Nat’l Telecomm. & Info. Admin., Sharing and Exchanging SBOMs (2021), https://www.ntia.gov/files/ntia/publications/ntia_sbom_sharing_exchanging_sboms-10feb2021.pdf.

services can have pointers to SBOM data stored online.

Automation support. A key element for SBOM to scale across the software ecosystem, particularly across organizational boundaries, is support for automation, including automatic generation and machine-readability. As the Executive Order notes, SBOMs should be machine-readable and should allow “for greater benefits through automation and tool integration.” Manual entry or distribution with spreadsheets does not scale, especially across organizations.

The SBOM community has identified three existing data standards (formats) that can convey the data fields and be used to support the operations described above: SPDX,⁹ CycloneDX,¹⁰ and SWID tags.¹¹ Experts in these formats have mapped between them to create interoperability for the baseline described above. Because these formats already are subject to public input and translation tools exist, they serve as logical starting points for sharing basic data.¹²

In addition to the three SBOM formats, the need for automation defines how some of the fields might be implemented better. For instance, machine-scale detection of vulnerabilities requires mapping component identity fields to existing vulnerability databases.

Request for Comment

The discussion above lays out the collected data points and experience from experts and practitioners in SBOM, including existing practices and novel proof-of-concept work. To inform, validate, and update NTIA’s understanding of SBOM, NTIA seeks comment on the following questions:

1. Are the elements described above, including data fields, operational considerations, and support for automation, sufficient? What other elements should be considered and why?

2. Are there additional use cases that can further inform the elements of SBOM?

3. SBOM creation and use touches on a number of related areas in IT

⁹ See also SPDX, <https://spdx.dev/> (last visited May 18, 2021).

¹⁰ See also CycloneDX, <https://cyclonedx.org/> (last visited May 18, 2021).

¹¹ See David Waltermire et al., Guidelines for the Creation of Interoperable Software Identification (SWID) Tags (2016) (Nat’l Inst. of Standards & Tech. Internal Rep. 8060), <http://dx.doi.org/10.6028/NIST.IR.8060> (SWID tags are defined by ISO/IEC 19770–2:2015).

¹² See, e.g., SwiftBOM—SBOM Generator for PoC and Demos, <https://democert.org/sbom/> (last visited May 18, 2021).

management, cybersecurity, and public policy. We seek comment on how these issues described below should be considered in defining SBOM elements today and in the future.

a. Software Identity: There is no single namespace to easily identify and name every software component. The challenge is not the lack of standards, but multiple standards and practices in different communities.

b. Software-as-a-Service and online services: While current, cloud-based software has the advantage of more modern tool chains, the use cases for SBOM may be different for software that is not running on customer premises or maintained by the customer.

c. Legacy and binary-only software: Older software often has greater risks, especially if it is not maintained. In some cases, the source may not even be obtainable, with only the object code available for SBOM generation.

d. Integrity and authenticity: An SBOM consumer may be concerned about verifying the source of the SBOM data and confirming that it was not tampered with. Some existing measures for integrity and authenticity of both software and metadata can be leveraged.

e. Threat model: While many anticipated use cases may rely on the SBOM as an authoritative reference when evaluating external information (such as vulnerability reports), other use cases may rely on the SBOM as a foundation in detecting more sophisticated supply chain attacks. These attacks could include compromising the integrity of not only the systems used to build the software component, but also the systems used to create the SBOM or even the SBOM itself. How can SBOM position itself to support the detection of internal compromise? How can these more advanced data collection and management efforts best be integrated into the basic SBOM structure? What further costs and complexities would this impose?

f. High assurance use cases: Some SBOM use cases require additional data about aspects of the software development and build environment, including those aspects that are enumerated in Executive Order 14028.¹³ How can SBOM data be integrated with this additional data in a modular fashion?

g. Delivery. As noted above, multiple mechanisms exist to aid in SBOM discovery, as well as to enable access to SBOMs. Further mechanisms and standards may be needed, yet too many

options may impose higher costs on either SBOM producers or consumers.

h. Depth. As noted above, while ideal SBOMs have the complete graph of the assembled software, not every software producer will be able or ready to share the entire graph.

i. Vulnerabilities. Many of the use cases around SBOMs focus on known vulnerabilities. Some build on this by including vulnerability data in the SBOM itself. Others note that the existence and status of vulnerabilities can change over time, and there is no general guarantee or signal about whether the SBOM data is up-to-date relative to all relevant and applicable vulnerability data sources.

j. Risk Management. Not all vulnerabilities in software code put operators or users at real risk from software built using those vulnerable components, as the risk could be mitigated elsewhere or deemed to be negligible. One approach to managing this might be to communicate that software is “not affected” by a specific vulnerability through a Vulnerability Exploitability eXchange (or “VEX”),¹⁴ but other solutions may exist.

4. Flexibility of implementation and potential requirements. If there are legitimate reasons why the above elements might be difficult to adopt or use for certain technologies, industries, or communities, how might the goals and use cases described above be fulfilled through alternate means? What accommodations and alternate approaches can deliver benefits while allowing for flexibility?

Instructions for Commenters: NTIA invites comment on the full range of issues that may be presented in this Notice, including issues that are not specifically raised in the above questions. Commenters are encouraged to address any or all of the above questions. Comments that contain references to studies, research, and other empirical data that are not widely available should include copies of the referenced materials with the submitted comments. Comments submitted by email should be machine-readable and should not be copy-protected. Responders should include the name of the person or organization filing the comment, which will facilitate agency follow up for clarifications as necessary, as well as a page number on each page of their submissions. All comments received are a part of the public record and will be posted on [regulations.gov](https://www.regulations.gov)

¹³ Exec. Order No. 14028 § 4(e)(i)–(x), 86 FR 26633, 26638–39 (May 12, 2021).

¹⁴ David Braue, Software ‘Bill of Materials’ To Become Standard?, Info. Age (Oct. 22, 2020, 11:34 a.m.), <https://ia.acs.org.au/article/2020/software-bill-of-materials-to-become-standard.html>.

and the NTIA website, <https://www.ntia.gov/>, without change. All personal identifying information (for example, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

Dated: May 27, 2021.

Kathy D. Smith,

Chief Counsel, National Telecommunications and Information Administration.

[FR Doc. 2021-11592 Filed 6-1-21; 8:45 am]

BILLING CODE 3510-60-P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No.: PTO-P-2021-0010]

Submitting Patent Applications in Structured Text Format and Reliance on the Text Version as the Source or Evidentiary Copy

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

ACTION: Notice.

SUMMARY: The United States Patent and Trademark Office (USPTO) is in the process of transitioning to a system that supports submitting new patent applications in structured text, specifically DOCX format. Filing in structured text allows applicants to submit their specifications, claims, and abstracts in text-based format, thereby eliminating the need for applicants to convert applications into a PDF for filing. It also provides a flexible format with no template constraints and improves data quality by supporting original formats for chemical formulas, mathematical equations, and tables. The USPTO previously stated that for applications filed in DOCX, the authoritative document would be the accompanying PDF that the USPTO systems generate from the DOCX document. In response to public feedback, however, the USPTO now considers the DOCX document filed by the applicant to be the authoritative document. Accordingly, an applicant who files or has filed an application in DOCX may rely on that version as the source or evidentiary copy of the application to make any corrections to the documents in the application file. The USPTO will be hosting DOCX training sessions to provide more information, demonstrate how to file and retrieve DOCX files in Patent Center, EFS-Web, and PAIR, and answer any questions. Applicants can

also file test submissions through Patent Center training mode to practice filing in DOCX. In addition, we will be offering listening sessions to gather feedback and suggestions to further improve DOCX features.

DATES: *Effective date:* June 2, 2021.

FOR FURTHER INFORMATION CONTACT:

Mark O. Polutta, Senior Legal Advisor, 571-272-7709, or Eugenia A. Jones, Senior Legal Advisor, 571-272-7727, of the Office of Patent Legal Administration, Office of the Deputy Commissioner for Patents.

For technical questions related to submitting documents in DOCX format, please contact the Patent Electronic Business Center (EBC) at 1-866-217-9197 (toll-free), 571-272-4100 (local), or ebc@uspto.gov. The EBC is open from 6 a.m. to midnight, ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The USPTO is in the process of transitioning to a system that supports submitting new patent applications in structured text, specifically DOCX format. Application documents submitted in DOCX format will facilitate the examination and publication processes. This notice provides information on structured text filing. Specifically, the USPTO now considers the DOCX documents filed by applicants to be the authoritative document, otherwise referred to as the source or evidentiary copy of the application, for purposes of determining the content of the application as originally filed, should a discrepancy be discovered. This notice does not require patent applicants to make any changes to their practices.

Currently, applicants may electronically file an application either by submitting PDF files or by submitting DOCX files. If an applicant submits DOCX files, the USPTO uses the DOCX files to generate PDF files prior to the actual filing of the application. The USPTO published a final rule on setting and adjusting patent fees on August 3, 2020. *See* Setting and Adjusting Patent Fees During Fiscal Year 2020, 85 FR 46932 (Aug. 3, 2020). In addition to establishing a fee for applications not submitted in a DOCX format, the response to comment 54 in the final rule stated that for applications filed in DOCX, the authoritative document will be the accompanying PDF that the USPTO systems generate from the DOCX document. *See id.* at 46957.

In response to public feedback, the USPTO has changed what will be the authoritative document. The USPTO is informing applicants that it now considers the DOCX documents filed by applicants to be the authoritative

document, otherwise referred to as the source or evidentiary copy of the application. This change applies to all patent documents submitted in DOCX format, including DOCX submissions made prior to this notice.

The source or evidentiary copy of the application is the version submitted to the USPTO by the applicant in one of the following formats: Paper, DOCX, or PDF when not accompanied by a DOCX version of the same. Applicants should not submit PDF versions they created when filing an application in DOCX, as they are unnecessary. If the applicant submits documents in DOCX along with PDF versions they created (not the auto-generated PDFs created by the USPTO), then the DOCX version will still be considered the source or evidentiary copy, and the applicant will be required to pay the non-DOCX surcharge fee.

Applicants can rely on the DOCX version as the source or evidentiary copy in order to make any corrections to the record when any discrepancies are identified between the source or evidentiary copy and the documents as converted by the USPTO. Accordingly, during the filing process, applicants will be advised to review the DOCX files before submission rather than reviewing the USPTO-generated PDF version, as set forth in the August 3, 2020, final rule.

However, applicants are advised to check the USPTO-generated versions as soon as practicable for any discrepancies or errors. Any discrepancies or errors that occur as a result of filing an application in DOCX format should be promptly brought to the attention of the USPTO. Applicants should initially contact the Patent EBC for investigation at 1-866-217-9197 (toll-free), 571-272-4100 (local), or ebc@uspto.gov. Depending on the situation, applicants may need to file a petition under 37 CFR 1.181 in order to have the issue reviewed and addressed. This is consistent with current USPTO procedures for documents filed in patent applications.

In this regard, the USPTO has a records retention schedule for documents it receives, including new patent applications and correspondence filed in patent applications. For example, applications filed in paper via mail or hand-delivery are scanned into the image file wrapper (IFW) or the Supplemental Complex Repository for Examiners (SCORE), as appropriate. In 2011, the USPTO established a one-year retention policy for patent-related papers scanned into the IFW or SCORE. *See* Establishment of a One-Year Retention Period for Patent-Related Papers That Have Been Scanned Into the

Image File Wrapper System or the Supplemental Complex Repository for Examiners, 77 FR 3745 (Jan. 25, 2012). After the expiration of the one-year period, the USPTO disposes of the paper unless the applicant, patent owner, or reexamination party timely files a *bona fide* request to correct the electronic record of the paper in IFW or SCORE. DOCX submissions will be treated similarly. Therefore, the procedure to correct any discrepancies or errors that occur as a result of filing an application in DOCX format will align with the established procedure for an applicant, patent owner, or reexamination party to request corrections to the electronic record when there is an error caused by the USPTO in scanning papers into the IFW.

Applicants should promptly review the electronic record of an application and file any request to correct the electronic record based on the source or evidentiary copy as soon as possible after the document has been submitted to the USPTO. Applicants should not expect to have a request to correct the electronic record granted if the request is based on the source or evidentiary copy and it is filed more than one year after submission of the document. Documents submitted by applicants in PDF or DOCX in patent applications will be treated in a similar manner to papers that have been scanned into the IFW in that they may be disposed of after a period of time if they are the source or evidentiary copy.

The USPTO's procedures regarding national security classified documents are unaffected by this notice. National security classified documents must be filed in the USPTO in paper format via hand-delivery to Licensing and Review or by mail in compliance with 37 CFR 5.1(a) and Executive Order 13526 of December 29, 2009, or in electronic format via the Department of Defense Secret internet Protocol Router Network (SIPRNET). See section 115 of the Manual of Patent Examining Procedure (MPEP, Ninth Edition, Revision 10.2019). National security classified documents filed electronically via SIPRNET are maintained at the USPTO in paper form; an electronic record of such documents is not maintained. Thus, all national security classified documents filed with the USPTO are maintained only in paper form, and the

paper copies of these documents are the source or evidentiary copies.

Andrew Hirshfeld,

Commissioner for Patents, Performing the Functions and Duties of the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2021-11256 Filed 6-1-21; 8:45 am]

BILLING CODE 3510-16-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP21-838-000]

Occidental Permian Ltd., OXY USA WTP LP v. El Paso Natural Gas Company, LLC; Notice of Complaint

Take notice that on May 24, 2021, pursuant to Section 5 of the Natural Gas Act¹ and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206 (2021), Occidental Permian Ltd. and OXY USA WTP LP (Complainants) filed a formal complaint against El Paso Natural Gas Company, LLC (Respondent), alleging that the Respondent's failure to waive and imposition of Critical Operating Condition charges and penalties for the period February 15, 2021 through February 17, 2021 is unjust and unreasonable, unreasonably punitive, and inconsistent with Commission policy and precedent, all as more fully explained in its complaint.

The Complainants certify that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using

the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID-19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov, or call toll-free, (886) 208-3676 or TTY, (202) 502-8659.

Comment Date: 5:00 p.m. Eastern Time on June 14, 2021.

Dated: May 26, 2021.

Debbie-Anne A. Reese,
Deputy Secretary.

[FR Doc. 2021-11577 Filed 6-1-21; 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:

Docket Number: PR21-47-000.

Applicants: Columbia Gas of Maryland, Inc.

Description: Tariff filing per 284.123(b), (e)/: CMD Rates Effective May 1 2021 to be effective 5/1/2021.

Filed Date: 5/24/2021.

Accession Number: 202105245095.

Comments/Protests Due: 5 p.m. ET 6/14/2021.

Docket Number: PR21-48-000.

Applicants: Columbia Gas of Ohio, Inc.

Description: Tariff filing per 284.123(b), (e)/: COH Rates Effective April 29 2021 to be effective 4/29/2021.

¹ 15 U.S.C. 717d.

Filed Date: 5/24/2021.
Accession Number: 202105245145.
Comments/Protests Due: 5 p.m. ET 6/14/2021.

Docket Numbers: RP21–821–001.
Applicants: Venice Gathering System, L.L.C.

Description: Tariff Amendment: Errata to be effective 7/1/2021.

Filed Date: 5/25/21.

Accession Number: 20210525–5019.

Comments Due: 5 p.m. ET 6/7/21.

Docket Numbers: RP21–839–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) Rate Filing: Negotiated Rates—Gulfport Amendment 911377 to be effective 5/1/2021.

Filed Date: 5/25/21.

Accession Number: 20210525–5000.

Comments Due: 5 p.m. ET 6/7/21.

Docket Numbers: RP21–840–000.

Applicants: Eastern Gas Transmission and Storage, Inc.

Description: § 4(d) Rate Filing: EGTS—West Loop Project (CP19–26) Transportation Service & Negotiated Rate to be effective 7/1/2021.

Filed Date: 5/25/21.

Accession Number: 20210525–5029.

Comments Due: 5 p.m. ET 6/7/21.

Docket Numbers: RP21–841–000.

Applicants: Carolina Gas Transmission, LLC.

Description: § 4(d) Rate Filing: CGT—Fuel Waiver to be effective 6/24/2021.

Filed Date: 5/25/21.

Accession Number: 20210525–5053.

Comments Due: 5 p.m. ET 6/7/21.

Docket Numbers: RP21–842–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Update (Pioneer Jul–Sep 2021) to be effective 7/1/2021.

Filed Date: 5/25/21.

Accession Number: 20210525–5078.

Comments Due: 5 p.m. ET 6/7/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests,

service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–11580 Filed 6–1–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD20–9–000]

Hybrid Resources; Notice Inviting Comments

On January 19, 2021, the Federal Energy Regulatory Commission (Commission) directed each Regional Transmission Organization and Independent System Operator (RTO/ISO) to submit informational reports by July 19, 2021 regarding hybrid resource issues, with public comments due 30 days thereafter (August 18, 2021).¹ Concurrently with the issuance of this notice, the Commission is issuing a staff white paper on Hybrid Resources. The white paper discusses the Hybrid Resources technical conference held by the Commission in July 2020 in this proceeding, as well as the information learned in post-technical conference comments.² Pursuant to this notice, all interested persons are invited to submit comments on the white paper, including information pertaining to non-RTO/ISO regions. We encourage commenters to jointly respond to both the white paper and RTO/ISO informational reports where applicable to avoid duplicate comments. Comments on both the RTO/ISO informational reports and the white paper are due August 18, 2021, 30 days after the RTO/ISO hybrid resource informational reports are filed.

For more information about this Notice, please contact:

Kaitlin Johnson (Technical Information),
 Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, (202) 502–8542, Kaitlin.Johnson@ferc.gov.

Meghan O'Brien (Legal Information),
 Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC

20426, (202) 502–6137,
Meghan.O'brien@ferc.gov.

Dated: May 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–11556 Filed 6–1–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 5411–004]

Port Townsend Paper Corporation; Notice of Application for Surrender of Conduit Exemption, 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 surrender of conduit exemption.

b. *Project No.:* P–5411–004.

c. *Date Filed:* October 26, 2018.

d. *Applicant:* Port Townsend Paper Corporation.

e. *Name of Project:* Port Townsend Mill Hydro-Turbine Generator Project.

f. *Location:* The project is located on the Port Townsend Mill water supply line in Jefferson County, Washington.

g. *Filed Pursuant to:* Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2705, 2708.

h. *Exemptee Contact:* Michael Craft, General Manager, Port Townsend Paper Corporation, 100 Mill Hill Road, Port Townsend, WA 98368; Telephone: (360) 379–2065; Email: Michael.craft@ptpc.com.

i. *FERC Contact:* Marybeth Gay, (202) 502–6125, Marybeth.gay@ferc.gov.

j. *Deadline for Filing Comments, Motions To Intervene, and Protests:* June 25, 2021.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at <http://www.ferc.gov/docs-filing/efiling.asp>. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at <http://www.ferc.gov/docs-filing/ecomment.asp>. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at FERCOnlineSupport@ferc.gov, (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions

¹ *Hybrid Resources*, 174 FERC ¶ 61,034 (2021).

² See *Hybrid Resources*, Notice Inviting Post-Technical Conference Comments, Docket No. AD20–9–000 (Aug. 10, 2020).

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-5411-004. 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 project has not operated since 2012. As a result, the exemptee has determined it would like to surrender the conduit exemption. Electricity to the hydro-generator has been permanently disconnected. No ground disturbance is associated with the proposed surrender and project features will remain in place.

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, 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: May 26, 2021.

Kimberly D. Bose,
Secretary.

[FR Doc. 2021-11554 Filed 6-1-21; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC21-30-000, RD-20-4-000]

Commission Information Collection Activities (FERC-725G); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC-725G (Mandatory Reliability Standards for the Bulk-Power System: PRC Reliability Standards.).

DATES: Comments on the collection of information are due August 2, 2021.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC21-30-000) by one of the following methods:

Electronic filing through <http://www.ferc.gov>, is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

- *Mail via U.S. Postal Service Only:*

Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

- *Hand (Including Courier) Delivery:*

Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: <http://www.ferc.gov>. For user assistance, contact FERC Online Support by email at ferconlinesupport@ferc.gov, or by phone at (866) 208-3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at <http://www.ferc.gov>.

FOR FURTHER INFORMATION CONTACT:

Ellen Brown may be reached by email at DataClearance@FERC.gov, telephone at (202) 502-8663.

SUPPLEMENTARY INFORMATION:

Title: FERC-725G (Mandatory Reliability Standards for the Bulk-Power System: Regional Reliability Standard PRC standards: PRC-006-5 Automatic Underfrequency Load-Shedding (UFLS), PRC-002-2, PRC-012-2, PRC-019-2, PRC-023-4, PRC-024-1, PRC-025-2, PRC-026-1, and PRC-027-1.

OMB Control No.: 1902-0252.

Type of Request: Revisions and extension to the information collection, as discussed in Docket No. RD20-4-000.

Abstract: On August 8, 2005, Congress enacted into law the Electricity Modernization Act of 2005, which is Title XII, Subtitle A, of the Energy Policy Act of 2005 (EPAc 2005).¹ EPAc 2005 added a new section 215 to the FPA, which required a Commission-certified Electric Reliability Organization (ERO) to develop mandatory and enforceable Reliability Standards, which are subject to Commission review and approval. Once approved, the Reliability Standards may be enforced by the ERO subject to Commission oversight, or the Commission can independently enforce Reliability Standards.²

¹ Energy Policy Act of 2005, Public Law 109-58, Title XII, Subtitle A, 119 Stat. 594, 941 (codified at 16 U.S.C. 824o).

² 16 U.S.C. 824o(e)(3).

The information collected by the FERC-725G is required to implement the statutory provisions of section 215 of the Federal Power Act (FPA).^[2] Section 215 of the FPA buttresses the Commission's efforts to strengthen the reliability of the interstate bulk power grid.

The FERC-725G information collection currently contains the reporting and recordkeeping requirements for the following Reliability Standards: PRC-002-2, PRC-006-5, PRC-012-2, PRC-019-2, PRC-023-4, PRC-024-1, PRC-025-2, PRC-026-1, and PRC-027-1.

• **PRC-002-2 Disturbance Monitoring and Reporting Requirements**

The purpose is to have adequate data available to facilitate analysis of Bulk Electric System (BES) Disturb.

• **PRC-006-5 Automatic Underfrequency Load Shedding**

To establish design and documentation requirements for automatic Underfrequency Load Shedding (UFLS) programs to arrest declining frequency, assist recovery of frequency following underfrequency events and provide last resort system preservation measures.

• **PRC-012-2 Remedial Action Schemes**

To ensure that Remedial Action Schemes (RAS) do not introduce unintentional or unacceptable reliability risks to the Bulk Electric System (BES).

• **PRC-019-2 Coordination of Generating Unit or Plant Capabilities, Voltage Regulating Controls, and Protection**

The purpose is to verify coordination of generating unit Facility or synchronous condenser voltage regulating controls, limit functions, equipment capabilities and Protection System settings.

• **PRC-023-4 Transmission Relay Load-Ability**

Protective relay settings shall not limit transmission load-ability; not interfere with system operators' ability to take remedial action to protect system reliability and; be set to reliably detect all fault conditions and protect the electrical network from these faults.

• **PRC-024-1 Generator Frequency and Voltage Protective Relay Settings**

The purpose is to ensure Generator Owners set their generator protective relays such that generating units remain connected during defined frequency and voltage excursions.

• **PRC-025-2 Generator Relay Load-Ability**

The purpose is to set load-responsive protective relays associated with generation Facilities at a level to prevent unnecessary tripping of generators during a system disturbance for conditions that do not pose a risk of damage to the associated equipment.

• **PRC-026-1 Relay Performance During Stable Power Swings**

The purpose is to ensure that load-responsive protective relays are expected to not trip in response to stable power swings during non-Fault conditions.

• **PRC-027-1 Coordination of Protection Systems for Performance During Faults**

The purpose is to maintain the coordination of Protection Systems installed to detect and isolate Faults on Bulk Electric System (BES) Elements, such that those Protection Systems operate in the intended sequence during Faults.

Each of these Reliability Standards have three components that impose burden upon affected industry:

- Requirements (e.g., denoted in each Reliability Standard as R1, R2 . . .)
- Measures (e.g., denoted in each Reliability Standard as M1, M2 . . .)
- Evidence Retention

These three components can be reviewed for the Reliability Standards in NERC petitions in FERC's eLibrary system (<http://www.ferc.gov/docs-filing/elibrary.asp>) or on NERC's own website (www.nerc.com).

Type of Respondents: Generator owners, Planning coordinators, Distribution providers, UFLS-only Distribution Providers, and transmission owners in the Northeast Power Coordinating Council (NPCC) Region.

*Estimate of Annual Burden:*³ Our estimates are based on the NERC Compliance Registry Summary of Entities as of February 5, 2021.

According to the NERC compliance registry, and Functions as of, which indicates there are registered as GO, PC, DP and TO entities. The individual burden estimates are based on the time needed to gather data, run studies, and analyze study results to design or update the underfrequency load shedding programs. Additionally, documentation and the review of

³ Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

underfrequency load shedding (UFLS) program results by supervisors and management is included in the administrative estimations. These are consistent with estimates for similar tasks in other Commission approved standards.

RD20-4 (PRC-006-4)

The revisions in the proposed Reliability Standards will align these standards with the previously approved changes to the NERC registration criteria⁴ by removing reference to entities⁵ that are no longer registered with NERC. In proposed Reliability Standard PRC-006-4, NERC adds the UFLS-only Distribution Provider as an applicable entity. In two instances, NERC has proposed changes that will promote consistent use of the term Planning Coordinator across the Reliability Standards.⁶

The Commission's request to OMB will reflect the following:

- Addition to the burden associated with UFLS-only distribution providers to proposed (in RD-20-4) Reliability Standard PRC-006-4.⁷ The petition states that the currently effective standard is applicable to planning coordinators, "UFLS entities" (which may include transmission owners and distribution providers that own, operate, or control UFLS equipment), and transmission owners that own certain elements. In proposed Reliability Standard PRC-006-4, NERC proposes to add the UFLS-only distribution provider as an applicable UFLS entity.⁸

- Current, Reliability Standard PRC-006-5⁹ (formerly PRC-006-3) (Automatic Underfrequency Load Shedding)

Commission estimates the annual burden and cost for the information collection as follows:

⁴ *Order on Electric Reliability Organization Risk Based Registration Initiative and Requiring Compliance Filing*, 150 FERC ¶ 61,213 (2015); *Order on Compliance Filing*, 153 FERC ¶ 61,024 (2015).

⁵ NERC's risk-based registration initiative resulted in the removal of the load-serving entity and purchasing-selling entity from the NERC compliance registry.

⁶ Standards Alignment with Registration Petition at 7.

⁷ The burden associated with the Commission approved standard, PRC-006-3, is included in FERC-725G.

⁸ Standards Alignment with Registration Petition at 13.

⁹ PRC-006-5 was approved April 1, 2021 in RM21-1 which did not trigger the PRA and therefore did not require prior OMB approval. The current version of this standard, PRC-006-5, was approved by the Commission on April 1, 2021. The only change was a revision to the regional variance for the WECC region for PRC-006-4 modifications that needs to be approved through OMB.

¹⁰ The number of entities is being reduced in order to more clearly identify the applicable entities

RD20-4 NET CHANGES FOR FERC-725G, OMB CONTROL NO. 1902-0252

PRC regional reliability standards	Average annual number ¹ of respondents	Average annual number of responses per respondent	Average annual total number of responses	Average burden hours per response	Total annual burden hours
	(1)	(2)	(1) * (2) = (3)	(4)	
PRC-006-4 (Automatic Underfrequency Load Shedding) Reporting Requirement—program decrease ¹⁰ .	-80 (TO & DP)	1	-80	47	-3,760
PRC-006-4 (Automatic Underfrequency Load Shedding) Evidence Retention—program decrease ¹⁴ .	-80 (TO & DP)	1	-80	5	-400
PRC-006-4 (Automatic Underfrequency Load Shedding) R1-R7, R11-R15 Reporting Requirement—program increase & clarification ¹¹ .	64 (PC)	1	64	47	3,008
PRC-006-4 (Automatic Underfrequency Load Shedding) R1-R7, R11-R15 Evidence Retention-program increase & clarification ¹⁴ .	64 (PC)	1	64	5	320
PRC-006-4 (Automatic Underfrequency Load Shedding) R8-R10 Evidence Retention—program increase & clarification ¹² .	478 (TO, DP, UFLS-only DP).	1	478	5	2,390
Net Changes for FERC-725G due to RD20-4 .....	.....	.....	446 (net increase)	.....	1,558 (net increase)

IC21-30-000 RENEWAL AS EFFECTED BY RD20-4-000: MANDATORY RELIABILITY STANDARDS FOR THE BULK-POWER SYSTEM: REGIONAL MANDATORY RELIABILITY STANDARDS FOR THE BULK-POWER SYSTEM: REGIONAL RELIABILITY STANDARD PRC STANDARDS: PRC-006-5, PRC-002-2, PRC-012-2, PRC-019-2, PRC-023-4, PRC-024-1, PRC-025-2, PRC-026-1, AND PRC-027¹³

Reliability standard & requirement	Average annual number ¹ of respondents	Average annual number of responses per respondent	Average annual total number of responses	Average burden hours & cost (\$ per response)	Total annual burden hours & cost (\$) (rounded)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
PRC-006-5 (Current burden after net changes due to RD20-4)						
TO/DP/PC ¹⁴	480	1	480	35 hrs.; \$2,905	16,800 hrs.; \$1,394,400	\$2,905
Net Changes for FERC-725G due to RD20-4.	.....	.....	926	.....	18,358 hrs.; \$1,523,714.	
PRC-023-4						
TO/GO/DP ¹⁵	1,314	1	1,314	303 hrs.; \$25,149	398,142 hrs.; \$33,045,786	25,149
PC	65	1	65	212 hrs.; \$17,596	13,780 hrs.; \$1,143,740	17,596

in subsequent rows in this table. As stated in the NERC Petition, “[t]he currently effective standard is applicable to Planning Coordinators, “UFLS entities” (which may include Transmission Owners and Distribution Providers that own, operate, or control UFLS equipment), and Transmission Owners that own certain Elements. In proposed Reliability Standard PRC-006-4, NERC proposes to add the UFLS-Only Distribution Provider as an applicable UFLS entity, consistent with the language in Section III(b) of Appendix 5B of the NERC Rules of Procedure (Statement of Compliance Registry Criteria) that the Reliability Standards applicable to UFLS-Only Distribution Providers includes prior effective versions of the PRC-006 standard.” The changes are not due to Docket No. RD20-4-000.

¹¹ The increases are not due to Docket No. RD20-4-000. They are a program increase of 64 PCs (and the corresponding hrs.) in order to correct and clarify the estimates.

¹² The program increase is due to adding 63 UFLS-only DPs due to Docket No. RD20-4-000. In addition, 415 TOs and DPs were originally estimated in FERC-725A due to Order No. 693. However, the estimates and descriptions were not clearly spelled out, so we are clarifying them. As a result, there are 315 hours (63 * 5 hours) and the corresponding increase of 63 respondents of program increase due to Docket No. RD20-4-000, and 2,075 hours (415 * 5 hours) of increase due to adjustment.

IC21-30-000 RENEWAL AS EFFECTED BY RD20-4-000: MANDATORY RELIABILITY STANDARDS FOR THE BULK-POWER SYSTEM: REGIONAL MANDATORY RELIABILITY STANDARDS FOR THE BULK-POWER SYSTEM: REGIONAL RELIABILITY STANDARD PRC STANDARDS: PRC-006-5, PRC-002-2, PRC-012-2, PRC-019-2, PRC-023-4, PRC-024-1, PRC-025-2, PRC-026-1, AND PRC-027¹³—Continued

Reliability standard & requirement	Average annual number ¹ of respondents	Average annual number of responses per respondent	Average annual total number of responses	Average burden hours & cost (\$ per response)	Total annual burden hours & cost (\$) (rounded)	Cost per respondent (\$)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
PRC-025-2¹⁶						
GO/TO/DP ¹⁷	1,314	1	1,314	4 hrs.; \$332	5,256 hrs.; \$436,248	332
PRC-019-2						
GO/TO	1,178	1	1,178	8.9 hrs.; \$664	9,424 hrs.; \$782,192	664
PRC-024-1						
GO	1,003	1	1,003	8 hrs.; \$664	8,024 hrs.; \$665,992	664
PRC-026-1						
GO/PC/TO	1,189	1	1,189	18 hrs.; \$1,494	21,402 hrs.; \$1,776,366	1,494
PRC-002-2						
TO/GO/PC ¹⁸	1,189	0.50	594.5	100 hrs.; \$8,300	59,450 hrs.; \$4,934,350	8,300
PRC-012-2						
RC/PC/TO/GO/DP	1,329	1	1,329	88 hrs.; \$7,304	116,952 hrs.; \$9,707,016	7,304
PRC-027-1						
TO/GO/DP	1,314	1	1,314	44 hrs.; \$3,652	57,816 hrs.; \$4,798,728	3,652
Total for FERC-725G			10,226.50		708,604 hrs.; \$58,814,132.	

Comments: Comments are invited on:
(1) Whether the collection of

¹³ The number of respondents on this table reflect information taken from NERC Compliance Registry, while it may show a decrease from previous years the 2021 values reflect treating standards as a whole instead of by requirement which allow for aggregate values and eliminating multiple counts of the same entity within a standard.

¹⁴ Using NERC Compliance Registration data (February 5, 2021), the number of respondents are for US unique entities and takes into account the overlap between functions of the DP = Distribution Provider, TO = Transmission Owner and PC= Planning Coordinator for a total of 480.

¹⁵ Using NERC Compliance Registration data (February 5, 2021), the number of respondents are for US unique entities and takes into account the overlap between functions of the DP = Distribution Provider, TO = Transmission Owner and DP = Distribution Provider for a total of 1,314. The number of hours also take into account line terminal work needed to be done applicable TO, GO, or DP as per PRC-023-1 approved in Order No. 773 March 18, 2010.

¹⁶ Reliability Standard PRC-025-2 from FERC-725G2 (OMB No. 1902-0281)—a temporary place holder is now being placed back into 725G.

¹⁷ According to the NERC compliance registry as of February 5, 2021, NERC has registered 379 distribution providers (DP), 1,003 generator owners (GO) and 321 transmission owners (TO). However, under NERC's compliance registration program, entities may be registered for multiple functions, so these numbers incorporate some double counting. The number of unique entities responding will be approximately 994 entities registered as a transmission owner, a distribution provider, or a

information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) 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.

Dated: May 26, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021-11552 Filed 6-1-21; 8:45 am]

BILLING CODE 6717-01-P

generator owner that is also a transmission owner and/or a distribution owner. These values reflect removing any year 1-2 costs and covers on-going cost from version PRC-025-1 and PRC-025-2.

¹⁸ Based on the Requirements of PRC-002-2 some entities do not have to perform tasks annual so average response rate is set to 0.50.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15-1375-012.

Applicants: McCoy Solar, LLC.

Description: Notice of Change in Status of McCoy Solar, LLC.

Filed Date: 5/26/21.

Accession Number: 20210526-5138.

Comments Due: 5 p.m. ET 6/16/21.

Docket Numbers: ER18-194-000.

Applicants: American Electric Power Service Corporation, Southwest Power Pool, Inc.

Description: Formal Challenge of Joint Customers' to May 26, 2021 Annual Informational Filing by American Electric Power Service Corporation.

Filed Date: 5/21/21.

Accession Number: 20210521-5275.

Comments Due: 5 p.m. ET 6/21/21.

Docket Numbers: ER20-687-003.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: Compliance filing: Fourth Compliance Filing to be effective 2/25/2020.

Filed Date: 5/26/21.

Accession Number: 20210526–5089.

Comments Due: 5 p.m. ET 6/16/21.

Docket Numbers: ER21–1438–000; ER18–2358–000; ER19–1357–000; ER20–1313–000.

Applicants: GridLiance High Plains LLC, Southwest Power Pool, Inc.

Description: Motion to Intervene and Consolidate and Formal Challenge of Xcel Energy Services Inc.

Filed Date: 4/15/21.

Accession Number: 20210415–5303.

Comments Due: 5 p.m. ET 6/25/21.

Docket Numbers: ER21–1737–001.

Applicants: Indianapolis Power & Light Company.

Description: Tariff Amendment: IPL Second Supplemental Filing to Reactive Power Tariff & Motion to be effective 6/9/2021.

Filed Date: 5/26/21.

Accession Number: 20210526–5080.

Comments Due: 5 p.m. ET 6/16/21.

Docket Numbers: ER21–2001–000.

Applicants: Shell Chemical Appalachia LLC.

Description: Baseline eTariff Filing: Market-Based Rate Application and Request for Expedited Action to be effective 5/27/2021.

Filed Date: 5/26/21.

Accession Number: 20210526–5099.

Comments Due: 5 p.m. ET 6/16/21.

Docket Numbers: ER21–2002–000.

Applicants: Duke Energy Florida, LLC.

Description: Compliance filing: DEF—Compliance Filing Revising Tariff Records to Reflect Approved Settlement to be effective 5/3/2021.

Filed Date: 5/26/21.

Accession Number: 20210526–5195.

Comments Due: 5 p.m. ET 6/16/21.

The filings are accessible in the Commission's eLibrary system (<https://elibrary.ferc.gov/idmws/search/fercgensearch.asp>) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: <http://www.ferc.gov/docs-filing/efiling/filing-req.pdf>. For

other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: May 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–11579 Filed 6–1–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL21–77–000]

Tenaska Clear Creek Wind, LLC v. Southwest Power Pool, Inc.; Notice of Complaint

Take notice that on May 21, 2021, pursuant to sections 206, 306, and 309 of the Federal Power Act, 16 U.S.C. 824e, 825e, and 825h and Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Tenaska Clear Creek Wind, LLC (Complainant) filed a formal complaint against Southwest Power Pool, Inc. (Respondent), alleging that the Respondent's affected system studies for the Tenaska Clear Creek Wind Project are unjust, unreasonable, and contrary to Commission precedent, all as more fully explained in its complaint.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondent in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainant.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to

Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (<http://www.ferc.gov>) using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at FERCOnlineSupport@ferc.gov, or call toll-free, (886) 208–3676 or TTY, (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 10, 2021.

Dated: May 26, 2021.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2021–11578 Filed 6–1–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10024–46–OAR; EPA–HQ–OAR–2021–0329]

Proposed Information Collection Request; Comment Request; Certification and Compliance Requirements for Nonroad Spark-Ignition Engines (Renewal), ICR 1695.14, OMB 2060–0338

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), "Certification and Compliance Requirements for Nonroad Spark-Ignition Engines (Renewal)", ICR 1695.14, OMB 2060–0338 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 request as described below. This notice is a proposed extension of the Nonroad Spark-Ignition Engines ICR, which is currently approved through January 31,

2022. This ICR will incorporate Emissions Defect Information Report (EDIR) and Voluntary Emissions Recall Report (VERR) obligations within this ICR. The EDIR and VERR have been segregated from 2060–0048 for nonroad spark-ignition engines and vehicles and incorporated into our computations for reporting and notice purposes in this ICR. 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 August 2, 2021.

ADDRESSES: Submit your comments, referencing the Docket ID No. EPA–HQ–OAR–2021–0329, to the EPA: Online using www.regulations.gov (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

EPA’s policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Julian Davis, Attorney Adviser, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4029; fax number 734–214–4869; email address: davis.julian@epa.gov.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, will be available in the public docket, EPA–HQ–OAR–2021–0329, for this ICR. The docket can

be viewed online at www.regulations.gov or in person at the EPA Docket Center, EPA 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 information collection is requested under the authority of Title II of the Clean Air Act (42 U.S.C. 7521 *et seq.*) Under this Title, EPA is charged with issuing certificates of conformity for those engines which comply with applicable emission standards. Such a certificate must be issued before engines

may be legally introduced into commerce. To apply for a certificate of conformity, manufacturers are required to submit descriptions of their planned production line, including detailed descriptions of the emission control system, and test data. This information is organized by “engine family” groups expected to have similar emission characteristics. The emission values achieved during certification testing may also be used in the Averaging, Banking, and Trading (ABT) Program. The program allows manufacturers to bank credits for engine families that emit below the standard and use the credits for families that emit above the standard. They may also trade banked credits with other manufacturers. Participation in the ABT program is voluntary. Different categories of spark-ignition engines may also be required to comply with production-line testing (PLT) and in-use testing. There are also recordkeeping and labeling requirements. This information is collected electronically by the Gasoline Engine Compliance Center (GECC), Compliance Division, Office of Transportation and Air Quality (OTAQ), Office of Air and Radiation of the U.S. Environmental Protection Agency. GECC uses this information to ensure that manufacturers comply with applicable regulations and the Clean Air Act (CAA). It may also be used by the Office of Enforcement and Compliance Assurance (OECA) and the Department of Justice for enforcement purposes. Non-CBI may be disclosed on OTAQ’s website or upon request under the Freedom of Information Act (FOIA) to trade associations, environmental groups, and the public. Any information submitted for which a claim of confidentiality is made is safeguarded according to EPA regulations at 40 CFR 2.201 *et seq.*

Form Numbers:

Form name	Form No.
NR Small SI Bond Worksheet	5900–450
NR Small SI Small Volume Bond Worksheet	5900–451
Altitude Worksheet	5900–452
Annual Production Worksheet	5900–90
NR Small SI Production Line Testing Report	5900–133
NR Small SI Averaging, Banking, and Trading Report	5900–131
Evaporative Fuel Cap Test Data	5900–453
Evaporative Fuel Line Test Data	5900–454
Evaporative Fuel Tank Data Worksheet	5900–455
HDSI ABT Report	5900–134
Marine and Large SI Diurnal System Data Worksheet	5900–456
NR Small SI Equipment Worksheet	5900–457
Marine SI Vessel Worksheet	5900–458
Marine SI Engine Data Map Sheet	5900–459
Marine SI Averaging, Banking, and Trading Report	5900–92
Marine SI Production Line Testing Report	5900–91
Large SI Production Line Testing Report	5900–130
Large SI In-Use Testing Report	5900–93

Form name	Form No.
Marine SI In-Use Testing Report	5900-93
Snowmobile Production Line Testing Report	5900-460
Snowmobile Certification Template	5900-463
Rec Vehicle Catalytic Converter Checklist	5900-464
Snowmobile Averaging, Banking, and Trading Template	5900-465
Rec Vehicle Fuel Line Test Data Worksheet	5900-466
Rec Vehicle Fuel Tank Test Data Worksheet	5900-467

Respondents/affected entities:
Respondents are manufacturers of nonroad engines within the following North American Industry Classification System (NAICS) code:

- 333618 Other Engine Equipment Manufacturing
- 336312 Gasoline Engine and Engine Parts Manufacturing
- 336999 Other Transportation Equipment Manufacturing
- 336991 Motorcycle, Bicycle and Parts Manufacturing
- 333112 Lawn & Garden Tractor and Home Lawn & Garden Equipment Manufacturing
- 335312 Motor and Generator Manufacturing

Estimated number of respondents:
430 (total).

Frequency of response: Yearly for certification, production, ABT, and warranty reports.

Total estimated burden: 1,718 hours (per respondent, per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: \$95,360,655 (per year), includes \$30,243,492.655 annualized capital or operation & maintenance costs.

Changes in Estimates: There is a decrease of 190 Respondents due to a previous overestimate of the number of component manufacturers certifying under 40 CFR part 1060. However, as a result of consolidating Defect and Recall reporting and an improved and complete accounting for compliance activities, such as Production-Line testing, the total hours to comply with this collection request has increased for the total estimated burden of 738,603 hours for the industry.

Byron Bunker,

Director, Compliance Division, Office of Transportation and Air Quality.

[FR Doc. 2021-11582 Filed 6-1-21; 8:45 am]

BILLING CODE 6560-50-P

EXPORT-IMPORT BANK

Sunshine Act Meetings; Notice of Open Meeting of the Advisory Committee of the Export-Import Bank of the United States (EXIM)

TIME AND DATE: Thursday, June 17th, 2021 from 2:00-4:30 p.m. EDT.

PLACE: The meeting will be held virtually.

STATUS: Public Participation: The meeting will be open to public participation and time will be allotted for questions or comments submitted online. Members of the public may also file written statements before or after the meeting to external@exim.gov. Interested parties may register for the meeting at <https://app.smartsheet.com/b/form/42af9759b5594205b9d9dc3ae754afae>.

MATTERS TO BE CONSIDERED: Discussion of EXIM policies and programs to provide competitive financing to expand United States exports and comments for inclusion in EXIM's Report to the U.S. Congress on Global Export Credit Competition.

CONTACT PERSON FOR MORE INFORMATION: For further information, contact India Walker, External Engagement Specialist, at 202-480-0062.

Joyce B. Stone,

Assistant Corporate Secretary.

[FR Doc. 2021-11717 Filed 5-28-21; 4:15 pm]

BILLING CODE 6690-01-P

FARM CREDIT ADMINISTRATION

Sunshine Act Meetings

AGENCY: Farm Credit Administration Board, Farm Credit Administration.

ACTION: Notice, regular meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act, of the forthcoming regular meeting of the Farm Credit Administration Board.

DATES: The regular meeting of the Board will be held June 10, 2021, from 9:00 a.m. until such time as the Board may conclude its business. *Note: Because of the COVID-19 pandemic, we will*

conduct the board meeting virtually. If you would like to observe the open portion of the virtual meeting, see instructions below for board meeting visitors.

ADDRESSES: To observe the open portion of the virtual meeting, go to [FCA.gov](https://www.fca.gov), select "Newsroom," then "Events." There you will find a description of the meeting and a link to "Instructions for board meeting visitors." See **SUPPLEMENTARY INFORMATION** for further information about attendance requests.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Secretary to the Farm Credit Administration Board (703) 883-4009. TTY is (703) 883-4056.

SUPPLEMENTARY INFORMATION: Instructions for attending the virtual meeting: Parts of this meeting of the Board will be open to the public, and parts will be closed. If you wish to observe the open portion, at least 24 hours before the meeting, go to [FCA.gov](https://www.fca.gov), select "Newsroom," then "Events." There you will find a description of the meeting and a link to "Instructions for board meeting visitors." If you need assistance for accessibility reasons or if you have any questions, contact Dale Aultman, Secretary to the Farm Credit Administration Board, at (703) 883-4009. The matters to be considered at the meeting are as follows:

Open Session

Approval of Minutes

- May 13, 2021

New Business

- Bank Liquidity Reserve—Advance Notice of Proposed Rulemaking

Reports

- Quarterly Report on Economic Conditions and FCS Condition and Performance
- Semi-Annual Report on Office of Examination Operations

Closed Session

- Office of Examination Quarterly Report ¹

¹ Closed session is exempt pursuant to 5 U.S.C. Section 552b(c)(8) and (9).

Dated: May 28, 2021.

Dale Aultman,

Secretary, Farm Credit Administration Board.

[FR Doc. 2021-11705 Filed 5-28-21; 4:15 pm]

BILLING CODE 6705-01-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 June 17, 2021.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. *WaterStone Bank SSB 2015 Amended and Restated Employee Stock Ownership Plan and Waterstone Bank SSB 401(K) Plan*; to acquire voting shares of WaterStone Financial, Inc., and thereby indirectly acquire voting shares of WaterStone Bank, all of Wauwatosa, Wisconsin.

Board of Governors of the Federal Reserve System, May 27, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021-11588 Filed 6-1-21; 8:45 am]

BILLING CODE P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request; Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Federal Trade Commission (FTC or Commission) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget (OMB) clearance for information collection requirements contained in the rules and regulations under the Fur Products Labeling Act (Fur Rules or Rules). That clearance expires on August 31, 2021.

DATES: Comments must be received on or before August 2, 2021.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comments part of the **SUPPLEMENTARY INFORMATION** section below. Write "Fur Rules; PRA Comment: FTC File No. P072108" on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Jock K. Chung, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Mail Code CC-9528, 600 Pennsylvania Ave. NW, Washington, DC 20580, (202) 326-2984.

SUPPLEMENTARY INFORMATION: *Title:* Rules and regulations under the Fur Products Labeling Act, 16 CFR part 301.

OMB Control Number: 3084-0099.

Type of Review: Extension of a currently approved collection.

Likely Respondents: Retailers, manufacturers, processors, and importers of furs and fur products.

Frequency of Response: Third party disclosure; recordkeeping requirement.

Estimated Annual Hours Burden: 303,001 hours (50,100 hours for recordkeeping + 252,901 hours for disclosure).

Recordkeeping: 50,100 hours [950 retailers incur an average recordkeeping

burden of about 18 hours per year (17,100 hours total); 75 manufacturers incur an average recordkeeping burden of about 60 hours per year (4,500 hours total); and 950 importers of furs and fur products incur an average recordkeeping burden of 30 hours per year (28,500 hours total)].

Disclosure: 252,901 hours [(214,834 hours for labeling + 67 hours for invoices + 38,000 hours for advertising)].

Estimated annual cost burden: \$5,194,259 (solely relating to labor costs).

Abstract: The Fur Products Labeling Act (Fur Act) ¹ prohibits the misbranding and false advertising of fur products. The Fur Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also provide a procedure for exemption from certain disclosure provisions under the Fur Act.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Commission's Fur Rules.

Burden Statement

Staff's burden estimates are based on data from the Department of Labor's Bureau of Labor Statistics (BLS) and data or other input from the Fur Industry Council of America. The relevant information collection requirements in these rules and staff's corresponding burden estimates follow. The estimates address the number of hours needed and the labor costs incurred to comply with the requirements.

The Fur Products Labeling Act (Fur Act) ² prohibits the misbranding and false advertising of fur products. The Fur Rules establish disclosure requirements that assist consumers in making informed purchasing decisions, and recordkeeping requirements that assist the Commission in enforcing the Rules. The Rules also provide a procedure for exemption from certain disclosure provisions under the Fur Act.

Estimated annual hours burden: 303,001 hours (50,100 hours for recordkeeping + 252,901 hours for disclosure).

Recordkeeping: The Fur Rules require that retailers, manufacturers, processors,

¹ 15 U.S.C. 69 *et seq.*

² 15 U.S.C. 69 *et seq.*

and importers of furs and fur products keep certain records in addition to those they may keep in the ordinary course of business. Staff estimates that 950 retailers incur an average recordkeeping burden of about 18 hours per year (17,100 hours total); 75 manufacturers incur an average recordkeeping burden of about 60 hours per year (4,500 hours total); and 950 importers of furs and fur products incur an average recordkeeping burden of 30 hours per year (28,500 hours total). The combined recordkeeping burden for the industry is approximately 50,100 hours annually.

Disclosure: Staff estimates that 1,025 respondents (75 manufacturers + 950 retail sellers of fur garments) each require an average of 30 hours per year to determine label content (30,750 hours total), and an average of 30 hours per year to draft and order labels (30,750 hours total). Staff estimates that the total number of garments subject to the fur

labeling requirements annually is approximately 3,680,000.³ Staff estimates that for approximately 50 percent of these garments (1,840,000) labels are attached manually, requiring approximately four minutes per garment for a total of 122,667 hours annually. For the remaining 1,840,000, the process of attaching labels is semi-automated and requires an average of approximately one minute per item, for a total of 30,667 hours. Thus, the total burden for attaching labels is 153,334 hours, and the total burden for labeling garments is 61,500 hours per year (30,750 hours to determine label content + 30,750 hours to draft and order labels).

Staff estimates that the incremental burden associated with the Fur Rules' invoice disclosure requirement, beyond the time that would be devoted to preparing invoices in the absence of the Rules, is approximately one minute per

invoice for pelts.⁴ The invoice disclosure requirement applies to fur pelts, which are generally sold in groups of at least 1100, on average. Based on information from the Fur Industry Council of America, staff estimates total sales of 4,450,000 pelts annually. Thus, the invoice disclosure requirement entails an estimated total burden of 67 hours (4,046 total invoices × one minute).

Staff estimates that the Fur Rules' advertising disclosure requirements impose an average burden of 40 hours per year for each of the approximately 950 domestic fur retailers, or a total of 38,000 hours.

Thus, staff estimates the total disclosure burden to be approximately 252,901 hours.

Estimated annual cost burden: \$5,194,259 (solely relating to labor costs). The chart below summarizes the total estimated costs.

Task	Hourly rate	Burden hours	Labor cost
Determine label content	\$30.00	30,750	\$922,500
Draft and order labels	19.00	30,750	584,250
Attach labels	⁵ 13.00	122,667	1,594,671
Invoice disclosures	14.00	67	938
Prepare advertising disclosures	30.00	38,000	1,140,000
Recordkeeping	18.00	50,100	951,900
Total			5,194,259

Staff believes that there are no current start-up costs or other capital costs associated with the Fur Rules. Because the labeling of fur products has been an integral part of the manufacturing process for decades, manufacturers have in place the capital equipment necessary to comply with the Rules' labeling requirements. Industry sources indicate that much of the information required by the Fur Act and Rules would be included on the product label even absent the Rules. Similarly, invoicing, recordkeeping, and advertising disclosures are tasks performed in the ordinary course of business so that covered firms would incur no additional capital or other non-labor costs as a result of the Act or the Rules.

Request for Comments

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (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) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of maintaining records and providing disclosures to consumers. All comments must be received on or before August 2, 2021.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before August 2, 2021. Write "Fur Rules; PRA Comment: FTC File No. P072108" on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

Due to the public health emergency in response to the COVID-19 outbreak and the agency's heightened security screening, postal mail addressed to the

Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write "Fur Rules; PRA Comment: FTC File No. P072108" on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580; or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In

³ The total number of imported fur garments, fur-trimmed garments, and fur accessories is estimated to be approximately 3,500,000 based on industry data. Estimated domestic production totals 180,000.

⁴ The invoice disclosure burden for PRA purposes excludes the time that respondents would spend for invoicing, apart from the Fur Rules, in the ordinary course of business. See 5 CFR 1320.3(b)(2).

⁵ Per industry sources, most fur labeling is done in the United States. This rate is reflective of an average domestic hourly wage for such tasks performed in the United States, which is derived from recent BLS statistics.

particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before August 2, 2021. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2021-11596 Filed 6-1-21; 8:45 am]

BILLING CODE 6750-01-P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Information Collection Renewal; Comment Request for OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice and request for comments.

SUMMARY: After this first round notice and public comment period, the Office of Government Ethics (OGE) intends to request that the Office of Management and Budget (OMB) renew its approval under the Paperwork Reduction Act for an existing information collection, entitled the OGE Form 278e Executive Branch Personnel Public Financial Disclosure Report.

DATES: Written comments by the public and agencies on this proposed extension are invited and must be received by August 2, 2021.

ADDRESSES: Comments may be submitted to OGE by any of the following methods:

Email: usoge@oge.gov (Include reference to "OGE Form 278e paperwork comment" in the subject line of the message.)

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Attention: Grant Anderson, Assistant Counsel, Washington, DC 20005-3917.

Instructions: Comments may be posted on OGE's website, www.oge.gov. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Grant Anderson at the U.S. Office of Government Ethics; telephone: 202-482-9318; TTY: 800-877-8339; Email: ganderso@oge.gov. An electronic copy of the OGE Form 278e is available on OGE's website at <https://www.oge.gov>. A paper copy may also be obtained, without charge, by contacting Mr. Anderson.

SUPPLEMENTARY INFORMATION:

Title: Executive Branch Personnel Public Financial Disclosure Report.

Agency Form Number: OGE Form 278e.

Abstract: The OGE Form 278 collects information from certain officers and high-level employees in the executive branch for conflicts of interest review and public disclosure. The form is also

completed by individuals who are nominated by the President for high-level executive branch positions requiring Senate confirmation and individuals entering into and departing from other public reporting positions in the executive branch. The financial information collected relates to: Assets and income; transactions; gifts, reimbursements and travel expenses; liabilities; agreements or arrangements; outside positions; and compensation over \$5,000 paid by a source—all subject to various reporting thresholds and exclusions. The information is collected in accordance with section 102 of the Ethics in Government Act, 5 U.S.C. app. sec. 102, as amended by the Representative Louise McIntosh Slaughter Stop Trading on Congressional Knowledge Act of 2012 (Pub. L. 112-105) (STOCK Act) and OGE's implementing financial disclosure regulations at 5 CFR part 2634.

In 2013, OGE sought and received approval for the OGE Form 278e, an electronic version of the Form 278, implemented pursuant to the e-filing system mandated under section 11(b) of the STOCK Act. The OGE Form 278e collects the same information as the OGE Form 278. In 2014, OGE sought and received approval to incorporate the OGE Form 278e into its *Integrity* e-filing application. *Integrity* has been in use since January 1, 2015, and OGE now requires filers to use a version of the OGE Form 278e rather than the old OGE Form 278. The version of the Form 278e that is produced by *Integrity* is a streamlined output report format that presents only the filer's inputs in given categories and does not report other categories not selected by the filer. OGE also continues to maintain an Excel version of the form and a 508 compliant PDF version on its website.

OMB Control Number: 3209-0001.

Type of Information Collection: Extension of a currently approved collection.

Type of Review Request: Regular.

Affected Public: Private citizen Presidential nominees to executive branch positions subject to Senate confirmation; other private citizens who are potential (incoming) Federal employees whose positions are designated for public disclosure filing; those who file termination reports from such positions after their Government service ends; and Presidential and Vice-Presidential candidates.

Estimated Annual Number of Respondents: 3,196.

Estimated Time per Response: 10 hours.

Estimated Total Annual Burden: 31,960 hours.

Request for Comments: OGE is publishing this first round notice of its intent to request paperwork clearance renewal for OGE Form 278e. Public comment is invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including the use of information technology). Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Approved: May 27, 2021.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2021-11551 Filed 6-1-21; 8:45 am]

BILLING CODE 6345-03-P

OFFICE OF GOVERNMENT ETHICS

Agency Information Collection Activities; Information Collection Renewal; Comment Request for OGE Form 450 Executive Branch Confidential Financial Disclosure Report

AGENCY: Office of Government Ethics (OGE).

ACTION: Notice and request for comments.

SUMMARY: After this first round notice and public comment period, the Office of Government Ethics (OGE) plans to request that the Office of Management and Budget (OMB) renew its approval under the Paperwork Reduction Act for an existing information collection, entitled the OGE Form 450 Executive Branch Confidential Financial Disclosure Report.

DATES: Written comments by the public and agencies on this proposed extension are invited and must be received by August 2, 2021.

ADDRESSES: Comments may be submitted to OGE by any of the following methods:

Email: usoge@oge.gov. (Include reference to "OGE Form 450 paperwork comment" in the subject line of the message.)

Mail, Hand Delivery/Courier: Office of Government Ethics, 1201 New York Avenue NW, Suite 500, Attention: Grant Anderson, Assistant Counsel, Washington, DC 20005-3917.

Instructions: Comments may be posted on OGE's website, www.oge.gov.

Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Grant Anderson at the U.S. Office of Government Ethics; telephone: 202-482-9318; TTY: 800-877-8339; Email: ganderso@oge.gov. An electronic copy of the OGE Form 450 is available on OGE's website at <https://www.oge.gov>. A paper copy may also be obtained, without charge, by contacting Mr. Anderson.

SUPPLEMENTARY INFORMATION:

Title: Executive Branch Confidential Financial Disclosure Report.

Agency Form Number: OGE Form 450.

Abstract: The OGE Form 450 collects information from covered department and agency employees as required under OGE's executive branch wide regulatory provisions in subpart I of 5 CFR part 2634. The basis for the OGE reporting regulation is section 201(d) of Executive Order 12674 of April 12, 1989 (as modified by Executive Order 12731 of October 17, 1990) and section 107(a) of the Ethics in Government Act, 5 U.S.C. app. sec. 107(a). OGE maintains the form in three formats on its website: a PDF version, a 508 compliant PDF version, and an Excel spreadsheet version. OGE seeks renewal of the OGE Form 450 without modification.

OMB Control Number: 3209-0006.

Type of Information Collection: Extension of a currently approved collection.

Type of Review Request: Regular.

Affected Public: Prospective Government employees, including special Government employees, whose positions are designated for confidential disclosure filing and whose agencies require that they file new entrant confidential disclosure reports prior to assuming Government responsibilities.

Estimated Annual Number of Respondents: 30,449.

Estimated Time per Response: 3 hours.

Estimated Total Annual Burden: 91,347 hours.

Request for Comments: OGE is publishing this first round notice of its intent to request paperwork clearance renewal for the OGE Form 450. Public comment is invited specifically on the need for and practical utility of this information collection, the accuracy of OGE's burden estimate, the enhancement of quality, utility and clarity of the information collected, and the minimization of burden (including

the use of information technology). Comments received in response to this notice will be summarized for, and may be included with, the OGE request for extension of OMB paperwork approval. The comments will also become a matter of public record.

Approved: May 27, 2021.

Emory Rounds,

Director, U.S. Office of Government Ethics.

[FR Doc. 2021-11553 Filed 6-1-21; 8:45 am]

BILLING CODE 6345-03-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10637 and CMS-10501]

Agency Information Collection Activities; Proposed Collection; Comment Request

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

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by August 2, 2021.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to <http://>

www.regulations.gov. Follow the instructions for “Comment or Submission” or “More Search Options” to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS’ website address at website address at <https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.html>.

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection’s supporting statement and associated materials (see **ADDRESSES**).

CMS–10637 Marketplace Operations
CMS–10501 Healthcare Fraud Prevention Partnership (HFPP) Data Sharing and Information Exchange

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term “collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of*

Information Collection: Marketplace Operations; *Use:* The data collections and third-party disclosure requirements will assist HHS in determining Exchange compliance with Federal standards and monitoring QHP issuers in FFEs for compliance with Federal QHP issuer standards. The data collection will also assist HHS in monitoring Web-brokers for compliance with Federal Web-broker standards. The data collected by health insurance issuers and Exchanges will help to inform HHS, Exchanges, and health insurance issuers as to the participation of individuals, employers, and employees in the individual Exchange, the SHOP, and the premium stabilization programs. *Form Number:* CMS–10637 (OMB control number 0938–1353); *Frequency:* Annually; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 3,902; *Total Annual Responses:* 3,902; *Total Annual Hours:* 2,336,190. (For policy questions regarding this collection contact: Nikolas Berkobien at 301–492–4400.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Healthcare Fraud Prevention Partnership (HFPP) Data Sharing and Information Exchange; *Use:* Section 1128C(a)(2) of the Social Security Act (42 U.S.C. 1320a–7c(a)(2)) authorizes the Secretary and the Attorney General to consult, and arrange for the sharing of data with, representatives of health plans for purposes of establishing a Fraud and Abuse Control Program as specified in Section 1128(C)(a)(1) of the Social Security Act. The result of this authority has been the establishment of the HFPP. The HFPP was officially established by a Charter in the fall of 2012 and signed by HHS Secretary Sibelius and US Attorney General Holder. In December 2020, President Trump signed into law H.R.133—Consolidated Appropriations Act, 2021, which amended Section 1128C(a) of the Social Security Act (42 U.S.C. 1320a–7c(a)) providing explicit statutory authority for the Healthcare Fraud Prevention Partnership including the potential expansion of the public-private partnership analyses.

Data sharing within the HFPP primarily focuses on conducting studies for the purpose of combatting fraud, waste, and abuse. These studies are intended to target specific vulnerabilities within the payment systems in both the public and private healthcare sectors. The HFPP and its committees design and develop studies in coordination with the TTP. The core function of the TTP is to manage and

execute the HFPP studies within the HFPP. *Form Number:* CMS–10501 (OMB control number: 0938–1251); *Frequency:* Occasionally; *Affected Public:* Private sector (Business or other for-profits); *Number of Respondents:* 28; *Number of Responses:* 28; *Total Annual Hours:* 120. (For questions regarding this collection, contact Marnie Dorsey at (410–786–5942).

Dated: May 27, 2021.

William N. Parham, III,
Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–11591 Filed 6–1–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–P–0163]

Determination That SANDOSTATIN (Octreotide Acetate) Injection, Equal to 0.2 Milligrams Base/Milliliter and Equal to 1 Milligram Base/Milliliter, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA, Agency, or we) has determined that SANDOSTATIN (octreotide acetate) injection, equal to (EQ) 0.2 milligrams (mg) base/milliliter (mL) and 1 mg base/mL, was not withdrawn from sale for reasons of safety or effectiveness. This determination means that FDA will not begin procedures to withdraw approval of abbreviated new drug applications (ANDAs) that refer to this drug product, and it will allow FDA to continue to approve ANDAs that refer to the product as long as they meet relevant legal and regulatory requirements.

FOR FURTHER INFORMATION CONTACT: Stacy Kane, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6236, Silver Spring, MD 20993–0002, 301–796–8363, Stacy.Kane@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products under an ANDA procedure. ANDA applicants must, with certain exceptions, show that

the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the “listed drug,” which is a version of the drug that was previously approved. ANDA applicants do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA).

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the “Approved Drug Products With Therapeutic Equivalence Evaluations,” which is known generally as the “Orange Book.” Under FDA regulations, drugs are removed from the list if the Agency withdraws or suspends approval of the drug’s NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

A person may petition the Agency to determine, or the Agency may determine on its own initiative, whether a listed drug was withdrawn from sale for reasons of safety or effectiveness. This determination may be made at any time after the drug has been withdrawn from sale, but must be made prior to approving an ANDA that refers to the listed drug (§ 314.161 (21 CFR 314.161)). FDA may not approve an ANDA that does not refer to a listed drug.

SANDOSTATIN (octreotide acetate) injection, EQ 0.2 mg base/mL and EQ 1 mg base/mL, is the subject of NDA 19667, held by Novartis Pharmaceuticals Corporation. NDA 19667 was initially approved on October 21, 1988, and the EQ 0.2 mg base/mL and EQ 1 mg base/mL strengths were approved on June 12, 1991. SANDOSTATIN is indicated to reduce blood levels of growth hormone and IGF-I (somatomedin C) in acromegaly patients who have had inadequate response to or cannot be treated with surgical resection, pituitary irradiation, and bromocriptine mesylate at maximally tolerated doses. SANDOSTATIN is also indicated for the symptomatic treatment of patients with metastatic carcinoid tumors where it suppresses or inhibits the severe diarrhea and flushing episodes associated with the disease. SANDOSTATIN is also indicated for the treatment of profuse watery diarrhea associated with vasoactive intestinal peptide-secreting tumors.

In a letter received by the Agency on May 11, 2020, Novartis Pharmaceuticals Corporation notified FDA that

SANDOSTATIN (octreotide acetate) injection, EQ 0.2 mg base/mL and EQ 1 mg base/mL, was being discontinued, and FDA moved the drug product to the “Discontinued Drug Product List” section of the Orange Book. Caplin Steriles Limited submitted a citizen petition dated February 5, 2021 (Docket No. FDA-2021-P-0163), under 21 CFR 10.30, requesting that the Agency determine whether SANDOSTATIN (octreotide acetate) injection, EQ 0.2 mg base/mL and EQ 1 mg base/mL, was withdrawn from sale for reasons of safety or effectiveness.

After considering the citizen petition and reviewing Agency records and based on the information we have at this time, FDA has determined under § 314.161 that SANDOSTATIN (octreotide acetate) injection, EQ 0.2 mg base/mL and EQ 1 mg base/mL, was not withdrawn for reasons of safety or effectiveness. The petitioner has identified no data or other information suggesting that SANDOSTATIN (octreotide acetate) injection, EQ 0.2 mg base/mL and EQ 1 mg base/mL, was withdrawn for reasons of safety or effectiveness. We have carefully reviewed our files for records concerning the withdrawal of SANDOSTATIN (octreotide acetate) injection, EQ 0.2 mg base/mL and EQ 1 mg base/mL, from sale. We have also independently evaluated relevant literature and data for possible postmarketing adverse events. We have found no information that would indicate that this drug product was withdrawn from sale for reasons of safety or effectiveness.

Accordingly, the Agency will continue to list SANDOSTATIN (octreotide acetate) injection, EQ 0.2 mg base/mL and EQ 1 mg base/mL, in the “Discontinued Drug Product List” section of the Orange Book. The “Discontinued Drug Product List” delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. FDA will not begin procedures to withdraw approval of approved ANDAs that refer to this drug product. Additional ANDAs for this drug product may also be approved by the Agency as long as they meet all other legal and regulatory requirements for the approval of ANDAs. If FDA determines that labeling for this drug product should be revised to meet current standards, the Agency will advise ANDA applicants to submit such labeling.

Dated: May 26, 2021.

Lauren K. Roth,

Acting Principal Associate Commissioner for Policy.

[FR Doc. 2021-11575 Filed 6-1-21; 8:45 am]

BILLING CODE 4164-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; Rural Health Care Coordination Program Performance Improvement and Measurement System Database, OMB No. 0906-0024—Reinstate With Changes

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period.

DATES: Comments on this ICR should be received no later than July 2, 2021.

ADDRESSES: Submit your comments, including the ICR Title, to the desk officer for HRSA, either by email to OIRA_submission@omb.eop.gov or by fax to (202) 395-5806.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email the HRSA Information Collection Clearance Officer at paperwork@hrsa.gov or call (301) 443-1984.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information request collection title for reference.

Information Collection Request Title: Rural Health Care Coordination Program Performance Improvement and Measurement System Database, OMB No. 0906-0024—Reinstate with Changes.

Abstract: The Rural Health Care Coordination (Care Coordination) program is authorized under Section 330A(e) of the Public Health Service (PHS) Act (42 U.S.C. 254(e)), as amended, to “improve access and

quality of care through the application of care coordination strategies with the focus areas of collaboration, leadership and workforce, improved outcomes, and sustainability in rural communities.” This authority permits the Federal Office of Rural Health Policy to support rural health consortiums/networks aiming to achieve the overall goals of improving access, delivery, and quality of care through the application of care coordination strategies in rural communities.

This ICR was discontinued in January 2020. HRSA is requesting a reinstatement with changes as it was decided to re-compete this pilot program.

The proposed Rural Health Care Coordination Program draft measures for information collection reflect changes to the Clinical Measures section which was previously in section eight and now currently in section six. The Clinical Measures Section now expands previous project focus from three chronic diseases (*i.e.*, Type 2 diabetes, Congestive Heart Failure, and Chronic Obstructive Pulmonary Disease) to an inclusive list of clinical measures in order to reflect a patient’s overall health and well-being as well as the organizations’ overall improved outcomes for the project. Proposed revisions also include measures to examine key elements cited for a successful rural care coordination program: (1) Collaboration, (2) leadership and workforce, (3) improved outcomes, and (4) sustainability.

1. Collaboration—Utilizing a collaborative approach to coordinate and deliver health care services through a consortium, in which member organizations actively engage in integrated, coordinated, patient-

centered delivery of health care services.

2. Leadership and Workforce—Developing and strengthening a highly skilled care coordination workforce to respond to vulnerable populations’ unmet needs within the rural communities.

3. Improved Outcomes—Expanding access and improving care quality and delivery, and health outcomes through evidence-based model and/or promising practices tailored to meet the local populations’ needs.

4. Sustainability—Developing and strengthening care coordination program’s financial sustainability by establishing effective revenue sources such as expanded service reimbursement, resource sharing, and/or contributions from partners at the community, county, regional, and state levels.

With the continuing shift in the healthcare environment towards provision of value-based care and utilization of reimbursement strategies through Centers for Medicare and Medicaid Services quality reporting programs, the latest competitive Rural Health Care Coordination Program cohort also aligned with this shift. An increased number of sophisticated applicants leveraging increasingly intricate reporting methodologies for quality, data collection, utilization and analysis has resulted in an estimate of burden hours more in line with the realities of the health care landscape. In addition, the total number of responses has increased to 10 since the previous Notice of Award. This is due to a new Rural Health Care Coordination Program grant cycle with an increased number of awardees therefore an increased number of respondents.

A 60-day notice published in the **Federal Register** on November 30, 2020, vol. 85, No. 230; pp. 76585–86. There were no public comments.

Need and Proposed Use of the Information: For this program, performance measures were drafted to provide data to the program and to enable HRSA to provide aggregate program data required by Congress under the Government Performance and Results Act of 1993. These measures cover the principal topic areas of interest to the Office of Rural Health Policy, including: (a) Access to care; (b) population demographics; (c) staffing; (d) consortium/network; (e) sustainability; and (f) project specific domains. All measures will speak to HRSA’s progress toward meeting the goals set.

Likely Respondents: The respondents would be recipients of the Rural Health Care Coordination Program funding.

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 respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Rural Health Care Coordination Grant Program Measures	10	1	10	3.5	35
Total	10	.....	10	.....	35

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. 2021-11542 Filed 6-1-21; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Meeting of the Advisory Committee on Infant Mortality

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces that the Advisory Committee on Infant Mortality (ACIM) has scheduled a public meeting. Information about ACIM and the agenda for this meeting can be found on the ACIM website at <https://www.hrsa.gov/advisory-committees/infant-mortality/index.html>.

DATES: June 22, 2021, 12:00 p.m.–4:00 p.m. Eastern Time (ET) and June 23, 2021, 12:00 p.m.–4:00 p.m. ET.

ADDRESSES: This meeting will be held via webinar. *The webinar link and log-in information will be available at ACIM's website before the meeting:* <https://www.hrsa.gov/advisory-committees/infant-mortality/index.html>.

FOR FURTHER INFORMATION CONTACT: Vanessa Lee, MPH, Acting Designated Federal Official, Maternal and Child Health Bureau, HRSA, 5600 Fishers Lane, Rockville, Maryland 20857; 301-443-0543; or SACIM@hrsa.gov.

SUPPLEMENTARY INFORMATION: The ACIM is authorized by section 222 of the Public Health Service Act (42 U.S.C. 217a), as amended. The Committee is governed by provisions of Public Law 92-463, as amended, (5 U.S.C. App. 2), which sets forth standards for the formation and use of Advisory Committees.

The ACIM advises the Secretary of HHS on department activities and

programs directed at reducing infant mortality and improving the health status of pregnant women and infants. The ACIM represents a public-private partnership at the highest level to provide guidance and focus attention on the policies and resources required to address the reduction of infant mortality and the improvement of the health status of pregnant women and infants. With a focus on life course, the ACIM addresses disparities in maternal health to improve maternal health outcomes, including preventing and reducing maternal mortality and severe maternal morbidity. The ACIM provides advice on how best to coordinate myriad federal, state, local, and private programs and efforts that are designed to deal with the health and social problems impacting infant mortality and maternal health, including implementation of the Healthy Start program and maternal and infant health objectives from the National Health Promotion and Disease Prevention Objectives (*i.e.*, Healthy People 2030).

The agenda for the June 22–23, 2021, meeting is being finalized and may include the following topics: Discussion of recommendations by ACIM to the Secretary; updates from HRSA's Maternal and Child Health Bureau, and other federal agencies; the Centers for Disease Control and Prevention's Pregnancy Risk Assessment Monitoring System survey; and patient-physician racial concordance in health care. Agenda items are subject to change as priorities dictate. Refer to the ACIM website for any updated information concerning the meeting.

Members of the public will have the opportunity to provide written or oral comments. Requests to submit a written statement or make oral comments to the ACIM should be sent to Vanessa Lee, using the email address above at least 3 business days prior to the meeting. Public participants may submit written statements in advance of the scheduled meeting by emailing SACIM@hrsa.gov. Oral comments will be honored in the order they are requested and may be limited as time allows.

Individuals who plan to attend and need special assistance or another reasonable accommodation should notify Vanessa Lee at the contact information listed above at least 10 business days prior to the meeting.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2021-11504 Filed 6-1-21; 8:45 am]

BILLING CODE 4165-15-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health.

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Music and Health.

Date: June 24, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: W. Ernest Lyons, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, 301-496-4056, lyonse@ninds.nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Small Vessel VCIID Biomarkers Validation Consortium Sites & Coordinating Center Review (U01 & U24).

Date: June 25, 2021.

Time: 10:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Mir Ahamed Hossain, PhD, Scientific Review Officer, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Rockville, MD 20852, 301-496-9223, mirahamed.hossain@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 26, 2021.

Tyeshia M. Roberson,
Program Analyst, Office of Federal Advisory
Committee Policy.

[FR Doc. 2021-11544 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Infectious Diseases, Reproductive Health, Asthma and Pulmonary Conditions: Infectious Disease and Reproductive Epidemiology.

Date: June 23-24, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lisa Steele, Ph.D., Scientific Review Officer, PSE IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301-594-6594, steeleln@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Cancer Health Disparities.

Date: June 29, 2021.

Time: 9:00 a.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Amy L. Rubinstein, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5152, MSC 7844, Bethesda, MD 20892, 301-408-9754, rubinsteinal@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; R15 AREA and REAP: Musculoskeletal, Oral, Skin, Rheumatology and Rehabilitation Sciences.

Date: June 30, 2021.

Time: 12:30 p.m. to 8:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Chi-Wing Chow, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, Bethesda, MD 20892, (301) 402-3912, chowc2@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 26, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory
Committee Policy.

[FR Doc. 2021-11519 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of applications for the Support of Competitive Research (SCORE) Awards.

Date: July 12, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: Lisa A. Newman, SCD, Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN18A, Bethesda, MD 20814, (301) 435-0965, newmanla2@mail.nih.gov.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of K99/R00 grant applications.

Date: July 14, 2021.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301-594-2773, laffanjo@mail.nih.gov.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of Postdoctoral T32 training grant applications.

Date: July 21, 2021.

Time: 9:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: John J. Laffan, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 3AN18J, Bethesda, MD 20892, 301-594-2773, laffanjo@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 26, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory
Committee Policy.

[FR Doc. 2021-11522 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the access applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Inherited Disease Research Access Committee CIDR Access Committee.

Date: July 9, 2021.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate access applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Room 3185, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Barbara J. Thomas, Ph.D., Scientific Review Officer, Scientific Review Branch, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Room 3185, Mail Stop Code 6908, Bethesda, MD 20892, 301-402-8837, barbara.thomas@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11569 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of NIGMS Support of Competitive Research (SCORE) Award Applications.

Date: July 9, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892 (Video Meeting).

Contact Person: Manas Chattopadhyay, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Building 45, Room 3AN12N, 45

Center Drive, Bethesda, MD. 20892, 301-827-5320, manasc@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives; 93.859, Biomedical Research and Research Training, National Institutes of Health, HHS)

Dated: May 26, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11514 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Small Business: Cardiovascular and Surgical Devices.

Date: June 29, 2021.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jan Li, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, Bethesda, MD 20892, (301) 402-9607, Jan.Li@nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR-20-181: Limited Competition: National Primate Research Centers (P51).

Date: July 1-2, 2021.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Brian H. Scott, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 827-7490, brianscott@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 26, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11521 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Research Projects Grants.

Date: June 10, 2021.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Elena Sanovich, Ph.D., Scientific Review Officer, Review Branch, DEA, NIDDK, National Institutes of Health, Room 7351, 6707 Democracy Boulevard, Bethesda, MD 20892-2542, 301-594-8886, sanoviche@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes,

Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 26, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11518 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Clinical Trial Implementation Cooperative Agreement (U01 Clinical Trial Required); NIAID Clinical Trial Planning Grants (R34 Clinical Trial Not Allowed).

Date: June 17, 2021.

Time: 11:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Mario Cerritelli, Ph.D., Scientific Review Officer, Scientific Review Program, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3F58, Rockville, MD 20852, 240-669-5199, cerritem@mail.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 26, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11546 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 11, 2021, 02:30 p.m. to June 11, 2021, 06:00 p.m., National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on May 18, 2021, 86 FR 26928.

The CSR Special Emphasis Panel; RFA-RM-20-017: Harnessing Data Science for Health Discovery and Innovation in Africa—Ethical, Legal and Social Implications Research meeting is being amended to change the end time from 6:00 p.m. to 8:00 p.m. The meeting is closed to the public.

Dated: May 26, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11520 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Detection of HIV for Self-

Testing (R61/R33 Clinical Trial Not Allowed).

Date: June 24, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G33B, Rockville, MD 20892 (Virtual Meeting).
Contact Person: John C. Pugh, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G33B, Rockville, MD 20852, (301) 435-2398, pughjohn@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 26, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021-11545 Filed 6-1-21; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; Exploratory Centers (P20) for Benign Urology.

Date: July 20, 2021.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Lan Tian, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney Diseases, National

Institutes of Health, Bethesda, MD 20892–5452, 202–821–7210 (mobile), email: tianl@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 26, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–11515 Filed 6–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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: Allergy, Immunology, and Transplantation Research Committee (AITC).

Date: June 24–25, 2021.

Time: 10:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health 5601 Fishers Lane, Room 3G31, Rockville, MD 20892 (Virtual Meeting).

Contact Person: James T. Snyder, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G31, Bethesda, MD 20892–9834, (240) 669–5060, james.snyder@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 26, 2021.

Tyeshia M. Roberson,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–11543 Filed 6–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Diabetes and Digestive and Kidney Diseases Advisory Council, September 01, 2021, 10:00 a.m. to September 02, 2021, 01:45 p.m., National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD, 20892 which was published in the **Federal Register** on December 28, 2020, 85 FR 84355.

The meeting notice is amended to change the date of the meeting from September 1–2, 2021 to September 9–10, 2021. The meeting is to the public.

Dated: May 26, 2021.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2021–11516 Filed 6–1–21; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–31940; PPWOCRADN0–PCU00RP16.R50000]

Native American Graves Protection and Repatriation Review Committee Notice of Public Meetings

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: The National Park Service is hereby giving notice that the Native American Graves Protection and Repatriation Review Committee (Committee) will hold six virtual meetings as indicated below.

DATES: The Committee will meet via teleconference on June 28, 2021; July 7, 2021; July 13, 2021; July 21, 2021; August 10, 2021; and August 19, 2021, from 3:00 p.m. until approximately 6:00 p.m. (Eastern). All meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Melanie O'Brien, Designated Federal Officer, National Native American Graves Protection and Repatriation Act

(NAGPRA) Program (2253), National Park Service, telephone (202) 354–2201, or email nagpra_info@nps.gov.

SUPPLEMENTARY INFORMATION: The Committee will meet virtually on June 28, 2021; July 7, 2021; July 13, 2021; July 21, 2021; August 10, 2021; and August 19, 2021, from 3:00 p.m. until approximately 6:00 p.m. (Eastern).

The agenda for each meeting may include a report from the National NAGPRA Program; the discussion of the Committee Report to Congress; subcommittee reports and discussion; and other topics related to the Committee's responsibilities under section 8 of NAGPRA. In addition, the agenda may include requests to the Committee for a recommendation to the Secretary of the Interior that an agreed-upon disposition of Native American human remains proceed. The meetings will be open to the public and there will be time for public comments. Written comments may be sent to see **FOR FURTHER INFORMATION CONTACT.** All comments received will be provided to the Committee.

Information on joining the virtual conference by internet or phone will be available on the National NAGPRA Program website at <https://www.nps.gov/orgs/1335/events.htm>.

Background

The Committee was established in section 8 of the Native American Graves Protection and Repatriation Act of 1990. Information about NAGPRA, the Committee, and Committee meetings is available on the National NAGPRA Program website at <https://www.nps.gov/orgs/1335/events.htm>.

The Committee is responsible for monitoring the NAGPRA inventory and identification process; reviewing and making findings related to the identity or cultural affiliation of cultural items, or the return of such items; facilitating the resolution of disputes; compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum, and recommending specific actions for developing a process for disposition of such human remains; consulting with Indian tribes and Native Hawaiian organizations and museums on matters affecting such tribes or organizations lying within the scope of work of the Committee; consulting with the Secretary of the Interior on the development of regulations to carry out NAGPRA; and making recommendations regarding future care of repatriated cultural items. The Committee's work is carried out during

the course of meetings that are open to the public.

Public Disclosure of Comments: Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. Appendix 2; 25 U.S.C. 3006.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2021-11098 Filed 6-1-21; 8:45 am]

BILLING CODE 4312-52-P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS-WASO-NRNL-DTS#-32036;
PPWOCRADIO, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before May 22, 2021, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by June 17, 2021.

ADDRESSES: Comments are encouraged to be submitted electronically to *National Register Submissions@nps.gov* with the subject line “Public Comment on <property or proposed district name, (County) State>.” If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before May 22, 2021. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

CALIFORNIA

Contra Costa County

Winehaven Historic District (Boundary Decrease), Both sides of Stenmark Dr. between Drowly Dr. and Grays Cir., Richmond, BC100006694

Sonoma County

Hines House, 301 Chinquapin Ln., Sea Ranch, SG100006689

IDAHO

Butte County

Craters of the Moon National Monument Mission 66 Historic District (National Park Service Mission 66 Era Resources MPS), 18 miles west of Arco on US 20/26/93, Arco vicinity, MP100006698

MONTANA

Lewis and Clark County

Shaw's Best Factory, 426½ Harrison Ave., Helena, SG100006699

OREGON

Jackson County

Holmes, Harry and Eleanor, House, 217 South Modoc Ave., Medford, SG100006685

Linn County

Mill City Southern Pacific Rail Road (SPRR) Bridge, Across North Santiam R., Mill City, SG100006686

RHODE ISLAND

Washington County

Beaver River Road Historic District, Beaver River Rd., Beaver River Schoolhouse Rd., Richmond, SG100006693

SOUTH DAKOTA

Lawrence County

Lead Historic District (Boundary Increase II) (Boundary Decrease), Roughly bounded by the Open Pit, Glendale Dr., West McClellan St., and Homestake Mine complex, Lead, BC100006688

WISCONSIN

Brown County

Mansion Street WWII Defense Housing Historic District, 902-942 Mansion St., De Pere, SG100006697

Milwaukee County

Holy Family Roman Catholic Church Complex, 3767 East Underwood Ave.,

3750, 3776 East Hammond Ave., Cudahy, SG100006695

Sheboygan County

Sheboygan Falls School, 101 School St., Sheboygan Falls, SG100006692

Vernon County

Hillsboro Condensed Milk Company, 206 East Madison St., Hillsboro, SG100006696

Additional documentation has been received for the following resources:

IOWA

Linn County

Sinclair, Caroline, Mansion (Additional Documentation), 2160 Linden Dr. SE, Cedar Rapids, AD76000780

WEST VIRGINIA

Brooke County

Hall, Lewis, Mansion (Additional Documentation), (Pleasant Avenue MRA), 1300 Pleasant Ave., Wellsburg, AD86001074

(Authority: Section 60.13 of 36 CFR part 60)

Dated: May 25, 2021.

Sherry A. Frear,

*Chief, National Register of Historic Places/
National Historic Landmarks Program.*

[FR Doc. 2021-11590 Filed 6-1-21; 8:45 am]

BILLING CODE 4312-52-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-1249]

Certain Cellular Signal Boosters, Repeaters, Bi-Directional Amplifiers, and Components Thereof (I); Commission Determination Not To Review an Initial Determination Granting a Joint Motion To Terminate the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's ("ALJ") initial determination ("ID") (Order No. 7) granting a joint motion to terminate the investigation based on a settlement agreement. The investigation is terminated in its entirety.

FOR FURTHER INFORMATION CONTACT:

Cathy Chen, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202-205-2392. Copies of non-confidential documents filed in connection with this investigation may be viewed on the

Commission's electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 25, 2021, based on a complaint filed on behalf of Wilson Electronics LLC of St. George, Utah ("Wilson"). 86 FR 11553-554 (Feb. 25, 2021). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain cellular signal boosters, repeaters, bi-directional amplifiers, and components thereof by reason of infringement of certain claims of U.S. Patent Nos. 7,221,967 ("the '967 patent"); 7,409,186; 7,486,929; 7,729,669 ("the '669 patent"); 7,783,318 ("the '318 patent"); 8,583,033 ("the '033 patent"); 8,583,034; 8,639,180; 8,755,399; 8,849,187; 8,874,029; and 8,874,030. The complaint, as supplemented, further alleged that an industry in the United States exists as required by the applicable Federal Statute. The Commission instituted three separate investigations, and defined the scope of the present investigation as whether there is a violation of section 337 based on the allegations of infringement as to the asserted claims of the '967, '669, '318, and '033 patents as to the accused products identified in the notice of investigation. *Id.* The notice of investigation named as respondents: Cellphone-Mate, Inc. d/b/a SureCall of Fremont, California and Shenzhen SureCall Communication Technology Co., Ltd. of Shenzhen, China (collectively, "SureCall").

On May 12, 2021, Wilson and SureCall filed a joint motion to terminate the investigation based on a settlement agreement.

On May 14, 2021, the ALJ issued the subject ID granting the joint motion to terminate pursuant to Commission Rule 210.21(b)(1) (19 CFR 210.21(b)(1)). *See* Order No. 7 at 1-2 (May 14, 2021). The ALJ found that the motion to terminate complies with the Commission's rules and that there is no evidence that terminating this investigation by

settlement would be contrary to the public interest. *Id.* at 2. No petitions for review were filed.

The Commission has determined not to review the subject ID. The investigation is terminated in its entirety.

The Commission vote for this determination took place on May 27, 2021.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in Part 210 of the Commission's Rules of Practice and Procedure, 19 CFR part 210.

By order of the Commission.

Issued: May 27, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021-11594 Filed 6-1-21; 8:45 am]

BILLING CODE P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701-TA-526 and 731-TA-1262 (Review)]

Melamine From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 ("the Act") to determine whether revocation of the countervailing and antidumping duty orders on melamine from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: February 5, 2021.

FOR FURTHER INFORMATION CONTACT:

Nitin Joshi (202-708-1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202-205-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-205-2000.

General information concerning the Commission may also be obtained by accessing its internet server (<https://www.usitc.gov>). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at <https://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION:

Background.—On February 5, 2021, the Commission determined that the domestic interested party group response to its notice of institution (85 FR 69359, November 2, 2020) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.¹ Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, <https://edis.usitc.gov>). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on May 26, 2021, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,² and any party other than an interested party to the reviews may file written comments with the Secretary on what determination the Commission should reach in the reviews. Comments are due on or before June 2, 2021 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information)

¹ A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

² The Commission has found the response to its notice of institution filed on behalf of Cornerstone Chemical Company, Inc., a domestic producer of melamine, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

pertinent to the reviews by June 2, 2021. However, should the Department of Commerce (“Commerce”) extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce’s final results is three business days after the issuance of Commerce’s results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission’s rules. The Commission’s *Handbook on Filing Procedures*, available on the Commission’s website at https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf, elaborates upon the Commission’s procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission’s rules.

By order of the Commission.

Issued: May 26, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–11501 Filed 6–1–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1251]

Certain Cellular Signal Boosters, Repeaters, Bi-Directional Amplifiers, and Components Thereof (II); Commission Determination Not To Review an Initial Determination Terminating the Investigation Based on Settlement; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade

Commission has determined not to review an initial determination (“ID”) (Order No. 9) of the presiding administrative law judge (“ALJ”) terminating the investigation based on settlement. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT:

Amanda Fisherow, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3179. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission’s electronic docket (EDIS) at <https://edis.usitc.gov>. For help accessing EDIS, please email EDIS3Help@usitc.gov. General information concerning the Commission may also be obtained by accessing its internet server at <https://www.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission’s TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: On February 25, 2021, the Commission instituted this investigation based on a complaint filed by Wilson Electronics LLC of St. George, Utah. 86 FR 11552–53 (Feb. 25, 2021). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain cellular signal boosters, repeaters, bi-directional amplifiers, and components thereof by reason of infringement of certain claims of eleven patents, including U.S. Patent Nos. 7,486,929 (“the ‘929 patent”); 7,409,186 (“the ‘186 patent”); 8,755,399 (“the ‘399 patent”); and 8,849,187 (“the ‘187 patent”). *Id.* at 11553. The complaint, as supplemented, further alleged that a domestic industry exists. *Id.* The Commission instituted three separate investigations, and defined the scope of the present investigation as whether there is a violation of section 337 based on the allegations of infringement as to the asserted claims of the ‘929, ‘186, ‘399, and ‘187 patents as to the accused products identified in the notice of investigation. *Id.* The notice of investigation named two respondents: Cellphone-Mate, Inc. d/b/a SureCall of Fremont, California; and Shenzhen SureCall Communication Technology Co., Ltd. of Shenzhen, China. *Id.* The Office of Unfair Import Investigations is not named as a party. *Id.*

On May 12, 2021, the parties jointly moved to terminate this investigation

based on a settlement agreement. On May 13, 2021, the ALJ issued the subject ID granting the joint motion to terminate the investigation. The ID explained that the parties provided confidential and public versions of the settlement agreement. ID at 2. The parties also stated that there are no other agreements, written or oral, express or implied, regarding the subject matter of this investigation. *Id.* The ID concluded that termination of the investigation is in the public interest. *Id.* No petitions for review were filed.

The Commission has determined not to review the subject ID. The investigation is terminated.

The Commission vote for this determination took place on May 27, 2021.

The authority for the Commission’s determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission’s Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: May 27, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–11593 Filed 6–1–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[OMB Number 1125–0010]

Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Appeal to the Board of Immigration Appeals From a Decision of a DHS Officer

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on March 3, 2021, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for an additional 30 days until July 2, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting “Currently under 30-day Review—Open for Public Comments” or by using the search function.

If you need a copy of the proposed information collection or additional information, please contact Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041, telephone: (703) 305-0289.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;
- Evaluate the accuracy of the agency’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

1. *Type of Information Collection:* Revision and extension of a currently approved collection.
2. *The Title of the Form/Collection:* Notice of Appeal to the Board of Immigration Appeals from a Decision of a DHS Officer.
3. *The agency form number:* EOIR-29 (OMB 1125-0010).
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*
Primary: A party who appeals a decision of a DHS Officer to the Board of Immigration Appeals (Board).
Other: None.

Abstract: A party affected by a decision of a DHS Officer may appeal that decision to the Board, provided that the Board has jurisdiction pursuant to 8 CFR 1003.1(b). The party must complete the Form EOIR-29 and submit it to the DHS office having administrative control over the record of proceeding in order to exercise its regulatory right to appeal.

5. *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,664 respondents complete the form annually with an average of 30 minutes per response for completion.

6. *An estimate of the total public burden (in hours) associated with the collection:* 832 annual burden hours.

If additional information is required contact: Melody Braswell, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E.405B, Washington, DC 20530.

Dated: May 26, 2021.
Melody D. Braswell,
Department Clearance Officer for PRA, U.S. Department of Justice.
 [FR Doc. 2021-11527 Filed 6-1-21; 8:45 am]
BILLING CODE 4410-30-P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On May 25, 2021, the Department of Justice lodged a proposed Consent Decree (“Consent Decree”) with the United States District Court for the District of Connecticut in a lawsuit entitled *United States v. The Metropolitan District*, Civil Action No. 3:21-cv-0715.

In its Complaint, the United States, on behalf of the U.S. Environmental Protection Agency (“EPA”), alleges that The Metropolitan District violated the Clean Air Act (the “CAA” or “Act”), 42 U.S.C. 7413, by violating the requirements for Standards of Performance for New Sewage Sludge Incineration Units, 40 CFR part 60, subpart LLLL. Those alleged violations include failing to submit required control and monitoring plans, conduct annual performance tests that comply with the CAA regulations, and achieve continuous compliance with operating parameter limits and air pollution emission limits from its sewage sludge incineration (“SSI”) units. The proposed Consent Decree in this case

requires payment of a civil penalty of \$298,000, and injunctive relief including: (a) Notification of a test plan, conducting a performance test, and submitting a test report related to the SSI units; (b) setting and meeting site-specific operating limits; (c) meeting emission limits and standards, and demonstrating initial and ongoing compliance with those limits and standards; (d) submitting an initial compliance report; (e) conducting annual testing; (f) submitting an annual compliance report; (g) submitting progress reports and semi-annual deviation reports; (j) conducting initial and annual air control device inspections and performing related repairs; (k) meeting annual operator training requirements; and, (l) installing a carbon monoxide emissions monitoring system and demonstrating compliance with carbon monoxide emission limits.

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. The Metropolitan District*, D.J. Ref. No. 90-5-2-1-12047. 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 proposed 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 proposed 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 \$10.00 (25 cents per page

reproduction cost), payable to the United States Treasury.

Henry Friedman,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 2021-11523 Filed 6-1-21; 8:45 am]

BILLING CODE 4410-15-P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Legal Services Corporation's (LSC) Board Finance Committee will meet remotely on Thursday, June 10, 2021. The meeting will commence at 2:00 p.m., EDT, continuing until the conclusion of the Committee's agenda.

PLACE:

Public Notice of Virtual Remote Meeting

LSC will conduct the June 10, 2021 meeting virtually via ZOOM.

Public Observation: Unless otherwise noted herein, the Finance Committee meeting will be open to public observation. Members of the public who wish to participate virtually may do so by following the directions provided below.

Directions for Open Sessions:

- To join the Zoom meeting by computer, please click this link.
- [https://lsc-gov.zoom.us/j/95753297614?](https://lsc-gov.zoom.us/j/95753297614?pwd=YjJlVmRCVEdyTDNTamExUUFzeDZSQ09)
pwd=YjJlVmRCVEdyTDNTamExUUFzeDZSQ09
- Meeting ID: 957 5329 7614
- Passcode: 150301
- To join the Zoom meeting with one tap from your mobile phone, please click dial:
- +13017158592, 95753297614# US (Washington, DC)
- +13126266799, 95753297614# US (Chicago)
- To join the Zoom meeting by telephone, please dial one of the following numbers:
- +1 301 715 8592 US (Washington DC)
- +1 312 626 6799 US (Chicago)
- +1 646 876 9923 US (New York)
- +1 408 638 0968 US (San Jose)
- +1 669 900 6833 US (San Jose)
- +1 253 215 8782 US (Tacoma)
- +1 346 248 7799 US (Houston)
- Meeting ID: 957 5329 7614
- Find your local number: <https://lsc-gov.zoom.us/u/adI2lh1Gkr>
- Once connected to the Zoom meeting, please immediately "MUTE" your telephone/computer microphone. Members of the public are asked to keep their telephones muted to

eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of meeting agenda
2. Approval of minutes of the Finance Committee's meeting on April 19, 2021
3. Public comment regarding LSC's Fiscal Year 2023 budget request
4. Public comment on other matters
5. Consider and act on other business
6. Consider and act on adjournment of meeting

CONTACT PERSON FOR INFORMATION:

Jessica Wechter, Board Relations Coordinator, (202) 295-1626, or Yladrea Drummond, Special Assistant to the President, (202) 295-1633. Questions may be sent by electronic mail to FR_NOTICE_QUESTION@lsc.gov.

Accessibility: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Jessica Wechter at (202) 295-1626 or FR_NOTICE_QUESTION@lsc.gov at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: May 26, 2021.

Stefanie Davis,

Senior Assistant General Counsel.

[FR Doc. 2021-11534 Filed 5-27-21; 11:15 am]

BILLING CODE 7050-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 21-032]

Name of Information Collection: NASA Serves the Public To Inspire Reach-Out and Engage (NSPIREHub)

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections.

DATES: Comments are due by August 2, 2021.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 60 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this information collection by selecting "Currently under 60-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Claire Little, NASA Clearance Officer, NASA Headquarters, 300 E Street SW, JF0000, Washington, DC 20546 or email claire.a.little@nasa.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is committed to effectively performing the Agency's communication function in accordance with the Space Act Section 203(a)(3) to "provide for the widest practicable and appropriate dissemination of information concerning its activities and the results thereof," and to enhance public understanding of, and participation in, the nation's space program in accordance with the NASA Strategic Plan.

The NASA Serves the Public to Inspire Reach-Out and Engage (NSPIREHub) is a one-stop, web-based volunteer management system that streamlines communications, recruitment and marketing and enhances reporting and management of official outreach events. The NSPIREHub engages, informs and inspires current docents, employees (civil servants and contractors), interns and qualified members of the general public to share NASA's advancements, challenges and contributions through participation in official outreach (*i.e.*, launch support, special events support activities, etc.).

The NSPIREHub utilizes a multiple tiered, role-based NAMS provisioning to empower system administrators to request and collect specific user information for the purpose of coordinating the carrying out of NASA's official outreach activities. These specific purposes include but are not limited To: Facilitating pre-event briefings, onsite and virtual support

trainings, shadowing opportunities and assignment scheduling.

The information collected and protected within the NSPIREHub helps to ensure all outreach support team members, prior to serving, are equipped with the tools, skills and confidence necessary to share their stories in alignment with NASA's communication priorities. It also makes possible the efficient reporting of metric data relevant to the impact of official outreach on fulfillment of NASA's responsibilities as related to the Space Act, Section 203.

II. Methods of Collection

Electronic.

III. Data

Title: NASA Serves the Public to Inspire, Reach-out, and Engage VolunteerHub (NSPIREHub).

OMB Number:

Type of Review: New.

Affected Public: Individuals.

Estimated Annual Number of Activities: 5,250.

Estimated Number of Respondents per Activity: 3.

Annual Responses: 15,750.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden Hours: 2,630.

Estimated Total Annual Cost: \$66,938.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They will also become a matter of public record.

Lori Parker,

NASA PRA Clearance Officer.

[FR Doc. 2021-11526 Filed 6-1-21; 8:45 am]

BILLING CODE 7510-13-P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation (NSF) announces the following meeting:

NAME AND COMMITTEE CODE: CMMT OpenKIM Virtual Site Visit (1203).

DATE AND TIME: June 28–29, 2021; 10:00 a.m.–6:00 p.m.

PLACE: NSF, 2415 Eisenhower Avenue, Alexandria, VA 22314 | Virtual.

TYPE OF MEETING: Part-Open.

CONTACT PERSON: Dr. Daryl Hess, Program Director, Division of Materials Research, National Science Foundation, 2415 Eisenhower Avenue, Room W 9216, Alexandria, VA 22314; Telephone: (703) 292-4942.

PURPOSE OF MEETING: Virtual site visit to provide an evaluation of the progress of the projects at the host site for the Division of Materials Research at the National Science Foundation.

Agenda

June 28, 2021 (Day 1)

10:00 a.m.–10:30 a.m. Executive: Registration and orientation for Review Committee members (CLOSED)

10:30 a.m.–10:45 a.m. Introductions and Overview—Daryl W. Hess, Program Director, NSF, Division of Materials Research

10:45 a.m.–12:30 p.m. OpenKIM Project Presentations Part I

- OpenKIM Introduction & Overview
- Demonstration
- OpenKIM Progress
- Community Engagement
- Products and Technical

12:30 p.m.–1:00 p.m. Discussion:

OpenKIM Team, Review Committee

1:00 p.m.–1:45 p.m. Executive Session: Discussions and Lunch (CLOSED)

1:45 p.m.–2:45 p.m. OpenKIM Project Presentations Part II

- OpenKIM Management
- Education, Outreach, Diversity & Inclusion
- The Road Ahead: Future OpenKIM

2:45 p.m.–3:20 p.m. Discussion:

OpenKIM Team, Review Committee

3:20 p.m.–3:30 p.m. Break

3:30 p.m.–4:00 p.m. Meeting with Students and junior collaborators

4:00 p.m.–4:45 p.m. Executive Session: Discussion and Follow-up Questions (CLOSED)

4:45 p.m.–5:00 p.m. Break

5:00 p.m.–6:00 p.m. Meeting with OpenKIM Director and Team: Present Questions

June 29, 2021 (Day 2)

10:00 a.m.–10:15 a.m. Executive Session (CLOSED)

10:15 a.m.–11:15 a.m. Response to Questions: Director and Team

11:15 a.m.–11:45 a.m. Executive Session: Discussions (CLOSED)

11:45 a.m.–11:55 a.m. Break

11:55 a.m.–12:20 p.m. Executive Session: Meeting with University Administrators (CLOSED)

12:20 p.m.–5:00 p.m. NSF + Site Visit Team—Report Writing (CLOSED)

5:00 p.m.–6:00 p.m. Review Committee Chair Debriefing with OpenKIM Director (CLOSED) OpenKIM Team and Review Committee

REASON FOR CLOSING: The work being reviewed during closed portions of the virtual site visit include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the project. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 27, 2021.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2021-11581 Filed 6-1-21; 8:45 am]

BILLING CODE 7555-01-P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. STN 50–456, STN 50–457, 72–73, STN 50–454, STN 50–455, 72–68, 50–317, 50–318, 72–8, 50–461, 72–1046, 50–10, 50–237, 50–249, 72–37, 50–333, 72–12, 50–373, 50–374, 72–70, 50–352, 50–353, 72–65, 50–220, 50–410, 72–1036, 50–171, 50–277, 50–278, 72–29, 50–254, 50–265, 72–53, 50–244, 72–67, 50–272, 50–311, 72–48, 50–289, 72–77, 50–295, 50–304, and 72–1037; NRC–2021–0099]

Braidwood Station, Units 1 and 2; Byron Station, Unit Nos. 1 and 2; Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Clinton Power Station, Unit No. 1; Dresden Nuclear Power Station, Units 1, 2, and 3; James A. FitzPatrick Nuclear Power Plant; LaSalle County Station, Units 1 and 2; Limerick Generating Station, Units 1 and 2; Nine Mile Point Nuclear Station, Units 1 and 2; Peach Bottom Atomic Power Station, Units 1, 2, and 3; Quad Cities Nuclear Power Station, Units 1 and 2; R. E. Ginna Nuclear Power Plant; Salem Nuclear Generating Station, Unit Nos. 1 and 2; Three Mile Island Nuclear Station, Unit 1; Zion Nuclear Power Station, Units 1 and 2; and the Associated Independent Spent Fuel Storage Installations; Consideration of Approval of Transfer of Licenses and Conforming Amendments

AGENCY: Nuclear Regulatory Commission.

ACTION: Application for indirect transfer of licenses; opportunity to comment, request a hearing, and petition for leave to intervene; extension of comment period.

SUMMARY: On May 3, 2021, the U.S. Nuclear Regulatory Commission (NRC, the Commission) solicited comments on an application for indirect transfer of licenses in the **Federal Register**. The public comment period was originally scheduled to close on June 2, 2021. The NRC has decided to extend the public comment period until June 23, 2021, to allow more time for members of the public to develop and submit their comments.

DATES: The due date for comments requested in the document published on May 3, 2021 (86 FR 23437), is extended. Comments should be filed no later than June 23, 2021. Comments received after this date will be considered, if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any of the following methods;

however, the NRC encourages electronic comment submission through the Federal Rulemaking website:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2021–0099. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: Stacy.Schumann@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.

- *Email comments to:* Hearing.Docket@nrc.gov. If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.

- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

For additional direction on obtaining information and submitting comments, see “Obtaining Information and Submitting Comments” in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Blake A. Purnell, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1380; email: Blake.Purnell@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2021–0099 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to <https://www.regulations.gov> and search for Docket ID NRC–2021–0099.

- *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. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.

- *Attention:* The PDR, where you may examine and order copies of public documents, is currently closed. You may submit your request to the PDR via email at pdr.resource@nrc.gov or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (EST), Monday through Friday, except Federal holidays.

B. Submitting Comments

The NRC encourages electronic comment submission through the Federal Rulemaking website (<https://www.regulations.gov>). Please include Docket ID NRC–2021–0099 in your comment submission.

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

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

II. Discussion

On May 3, 2021, the NRC solicited comments on an application dated February 25, 2021 (ADAMS Accession No. ML21057A273), as supplemented by letter dated March 25, 2021 (ADAMS Accession No. ML21084A165), filed by Exelon Generation Company, LLC (EGC), on behalf of itself and Exelon Corporation; Exelon FitzPatrick, LLC; Nine Mile Point Nuclear Station, LLC; R. E. Ginna Nuclear Power Plant, LLC; and Calvert Cliffs Nuclear Power Plant, LLC. The application is seeking NRC approval of the indirect transfer of control of Renewed Facility Operating License Nos. NPF–72 and NPF–77 for Braidwood Station, Units 1 and 2, respectively; Renewed Facility Operating License Nos. NPF–37 and NPF–66 for Byron Station, Unit Nos. 1 and 2, respectively; Renewed Facility Operating License Nos. DPR–53 and DPR–69 for Calvert Cliffs Nuclear Power Plant (Calvert Cliffs), Units 1 and 2, respectively; Facility Operating License No. NPF–62 for Clinton Power Station,

Unit No. 1; Facility Operating License No. DPR-2 and Renewed Facility Operating License Nos. DPR-19 and DPR-25 for Dresden Nuclear Power Station, Units 1, 2, and 3, respectively; Renewed Facility Operating License No. DPR-59 for James A. FitzPatrick Nuclear Power Plant (FitzPatrick); Renewed Facility Operating License Nos. NPF-11 and NPF-18 for LaSalle County Station, Units 1 and 2, respectively; Renewed Facility Operating License Nos. NPF-39 and NPF-85 for Limerick Generating Station, Units 1 and 2, respectively; Renewed Facility Operating License Nos. DPR-63 and NPF-69 for Nine Mile Point Nuclear Station (NMP), Units 1 and 2, respectively; Facility Operating License No. DPR-12 and Subsequent Renewed Facility Operating License Nos. DPR-44 and DPR-56 for Peach Bottom Atomic Power Station, Units 1, 2, and 3, respectively; Renewed Facility Operating License Nos. DPR-29 and DPR-30 for Quad Cities Nuclear Power Station, Units 1 and 2, respectively; Renewed Facility Operating License No. DPR-18 for R. E. Ginna Nuclear Power Plant (Ginna); Renewed Facility Operating License Nos. DPR-70 and DPR-75 for Salem Nuclear Generating Station, Unit Nos. 1 and 2, respectively; Renewed Facility License No. DPR-50 for Three Mile Island Nuclear Station, Unit 1; Facility Operating License Nos. DPR-39 and DPR-48 for Zion Nuclear Power Station (Zion), Units 1 and 2, respectively; Renewed Materials License No. SNM-2505 for the independent spent fuel storage installation (ISFSI) at Calvert Cliffs; and the general licenses for the ISFSIs at the other sites (collectively, the licenses). These reactor units and associated ISFSIs are collectively referred to as the facilities. The NRC is also considering amending the licenses for administrative purposes to reflect the proposed transfer.

The application, as supplemented, requests that the NRC consent to the indirect transfer of control of the licenses to support a proposed transaction in which Exelon Corporation will transfer its 100 percent ownership of EGC to a newly created subsidiary that will then be spun off to Exelon Corporation shareholders, becoming EGC's new ultimate parent company. Once the spin transaction is completed, the new ultimate parent company, EGC, and its subsidiaries will no longer be affiliated with Exelon Corporation. EGC will remain the same Pennsylvania limited liability company as before the proposed transaction and will continue to own and/or operate the facilities, as applicable, and hold the licenses, but it will be renamed and

reorganized. The name of the new ultimate parent company and the renamed EGC are yet to be determined; therefore, the application refers to these companies as HoldCo and SpinCo, respectively. The application also requests that the NRC consent to the indirect transfer of control of the licenses for the FitzPatrick, NMP, and Ginna facilities (*i.e.*, the reactor units and associated ISFSIs) to support the reorganization of EGC.

The application, as supplemented, also requests NRC approval to replace existing nuclear operating services agreements and financial support agreements associated with the ownership and operation of the Calvert Cliffs, NMP, Ginna, and FitzPatrick facilities. The application requests NRC approval to transfer the qualified and non-qualified trusts for FitzPatrick from Exelon Generation Consolidation, LLC (a subsidiary of EGC) to New FitzPatrick, LLC. Pursuant to section 50.90 of title 10 of the *Code of Federal Regulations*, the application, as supplemented, requests amendments to the Calvert Cliffs, Units 1 and 2; NMP, Units 1 and 2; and Ginna licenses to delete conditions referencing the Constellation Energy Nuclear Group, LLC (a subsidiary of EGC at the time of the proposed transaction) Board and its operating agreement to reflect the internal reorganization of EGC described in the application.

By order dated November 26, 2019 (ADAMS Accession No. ML19228A130), as modified by orders dated October 21, 2020, and May 12, 2021 (ADAMS Accession Nos. ML20259A469 and ML21110A606, respectively), the NRC authorized the direct transfer of Facility Operating License Nos. DPR-39 and DPR-48 for Zion, Units 1 and 2, respectively, and the generally licensed Zion ISFSI from ZionSolutions, LLC to EGC. According to the February 25, 2021, application, the Zion license transfer will be completed prior to the spin transaction.

The public comment period on this action was originally scheduled to close on June 2, 2021. The NRC has decided to extend the public comment period until June 23, 2021, to allow more time for members of the public to develop and submit their comments. Separately, by order dated May 24, 2021 (ADAMS Accession No. ML21144A125), the Acting Secretary of the Commission extended the time for filing hearing requests and petitions to intervene on this action until June 14, 2021.

Dated: May 26, 2021.

For the Nuclear Regulatory Commission.

Blake A. Purnell,

*Project Manager, Plant Licensing Branch III,
Division of Operating Reactor Licensing,
Office of Nuclear Reactor Regulation.*

[FR Doc. 2021-11528 Filed 6-1-21; 8:45 am]

BILLING CODE 7590-01-P

POSTAL REGULATORY COMMISSION

[Docket No. N2021-2; Order No. 5900]

Service Standard Changes

AGENCY: Postal Regulatory Commission.
ACTION: Notice.

SUMMARY: The Commission is acknowledging a filing by the Postal Service of its intent to conduct a pre-filing conference regarding its proposed changes to the service standards for First-Class Package Services. This document informs the public of this proceeding and the pre-filing conference, and takes other administrative steps.

DATES: *Pre-filing conference:* June 8, 2021, 1:00 p.m. to 3:00 p.m., Eastern Daylight Time—Virtual Online.

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: Pursuant to 39 CFR 3020.111(d), on May 25, 2021, the Postal Service filed a notice of its intent to conduct a pre-filing conference regarding its proposed changes to the service standards for First-Class Package Services.¹ Due to the COVID-19 pandemic, the conference will be held virtually on June 8, 2021, from 1:00 p.m. to 3:00 p.m. Eastern Daylight Time (EDT). See Notice at 1, 3. At this conference, Postal Service representatives capable of discussing the policy rationale for its proposal will be available to educate the public and to allow interested persons to provide feedback to the Postal Service that it can use to modify or refine its proposal before formally filing a request for an

¹ Notice of Pre-Filing Conference, May 25, 2021 (Notice). First-Class Package Services "is a mailing service available for lightweight packages—for retail mailers, the weight of the package cannot exceed 13 ounces; for commercial mailers, the weight of the package cannot exceed 15.999 ounces." Notice at 1, n.1.

advisory opinion from the Commission. *See id.* The registration instructions, which are available at <https://about.usps.com/what/strategic-plans/delivering-for-america/#conference>, direct interested persons to a website to register to participate using Zoom, and state that “[s]pace is limited. Unless all available spaces are taken, you will have until June 1, 2021, at 5:00 p.m. EDT to register.”

The Commission establishes Docket No. N2021–2 to consider the Postal Service’s proposed changes to the service standards for First-Class Package Services. In conjunction with the announcement of its 10-Year Strategic Plan,² the Postal Service proposes to revise the existing service standards for First-Class Package Services, which would “generally affect service on a nationwide or substantially nationwide basis.” Notice at 1 (quoting 39 U.S.C. 3661(b)). The Postal Service asserts that its proposed approach would be similar to the changes proposed to Market Dominant First-Class Mail (letter- and flat-shaped mailpieces) in Docket N2021–1, because the First-Class Package Services service standards would also be adjusted to account for additional drive time between origin and destination processing facilities. *See* Notice at 2. However, the actual service standards that the Postal Service proposes to apply to First-Class Package Services would diverge from those proposed for First-Class Mail. *See id.*

Specifically, the Postal Service states that its proposal for First-Class Package Services would expand the drive time for the 2-Day service standard to allow additional drive time to certain processing facilities. *See id.* Additionally, within the contiguous United States, the Postal Service states that its proposal would narrow the scope of the existing 3-Day service standard; instead the 4-Day and 5-Day service standards would apply to certain First-Class Package Services traveling longer distances between origin and destination processing facilities. *Id.* Moreover, within the non-contiguous United States and certain territories, the Postal Service plans to increase service standards by up to one day. *Id.* The Postal Service adds that a 4-Day service standard would apply for certain volume, while all other volume to non-contiguous destinations would be subject to the 5-Day service standard. *Id.*

² *See* United States Postal Service, Delivering for America: Our Vision and Ten-Year Plan to Achieve Financial Sustainability and Service Excellence, March 23, 2021, at 53, available at https://about.usps.com/what/strategic-plans/delivering-for-america/assets/USPS_Delivering-For-America.pdf.

The Postal Service must file its formal request for an advisory opinion with the Commission at least 90 days before implementing any of the proposed changes. 39 CFR 3020.112. This formal request must certify that the Postal Service has made good faith efforts to address the concerns raised at the pre-filing conference and meet other content requirements. *Id.* section 3020.113. After the Postal Service files the formal request for an advisory opinion, the Commission will set forth a procedural schedule and provide additional information in a notice and order that will be published in the **Federal Register**. *Id.* section 3020.110. Before issuing its advisory opinion, the Commission must provide an opportunity for a formal, on-the-record hearing pursuant to 5 U.S.C. 556 and 557. 39 U.S.C. 3661(c). The procedural rules in 39 CFR part 3020 apply to Docket No. N2021–2.

Pursuant to 39 U.S.C. 3661(c) and 39 CFR 3020.111(d), the Commission appoints Mallory L. Smith to represent the interests of the general public (Public Representative) in this proceeding. Pursuant to 39 CFR 3020.111(d), the Secretary shall arrange for publication of this Order in the **Federal Register**.

It is ordered:

1. The Commission establishes Docket No. N2021–2 to consider the Postal Service’s proposed changes to the service standards for First-Class Package Services.

2. The Postal Service shall conduct a virtual pre-filing conference regarding its proposal on June 8, 2021, from 1:00 p.m. to 3:00 p.m. Eastern Daylight Time.

3. Pursuant to 39 U.S.C. 3661(c) and 39 CFR 3020.111(d), Mallory L. Smith is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

4. Pursuant to 39 CFR 3020.111(d), the Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Erica A. Barker,

Secretary.

[FR Doc. 2021–11517 Filed 6–1–21; 8:45 am]

BILLING CODE 7710–FW–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the

Actuarial Advisory Committee will hold a virtual meeting on June 7, 2021, at 9:00 a.m. (Central Daylight Time) on the conduct of the 28th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the results and presentation of the 28th Actuarial Valuation. The text and tables that constitute the Valuation will have been prepared in draft form for review by the Committee. It is expected that this will be the last meeting of the Committee before publication of the Valuation.

The meeting will be open to the public. Persons wishing to submit written statements, make oral presentations, or attend the meeting should address their communications or notices to Patricia Pruitt (Patricia.Pruitt@rrb.gov) so that information on how to join the virtual meeting can be provided.

Dated: May 27, 2021.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2021–11567 Filed 6–1–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92033; File Nos. SR–NYSE–2021–14, SR–NYSEAMER–2021–10, SR–NYSEArca–2021–13, SR–NYSECHX–2021–03, SR–NYSENAT–2021–04]

Self-Regulatory Organizations; New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove Proposed Rule Changes To Amend the Schedule of Wireless Connectivity Fees and Charges To Add Circuits for Connectivity Into and Out of the Data Center in Mahwah, New Jersey

May 26, 2021.

I. Introduction

On February 12, 2021, New York Stock Exchange LLC (“NYSE”), NYSE American LLC (“NYSE American”), NYSE Arca, Inc. (“NYSE Arca”), NYSE Chicago, Inc. (“NYSE Chicago”), and NYSE National, Inc. (“NYSE National”) (collectively, the “Exchanges”) each filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Exchange Act” or “Act”)¹ and Rule 19b–4 thereunder,²

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

a proposed rule change to amend their schedule of Wireless Connectivity Fees and Charges (“Fee Schedule”) to (1) add circuits for connectivity into and out of the data center in Mahwah, New Jersey (“Mahwah Data Center”); (2) add services available to customers of the Mahwah Data Center that are not colocation Users; and (3) change the name of the Fee Schedule to “Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fees and Charges.” The proposed rule changes were published for comment in the **Federal Register** on March 4, 2021.³ On April 7, 2021, pursuant to Section 19(b)(2) of the Act,⁴ the Commission designated a longer period within which to either approve the proposed rule changes, disapprove the proposed rule changes, or institute proceedings to determine whether to disapprove the proposed rule changes.⁵ This order institutes proceedings under Section 19(b)(2)(B) of the Exchange Act to determine whether to approve or disapprove the proposed rule changes.

II. Description of the Proposed Rule Changes

The Exchanges propose to amend the Fee Schedule to add services (“NCL Services”) and related fees available to customers of the data center in Mahwah Data Center that are not colocation Users (“NCL Customers”), as well as circuits into and out of the Mahwah Data Center that are available to both colocation Users and NCL Customers.⁷ The Exchanges also propose changing the name of the Fee Schedule from

³ See Securities Exchange Act Release Nos. 91217 (February 26, 2021), 86 FR 12715 (March 4, 2021) (SR–NYSE–2021–14) (“Notice”); 91218 (February 26, 2021), 86 FR 12744 (March 4, 2021) (SR–NYSEAMER–2021–10); 91216 (February 26, 2021), 86 FR 12735 (March 4, 2021) (SR–NYSEArca–2021–13); 91219 (February 26, 2021), 86 FR 12724 (March 4, 2021) (SR–NYSECHX–2021–03); and 91215 (February 26, 2021), 86 FR 12752 (March 4, 2021) (SR–NYSENAT–2021–04) (collectively, the “Notices”). Comments received on the Notices are available on the Commission’s website at: <https://www.sec.gov/comments/sr-nyse-2021-14/srnyse202114.htm>. For ease of reference, citations to the Notice(s) are to the Notice for SR–NYSE–2021–14.

⁴ 15 U.S.C. 78s(b)(2).

⁵ See Securities Exchange Act Release No. 91490 (April 7, 2021), 86 FR 19313 (April 13, 2021). The Commission designated June 2, 2021, as the date by which it should approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule changes.

⁶ 15 U.S.C. 78s(b)(2)(B).

⁷ See Notice, *supra* note 3, at 12715. For purposes of the Exchanges’ colocation services, a “User” means any market participant that requests to receive colocation services directly from the Exchanges. See *id.* at 12715 n.4 (citing Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40)). NCL Customers do not co-locate any equipment in the Mahwah Data Center. See *id.* at 12720 n.10.

“Wireless Connectivity Fees and Charges” to “Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fees and Charges.”⁸ The Exchanges expect the proposed changes to be operative 60 days after the proposed rule changes become effective.⁹

The Exchanges state that they make the current proposals solely as a result of their determination that the Commission’s interpretations of the Act’s definitions of the terms “exchange”¹⁰ and “facility”¹¹ apply to connectivity services described herein that are offered by entities other than the Exchanges.¹² The Exchanges state that they disagree with the Commission’s interpretations, deny the services covered herein are offerings of an “exchange” or a “facility” thereof, and have sought review of the Commission’s interpretations as expressed in the Wireless Approval Order in the Court of Appeals for the District of Columbia Circuit.¹³

A. Mahwah Circuits

According to the Exchanges, customers can connect into and out of the Mahwah Data Center using either wireless connections or wired fiber optic circuits.¹⁴ Both ICE Data Services (“IDS”)¹⁵ and third-party

⁸ See *id.* at 12715–16.

⁹ See *id.* at 12716.

¹⁰ See 15 U.S.C. 78c(a)(1) (“The term ‘exchange’ means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.”).

¹¹ See 15 U.S.C. 78c(a)(2) (“The term ‘facility’ when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.”).

¹² See Notice, *supra* note 3, at 12716; see also Securities Exchange Act Release No. 90209 (October 15, 2020), 85 FR 67044 (October 21, 2020) (SR–NYSE–2020–05, SR–NYSEAMER–2020–05, SR–NYSEArca–2020–08, SR–NYSECHX–2020–02, SR–NYSENAT–2020–03, SR–NYSE–2020–11, SR–NYSEAMER–2020–10, SR–NYSEArca–2020–15, SR–NYSECHX–2020–05, SR–NYSENAT–2020–08) (“Wireless Approval Order”).

¹³ See Notice, *supra* note 3, at 12716; see also *Intercontinental Exchange, Inc. v. SEC*, No. 20–1470 (D.C. Cir. 2020).

¹⁴ See *id.* at 12716.

¹⁵ IDS operates through several different Intercontinental Exchange, Inc. (“ICE”) affiliates, including NYSE Technologies Connectivity, Inc., an indirect subsidiary of NYSE. The Exchanges

telecommunications service providers offer wired circuits into and out of the Mahwah Data Center.¹⁶ The Exchanges propose to add to the Fee Schedule the circuit options offered by IDS to both colocation Users and NCL Customers to connect into and out of the Mahwah Data Center.¹⁷

Specifically, the Exchanges propose to amend the Fee Schedule to add two different types of circuits, each available in three different sizes, under the new heading “C. Mahwah Circuits.”¹⁸ First, the Exchanges propose to amend the Fee Schedule to add “Optic Access” circuits, which are circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS access centers at six third-party owned data centers.¹⁹ Second, the Exchanges propose to amend the Fee Schedule to add lower-latency Optic Low Latency circuits that IDS operates and that customers can use to connect between the Mahwah Data Center and IDS’s Secaucus Access Center or Carteret Access Center.²⁰ The Exchanges propose to add a chart to the Fee Schedule to include these circuits, setting forth each type of service and the associated amounts of initial plus monthly fees.²¹

B. Non-Colocation Services

The Exchanges propose to amend the Fee Schedule to add several services available to NCL Customers as well as several notes under the new heading “D. Non-Colocation (“NCL”) Services.”²² According to the Exchanges, these are the services that IDS offers within the Mahwah Data Center that are not colocation services.²³

themselves are indirect subsidiaries of ICE. See Wireless Approval Order, *supra* note 12, at 67045.

¹⁶ See Notice, *supra* note 3, at 12716.

¹⁷ See *id.*

¹⁸ See *id.*

¹⁹ These data centers include: (1) 111 Eighth Avenue, New York, NY; (2) 32 Avenue of the Americas, New York, NY; (3) 165 Halsey, Newark, NJ; (4) Secaucus, NJ (the “Secaucus Access Center”); (5) Carteret, NJ (the “Carteret Access Center”); and (6) Weehawken, NJ. Optic Access circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes. See *id.*

²⁰ Optic Low Latency circuits are available in 1 Gb, 10 Gb, and 40 Gb sizes. See *id.*

²¹ The proposed types of services and amounts of charges are as follows: Optic Access Circuit—1 Gb (\$1,500 initial charge plus \$1,500 monthly charge); Optic Access Circuit—10 Gb (\$5,000 initial charge plus \$2,500 monthly charge); Optic Access Circuit—40 Gb (\$5,000 initial charge plus \$6,000 monthly charge); Optic Low Latency Circuit—1 Gb (\$1,500 initial charge plus \$2,750 monthly charge); Optic Low Latency Circuit—10 Gb (\$5,000 initial charge plus \$3,950 monthly charge); and Optic Low Latency Circuit—40 Gb (\$5,000 initial charge plus \$8,250 monthly charge). See *id.*

²² See *id.*

²³ See *id.*

1. IDS Network Ports

The Exchanges propose to amend the Fee Schedule to add services that IDS offers enabling NCL Customers to connect to the IDS Network in the Mahwah Data Center.²⁴ The Exchanges describe the “IDS Network” as a wide area network available in the Mahwah Data Center and other access centers.²⁵ The Exchanges propose to add a chart to the Fee Schedule setting forth and describing each type of IDS Network Port providing NCL Customers access to IDS’s network,²⁶ along with the associated amounts of initial plus monthly fees.²⁷

The Exchanges also propose to add to the Fee Schedule several notes regarding these services, which they state are based on General Notes 4, 5, and 6 of the Exchanges’ Price List regarding colocation.²⁸ Specifically, the Exchanges propose to add the heading “NCL Notes” after the tables in the proposed section of the Fee Schedule titled “D. Non-Colocation (“NCL”) Services.”²⁹ Proposed Note 1, titled “Note 1: IDS Network,” would establish that when an NCL Customer purchases access to the IDS Network, the NCL Customer would receive: (a) The ability to access the trading and execution systems of the Exchanges (“Exchange Systems”) as well as of the Global OTC System (“Global OTC”);³⁰ and (b) connectivity to any of the listed data

²⁴ See *id.*

²⁵ See *id.*

²⁶ A port is connected to a circuit by using a cross connect. See *id.* at 12720; see also *infra* note 65 and accompanying text.

²⁷ The proposed types of services and the Exchanges’ descriptions of them, along with the associated amounts of initial plus monthly fees, are as follows: NCL IDS Network Access—10 Gb, a 10 Gb IDS Network port (\$10,000 initial charge plus \$15,250 monthly charge); and NCL IDS Network Access—40 Gb, a 40 Gb IDS Network port (\$10,000 initial charge plus \$19,750 monthly charge). See Notice, *supra* note 3, at 12716–17.

²⁸ See *id.* at 12717.

²⁹ See *id.*

³⁰ Proposed Note 1 states that when an NCL Customer purchases access to the IDS Network, it receives the ability to access the trading and execution systems of the NYSE, NYSE American, NYSE Arca, NYSE Chicago, and NYSE National (together, the Exchange Systems) as well as of Global OTC (the Global OTC System), subject, in each case, to authorization by the NYSE, NYSE American, NYSE Arca, NYSE Chicago, NYSE National, or Global OTC, as applicable. Proposed Note 1 also states that each Exchange listed above offers access to its Exchange Systems to its members and Global OTC offers access to the Global OTC System to its subscribers, such that an NCL Customer does not have to purchase a service that includes access to the IDS Network to obtain access to Exchange Systems or the Global OTC System. See *id.*

products (“Included Data Products”)³¹ that it selects.³²

2. NCL Connectivity to Third Party Systems, Data Feeds, Testing and Certification Feeds, and DTCC

The Exchanges also propose to amend the Fee Schedule to provide for the connectivity services that IDS offers for NCL Customers to Third Party Systems, Third Party Data Feeds, third party testing and certification feeds, and DTCC (each as defined below).³³

a. Connectivity to Third Party Systems

The Exchanges propose to specify in the Fee Schedule services that IDS offers NCL Customers to access the trading and execution services of Third Party markets and other content service providers (“Third Party Systems”) for a fee.³⁴ According to the Exchanges, NCL Customers connect to Third Party Systems over the IDS Network.³⁵ The

³¹ Proposed Note 1 provides that these “Included Data Products” are as follows: NMS feeds—CTS, CQS, and OPRA; NYSE; NYSE American; NYSE American Options; NYSE Arca; NYSE Arca Options; NYSE Best Quote and Trades (BQT); NYSE Bonds; NYSE Chicago; and NYSE National. See *id.*

³² Proposed Note 1 also states that when an NCL Customer purchases access to the IDS Network, it receives connectivity to any of the Included Data Products that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing by the provider of the Included Data Feed. Fees for the Included Data Products are charged by the provider of such Included Data Products. An NCL Customer can change the Included Data Products to which it receives connectivity at any time, subject to authorization from the provider of such Included Data Product. Proposed note 1 also states that because access to the IDS Network is not the exclusive method to connect to the Included Data Products, an NCL Customer does not have to purchase a service that includes access to the IDS Network to connect to such Included Data Products. See *id.*

³³ The Exchanges state that they propose to adopt substantially similar services and fees as set forth in the Exchanges’ Price List regarding colocation. See *id.* (citing Securities Exchange Act Release No. 80311 (March 24, 2017), 82 FR 15749 (March 30, 2017) (SR–NYSE–2016–45)).

³⁴ See *id.*

³⁵ The Exchanges state that in order to obtain access to a Third Party System, an NCL Customer enters into an agreement with the relevant third-party content service provider, pursuant to which the third-party content service provider charges the NCL Customer for access to the Third Party System. When such services are requested, IDS establishes a connection between the NCL Customer and the relevant third party content service provider over the IDS Network. IDS charges the NCL Customer for the connectivity to the Third Party System. An NCL Customer only receives, and is only charged by IDS for, connectivity to each Third Party System for which the customer enters into an agreement with the third-party content service provider. According to the Exchanges, neither the Exchanges nor IDS has an affiliation with the providers of the Third Party Systems. Establishing an NCL Customer’s access to a Third Party System does not give either IDS or the Exchanges any right to use the Third Party Systems. Connectivity to a Third Party System does not provide access or order entry to the Exchange’s execution system, and an NCL Customer’s

Exchanges state that IDS charges a monthly recurring fee for connectivity to a Third Party System, which the Exchanges propose to add to their Fee Schedule.³⁶ The Exchanges propose to add a chart to the Fee Schedule setting forth a description of each type of connectivity service to Third Party Systems over the IDS Network, along with the associated amount of monthly fees per connection.³⁷

The Exchanges also propose to add Note 2, titled “Note 2: Third Party Systems,” to the section of the Fee Schedule titled “D. Non-Colocation (“NCL”) Services,” which would provide that when an NCL Customer purchases a connection that includes access to Third Party Systems, it receives access to Third Party Systems it selects subject to any technical provisioning requirements, authorization, and licensing from such Third Party System.³⁸ Proposed Note 2 also provides that fees for the Third Party Systems are charged by the provider of such Third Party System.³⁹ In addition, proposed Note 2 states that the Exchanges are not the exclusive method to connect to Third Party Systems.⁴⁰

connection to a Third Party System is not through the Exchange’s execution system. See *id.*

³⁶ Specifically, when an NCL Customer requests access to a Third Party System, IDS identifies the applicable third-party market or other content service provider and the bandwidth connection it requires. See *id.*

³⁷ The Exchanges propose the following monthly fees per connection: 1Mb (\$200 per connection monthly charge); 3Mb (\$400 per connection monthly charge); 5Mb (\$500 per connection monthly charge); 10Mb (\$800 per connection monthly charge); 25Mb (\$1,200 per connection monthly charge); 50Mb (\$1,800 per connection monthly charge); 100Mb (\$2,500 per connection monthly charge); 200Mb (\$3,000 per connection monthly charge); and 1Gb, \$3,500 per connection monthly charge. See *id.* at 12717–18.

³⁸ See *id.* at 12718.

³⁹ See *id.*

⁴⁰ Proposed Note 2 would further provide that these “Third Party Systems” are as follows: American Trading Group (ATG); BM&F Bovespa; Boston Options Exchange (BOX); Canadian Securities Exchange (CSE); Cboe BYX Exchange (CboeBYX); Cboe BZX Exchange (CboeBZX); Cboe EDGA Exchange (CboeEDGA); and Cboe EDGX Exchange (CboeEDGX); Cboe Exchange (Cboe) and Cboe C2 Exchange (C2); Chicago Mercantile Exchange (CME Group); Credit Suisse; Euronext Optiq Cash and Derivatives Unicast (EUA); Euronext Optiq Cash and Derivatives (Production); Investor Exchange (IEX); ITG TriAct Matchnow; Long Term Stock Exchange (LTSE); Members Exchange (MEMX); MIAX Options, MIAX PEARL Options, MIAX PEARL Equities, and MIAX Emerald; Morgan Stanley; Nasdaq; NASDAQ Canada (CXC, CXD, CX2); NASDAQ ISE; Neo Aequitas; NYFIX Marketplace; Omega; OneChicago; OTC Markets Group; TD Ameritrade; and TMX Group. See *id.*

b. Connectivity to Third Party Data Feeds

The Exchanges propose to specify in the Fee Schedule connectivity services that IDS offers NCL Customers to connect to data feeds from third-party markets and other content service providers (“Third Party Data Feeds”) for a fee.⁴¹ According to the Exchanges, NCL Customers connect to Third Party Data Feeds over the IDS Network.⁴²

The Exchanges state that IDS charges a monthly recurring fee for connectivity to each Third Party Data Feed.⁴³ Third Party Data Feed providers may charge redistribution fees.⁴⁴ The Exchanges propose that, when IDS is charged a redistribution fee by the Third Party Data Feed provider, IDS would pass through the charge to the NCL Customer, without change to the fee.⁴⁵ In addition, the Exchanges propose they it would not charge NCL Customers that are third-party markets or content providers for connectivity to their own feeds, as the Exchanges maintain that

such parties generally receive their own feeds for purposes of diagnostics and testing.⁴⁶ The Exchanges propose to add a chart to the Fee Schedule setting forth a description of each type of connectivity service to Third Party Feeds over the IDS Network, along with the associated amount of monthly fees.⁴⁷

The Exchanges also propose to add Note 3, titled “Note 3: Third Party Systems,” to the section of the Fee Schedule titled “D. Non-Colocation (“NCL”) Services.”⁴⁸ Proposed Note 3 would provide that pricing for data feeds from third party markets and other service providers (Third Party Data Feeds) is for connectivity only, which is subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed, and is over the IDS Network.⁴⁹ Proposed Note 3 would also state that fees for Third Party Data Feeds are charged by the provider of such data feeds,⁵⁰ as well as that IDS is not the

exclusive method to connect to Third Party Data Feeds.⁵¹

c. Connectivity to Third Party Data Testing and Certification Feeds

The Exchanges propose to specify in the Fee Schedule that NCL Customers may obtain connectivity to third-party testing and certification feeds.⁵² According to the Exchanges, certification feeds are used to certify that an NCL Customer conforms to any of the relevant content service provider’s requirements for accessing Third Party Systems or receiving Third Party Data Feeds, while testing feeds would provide NCL Customers an environment in which to conduct tests with non-live data.⁵³ The Exchanges state that such feeds, which are solely used for certification and testing and do not carry live production data, are available over the IDS Network.⁵⁴ The Exchanges propose to add a \$100 monthly recurring charge per feed for connectivity to Third Party Testing and Certification Feeds to the Fee Schedule.⁵⁵

d. Connectivity to DTCC

The Exchanges propose to specify in the Fee Schedule services that IDS provides to connect NCL Customers to Depository Trust & Clearing Corporation (“DTCC”) for clearing, fund transfer, insurance, and settlement services.⁵⁶ IDS charges the NCL Customer for the connectivity to DTCC.⁵⁷ The Exchanges

IDS does not charge third party markets or content providers for connectivity to their own feeds. *See id.*

⁵¹ *See id.*

⁵² *See id.*

⁵³ *See id.*

⁵⁴ The Exchanges state that connectivity to third party testing and certification feeds would be subject to any technical provisioning requirements, authorization, and licensing from the provider of the data feed; fees for such feeds are charged by the provider of the feed; and the Exchanges are not the exclusive method to connect to third-party testing and certification feeds. *See id.*

⁵⁵ *See id.*

⁵⁶ According to the Exchanges, in order to connect to DTCC, an NCL Customer enters into a contract with DTCC, pursuant to which DTCC charges the NCL Customer for the services provided. IDS receives the DTCC feed over its fiber optic network and, after DTCC and the NCL Customer entered into the services contract and IDS received authorization from DTCC, IDS provides connectivity to DTCC to the NCL Customer over the NCL Customer’s IDS Network port. The Exchanges state that connectivity to DTCC does not provide access or order entry to the Exchanges’ execution systems, and an NCL Customer’s connection to DTCC is not through the Exchanges’ execution systems. *See id.* at 12719–20.

⁵⁷ The Exchanges state that connectivity to DTCC is subject to any technical provisioning requirements, authorization, and licensing from DTCC; fees for such feeds are charged by DTCC; and IDS is not the exclusive provider to connect to DTCC feeds. *See id.* at 12720.

⁴¹ *See id.*

⁴² The Exchanges state that IDS receives Third Party Data Feeds from multiple national securities exchanges and other content service providers at the Mahwah Data Center, and provides connectivity to that data to NCL Customers for a fee. According to the Exchanges, in order to connect to a Third Party Data Feed, an NCL Customer enters into a contract with the relevant third-party market or other content service provider, pursuant to which the content service provider charges the NCL Customer for the Third Party Data Feed. IDS receives the Third Party Data Feed over its fiber optic network and, after the data provider and NCL Customer enter into an agreement and IDS receives authorization from the data provider, IDS retransmits the data to the NCL Customer over the NCL Customer’s IDS Network port. IDS charges the NCL Customer for the connectivity to the Third Party Data Feed. An NCL Customer only receives, and is only charged for, connectivity to the Third Party Data Feeds for which it entered into contracts. With the exception of the IDS, ICE, and Global OTC feeds, neither the Exchanges nor IDS has any affiliation with the sellers of the Third Party Data Feeds. The Exchanges and IDS have no right to use the Third Party Data Feeds other than as a redistributor of the data. The Third Party Data Feeds do not provide access or order entry to the Exchange’s execution system. With the exception of the ICE feed, the Third Party Data Feeds do not provide access or order entry to the execution systems of the third party generating the feed. The Exchanges further represent that IDS receives Third Party Data Feeds via arms-length agreements and has no inherent advantage over any other distributor of such data. *See id.*

⁴³ The monthly recurring fee is per Third Party Data Feed, with the exception that the monthly recurring fee for the ICE Data Services Consolidated Feeds (including the ICE Data Services Consolidated Feed Shared Farm feeds), Vela—SuperFeeds, and MSCI feeds vary by the bandwidth of the connection. According to the Exchanges, depending on its needs and bandwidth, an NCL Customer may opt to receive all or some of the Third Party Data Feeds. *See id.*

⁴⁴ *See id.*

⁴⁵ The fee would be labeled as a pass-through of a redistribution fee on the NCL Customer’s invoice. *See id.*

⁴⁶ *See id.*

⁴⁷ The proposed descriptions of these services and associated amount of monthly fees are as follows: BM&F Bovespa (\$3,000); Boston Options Exchange (BOX) (\$1,000); Canadian Securities Exchange (CSE) (\$1,000); Cboe BZX Exchange (CboeBZX) and Cboe BYX Exchange (CboeBYX) (\$2,000); Cboe EDGX Exchange (CboeEDGX) and Cboe EDGA Exchange (CboeEDGA) (\$2,000); Cboe Exchange (Cboe) and Cboe C2 Exchange (C2) (\$2,000); CME Group (\$3,000); Euronext Optiq Compressed Cash (\$900); Euronext Optiq Compressed Derivatives (\$600); Euronext Optiq Shaped Cash (\$1,200); Euronext Optiq Shaped Derivatives (\$900); Financial Industry Regulatory Authority (FINRA) (\$500); Global OTC (\$100); ICE Data Services Consolidated Feed ≤100 Mb (\$200); ICE Data Services Consolidated Feed >100 Mb to ≤1 Gb (\$500); ICE Data Services Consolidated Feed >1 Gb (\$1,000); ICE Data Services Consolidated Feed Shared Farm ≤100Mb (\$200); ICE Data Services Consolidated Feed Shared Farm >100 Mb to ≤1 Gb (\$500); ICE Data Services Consolidated Feed Shared Farm >1 Gb (\$1,000); ICE Data Services—ICE TMC (\$200); ICE Data Services PRD (\$200); ICE Data Services PRD CEP (\$400); Intercontinental Exchange (ICE) (\$1,500); Investors Exchange (IEX) (\$1,000); ITG TriAct Matchnow (\$1,000); Members Exchange (MEMX) (\$3,000); MIAX Emerald (\$3,500); MIAX Options/MIAX PEARL Options (\$2,000); MIAX PEARL Equities (\$2,500); Montréal Exchange (MX) (\$1,000); MSCI 5 Mb (\$500); MSCI 25 Mb (\$1,200); NASDAQ Stock Market (\$2,000); NASDAQ OMX Global Index Data Service (\$100); NASDAQ UQDF & UTDF (\$500); NASDAQ Canada (CXC, CXD, CX2) (\$1,500); NASDAQ ISE (\$1,000); Neo Aquitas (\$1,200); Omega (\$1,000); OneChicago (\$1,000); OTC Markets Group (\$1,000); Vela—SuperFeed <500 Mb (\$250); Vela—SuperFeed >500 Mb to <1.25 Gb (\$800); Vela—SuperFeed >1.25 Gb (\$1,000); and TMX Group (\$2,500). *See id.* at 12718–19.

⁴⁸ *See id.* at 12719.

⁴⁹ *See id.*

⁵⁰ Proposed Note 3 further provides that Third Party Data Feed providers may charge redistribution fees, and that when IDS is charged a redistribution fee, IDS passes the charge through to the customer, without change to the fee. The fee is labeled as a pass-through of a redistribution fee on the customer’s invoice. Proposed Note 3 also states that

propose to add a \$500 monthly recurring charge for a 5 Mb connection to DTCC and a \$2,500 monthly recurring charge for a 10 Mb connection to DTCC to the Fee Schedule.⁵⁸

3. NCL NMS Network Ports

The Exchanges propose to amend the Fee Schedule to add services that IDS currently offers enabling NCL Customers to connect to the NMS feeds for which the Securities Industry Automation Corporation is engaged as the securities information processor (the “NMS Network”) in the Mahwah Data Center.⁵⁹ The Exchanges propose to add a chart to the Fee Schedule setting forth and describing each type of NCL NMS Network Port providing NCL Customers access to the NCL NMS Network, along with the associated amounts of initial plus monthly fees.⁶⁰

The Exchanges also propose to add Note 4, titled “Note 4: NMS Network,” to the section of the Fee Schedule titled “D. Non-Colocation (“NCL”) Services,” establishing that when an NCL Customer purchases an NMS Network port, it has the option of receiving the NMS feeds over the NMS Network.⁶¹ Proposed Note 4 would provide that when an NCL Customer purchases access to the NMS Network, upon its request, it will receive connectivity to any of the NMS feeds that it selects, subject to any necessary technical provisioning requirements, authorization, and licensing from the provider of such NMS feed.⁶² Proposed Note 4 would also state that fees for the NMS feeds are charged by the provider of such NMS feed.⁶³

4. NCL Cross Connect

The Exchanges propose to amend the Fee Schedule to specify fiber cross connect services that IDS offers NCL Customers for an initial and monthly charge.⁶⁴ A cross connect is used to connect a circuit to a port, the Exchanges state, and NCL Customers

use such cross connects to connect from the IDS Network or NMS Network to a circuit connecting outside the Mahwah Data Center.⁶⁵ According to the Exchanges, the proposed fees for this service would be identical to the fees for the corresponding service in colocation.⁶⁶ The Exchanges propose to add a \$500 initial charge plus a \$600 monthly charge to furnish and install one NCL Cross Connect to the Fee Schedule.⁶⁷

5. NCL Expedite Fee

The Exchanges propose to amend the Fee Schedule to specify optional services that IDS offers NCL Customers to expedite the completion of services purchased or ordered by the NCL Customer, for which IDS charges an “Expedite Fee.”⁶⁸ If an NCL Customer wishes to obtain NCL Services earlier than the expected completion date, the NCL Customer may pay the Expedite Fee.⁶⁹ The Exchanges propose to add a \$4,000 per request charge for expedited installation/completion of a customer’s NCL service to the Fee Schedule.⁷⁰

6. NCL Change Fee

The Exchanges propose to amend the Fee Schedule to specify the “Change Fee” that IDS charges an NCL Customer if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer.⁷¹ The

Exchanges propose to add a \$950 per request charge to change an NCL service that has already been installed/completed for a customer to the Fee Schedule.⁷²

C. Fee Schedule Name

Finally, the Exchanges propose change the name of the Fee Schedule from “Wireless Connectivity Fees and Charges” to “Mahwah Wireless, Circuits, and Non-Colocation Connectivity Fees and Charges,” since the Fee Schedule will no longer be limited to wireless services.⁷³

III. Exchanges’ Justification and Comments Received

The Exchanges generally argue that the proposed rule changes are reasonable, equitable, and not unfairly discriminatory because use of the proposed services is completely voluntary and alternatives to them are available.⁷⁴ According to the Exchanges, IDS operates in a highly competitive market in which exchanges, third party telecommunications providers, Hosting Users,⁷⁵ and other third-party vendors offer connectivity services as a means to facilitate the trading and other market activities of market participants.⁷⁶ With these proposals, the Exchanges assert that market participants would have more choices with respect to the form and price of the services they use, allowing market participants to select the services and connectivity options that better suit their needs, thereby helping them tailor their connectivity operations to the requirements of their businesses.⁷⁷ In any case, the Exchanges state that there are currently few NCL Customers, and thus expect that the

through submitting an order form requesting multiple services), the NCL Customer would be charged a one-time Change Fee of \$950, which would cover the multiple services. *See id.* at 12720–21.

⁷² *See id.* at 12721.

⁷³ *See id.*

⁷⁴ *See id.*

⁷⁵ “Hosting” is a service offered by a User to another entity in the User’s space within the Mahwah Data Center. The Exchanges allow Users to act as Hosting Users for a monthly fee. *See id.* (citing Securities Exchange Act Release No. 76008 (September 29, 2015), 80 FR 60190 (October 5, 2015) (SR–NYSE–2015–40)).

⁷⁶ *See id.* In this regard, the Exchanges maintain that most of the third-party telecommunications providers that provide circuits do so at fees lower than those proposed herein, and that most NCL Customers and colocation Users use such third party telecommunication circuits into and out of the Mahwah Data Center. *See id.* at 12722.

⁷⁷ *See id.* at 12723. More generally, the Exchanges maintain that market participants consider various factors in determining which connectivity options to choose, including latency; bandwidth size; amount of network uptime; the equipment that the network uses; the cost of the connection; and the applicable contractual provisions. *See id.* at 12722.

⁵⁸ *See id.* at 12720.

⁵⁹ *See id.*

⁶⁰ *See id.*

⁶¹ According to the Exchanges, the proposed fees would be similar to the “Expedite Fee” applicable to Users in colocation. *See id.* (citing Securities Exchange Act Release No. 67666 (August 15, 2012), 77 FR 50742 (August 22, 2012) (SR–NYSE–2012–18)).

⁶² The Exchanges state that the time saved would vary depending on the type(s) of service(s) ordered, but the Expedite Fee would always be a flat \$4,000, allowing the NCL Customer to determine if the expected time savings warrants payment of the fee. *See id.*

⁶³ *See id.*

⁶⁴ The Exchanges state that several of the proposed services that would be added to the Fee Schedule include an initial fee in addition to an ongoing monthly fee. These initial fees are related to IDS’s initial cost of establishing or installing a particular service for the NCL Customer. IDS charges a fee of \$950 per order if the NCL Customer requests a change to one or more existing NCL Services that IDS has already established or completed for the NCL Customer. According to the Exchanges, this is similar to the “Change Fee” applicable to Users in colocation. For example, the initial installation of an IDS Network connection would include establishing and configuring market data services requested by the NCL Customer, which would be covered by the initial install fee. However, if the NCL Customer requests that IDS establish and configure additional market data services for its IDS Network connection, the NCL Customer would be charged a one-time Change Fee of \$950 for that request. If an NCL Customer orders two or more services at one time (for example,

⁵⁸ *See id.*

⁵⁹ *See id.*

⁶⁰ The Exchanges propose a \$10,000 initial charge plus \$11,000 monthly charge for a 10 Gb NCL NMS Network port, and a \$10,000 initial charge plus \$18,000 monthly charge for a 40 Gb NCL NMS Network port. *See id.*

⁶¹ *See id.*

⁶² Proposed Note 4 would further provide that these NMS feeds are as follows: CTS; CQS; and OPRA. *See id.*

⁶³ *See id.*

⁶⁴ *See id.* According to the Exchanges, because NCL Customers do not co-locate any equipment in the Mahwah Data Center, they generally require fewer fiber cross connects than colocation Users. Hence, the Exchanges do not propose amending the Fee Schedule to include bundles of 6, 12, 18, or 24 cross connects as are available to colocation Users. *See id.* at 12720 n.10.

impact of the proposals would be minimal.⁷⁸

With respect to the competitive environment, the Exchanges maintain generally that the proposed rule changes are reasonable because the proposed fees are constrained by competition.⁷⁹ In this regard, the Exchanges argue that the proposed services are voluntary and available to all market participants on an equal basis.⁸⁰ In addition, the Exchanges provide some cost-based justifications throughout for why the proposals are reasonable, claiming that offering the proposed services requires the provision, maintenance, and operation of the Mahwah Data Center, including the installation, monitoring, support, and maintenance of the proposed services.⁸¹ The Exchanges also assert that various of the proposed changes to the Fee Schedule would provide market participants with greater transparency and clarity.⁸²

The Exchanges argue that the proposals provide for an equitable allocation of fees and are not unfairly discriminatory, again contending that the proposed services are voluntary and available to all market participants on an equal basis.⁸³ The Exchanges claim that the proposed rule changes do not apply differently to distinct types or sizes of market participants, but rather apply to all market participants equally, and state that the Fee Schedule would be applied uniformly to all market participants.⁸⁴

Lastly, the Exchanges argue that the proposed rule changes do not impose an unnecessary or inappropriate burden on competition because there are numerous other third parties that provide circuits and connectivity at the Mahwah Data Center, with whom IDS competes for the provision of such services to customers.⁸⁵ According to the Exchanges, the proposals do not affect competition among national securities exchanges or among members of the Exchanges, but rather the Exchanges' filing of the proposals puts IDS at a competitive disadvantage relative to its commercial competitors that are not subject to filing requirements of Section 19(b) of the Act.⁸⁶

The Commission has received one comment letter regarding the proposed

rule changes.⁸⁷ This commenter argues that the Exchanges have failed to demonstrate that the proposed rule changes are consistent with the Act.⁸⁸ The commenter asserts that the proposals are not transparent as to whether they are only prospective, or whether and to what extent they cover services and fees that are already in effect.⁸⁹

This commenter further argues that the Exchanges' competition- and cost-based justifications for the proposals amount to conclusory assertions.⁹⁰ The commenter maintains that the Exchanges do not specifically assert that other service providers can offer the ability to transmit data or messages into or out of the Mahwah Data Center as quickly and efficiently as IDS can.⁹¹ With respect to competition, the commenter states that the Exchanges should explain the following: Who the other competing providers are and which, if any of them, provide all of the same functionality as is provided by IDS in terms of access to exchange systems, third market systems, and market data; how the fees for the services compare to the prices charged by competing providers for the same or similar services; and whether competing providers have the ability to provide services that are equivalent to the services in terms of latency or other characteristics, and if so, the basis for that conclusion (and if not equivalent, what differences there are and how they affect the question of whether the fees charged are fair and reasonable).⁹² The commenter also notes the Exchanges' claim that third-party providers of circuits in the Mahwah Data Center charge lower fees than IDS, and argues that this raises the question of why IDS is able to charge more and what benefits

IDS may be able to provide that third parties cannot.⁹³

Moreover, the commenter argues that the Exchanges have not provided any quantitative or other specific information to support their argument that fees for the proposed services are reasonable because of the need to recover data center costs.⁹⁴ The commenter states that the following information would be relevant with respect to the Exchanges' cost-based arguments: Which cost components the Exchanges believe are relevant to the services and why; the amount of those costs over some specified period of recent time (e.g., during the last year); and how those costs compare to the amount of fees from the services that has been collected or is expected to be collected over the same time period.⁹⁵

IV. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Changes

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the Exchanges' proposed rule changes should be approved or disapproved.⁹⁶ Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule changes to inform the Commission's analysis of whether to approve or disapprove the proposed rule changes.

Pursuant to Section 19(b)(2)(B) of the Act,⁹⁷ the Commission is providing notice of the grounds for possible disapproval under consideration:

- Whether the Exchanges have demonstrated how the proposals are consistent with Section 6(b)(4) of the Act, which requires that the rules of a national securities exchange "provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities;"⁹⁸

⁷⁸ See *id.* at 12721.

⁷⁹ See *id.* at 12721–22.

⁸⁰ See *id.* at 12721.

⁸¹ See *id.* at 12721–23.

⁸² See *id.* at 12722.

⁸³ See *id.* at 12723.

⁸⁴ See *id.*

⁸⁵ See *id.* at 12724.

⁸⁶ See *id.* at 12723–24.

⁸⁷ Letter from John Ramsay, Chief Market Policy Officer, Investors Exchange LLC ("IEX") to Vanessa Countryman, Secretary, Commission, dated March 25, 2021 ("IEX Letter").

⁸⁸ See *id.* at 1, 4–5. The commenter also disputes the Exchanges' assertion that the proposed services are not offerings of an "exchange" or a "facility" thereof. See *id.* at 2; see also *supra* notes 10–13 and accompanying text.

⁸⁹ This commenter states that it is important for providing informed comment on the proposals that the Exchanges be clear as to whether they are seeking retroactive approval of offerings and fees that are already in effect, and if so, understanding their history. The commenter states that the Exchanges should at a minimum explain: Which fees are already in effect and how long have they been in effect; if previously charged by an entity other than IDS, by which entity, and what the purpose was for the change in entity; and if any specific fees have increased, what the dates and amounts of the increases were, as well as the reasons for such increases. See IEX Letter at 2.

⁹⁰ See *id.* at 3.

⁹¹ See *id.* at 4.

⁹² See *id.*

⁹³ See *id.*; see also *supra* note 76.

⁹⁴ See IEX Letter at 3.

⁹⁵ See *id.*

⁹⁶ 15 U.S.C. 78s(b)(2)(B).

⁹⁷ *Id.* Section 19(b)(2)(B) of the Act also provides that proceedings to determine whether to disapprove a proposed rule change must be concluded within 180 days of the date of publication of notice of the filing of the proposed rule change. See *id.* The time for conclusion of the proceedings may be extended for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding, or if the exchange consents to the longer period. See *id.*

⁹⁸ 15 U.S.C. 78f(b)(4).

- Whether the Exchanges have demonstrated how the proposals are consistent with Section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be “designed to perfect the operation of a free and open market and a national market system” and “protect investors and the public interest,” and not be “designed to permit unfair discrimination between customers, issuers, brokers, or dealers;”⁹⁹ and

- Whether the Exchanges have demonstrated how the proposals are consistent with Section 6(b)(8) of the Act, which requires that the rules of a national securities exchange “not impose any burden on competition not necessary or appropriate in furtherance of the purposes of [the Act].”¹⁰⁰

As discussed in Section III above, the Exchanges made various arguments in support of the proposals and the Commission received a comment letter that expressed concerns regarding the proposals, including that the Exchanges did not provide sufficient information to establish that the proposals are consistent with the Act and the rules thereunder.

Under the Commission’s Rules of Practice, the “burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization [‘SRO’] that proposed the rule change.”¹⁰¹ The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding.¹⁰² Any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Act and the applicable rules and regulations.¹⁰³

The Commission is instituting proceedings to allow for additional consideration and comment on the issues raised herein, including as to whether the proposals are consistent with the Act, specifically, with its requirements that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers, and other persons

using its facilities; are designed to perfect the operation of a free and open market and a national market system, and to protect investors and the public interest; are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers; and do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act;¹⁰⁴ as well as any other provision of the Act, or the rules and regulations thereunder.

V. Commission’s Solicitation of Comments

The Commission requests written views, data, and arguments with respect to the concerns identified above as well as any other relevant concerns. Such comments should be submitted by June 23, 2021. Rebuttal comments should be submitted by July 7, 2021. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.¹⁰⁵

The Commission asks that commenters address the sufficiency and merit of the Exchanges’ statements in support of the proposals, in addition to any other comments they may wish to submit about the proposed rule changes.

Interested persons are invited to submit written data, views, and arguments concerning the proposed rule changes, including whether the proposals are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Nos. SR–NYSE–2021–14, SR–NYSEAMER–2021–10, SR–NYSEArca–2021–13, SR–NYSECHX–2021–03, SR–NYSEAT–2021–04 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 Nos. SR–NYSE–2021–14, SR–NYSEAMER–2021–10, SR–NYSEArca–2021–13, SR–NYSECHX–2021–03, and SR–NYSEAT–2021–04. The file numbers should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchanges. 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 publicly available. All submissions should refer to File Nos. SR–NYSE–2021–14, SR–NYSEAMER–2021–10, SR–NYSEArca–2021–13, SR–NYSECHX–2021–03, and SR–NYSEAT–2021–04 and should be submitted on or before June 23, 2021. Rebuttal comments should be submitted by July 7, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰⁶

J. Matthew DeLesDernier,
Assistant Secretary.

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⁹⁹ 15 U.S.C. 78f(b)(5).

¹⁰⁰ 15 U.S.C. 78f(b)(8).

¹⁰¹ 17 CFR 201.700(b)(3).

¹⁰² See *id.*

¹⁰³ See *id.*

¹⁰⁴ See 15 U.S.C. 78f(b)(4), (5), and (8).

¹⁰⁵ 15 U.S.C. 78s(b)(2). Section 19(b)(2) of the Act grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by an SRO. See Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

¹⁰⁶ 17 CFR 200.30–3(a)(57).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92029; File No. SR-IEX-2021-06]

Self-Regulatory Organizations; Investors Exchange LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To Enhance the IEX Retail Price Improvement Program for the Benefit of Retail Investors

May 26, 2021.

On April 1, 2021, the Investors Exchange LLC (“IEX”) filed with the Securities and Exchange Commission (“Commission”), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² a proposed rule change to enhance its Retail Price Improvement Program for the benefit of retail investors. The proposed rule change was published for comment in the *Federal Register* on April 15, 2021.³ The Commission received a comment letter on the proposed rule change.⁴

Section 19(b)(2) of the Act⁵ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 30, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received thereon. Accordingly, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designates July 14, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine

whether to disapprove, the proposed rule change (File No. SR-IEX-2021-06).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11531 Filed 6-1-21; 8:45 am]

BILLING CODE 8011-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92028; File No. SR-EMERALD-2021-19]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Adopt Fees for a New Data Product Known as the Liquidity Taker Event Report

May 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 14, 2021, MIAX Emerald, LLC (“MIAX Emerald” or “Exchange”), filed with the Securities and Exchange Commission (“Commission”) a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the Exchange’s Fee Schedule (“Fee Schedule”) to adopt fees for a new data product known as the Liquidity Taker Event Report.³

The text of the proposed rule change is available on the Exchange’s website at <http://www.miaxoptions.com/rule-filings/emerald>, at MIAX’s principal office, 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 recently adopted a new data product known as the Liquidity Taker Event Report (the “Report”), which will be available for purchase to Exchange Members on a voluntary basis.⁴ The Exchange now proposes to adopt fees for the Report. The Report was recently approved by the Securities and Exchange Commission (“Commission”) and is described under Exchange Rule 531(a).⁵ The Report is an optional product available to Members.

By way of background, the Report is a daily report that provides a Member (“Recipient Member”) with its liquidity response time details for executions of an order resting on the Book,⁶ where that Recipient Member attempted to execute against such resting order⁷ within a certain timeframe. It is important to note that the content of the Report is specific to the Recipient Member and the Report will not include any information related to any Member other than the Recipient Member.

The following information is included in the Report regarding the resting order: (A) The time the resting order was received by the Exchange; (B) symbol; (C) order reference number, which is a unique reference number assigned to a new order at the time of receipt; (D) whether the Recipient Member is an Affiliate⁸ of the Member

⁴ The term “Member” means an individual or organization approved to exercise the trading rights associated with a Trading Permit. Members are deemed “members” under the Exchange Act. See the Definitions Section of the Fee Schedule and Exchange Rule 100.

⁵ See Securities Exchange Act Release No. 91787 (May 6, 2021), 86 FR 26111 (May 12, 2021) (SR-EMERALD-2021-09) (Order Granting Approval of a Proposed Rule Change to Adopt Exchange Rule 531(a), Reports, to Provide for a New “Liquidity Taker Event Report”).

⁶ The term “Book” means the electronic book of buy and sell orders and quotes maintained by the System. See Exchange Rule 100. The term “System” means the automated trading system used by the Exchange for the trading of securities. See *id.*

⁷ Only displayed orders will be included in the Report. The Exchange notes that it does not currently offer any non-displayed orders types on its options trading platform.

⁸ The term “affiliate” of or person “affiliated with” another person means a person who, directly, or indirectly, controls, is controlled by, or is under

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91523 (April 9, 2021), 86 FR 19912 (April 15, 2021).

⁴ Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-ix-2021-06/sriex202106.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ *Id.*

⁷ 17 CFR 200.30-3(a)(31).

⁸ 15 U.S.C. 78s(b)(1).

⁹ 17 CFR 240.19b-4.

¹⁰ See, generally, Exchange Rule 531(a).

that entered the resting order;⁹ (E) origin type (e.g., Priority Customer,¹⁰ Market Maker;¹¹) (F) side (buy or sell); and (G) displayed price and size of the resting order.¹²

The following information is included in the Report regarding the execution of the resting order: (A) The EBBO¹³ at the time of execution;¹⁴ (B) the ABBO¹⁵ at the time of execution;¹⁶ (C) the time first response that executes against the resting order was received by the Exchange and the size of the execution and type of the response;¹⁷ (D) the time difference between the time the resting order was received by the Exchange and the time the first response that executes against the resting order was received by the Exchange;¹⁸ and (E) whether the response was entered by the Recipient

common control with, such other person. *See* Exchange Rule 100.

⁹The Report will simply indicate whether the Recipient Member is Affiliate of the Member that entered the resting order and not include any other information that may indicate the identity of the Member that entered the resting order.

¹⁰The term "Priority Customer" means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 to Exchange Rule 100. *See* Exchange Rule 100.

¹¹The term "Market Maker" refers to "Lead Market Makers", "Primary Lead Market Makers" and "Registered Market Makers" collectively. *See* Exchange Rule 100.

¹²This information is also included in the Missed Opportunity—Latency Report, which is similar report for equity securities that is offered by the NASDAQ Stock Market, LLC (the "NASDAQ Report"). *See* NASDAQ Equity Section 7, Rule 146(a)(2). The Exchange notes that the displayed price and size are also disseminated via the Exchange's proprietary data feeds and the Options Price Reporting Authority ("OPRA"). The Exchange also notes that the displayed price of the resting order may be different than the ultimate execution price. This may occur when a resting order is displayed and ranked at different prices upon entry to avoid a locked or crossed market.

¹³The term "EBBO" means the best bid or offer on the Exchange. *See* Exchange Rule 100.

¹⁴Exchange Rule 531(a)(1)(ii)(B) provides that if the resting order executes against multiple contra-side responses, only the EBBO at the time of the execution against the first response will be included.

¹⁵The term "ABBO" or "Away Best Bid or Offer" means the best bid(s) or offer(s) disseminated by other Eligible Exchanges (defined in Exchange Rule 1400(g)) and calculated by the Exchange based on market information received by the Exchange from OPRA. *See* Exchange Rule 100.

¹⁶Exchange Rule 531(a)(1)(ii)(A) further provides that if the resting order executes against multiple contra-side responses, only the ABBO at the time of the execution against the first response will be included.

¹⁷The time the Exchange received the response order would be in nanoseconds and would be the time the response was received by the Exchange's network, which is before the time the response would be received by the System.

¹⁸The time difference would be provided in nanoseconds.

Member. If the resting order executes against multiple contra-side responses, only the EBBO and ABBO at the time of the execution against the first response will be included.

The following information is included in the Report regarding response(s) sent by the Recipient Member: (A) Recipient Member identifier; (B) the time difference between the time the first response that executes against the resting order was received by the Exchange and the time of each response sent by the Recipient Member, regardless of whether it executed or not;¹⁹ (C) size and type of each response submitted by Recipient Member; and (D) response reference number, which is a unique reference number attached to the response by the Recipient Member.

The Report includes the data set for executions and contra-side responses that occurred within 200 microseconds of the time the resting order was received by the Exchange. The Report contains historical data from the prior trading day and will be available after the end of the trading day, generally on a T+1 basis. The Report does not include real-time data.

The Exchange believes the additional data points from the matching engine outlined above may help Members gain a better understanding about their own interactions with the Exchange. The Exchange believes the Report will provide Members with an opportunity to learn more about better opportunities to access liquidity and receive better execution rates. The Report will increase transparency and democratize information so that all firms that subscribe to the Report have access to the same information on an equal basis, even for firms that do not have the appropriate resources to generate a similar report regarding interactions with the Exchange.

Members generally would use a liquidity accessing order if there is a high probability that it will execute against an order resting on the Exchange's Book. The Report identifies by how much time an order that may have been marketable missed an execution. The Report will provide greater visibility into the missed trading execution, which will allow Members to optimize their models and trading patterns to yield better execution results.

¹⁹For purposes of calculating this duration of time, the Exchange will use the time the resting order and the Recipient Member's response(s) is received by the Exchange's network, both of which would be before the order and response(s) would be received by the System. This time difference would be provided in nanoseconds.

The Report will be a Member-specific report and will help Members to better understand by how much time a particular order missed executing against a specific resting order, thus allowing that Member to determine whether it wants to invest in the necessary resources and technology to mitigate missed executions against certain resting orders on the Exchange's Book.

The Exchange proposes to provide the Report in response to Member demand for data concerning the timeliness of their incoming orders and executions against resting orders. Members have periodically requested from the Exchange's trading operations personnel information concerning the timeliness of their incoming orders and efficacy of their attempts to execute against resting liquidity on the Exchange's Book. The purpose of the Report is to provide Members the necessary data in a standardized format on a T+1 basis to those that subscribe to the Report on an equal basis.

The product is offered to Members on a completely voluntary basis in that the Exchange is not required by any rule or regulation to make this data available and potential subscribers may purchase the Report only if they voluntarily choose to do so. It is a business decision of each Member whether to subscribe to the Report or not.

The Exchange proposes to adopt new Section 7), Reports, in its Fee Schedule, which will provide that Members may purchase the Report on a monthly or annual (12-month) basis. The Exchange proposes to assess a monthly fee of \$4,000 per month and a fee of \$24,000 per year for a 12-month subscription for the Report. Members may cancel their subscription at any time. The Exchange also proposes to specify that for mid-month subscriptions, new subscribers will be charged for the full calendar month for which they subscribe and will be provided Report data for each trading day of the calendar month prior to the day on which they subscribed.

The Exchange intends to begin to offer the Report and charge the proposed fees on May 17, 2021.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²⁰ in general, and furthers the objectives of Section 6(b)(5) of the Act,²¹ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of

²⁰ 15 U.S.C. 78f(b).

²¹ 15 U.S.C. 78f(b)(5).

trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest, and that it is not designed to permit unfair discrimination among customers, brokers, or dealers. The Exchange also believes that its proposal to adopt fees for the Report is consistent with Section 6(b) of the Act²² in general, and furthers the objectives of Section 6(b)(4) of the Act²³ in particular, in that it is an equitable allocation of dues, fees and other charges among its Members and other recipients of Exchange data.

In adopting Regulation NMS, the Commission granted self-regulatory organizations (“SROs”) and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the Report further broadens the availability of U.S. option market data to investors consistent with the principles of Regulation NMS. The Report also promotes increased transparency through the dissemination of the Report. Particularly, the Report will benefit investors by facilitating their prompt access to the value added information that is included in the Report. The Report will allow Members to access information regarding their trading activity that they may utilize to evaluate their own trading behavior and order interactions.

The Exchange operates in a highly competitive environment. Indeed, there are currently 16 registered options exchanges that trade options. Based on publicly available information, no single options exchange has more than 15% of the market share and currently the Exchange represents only approximately 6.08% of the market share.²⁴ The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Particularly, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system “has been remarkably successful in promoting market competition in its

broader forms that are most important to investors and listed companies.”²⁵ Making similar data products available to market participants fosters competition in the marketplace, and constrains the ability of exchanges to charge supra-competitive fees. In the event that a market participant views one exchange’s data product as more attractive than the competition, that market participant can, and often does, switch between similar products. The proposed fees are a result of the competitive environment of the U.S. options industry as the Exchange seeks to adopt fees to attract purchasers of the recently introduced Report.

The Exchange believes the proposed fees are reasonable as the proposed fees are both modest and similar to fees assessed by other exchanges that provide similar data products.²⁶ Indeed, if the Exchange proposed fees that market participants viewed as excessively high, then the proposed fees would simply serve to reduce demand for the Exchange’s data product, which as noted, is entirely optional. Other options exchanges are also free to introduce their own comparable data products with lower prices to better compete with the Exchange’s offering. As such, the Exchange believes that the proposed fees are reasonable and set at a level to compete with other options exchanges that may choose to offer similar reports. Moreover, if a market participant views another exchange’s potential report as more attractive, then such market participant can merely choose not to purchase the Exchange’s Report and instead purchase another exchange’s similar data product, which may offer similar data points, albeit based on that other market’s trading activity.

The Exchange also believes providing an annual subscription for an overall lower fee than a monthly subscription is equitable and reasonable because it would enable the Exchange to gauge

long-term interest in the Report. A lower annual subscription fee would also incentivize Members to subscribe to the Report on a long-term basis, thereby improving the efficiency by which the Exchange may deliver the Report by doing so on a regular basis over a prolonged and set period of time. The Exchange notes that other exchanges provide annual subscriptions for reports concerning their data product offerings.²⁷

The Exchange also believes the proposed fees are reasonable as they would support the introduction of a new market data product to Members that are interested in gaining insight into latency in connection with orders that failed to execute against an order resting on the Exchange’s Book. The Report accomplishes this by providing those Members data to analyze by how much time their order may have missed an execution against a contra-side order resting on the Book. Members may use this data to optimize their models and trading patterns in an effort to yield better execution results by calculating by how much time their order may have missed an execution.

Selling market data, such as the Report, is also a means by which exchanges compete to attract business. To the extent that the Exchange is successful in attracting subscribers for the Report, it may earn trading revenues and further enhance the value of its data products. If the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of the data and/or avail themselves of similar products offered by other exchanges.²⁸ The Exchange therefore believes that the proposed fees for the Report reflect the competitive environment and would be properly assessed on Member users. The Exchange also believes the proposed fees are equitable and not unfairly discriminatory as the fees would apply equally to all users who choose to purchase such data. It is a business decision of each Member that chooses to purchase the Report. The Exchange’s proposed fees would not differentiate between subscribers that purchase the Report and are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

The Exchange reiterates that the decision as to whether or not to purchase the Report is entirely optional

²⁵ See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (“Regulation NMS Adopting Release”).

²⁶ The NASDAQ Stock Market LLC (“NASDAQ”) charges fees ranging from \$1,500 to \$3,500 per month for a similar report for equity securities called the Missed Opportunity—Latency report as part of its NASDAQ Trader Insights offering. See NASDAQ Equity Section 7, Rule 146(a)(2). See also the CME Group, Inc.’s Time and Sale report. <https://www.cmegroup.com/trading/about-time-sales.html#:~:text=CME%20Globex%20Options%20Group's%20Time%20%26%20Sales%20report%20provides%20the%20price%20and%20time,calendar%20date%20of%20the%20transaction.&text=A%20zero%20volume%20represents%20an%20indicative%20price,-The%20Indicator%20column.>

²⁷ Cboe Exchange, Inc. (“Cboe”) assesses a \$24,000 annual fee for an intra-day subscription to Open-Close Data. See <https://datashop.cboe.com/options-summary-subscription>.

²⁸ See supra note 26.

²² 15 U.S.C. 78f(b).

²³ 15 U.S.C. 78f(b)(4).

²⁴ See Cboe Global Markets U.S. Options Market Month-to-Date Volume Summary (April 28, 2021), available at https://markets.cboe.com/us/options/market_statistics/.

for all potential subscribers. Indeed, no market participant is required to purchase the Report, and the Exchange is not required to make the Report available to all investors. It is entirely a business decision of each Member to subscribe to the Report. The Exchange offers the Report as a convenience to Members to provide them with additional information regarding trading activity on the Exchange on a delayed basis after the close of regular trading hours. A Member that chooses to subscribe to the Report may discontinue receiving the Report at any time if that Member determines that the information contained in the Report is no longer useful.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange made the Report available in order to keep pace with changes in the industry and evolving customer needs and demands, and believes the data product will contribute to robust competition among national securities exchanges. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange also does not believe the proposed fees would cause any unnecessary or inappropriate burden on intermarket competition as other exchanges are free to introduce their own comparable data product with lower prices to better compete with the Exchange's offering. The Exchange operates in a highly competitive environment, and its ability to price the Report is constrained by competition among exchanges who choose to adopt a similar product. The Exchange must consider this in its pricing discipline in order to compete for the market data. For example, proposing fees that are excessively higher than fees for potentially similar data products would simply serve to reduce demand for the Exchange's data product, which as discussed, market participants are under no obligation to utilize. In this competitive environment, potential purchasers are free to choose which, if any, similar product to purchase to satisfy their need for market information. As a result, the Exchange believes this proposed rule change permits fair competition among national securities exchanges.

The Exchange does not believe the proposed rule change would cause any unnecessary or inappropriate burden on

intramarket competition. Particularly, the proposed product and fees apply uniformly to any purchaser in that the Exchange does not differentiate between subscribers that purchase the Report. The proposed fees are set at a modest level that would allow any interested Member to purchase such data based on their business needs.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act,²⁹ and Rule 19b-4(f)(2)³⁰ thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR-EMERALD-2021-19 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-EMERALD-2021-19. 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-EMERALD-2021-19 and should be submitted on or before June 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³¹

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11530 Filed 6-1-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92032; File No. SR-CboeBZX-2021-024]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change To List and Trade Shares of the WisdomTree Bitcoin Trust Under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares

May 26, 2021.

On March 26, 2021, Cboe BZX Exchange, Inc. ("BZX") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4

²⁹ 15 U.S.C. 78s(b)(3)(A)(ii).

³⁰ 17 CFR 240.19b-4(f)(2).

³¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

thereunder,² a proposed rule change to list and trade shares of the WisdomTree Bitcoin Trust under BZX Rule 14.11(e)(4), Commodity-Based Trust Shares. The proposed rule change was published for comment in the **Federal Register** on April 15, 2021.³ The Commission has received comments on the proposed rule change.⁴

Section 19(b)(2) of the Act⁵ provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is May 30, 2021. The Commission is extending this 45-day time period.

The Commission finds that it is appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change and the comments received. Accordingly, pursuant to Section 19(b)(2) of the Act,⁶ the Commission designates July 14, 2021, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR-CboeBZX-2021-024).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁷

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021-11532 Filed 6-1-21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-92020; File No. SR-ICEEU-2021-010]

Self-Regulatory Organizations; ICE Clear Europe Limited; Notice of Filing of Proposed Rule Change Relating to the Clearing Rules, Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures and General Contract Terms

May 26, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 13, 2021, ICE Clear Europe Limited (“ICE Clear Europe” or the “Clearing House”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule changes described in Items I, II and III below, which Items have been prepared primarily by ICE Clear Europe. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency’s Statement of the Terms of Substance of the Proposed Rule Change

ICE Clear Europe Limited proposes to amend its Clearing Rules (the “Rules”)³ (including to the CDS Standard Terms, F&O Standard Terms and FX Standard Terms annexed thereto), Clearing Procedures, Finance Procedures, Delivery Procedures, CDS Procedures, Membership Procedures, Complaint Resolution Procedures and General Contract Terms (collectively, the “Amended Documents”) to make various updates and enhancements.

II. Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICE Clear Europe 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. ICE Clear Europe has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) *Clearing Agency’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

ICE Clear Europe is submitting proposed amendments to the Amended Documents that are intended to make a variety of improvements and changes, including to (1) update various Rules and procedures to reflect current laws and regulations such as those relating to post-default porting, capital requirements, and anti-money laundering requirements, (2) update various defined terms, (3) update certain product and Clearing Member termination rules, (4) update certain notice provisions, (5) clarify membership criteria and obligations for Clearing Members, (6) clarify how open contract positions are aggregated and netted, (7) update certain systems references to reflect current systems and delete obsolete references, (8) amend and clarify the Complaint Resolution Procedures, (9) update various provisions of the Delivery Procedures, (10) introduce a summary disciplinary process and clarify disciplinary processes and (11) make various other drafting improvements, clarifications and updates, in each case as described in further detail herein.

a. Removal of “Default Portability Preference”

Various amendments are proposed to remove the process whereby Non-FCM/BD Clearing Members are able to deliver a “Default Portability Preference”, with advance, pre-default, porting information to the Clearing House. This process and mechanism had been developed by ICE Clear Europe as part of its default planning processes prior to post-crisis legislation such as EMIR coming into force. EMIR requires post-default porting notices to be served as a pre-condition to porting, rendering the default portability preference structure to be of limited assistance. In addition, and in practice, ICE Clear Europe did not receive many notices of Default Portability Preferences. After EMIR, other clearing houses did not use or ceased to use such notices and potential transferee clearing members are often unwilling to commit to receive porting in advance. As part of default management planning and following default drills with industry participation, it was determined to remove this structure from the Rules. Various changes will be made to the Rules to remove references to pre-default Porting Notice and, where appropriate, replace these references

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 91521 (April 9, 2021), 86 FR 19917 (April 15, 2021).

⁴ Comments received on the proposed rule change are available at: <https://www.sec.gov/comments/sr-cboebzx-2021-024/sr-cboebzx2021024.htm>.

⁵ 15 U.S.C. 78s(b)(2).

⁶ *Id.*

⁷ 17 CFR 200.30-3(a)(31).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Capitalized terms used but not defined herein have the meanings specified in the Rules.

with post-default Porting Notices, as discussed herein.

This proposal results in a number of proposed changes. In Rule 101, the definition of “Default Portability Preference” definition would be deleted. The related concept of “Non-Transfer Positions” in Rule 101 would be deleted as this defined term would no longer be used following removal of the Default Portability Preference concept. A new definition of “Porting Notice” (which refers to a post-default indication of a porting preference) would be introduced in Rule 101, with a cross-reference to the existing definition of that term in the Standard Terms Annex.

In Rule 904, which addresses procedures for post-default transfer of contracts and margin, various changes are proposed to implement the remove of Default Portability Preferences. Specifically, changes are proposed to Rules 904(g) and 904(j) to remove the references to Default Portability Preference and instead refer to the process around the use of Porting Notices. Rule 904(g) would be amended to state that consent to become a Transferee Clearing Member can only be evidenced in a Porting Notice where that Clearing Member has countersigned the notice or otherwise agreed in writing. This clarifies that simply being named by a customer as a potential Transferee Clearing Member is insufficient. The changes proposed at Rules 904(m), 904(p), 904(u) and 904(w) reflect the deletion of the definition of Default Portability Preference.

Related changes are proposed in Rule 907(d), which relates to the Clearing House’s ability to rely on certain information provided to it. References to Default Portability Preference and Non-Transfer Positions have been deleted. Instead, in connection with porting the Clearing House will be entitled to rely on any information provided to it by a defaulter prior to declaration of default in respect of Contracts, Customer-CM Transactions, Margin and the Accounts in which Contracts and Margin were recorded or which relate to particular Customers or particular groups of Customers. This would allow the Clearing House to continue to be able to act efficiently in default scenarios, and be able to rely on more of the relevant information available to it in relation to the Defaulter. Amendments would also clarify that the Clearing House has no obligation to inquire of any person as to any Porting Notice.

The CDS Standard Terms (paragraph 6), F&O Standard Terms (paragraph 6) and FX Standard Terms (paragraph 6) would be amended to remove references

to Default Portability Preferences and include reference to Porting Notices.

b. Introducing Consistency to the Definitions Relating to Energy Transactions

A series of amendments are proposed to certain definitions relating to Energy transactions, simplifying and making such terms consistent with certain amendments previously made to definitions for other F&O Products.⁴

Consistent with such prior amendments, in Rule 101, the “Energy” definition would be shortened to refer to the term “Market” rather than naming all specific ICE markets. New definitions would be introduced for “Energy Matched Transaction” (referencing an energy transaction conducted on a Market) and a revised definition of “Energy Transaction” would be added (covering an Energy Matched Transaction or an Energy Block Transaction meeting specified criteria). The changes are consistent with the approach used in the definitions of Financials & Softs Matched Transaction and Financials & Softs Transactions.

The introduction to the General Contract Terms would similarly be amended to remove references to named ICE markets and instead use the more generic term “relevant Market”.

c. EFRP (Exchange for Related Position) Definition Amendments

Several changes to the Rules are proposed to address more clearly exchange for related position transactions (referred to as EFRPs) under applicable Market rules, including to revise defined terms and clarify that such transactions are available on exchanges for products other than soft commodities.

In Rule 101, a new “EFRP” definition would be added, to be defined using a similar structure to that for EFP and EFS transactions. Also in Rule 101, in the “EFS” definition would be clarified to refer only to exchange for swaps or similar transactions under Market Rules and to remove an existing reference to exchange for related positions, which would now be covered by the EFRP definition. In the “Financials & Softs Block Transaction” definition, reference to “Soft Commodity EFRPs” would be widened to include all “EFRP”s under all Market Rules, as Soft Commodity EFRPs are specific to ICE Futures Europe. This would be in line with the definitions for EFP and EFS transactions. Accordingly, the “Soft

Commodity EFRP” definition (which is not otherwise used) would be deleted.

d. Amendments to Product Termination Rules

Rule 105 would be amended to shorten the termination period (generally from four months to one month) for a service withdrawal for a product in circumstances in which there is no open interest in the relevant Set. In such circumstances, in ICE Clear Europe’s view, a longer termination period is unnecessary, since no action is required by Clearing Members to close out their positions. Proposed amendments would also clarify that where a product termination occurs following actions of the relevant exchange (*e.g.*, a de-listing), the notice period required under the exchange’s rules would instead apply and the exchange would be responsible for providing such notice.

e. Amendments to the Termination Rules for Clearing Members

Amendments are proposed to Rule 209(d) to facilitate membership terminations in the context of a corporate group reorganization where a new Clearing Member that is an Affiliate will be receiving the terminating Clearing Member’s Open Contract Positions. The amendment would establish an exception to the requirement for terminating Clearing Members to immediately upon service of a Termination Notice pay to the Clearing House Assessment Contributions equal to three times the required relevant guaranty fund contribution. In ICE Clear Europe’s view, such an exception is warranted since all positions would be received by an affiliated Clearing Member in good standing that would remain liable with respect to any obligations arising from or related to the holding of such positions under the Rules (including as to future Assessment Contributions).

Rule 209(d) would be further amended to clarify that references in the Clearing Rules to Assessment Contributions being called or to Guaranty Fund Contributions being replenished or applied, where the Clearing Member has provided Permitted Cover to the Clearing House (whether under Rule 209(d) or prior to the Clearing Member serving its termination notice or the Termination Date), would be interpreted as a reference to that Permitted Cover being applied. The new reference to Permitted Cover which has been provided prior to the serving of a termination notice or a Termination Date would clarify that, as is currently intended, the Cover

⁴ See Exchange Act Release No. 34–87275 (File No. SR–ICEEU–2019–020) (Oct. 10, 2019), 84 FR 55649 (Oct. 17, 2019) (changes to definitions using the term Market).

provided at that earlier stage could also be included as part of, for example, any applications of Guaranty Fund by the Clearing House under Part 9 or Part 11.

Further amendments to Rule 209(d) would clarify for the avoidance of doubt that the following obligations would apply to a terminating Clearing Member until Open Contract Positions have been closed, the Termination Date has passed and all Guaranty Fund Contributions have been returned under Rule 1102(g): Application of Guaranty Fund Contributions, application of Assessment Contributions (to the extent paid under Rule 209(d) or otherwise prior to the Termination Date), position limits under Part 6, disciplinary actions under Part 10 and the declaration and consequences of an Event of Default under Part 9 of the Rules. This amendment is not intended to change the current requirements under the Rules, but rather to state those requirements more clearly in a single provision and thereby facilitate the Clearing House's enforcing its rules during a termination period.

The proposed amendments to Rule 209(d) overall reflect the Clearing House's experience with both default planning and recent Clearing Member terminations involving group reorganizations.

f. Notice Provisions

These proposed changes are designed to clarify and provide greater flexibility as to delivery of notices under the Rules. The changes have been informed by default simulation planning and in particular the requirements around default notices under Rule 901, but are not limited to that context. Rules 113(a) and 113(a)(i) would be amended to delete the references to telephone as a valid mode of service of notices (since this is not supported operationally) and to replace it with email. The email address last notified to the Clearing House by a Clearing Member would become an option for service of notices. The addition of new Rule 113(a)(ii) would clarify that the Clearing House may also validly deliver notices to a process agent nominated by the Clearing Member to act as its agent. Rule 113(e) already referred to such agents for service of process, and would be expanded to explicitly refer to service of other contractual notices and communications. A further change to Rule 113(a) clarifies that delivery in accordance with this section would be deemed made to the Clearing Member or Sponsored Principal (also if made to an agent appointed by the Clearing Member or Sponsored Principal).

Rule 113(c) and 113(d) would be amended to clarify the precise time when effective service is deemed to be made for communications by fax, email and courier, and that effective service and delivery can be achieved outside of opening hours on a business day, consistent with current operational practices.

Rule 1901(n) is similarly proposed to be amended to make clear that process agents for Sponsored Principals will act as agents for service of process of any notice, order or other communication under the Rules and the Sponsored Principal Agreement.

To conform to the Rules, amendments to paragraph 4.2E of the summary table at paragraph 4.2 of the Membership Procedures would provide that termination of a Clearing Membership Agreement or membership as a Clearing Member would become effective no less than 30 Business Days after the date of the Termination Notice Time or pursuant to Rule 917(c) instead of no less than three months' advance notice if termination is not for cause and otherwise as specified in and allowed pursuant to the Rules.

Additionally, updates would be made throughout the summary table at paragraph 4.2 of the Membership Procedures to the email address to which Clearing Members should send certain notifications.

g. Clarifying Clearing Membership Criteria and Clearing Member Obligations

Rule 201(a)(ix) would be amended to reference that under existing Rule 201(b), the Clearing House may require that potential Clearing Members enter into additional annexes or agreements to the Clearing Membership Agreement in order to be, and remain, eligible for Clearing Membership. Some such annexes have had to be developed to cater for local law issues arising in certain EU member states as part of Clearing Members' post-Brexit group legal structuring. This change would clarify the basis in the Rules for the Clearing House to require such additional documentation to be executed, where necessary.

Rule 202(a)(xxii) would be amended to extend the requirement for Clearing Members to have competent persons accessible to the Clearing House, to also include two hours prior to the start of the business day. This is consistent with current operational practice and is necessary to ensure that staff are available to process and deal with queries in relation to morning margin calls.

New Rule 301(o) would allow the Clearing House to request information when needed on account balances of nominated accounts of the Clearing Member at financial institutions, including for the purpose of calling on available cash where the Clearing Member has failed to meet a payment obligation or determining whether the Clearing Member is or is likely to be in default. This change would address issues that have arisen in practice where payment banks have refused to provide such information to the Clearing House. This consent, as part of the Rules, should promote the sharing of this important information.

h. Greater flexibility in Financial Reporting by Clearing Members

It is proposed that Rule 205(a)(ii) be amended to give the Clearing House greater flexibility to accept different kinds of financial statements (for example, semi-annual accounts) from Clearing Members as part of their financial reporting obligations, in circumstances where that Clearing Member does not produce a quarterly financial statement for its regulators. This amendment would also result in a conforming change to the summary table at paragraph 4.2 of the Membership Procedures.

The amendment would formalize current operational practice for those Clearing Members who do not draw up regulatory quarterly financials and means that the basis for accepting such reporting would be set forth in the Rules rather than pursuant to a separate arrangement, increasing transparency.

In addition, Rule 205(a)(ii) as well as the summary table at paragraph 4.2 of the Membership Procedures would be amended to change the deadline for submitting financial statements from 30 to 45 days after the relevant period so that the deadline aligns with other regulatory reporting deadlines (for example, the FCA deadlines).

i. Clarifying CDS Contract Formation

Rule 401(o) would be amended to make clear that where a CDS Contract of a Non-FCM/BD Clearing Member for a customer account arises pursuant to Rule 401, a Customer-CM CDS Transaction arises between the Customer and the Non-FCM/BD Clearing Member at the same time as the Contract. The current rule does not specify the timing of the Customer-CM CDS Transaction, and the amendment would reflect the equivalent rule for F&O in Rule 401(n) and eliminate an unintended drafting distinction.

j. Clarifying How Open Contract Positions Are Aggregated and Netted

The proposed amendments at Rule 406(b) and (c) address contractual netting for F&O contracts. The proposed changes would align the provisions for F&O Contracts more closely with the corresponding rule on contractual netting for CDS contracts in Rule 406(d) *et seq.*

In particular, the changes would address aggregation of open contract positions of an F&O Clearing Member in addition to netting of such positions, and would clarify that the process for aggregation or netting takes place via contractual novation.

k. Clarifying How the Clearing House May Amend Contract Terms

It is proposed that Rule 409(a) be amended so that the Clearing House can evidence its consent to amendments, waivers and variations of the Contract Terms by way of Circular. This has been the usual way of issuing such amendments, waivers and variations, and would conform the Rules with operational practice.

l. Pledged Collateral Not for Settlement Payments

It is proposed that Rule 1603(c) be amended to clarify that only “original” or “initial” types of Margin payments be provided in the form of Pledged Collateral, and that such collateral excludes Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin, which is provided to or by the Clearing House by outright transfer of cash as a settlement payment. The change is intended to be consistent with amendments previously made to the Rules to clarify that such variation and mark-to-market margin are settlement payments rather than collateral, and was inadvertently omitted from such prior amendments.⁵

m. Hedging Following an Event of Default

Rule 903(c) would be amended to clarify that the Clearing House’s right to authorize hedging transactions in a Default scenario would include transactions on a Market, any other Exchange or over the counter. The amendments would also provide that such transactions taking place on an exchange which is not a Market, or where requested or directed otherwise by the Clearing House, need not themselves be cleared. These

amendments come out of default event simulations and planning.

n. Affiliate Cross-Defaults

It is proposed that Rule 901(a)(iv) be amended to clarify that the declaration of an Event of Default in respect of one Clearing Member is a circumstance in which the Clearing House can declare an Event of Default in respect of another Clearing Member that is a Group Company. In the Clearing House’s view, this is the effect of Rule 901(a) as it stands already, but the Clearing House has decided to clarify this expressly in light of questions raised in default planning exercises.

o. “Eligible Contract Participant” Status

Rule 201(a)(xx) would be amended to provide that the requirement that a Clearing Member be an “eligible contract participant”⁶ only applies if it is to be a CDS Clearing member or an FX Clearing member. Such status would not be required under U.S. law for a Clearing Member that is only an F&O Clearing Member. The amendment reflects that such status is required under applicable U.S. law for persons that trade swaps and security-based swaps (such as CDS), but not for futures.⁷ Section 10 of the F&O Standard Terms would for similar reasons be amended to remove a requirement that an F&O Clearing Member and Customer be an eligible contract participant. Rule 1901(b)(xv) would also be amended to provide that the requirement that a Sponsored Principal be an eligible contract participant only applies in relation to CDS Contracts and FX Contracts.

p. Corrected Names of Internal Risk Committees

It is proposed that Rule 916(d) be amended to change the term “Risk Committee” to “relevant product risk committee”. This reflects that there are different product risk committees addressing topics specific to F&O and CDS which take on this role. The Risk Committee established under EMIR has different competencies. The changes clarify and align the Rules to current Clearing House governance processes.

In the Finance Procedures paragraph 14(2) and 14(3), reference to the CDS Risk Committee and FX Risk Committee would be corrected to “CDS Product Risk Committee” and “FX Product Risk Committee” to reflect the correct committee names. The same change

would be made throughout the CDS Procedures where “CDS Risk Committee” is currently used.

q. Amendments to Complaint Resolution Procedures

Various clarifications and amendments are proposed throughout the Complaint Resolution Procedures.

Paragraph 1.1 would be amended to reframe the Complaint Resolution Procedures based on ICE Clear Europe’s obligations as a CCP under EMIR.⁸

Throughout the procedures, the term “Complaints Resolution Procedure” would be replaced with “Complaint Resolution Procedures” to correct a typographical error and for consistency with the term used in Rule 101.

Paragraph 1.1 would be amended to use the defined term “Person” (which is defined in Rule 101) rather than “person”. This would be reflected as a global change throughout the Complaint Resolution Procedures. Further amendments in paragraphs 1.1 and 1.2 would be made to provide for an independent “Commissioner,” who is responsible for the investigation of complaints generally, and for the appointment of an “Investigator” to investigate a particular complaint. Minor drafting updates would be made in paragraph 1.3 to improve clarity.

Additional drafting changes throughout the procedures would be made to refer where appropriate to “Eligible Complaint” instead of complaint. This would clarify that only Eligible Complaints (and not other complaints) would be subject to this process. As a result, the defined term “Complaint” has been replaced globally by the undefined term “complaint”, to allow a distinction between complaints generally speaking and those that qualify as “Eligible Complaints” within the scope of the procedures.

The definition of “Eligible Complaints” in paragraph 2.1 would be broadened to include complaints against any Directors, officers, employees or committees (or committee members) of the Clearing House, which ICE Clear Europe believes is the proper scope for the Complaint Resolution Procedures. The amendments would also clarify that Eligible Complaints may relate to the manner in which the Clearing House has failed to perform applicable regulatory functions.

⁸ As a result of ICE Clear Europe Circular C20/163, this reference to EMIR is to be interpreted as including a reference to EMIR as applicable in the United Kingdom under the European Union (Withdrawal) Act 2018. See Exchange Act Release No. 34–90746 (File No. SR-ICEEU–2020–016) (Dec. 21, 2020), 85 FR 85704 (Dec. 29, 2020).

⁵ Exchange Act Release No. 34–88665 (File No. SR-ICEEU–2020–003) (Apr. 16, 2020), 85 FR 22892 (Apr. 23, 2020).

⁶ Commodity Exchange Act Section 1a(18), 7 U.S.C. 1a(18).

⁷ See Section 6(l) of the Act, 15 U.S.C. 78f(l); Commodity Exchange Act Section 2(e), 7 U.S.C. 2(e).

Minor drafting amendments would be made in paragraph 2.2 to correct typographical errors and use of defined terms.

Paragraph 3.6 would be amended to include “investigation of the” before “Eligible Complaint” for drafting clarity.

A drafting improvement would be made in paragraph 4.1 to clarify that acknowledgment of the complaint by the Clearing House must be made promptly, and in any case within 5 Business Days of receipt.

New paragraph 4.2 would be added to allow the Clearing House to refer complaints to another recognized body or authorized person where they consider that such entity is entirely or partly responsible for the subject matter of the complaint. For example, a complaint might better be administered by an exchange for which the Clearing House clears. New paragraph 4.3 would be added to set out the process whereby the Clearing House would be able to refer such a complaint. The amendments are intended to clarify existing procedures, and avoid a situation where the Clearing House would be forced to address a duplicative complaint or a complaint better handled by another entity.

Paragraph 4.4 would be amended to correct minor typographical errors.

The amendments to paragraph 4.5 would clarify that the Investigator must be an individual who has no personal interest or involvement in the matter of the Eligible Complaint. The amendments to that paragraph would also make typographical corrections and similar drafting improvements.

Paragraph 4.7 would be amended to make clear that the Investigator would not be required to disclose any information about the Complainant’s identity when drafting their report of the Eligible Complaint. This paragraph would also be amended to correct minor typographical errors and to update cross-references.

Paragraph 4.8 would be amended to include delivery disputes and appeals in the list of potential ongoing matters that could warrant delay in the consideration of an Eligible Complaint. A similar change would also be made in paragraph 4.12. Certain typographical errors would also be corrected.

Paragraph 4.11 would be amended to clarify that where the Clearing House objects to the referral of a complaint to the Commissioner under specified circumstances (such that the Clearing House can conclude its own investigation), it must submit to the Commissioner the reasons for that determination. Several cross-references in the paragraph would also be updated.

Paragraph 4.12 would be amended to expand the list of ongoing matters that would justify delay in the Commissioner’s consideration of an Eligible Complaint to be consistent with the list at paragraph 4.8, and also reference other processes under Part 10 of the Rules.

Paragraph 4.14 would be amended with minor non-substantive drafting improvements.

Paragraph 5 would be amended to clarify that the Investigator recommends rather than takes remedial action himself.

Paragraph 6.3 would be amended to add “appeal process” to the list of dispute resolution procedures that a Complainant cannot use if it requires the referral of any Eligible Complaint to the Commissioner pursuant to the Complaint Resolution Procedures. Reference to “mediation” has also been deleted (as unnecessary in light of the other listed types of dispute resolution).

Paragraph 7.2 would be amended to clarify that the Commissioner does not have to continue investigating a complaint if the complaint is not an Eligible Complaint. Paragraph 7.3 would be amended to make clear that the Commissioner would only be required to produce a final response where the complaint is an Eligible Complaint.

Paragraph 7.6 would be amended to ensure that the Commissioner has access to all relevant personnel (including directors, officers and other persons to whom functions have been outsourced) that may be needed for the purposes of the Eligible Complaint.

Paragraph 7.8 would be amended to obligate the Clearing House to inform the Complainant of an alternative Commissioner, when one is appointed, within five Business Days of the date of appointment.

Paragraph 8.1 would be amended to state explicitly that the Clearing House is required to consider the Commissioner’s report and recommendations, in addition to informing the Commissioner of any proposed steps it would take in response to the report and recommendations. Certain other non-substantive drafting clarifications would be made as well.

Paragraphs 8.2 and 8.3 would be amended to correct typographical errors.

Paragraph 11 would be amended to include the Investigator as a person subject to the confidentiality obligations with respect to the complaint, and make certain drafting clarifications.

r. Amendments to CDS Procedures Relating to List of Eligible Single Name Reference Entities

Paragraph 11.4 would be amended such that the Clearing House be required to update certain relevant information relating to CDS Contracts on its website after making certain updates relating to Permitted Single Name Fixed Rates and Eligible Single Name Reference Entities instead of giving notice by Circular of such actions.

s. Amendments to CDS Procedures To Allow Clearing Members To Nominate Affiliates

Paragraph 4.4(f) of the CDS Procedures would be amended to clarify that CDS Clearing Members could designate an Affiliate that is also a CDS Clearing Member to accept CDS Contracts in lieu of it for CDS Contracts arising as a result of the existing CDS end-of-day pricing process pursuant to Rule 401(a)(xi).

A similar same change would be made at paragraph 11.5, to allow designation of an Affiliate to accept transactions arising out of the existing auction process to be used in the case of self-referencing CDS transactions. This reflects existing practice for CDS Clearing Members, as documented in certain arrangements between the Clearing House and certain CDS Clearing Members allowing this to take place, but was unintentionally omitted from the CDS Procedures.

t. Clarifications to CDS Clearing Member Sign Off of Weekly Cycles

It is proposed that new paragraph 3.5 be added to the CDS Procedures to require CDS Clearing Members to provide sign off via email on weekly cycles by the time specified by the Clearing House. This change would document existing operational processes.

u. Adjustments to Clearing Member Capital Requirements

It is proposed that paragraph 3.5(a) of the Membership Procedures would be amended to lower, from 50% to 25%, the portion of a Clearing Member’s Capital requirement that may be covered by subordinated loans before the Clearing House would require a written undertaking from the Clearing Member to not repay subordinated loans without the consent of the Clearing House. This change would align the Clearing Member capital requirement more closely with Basel III requirements. The Basel II standard for “tier 2” instruments was set at 50% of total capital, *i.e.*, Tier 2 capital including

certain subordinated debt instruments could be of an amount equal to tier 1 (essentially share capital) (Section B, Annex 1a, Basel II). This was changed in Basel III (LEX 20.1) to involve greater restrictions on the usage of subordinated debt in general subject, where subordinated debt may be used, to an upper limit of 25%. This proposed change in capital requirements promotes greater consistency with its existing operational implementation of capital requirements for Clearing Members, albeit remaining more liberal than Basel III. All of the Clearing Members are located in countries which have implemented Basel III and this change is not considered to be material for any of them, whilst at the same time making the Clearing House's capital requirements more robust.

It is further proposed that paragraph 3.5 of the Membership Procedures would be amended to remove irrevocable letters of credit as a potential method that Clearing Members or Sponsored Principals may use to satisfy capital requirements. Instead, the Clearing House could, at its discretion, require a Clearing Member to post additional cash or collateral in addition to the normal margin requirements pursuant to the amendments.

v. Replacement of Prospectus Directive

Amendments are proposed to Part 1501 of the Rules to change the definition of "Prospectus Directive" to "Prospectus Regulation" as the EU Prospectus Directive has been repealed and replaced with the Prospectus Regulation. Conforming changes would be made to the definitions of "Offer to the Public", "Relevant Member State" and "Securities". The definition of "2010 PD Amending Directive" (and references thereto) would be deleted as this is also no longer in force. Conforming changes would be made in Rule 1503 to remove obsolete legislative references.

w. Changes to Clearing Member Account Requirements

Amendments to the Finance Procedures in paragraphs 4.1(a)(i) and (iv) and 4.4(a)(i) and (iv) are proposed to the account requirements for members to reflect that ICE Clear Europe clears both EUR and USD denominated CDS contracts and as such all CDS Clearing Members are required to have both EUR and USD accounts (and need not have a GBP account).

x. Updates for Changes to Applicable Anti-Money Laundering Law

Amendments are proposed in Rule 101 to update the definition of "Money

Laundering Directive" to reflect the implementation of the fifth EU Anti-Money Laundering Directive. A definition of "Money Laundering Regulations" is also proposed to be added to the rules to reference the applicable UK regulations corresponding to that Directive (including after its exit from the European Union).

In Rule 201(a)(xxix) and 1901(d)(xi), the reference to 'simplified due diligence' is proposed to be removed. This reflects the repeal and restatement of the former U.K.'s Money Laundering Regulations 2007 pursuant to the Money Laundering, Terrorist Financing and Transfer of Funds (Information on the Payer) Regulations 2017, which removed simplified due diligence as the default option for a defined list of entities and replaced this with a discretion on in-scope firms to apply risk-based levels of due diligence.

Rule 201(a)(xxxi) is proposed to be amended to include anti-money laundering laws to the list of applicable laws that are required to be acceptable to the Clearing House in a jurisdiction for Clearing Members.

New Rule 201(a)(xxxiii) is proposed to be added to require Clearing Members to have adequate policies, procedures, systems and controls relating to Applicable Laws, including relating to anti-money laundering and the prevention of financial crime.

Amendments are proposed to Rules 202(a)(xii) and 1901(m) to update relevant references to relevant laws, clarify that the Clearing Member is required to make certain representations and warranties to the Clearing House with respect to the matters in those subsections, require the Clearing Member to have the necessary authority from customers and others to disclose the necessary information about beneficial owners in order to comply with requirements under Applicable Laws, and to retain copies of documents required to be retained under anti-money laundering laws.

A similar amendment is proposed to Rule 1607(g) to require FCM/BD Customers to also obtain the authority from "beneficial owners" to disclose information to the Clearing Member and Clearing House necessary for anti-money laundering due diligence.

Similar amendments are also proposed to the CDS Standard Terms 3(q), F&O Standard Terms 3(r) and FX Standard Terms 3(q) to require Customers to obtain the necessary authority from beneficial owners to make disclosure to the Clearing Member and Clearing House necessary for anti-money laundering due diligence.

A new paragraph 1.1(d) of the Delivery Procedures would obligate Clearing Members to conduct appropriate AML due diligence for any transferors/transferees and provide relevant documentation to the Clearing House and/or Clearing Member. The amendments at paragraphs 5.4 and 5.5 of the Delivery Procedures would clarify that transferors and transferees that are customers would be bound by the F&O Standard Terms, including with respect to delivery of information, and also clarify that transferors/transferees are not customers of the Clearing House for purposes of relevant anti-money laundering laws and other Applicable Law.

y. Amendments To Reflect Updates to ICE Clear Europe Systems

New definitions of "ECS", "MFT", "ICE FEC" and "MPFE", reflecting various existing ICE Clear Europe systems, are proposed in the Delivery Procedures so that there is consistent usage across the Procedures.

An amendment is proposed to Clearing Procedures paragraph 1.1(a) as the referenced PTMS/ACT systems are legacy systems no longer used by the Clearing House, and have been replaced with ICE FEC.

Amendments are proposed to Clearing Procedures paragraphs 1.1(f) and 3.1(c) to remove the definitions of MFT and ECS as these terms would now be defined in the Delivery Procedures.

Similar amendments are proposed to Finance Procedures paragraphs 3.10, 3.11, 3.21 and 4.5 to ensure that the use of defined term "ECS" is consistent.

z. Clarifications Relating to Negative EDSP

The definition of "Exchange Delivery Settlement Price" in Rule 101 would be amended to clarify, for the avoidance of doubt, that the EDSP can be positive, negative or zero.

Rule 703(b) would be revised to clarify the process for payment obligations if the EDSP is a negative number.

aa. Clarification to the Finance Procedures

Amendments are proposed to paragraph 6.1(i)(ix) of the Finance Procedures to clarify that the additional margin requirement that applies where payment of variation or mark-to-market margin is made in a currency other than the contractual currency would apply on a Currency Holiday. This reflects current Clearing House practice.

bb. Amendments to Delivery Procedures

Various changes are proposed to the Delivery Procedures to update provisions to update various operational practices and make other drafting improvements.

It is proposed that a new paragraph 7 be added to the Delivery Procedures to reference the alternative delivery procedure for Emission Contracts as set out in paragraph A.7 of the Delivery Procedures. Subsequent paragraphs would be renumbered and conforming amendments to cross-references would be made.

Various changes would be made throughout to remove references to the legacy ICE System Crystal, and update this to refer to ECS, MFT and ICE FEC which are the systems now used by the Clearing House. Similarly, changes are proposed to delete Delivery Documentation Summaries and form references where ECS has replaced the manual submission of forms to the Clearing House. These changes are made throughout the Delivery Procedures, including in relation to ICE Gasoil Futures (in Part B), and ICE Futures UK Natural Gas Contracts (in Part D), ICE Endex TTF Natural Gas Contracts (in Part F), ICE Endex Gaspool Natural Gas Contracts (in Part G), ICE Endex NCG Natural Gas (in Part H), ICE Endex ZTP Natural Gas Contracts (in Part I), ICE Deliverable US Emissions Contracts (in Part N), Financials & Softs White Sugar Contracts (in Part Q), Financials & Softs Gilt Contract (in Part U) and Equity Futures/Options (in Part Z).

In Part A (ICE Deliverables EU Emissions Contracts), references to "Account", which is no longer a defined term in the Delivery Procedures, would be corrected to reference the defined term, "Registry Account". The defined term, "Contract Date", would be amended such that it would no longer include a Business Day on which the Delivery Period commences for those trades executed on a Business Day. Section 9.3 would be deleted as unnecessary as Part A no longer references auction contracts.

Also in Part A, the procedures following the entry into an EADP Agreement by a Clearing Member and the Clearing House would be amended such that the existing Contract would no longer be liquidated, but instead dealt with in the manner specified in the EADP. If the existing Contract were to be liquidated under the EADP, this would be done on the basis of the Exchange Delivery Settlement Price. Delivery under the EADP Agreement would be subject to the requirements set out in the entirety of paragraph 7

instead of just paragraph 7.3. The amendments would provide that the Clearing Members and Clearing House would have a reasonable period of time after the Failed Delivery to enter into an EADP Agreement or effect delivery under EADP instead of only until the close of business on the Business Day following the day of the Failed Delivery before the Clearing House refers the matter to the relevant exchange. Pursuant to the amendments, the Clearing House would also consider what reasonable next steps it should take. The Clearing House could decide to take one of the listed steps, but pursuant to the amendments would not be limited by the list and would not be required to Invoice Back affected Contracts.

Part M (ICE Endex German Power Futures) would be deleted as these contracts have been delisted from the relevant exchange.

In Part N, outdated references to ICE OTC Contracts would be deleted.

In Part U, new provisions relating to failed settlement and non-delivery of securities under a Financials & Softs Gilt Contract would be added, including as to the steps the Clearing House can take to promote settlement in accordance with the contract terms and the requirements of the CREST central securities depository and allocation of the costs of such steps to the Clearing Member that failed to make delivery. These changes are intended to reflect existing practices and provide consistency with provisions of the Delivery Procedures for other contracts, including Part Z.

In Part Z, relating to Equity Futures and Options, various updates would be made to reference the correct settlement facilities and relevant settlement details and settlement procedures. The treatment of corporate events relating to underlying securities would be clarified through reference to the relevant Exchange corporate action policy. Provisions dealing with failed deliveries and partial deliveries would also be clarified, including as to the steps the Clearing House may take to facilitate delivery, the rights and responsibilities of the buying clearing member with respect to onward deliveries under other contracts and the allocation of costs to clearing members. The buying-in timetable would also be clarified. Other typographical corrections and similar drafting clarifications would be made throughout Part Z.

In the first table in Part FF, with respect to the receipt of documents by the Clearing House, the statement that in the event of non-availability of any of the listed delivery documents, Seller

may substitute a letter of indemnity in favor of the Buyer would be removed.

Various other typographical corrections and updates to use of defined terms and cross-references are made throughout the Delivery Procedures.

cc. Introduction of a Summary Disciplinary Process and Other Disciplinary Process Updates

Amendments would be made to the Rules to introduce a summary fining power for the Clearing House (in line with other ICE exchanges for which ICE Clear Europe provides clearing services) and to make certain minor drafting improvements to the disciplinary process provisions of the Rules. The intention behind these provisions is to introduce a more streamlined sanctioning process for clear-cut and minor rules violations, examples of which are cited in the rule itself and discussed further below, rather than having these subject to the formal and more cumbersome proceedings of a disciplinary committee.

In Rule 101, the definition of "Appeal Panel" would be amended to include reference to the new Summary Disciplinary Process. Also in Rule 101, a new definition of "Summary Disciplinary Process" would be introduced.

A minor amendment is proposed to Rule 102(j) to refer to new Rule 1008 in the context of disciplinary proceedings under the Rules. An amendment is proposed to Rule 102(p) to clarify that Disciplinary Panels, Summary Disciplinary Committees and Appeal Panels are also able to exercise discretion in the same way as the Clearing House.

Amendments are proposed to 1002(i) and 1003(b) to make reference to the new Summary Disciplinary Process. In 1005(c), the word "exclusive" would be deleted in relation to discretion, as Rule 102(p) now governs this matter.

New Rule 1005(g) would be added to make clear that Rule 1005 applies as the appeal process for the Summary Disciplinary Process.

Proposed Rule 1008 would be introduced to set out the new summary disciplinary process against a Clearing Member, clarifying the situations in which these new Rules apply, the sanctioning power of the Summary Disciplinary Process and the process by which the Summary Disciplinary Process would be conducted. The Summary Disciplinary Process may be applied in relation to: The late filing or submission of any document, notice or information; the late making of any payment; any failure to record a

Contract in the correct Account; the late making or taking of any delivery; any breach of Rule 202(a)(xix) (participation in default management simulations, new technology testing and other exercises); any breach of Rule 503(g) (the submission of end-of-day prices relating to Sets of CDS Contracts required of Clearing Members to aid in the establishment of Mark-to-Market Prices); any breach of a position limit under Part 6 of the Rules; any breach of any provision of the Rules or Procedures considered by the Clearing House to be of a factual nature where the Clearing House holds sufficient evidence of such facts; any breach of any provision of the Rules or Procedures considered by the Clearing House to be minor in nature; or any breach of the Rules or Procedures which the Clearing House considered would be appropriately addressed by the Summary Disciplinary Process.

Sanctions pursuant to proposed Rule 1008 would be limited to the following: Issuance of a private warning or reprimand naming the Clearing Member or a Clearing Member Customer, client or Representative; a fine of up to £50,000; or any combination of the foregoing.

Proposed Rule 1008 would also specify the process of imposing any sanction, including the notice process by the Clearing House, the opportunity for a Clearing Member to appeal, the grounds for appeal and the actions the appeal panel may take (*i.e.*, to affirm, vary or revoke a sanction). It would also allow the Clearing House to provide further guidance by way of Circular in relation to the operation of the Summary Disciplinary Process.

dd. Other Proposed Drafting Enhancements and Improvements

A number of other drafting enhancements, clarifications and improvements are proposed.

This includes a number of amendments to the definitions in Rule 101. A new definition of “Acceptance Time” would be added. The definition is consistent with the definitions currently in the CDS Procedures and FX Procedures, and would be added to the Rules for clarity given that the term is used in the Rules, *e.g.*, Rule 1204 and also in paragraph 10 of Standard Terms annexes.

In the definition of “Applicable Law”, a reference to “the FSMA” would be added. This important piece of UK legislation for CCPs, such as ICE Clear Europe, was unintentionally omitted from the “Applicable Law” definition.

In the “Clearing Organisation” definition, a reference to “securities clearing agency” would be added, to

ensure that the defined term includes securities clearing agencies regulated by the SEC.

In the “Defaulter” definition, amendments would clarify that the defined term refers to a person in respect of whom an Event of Default has occurred, rather than a person in respect of whom a Default Notice has been issued.

A new definition of “FINRA” referencing the U.S. Financial Industry Regulatory Authority, the self-regulatory body of several US clearing members, would be added. The term is currently used but in the definition of Regulatory Authority, but is not defined.

The definition of “Original Margin” would be amended to clarify that buyer’s security, seller’s security and delivery margin would all be included.

The “Regulatory Authority” definition would also be updated to include reference to “National Futures Association”, a self-regulatory body in the U.S. which supervises several clearing members.

The definition of “Rule Change” would be amended expressly to include changes to the Contract Terms. Rule 109(b)(vii) and (viii) and 109(k) already assume that the definition “Rule Change” covers changes to Contract Terms, but the definition itself is inconsistently narrower. The cross reference to Rule 109 would be clarified to reflect that it is not the sole provision governing the process for Rule Changes.

In the definition of “Segregated Customer”, typographical corrections would be made.

The definitions of “Transferee” and “Transferor” would be revised to clarify that the subject of a transfer or delivery is a Deliverable (as defined in the Rules).

Rule 201(a)(v) is proposed to be amended to correct an erroneous use of the singular “Contract” when the plural “Contracts” should be used.

Rules 304(a)(ii)(A), 304(a)(ii)(B) and 1901(e) would be amended to correctly reference the term “Nominated Bank Account”.

A clarification is proposed to Rule 401(g) to reflect that under existing practice and as stated and assumed elsewhere in the Rules (*e.g.*, Rule 906, Clearing Procedures), Clearing Members can have multiple Proprietary Position Accounts.

Rule 406(a) would be amended to remove an erroneous reference to the legacy term “Clearing Processing System” and replace it with the correct defined term “ICE System”.

Rule 904(b) would be amended to correct the use of an incorrect term “Market-to-Market Value” to the correct

definition “Mark-to-Market Price”. A change would similarly be made at Rule 905(g) to delete a reference to “Market-to-Market Value” as well as the unused term Reference Price.

An amendment is proposed to Rule 905(b)(ix) to reflect that there may be multiple Defaulters rather than just one.

Amendments to Rule 908(i) would correct typographical errors and an incorrect cross-reference.

Rule 908(ii) would be amended to reflect that the applicable modifications would be set out in the Default Auction Procedures as opposed to a Circular.

In the definition of “MTM/VM” in Rule 913(a)(xxx), amendments would be proposed to reflect that MTM/VM is transferred to rather than held as a deposit by the Clearing House.

The definition of “Product Termination Amount” in Rule 913(a)(xxxviii) is proposed to be deleted as this term is already defined in Rule 916.

A minor amendment is proposed to Rule 913(a)(lviii) to clarify for the avoidance of doubt that amounts payable in respect of transfers are included in the definition of “Transfer Cost”.

A correction would be made to Rule 915(e) to refer to correctly reference all categories of mark-to-market or variation margin for all product categories.

Clarifications would be made to Rule 916(i) to be clear that Guaranty Fund and Assessment contributions due pursuant to Rule 916(i) are subject to the provisions of Rule 917 (including the limitations thereon during a Cooling-off Period).

Rule 918(d) would be clarified to refer to any Event of Default rather than multiple Events of Default.

It is proposed to incorporate references to Rules 916 and 918 into Rule 1102(g) to reflect that these Rules are also applicable in certain cases to determining the return of Guaranty Fund contributions.

Rule 1901(d)(vi) would be deleted because the Council Directive referenced by this provision has been repealed. Subsequent provisions would be renumbered and cross-references in other provisions updated.

A typographical error in the title of Part 23 would be corrected.

Other typographical and similar corrections would be made in various provisions of the Rules, including 102(q), 202(a)(xxi), 203(a)(xx) and 504(c)(vi).

Part 3(b) of the F&O Standard Terms would be amended to more clearly state that Customer-CM F&O Transactions would arise in accordance with Part 4 of the Rules. This change would align

with the drafting used in the other Standard Terms.

Proposed clarifications would be made to Rule 1607(d)(iii), CDS Standard Terms 7(iii), F&O Standard Terms 7(iii) and FX Standard Terms 7(iii) to refer to "Personal Data" rather than "Personal Data of its Data Subjects". This change eliminates unnecessary language.

A minor change is proposed to paragraph 15.4(b) of the Finance Procedures to delete an outdated reference to the Continuing CDS Rule Provisions, which are no longer in effect.

(b) Statutory Basis

ICE Clear Europe believes that the proposed rule changes are consistent with the requirements of Section 17A of the Act⁹ and the regulations thereunder applicable to it, including the standards under Rule 17Ad-22.¹⁰ In particular, Section 17A(b)(3)(F) of the Act requires that that rule changes be consistent with the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts and transactions cleared by ICE Clear Europe, the safeguarding of securities and funds in the custody or control of ICE Clear Europe or for which it is responsible, and the protection of investors and the public interest.¹¹ As discussed herein, the proposed rule changes are principally designed to clarify various aspects of the Rules and Procedures to improve drafting and to update the Rules and Procedures to ensure consistency with current operational practices and processes as well as current applicable laws and regulations. In ICE Clear Europe's view, these changes would therefore facilitate the prompt and accurate clearance and settlement of transactions through the Clearing House and would generally be consistent with the protection of investors and the public interest. Furthermore, ensuring that the Rules and Procedures are clear, including with respect to matters such as portability, will enhance the safeguarding of securities and funds in the custody or control of the Clearing House or for which it is responsible. As such, ICE Clear Europe believes the amendments are consistent with the requirements of Section 17A(b)(3)(F) of the Act.¹²

Further, Section 17A(b)(3)(G) of the Act¹³ requires that clearing agency rules provide that its participants shall be appropriately disciplined for violations

of the rules including by fine, censure or any other fitting sanction. Section 17A(b)(3)(H) of the Act¹⁴ requires that a clearing agency provide a fair procedure with respect to the disciplining of participants. The addition of the new Summary Disciplinary Process would enable the Clearing House to impose appropriate fines or to censure appropriate parties in the event of a rule violation. It would also specify the process of imposing any sanction, including the notice process by the Clearing House, the opportunity for a Clearing Member to appeal, the grounds for appeal and the actions the appeal panel may take (*i.e.*, to affirm, vary or revoke a sanction). As such, by enabling appropriate disciplining of participants and providing a fair procedure relating to this process, ICE Clear Europe believes the amendments are consistent with the requirements of Section 17A(b)(3)(G) and (H) of the Act.¹⁵

The amendments are also consistent with the relevant specific requirements of Rule 17Ad-22,¹⁶ as set forth in the following discussion:

(i) Portability

Rule 17Ad-22(e)(14)¹⁷ requires that clearing agencies maintain policies and procedures which enable the segregation and portability of customer's positions and collateral. The amendments provide greater clarity with respect to providing porting instructions. The amendments would remove the existing process whereby Non-FCM/BD Clearing Members may deliver a "Default Portability Preference", with advance porting information, to the Clearing House, an option that was rarely used and that has proven to be impractical and has been superseded by requirements under EMIR that post-default porting notices be served prior to porting, which limited the value of instructions provided prior to default. The amendments will also clarify the process for providing post-default porting notices. The amendments will

thus facilitate the process of post-default porting in a manner consistent with applicable regulations, including the requirements of Rule 17Ad-22(e)(14),¹⁸ while avoiding the concerns created by the existing process.

Further, proposed amendments to Rule 209(d) would facilitate the process of porting positions, pre-default, in the context of a corporate group reorganization where a new Clearing Member that is an Affiliate will be receiving the terminating Clearing Member's Open Contract Positions, and thereby facilitate the Clearing House's compliance with requirements of Rule 17Ad-22(e)(14)¹⁹ to enable portability of customer positions and collateral.

(ii) Operational Risk

Rule 17Ad-22(e)(17)(i)²⁰ requires that a clearing agency manage its operational risks through appropriate policies and procedures. The amendments to the notices provisions would facilitate electronic notice, including for default notices under Rule 901 and other notices more generally under Rule 113. These clarifications better ensure appropriate and timely notices will be provided, reducing operational risks relating to timely receipt of notices.

Further, proposed amendments to Rule 202(a)(xxii) would extend the requirement for Clearing Members to have competent persons accessible to the Clearing House to also include the two hours prior to the start of the business day, to ensure that operational policies are consistent with consistent with operational practices and ensures that staff are available to process and deal with questions in relation to morning margin calls. The amendment would thus reduce the operational risks of not being able to address such calls in a timely manner.

The proposed changes at Rule 301(o) enhance the Clearing House's ability to request information when needed on account balances, including for the purpose of calling on available cash where the Clearing Member has failed to meet a payment obligation, and are expected to reduce operational risks that may arise where the Clearing House may not otherwise have access to such information.

¹⁴ 15 U.S.C. 78q-1(b)(3)(H).

¹⁵ 15 U.S.C. 78q-1(b)(3)(G) and (H).

¹⁶ 17 CFR 240.17Ad-22.

¹⁷ 17 CFR 240.17Ad-22(e)(14) which states that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (14) Enable, when the covered clearing agency provides central counterparty services for security-based swaps or engages in activities that the Commission has determined to have a more complex risk profile, the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant."

¹⁸ 17 CFR 240.17Ad-22(e)(14).

¹⁹ 17 CFR 240.17Ad-22(e)(14).

²⁰ 17 CFR 240.17Ad-22(e)(17)(i) which states that "[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (17) Manage the covered clearing agency's operational risks by: (i) Identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls."

⁹ 15 U.S.C. 78q-1.

¹⁰ 17 CFR 240.17Ad-22.

¹¹ 15 U.S.C. 78q-1(b)(3)(F).

¹² 15 U.S.C. 78q-1(b)(3)(F).

¹³ 15 U.S.C. 78q-1(b)(3)(G).

(iii) Legal Basis

Rule 17Ad–22(e)(1)²¹ requires that a clearing agency provide for a well-founded legal basis for each aspect of its activities in all relevant jurisdictions. The amendments to Rule 201(a)(ix) would clarify that the Clearing House may require that potential Clearing Members enter into additional annexes/agreements to the Clearing Membership Agreement in accordance with Rule 201(b) in order to be, and remain, eligible for Clearing Membership. The Clearing House would expect to impose such requirements where necessary to comply with or address post-Brexit local law group structuring issues, including as applicable to its Clearing Members located in certain EU member states. This change would clarify the legal basis under the Rules for the Clearing House to require additional documentation to be executed, where necessary.

The proposed amendments to Rule 1901(b)(xv), Rule 1901(d)(ix), Rule 201(a)(xx) and Section 10 of the F&O Standard Terms, which would remove the requirement for Clearing Members, Customer and Sponsored Principals to be “eligible contract participants” if they are solely engaging in F&O Contracts, is intended to remove an unnecessary requirement for such Contracts while ensuring that the membership requirements remain compliant with applicable US laws.

The amendments to paragraph 3.5(a) of the Membership Procedures to lower the threshold at which the Clearing House will require a written undertaking from a Clearing Member to not repay subordinated loans will align the Rules more closely with Basel III requirements applicable to Clearing Members.

The various amendments to address applicable anti-money laundering laws in the EU and UK, including to address requirements to provide necessary information for due diligence checks, are intended to facilitate compliance by the Clearing House, Clearing Members, Sponsored Principals and Customers with applicable anti-money laundering laws. Similarly, amendments to the Delivery Procedures would obligate Clearing Members to conduct appropriate anti-money laundering AML due diligence for any transferors/transferees and provide relevant documentation to the Clearing House

and/or Clearing Member. These requirements support the well-founded basis for the Clearing House’s operation under applicable anti-money laundering laws.

Overall, these changes, as well the numerous other changes to improve the drafting and clarity of the Rules and Procedures, are generally consistent with establishing a well-founded legal framework for the Clearing House’s operations, within the meaning of Rule 17Ad–22(e)(1).²²

(iv) Margin

Rule 17Ad–22(e)(6) require that a covered clearing agency establish a risk-based margin system that, among other matters, “[m]arks participant positions to market and collects margin, including variation margin . . . , at least daily.”²³ Rule 1603(c) would be amended to clarify that only “original” or “initial” types of Margin payments would be provided in the form of Pledged Collateral, and that such collateral excludes Variation Margin, Mark-to-Market Margin and FX Mark-to-Market Margin which is provided to or by the Clearing House by outright transfer of cash as a settlement payment. This amendment is consistent with the treatment of variation and mark-to-market margin as settlement payments,²⁴ as provided elsewhere in the Rules and Procedures, and in ICE Clear Europe’s view is consistent with the margin framework requirements under Rule 17Ad–22(e)(6).²⁵

(v) Settlement and Physical Delivery

Rule 17Ad–22(e)(10) requires that a covered clearing agency “establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries.”²⁶ The proposed amendment to the definition of “Exchange Delivery Settlement Price” in the Rules will clarify for the avoidance of doubt that the EDSP can be positive, negative or zero. The amendments will also clarify the procedure for payment of the EDSP in a physical settlement where the EDSP is negative. The amendments will thus clarify and enhance the settlement

process in such case, consistent with Rule 17Ad–22(e)(10).²⁷

Proposed amendments to the Delivery Procedures will clarify other aspects of the physical settlement process. Proposed new paragraph 7 to the Delivery Procedures will contemplate an alternative delivery procedure for certain Emission Contracts in the event of a failed delivery. In Part U, new provisions relating to failed settlement and non-delivery of securities under a Financials & Softs Gilt Contract would be added, including as to the steps the Clearing House can take to promote settlement in accordance with the contract terms and the requirements of the CREST central securities depository and allocation of the costs of such steps to the Clearing Member that failed to make delivery. Updates to Part Z would be made to reference the correct settlement facilities and relevant settlement details and settlement procedures. Part Z provisions dealing with failed deliveries and partial deliveries would also be clarified. Throughout the Delivery Procedures, the delivery documentation summaries, timetables and other relevant provisions will be updated and clarified to reflect current operational processes and Clearing House systems and to remove outdated references and language. Taken together, these changes will establish and update transparent written standards associated with physical deliveries, consistent with the requirements of Rule 17Ad–22(e)(10).²⁸

(vi) Governance Arrangements

Rule 17Ad–22(e)(2)(i)²⁹ requires that a clearing agency have governance arrangements that are clear and transparent. The proposed amendments to Rule 916(d) would change “Risk Committee” to “relevant product risk committee” to reflect the different product risk committees addressing topics specific to F&O and CDS Contracts. Similar changes would be made to references to relevant risk committees in certain Procedures, as discussed above. In ICE Clear Europe’s view, these amendments would clarify governance descriptions in the Rules and Procedures to more clearly and accurately reflect established arrangements, and are thus consistent with Rule 17Ad–22(e)(2)(i).

²¹ 17 CFR 240.17Ad–22(e)(1) which states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (1) Provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.”

²² 17 CFR 240.17Ad–22(e)(1).

²³ 17 CFR 240.17Ad–22(e)(6).

²⁴ As discussed above, the amendments are also consistent with the approach provided for in Exchange Act Release No. 34–88665 (File No. SR–ICEEU–2020–003) (Apr. 16, 2020), 85 FR 22892 (Apr. 23, 2020).

²⁵ 17 CFR 240.17Ad–22(e)(6).

²⁶ 17 CFR 240.17Ad–22(e)(10).

²⁷ 17 CFR 240.17Ad–22(e)(10).

²⁸ 17 CFR 240.17Ad–22(e)(10).

²⁹ 17 CFR 240.17Ad–22(e)(2)(i) which states that “[e]ach covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable: (2) Provide for governance arrangements that: (i) Are clear and transparent;”.

(vii) Membership Criteria

Rule 17Ad-22(e)(18) requires covered clearing agencies to establish criteria for participation which ensures participants have sufficient financial resources and robust operational capacity to meet obligations arising from participation and to monitor compliance.³⁰ Proposed amendments would extend the hours during which staff are available to process and deal with questions in relation to morning margin calls, which strengthen operational capacity to meet obligations arising from participation. The amendments would also clarify certain requirements as to member Capital, including to reference updated capital standards and to limit the use of certain subordinated debt as capital. These amendments are intended to be consistent with the requirements of the Basel III capital framework applicable to most Clearing Members. In ICE Clear Europe view, the amendments accordingly set appropriate Capital requirements for Clearing Members, consistent with the requirements of Rule 17Ad-22(e)(18).

(viii) Default Management

Rule 17Ad-22(e)(13)³¹ requires a covered clearing agency to ensure that it “has the authority and operational capacity to take timely action to contain losses and liquidity demands” in the case of default.

The amendments would, as noted above, clarify certain aspects of the Clearing House’s default management procedures, including the use of post-default porting notices and the manner of delivering default notices. The amendments would clarify the ability of the Clearing House to use hedging post-default, and clarify certain aspects of the definition of Event of Default, particularly in connection with defaults of affiliated Clearing Members. A number of other drafting improvements would be made in the Part 9 of the Rules, as discussed above. In ICE Clear Europe’s view, these amendments will generally enhance the Clearing House’s default management procedures and facilitate its ability to take timely action in the case of a default to contain losses, consistent with the requirements of Rule 17Ad-22(e)(13).³²

(B) Clearing Agency’s Statement on Burden on Competition

ICE Clear Europe does not believe the proposed amendments would have any impact, or impose any burden, on competition not necessary or

appropriate in furtherance of the purpose of the Act. The amendments are generally intended to improve drafting clarity in the Rules and Procedures and update various provisions to refer to current laws and operational and other processes, including with respect to such matters as portability, settlement and delivery procedures, updated system references, anti-money laundering procedures and similar matters. Overall, ICE Clear Europe does not expect the amendments would impose any material new obligations on Clearing Member. Further, ICE Clear Europe does not expect that the proposed changes will adversely affect access to clearing or the ability of Clearing Members, their customers or other market participants to continue to clear contracts. ICE Clear Europe also does not believe the amendments would materially affect the cost of clearing or otherwise limit market participants’ choices for selecting clearing services. Accordingly, ICE Clear Europe does not believe the amendments would impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

(C) Clearing Agency’s Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

ICE Clear Europe conducted a consultation with respect to the proposed amendments to the Rules set forth herein.³³ No written comments relating to the proposed amendments have been received by ICE Clear Europe. ICE Clear Europe will notify the Commission of any comments received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission’s internet comment form (<http://www.sec.gov/rules/sro.shtml>) or
- Send an email to rule-comments@sec.gov. Please include File Number SR-ICEEU-2021-010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-ICEEU-2021-010. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission’s internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission’s Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Europe and on ICE Clear Europe’s website at <https://www.theice.com/clear-europe/regulation>.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-ICEEU-2021-010 and should be submitted on or before June 23, 2021.

³⁰ 17 CFR 240.17Ad-22(e)(18).

³¹ 17 CFR 240.17Ad-22(e)(13).

³² 17 CFR 240.17Ad-22(e)(13).

³³ ICE Clear Europe Circular C21/013 (Feb. 2, 2021).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁴

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021-11529 Filed 6-1-21; 8:45 am]

BILLING CODE 8011-01-P

SMALL BUSINESS ADMINISTRATION

[License No. 02/02-0695]

QS Capital Strategies II, L.P.; Notice Seeking Exemption Under Section 312 of the Small Business Investment Act, Conflicts of Interest

Notice is hereby given that QS Capital Strategies II, L.P., 527 Madison Avenue, 11th Floor, New York, NY 10022, a Federal Licensee under the Small Business Investment Act of 1958, as amended (“the Act”), in connection with the financing of a small concerns, has sought an exemption under Section 312 of the Act and Section 107.730, Financings which Constitute Conflicts of Interest of the Small Business Administration (“SBA”) Rules and Regulations (13 CFR 107.730). QS Capital Strategies II, L.P. is proposing to provide financing to BrandMuscle, Inc. to support the Company’s growth.

The proposed transaction is brought within the purview of § 107.730 of the Regulations because QS Capital Strategies, L.P., an Associate of QS Capital Strategies II, L.P., by virtue of Common Control as defined at § 107.50, holds a debt investment in BrandMuscle, Inc. and the proposed transaction would discharge an obligation to an Associate.

Therefore, the proposed transaction is considered self-deal pursuant to 13 CFR 107.730 and requires a regulatory exemption. Notice is hereby given that any interested person may submit written comments on the transaction within fifteen days of the date of this publication to Associate Administrator for Investment, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

Thomas Morris,

Acting Associate Administrator, Director,
Office of SBIC Liquidation, Office of
Investment and Innovation.

[FR Doc. 2021-11503 Filed 6-1-21; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36519]

Gulf & Ship Island Railroad LLC—Lease and Operation Exemption—Rail Line of Harrison County Development Commission at or Near Gulfport, Harrison County, MS

Gulf & Ship Island Railroad LLC (GSIR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from the Harrison County Development Commission, acting with the Harrison County Board of Supervisors (the County), and operate approximately five miles of industrial lead tracks known as the Seaway Lead, extending between a point approximately 800 feet east of U.S. Highway 49 on the Seaway Lead and the end of the Seaway Lead at Bernard Bayou Industrial Park, at or near Gulfport, in Harrison County, Miss. (the Line).

This transaction is related to a concurrently filed verified notice of exemption in *Chicago, Rock Island & Pacific Railroad LLC—Continuance in Control Exemption—Gulf & Ship Island Railroad LLC*, Docket No. FD 36420, in which Chicago Rock Island & Pacific LLC seeks to continue in control of GSIR upon GSIR’s becoming a Class III rail carrier.

GSIR states that it has reached an agreement with the County pursuant to which GSIR will lease the Line from the County and operate it. GSIR further states that the proposed transaction does not involve any provision or agreement that would limit GSIR’s future interchange of traffic on the Line with a third-party connecting carrier.

GSIR certifies that its projected annual revenues as a result of this transaction will not result in GSIR’s becoming a Class II or Class I rail carrier. GSIR further certifies that its projected annual revenue will not exceed \$5 million.

The transaction may be consummated on or after June 16, 2021, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than June 9, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36519, 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 GSIR’s representative, Thomas F. McFarland, Thomas F. McFarland, P.C., 2230 Marston Lane, Flossmoor, IL 60422-1336.

According to GSIR, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at www.stb.gov.

Decided: May 27, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Brendetta Jones,
Clearance Clerk.

[FR Doc. 2021-11589 Filed 6-1-21; 8:45 am]

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SURFACE TRANSPORTATION BOARD

[Docket No. FD 36472; Docket No. FD 36472 (Sub-No. 1); Docket No. FD 36472 (Sub-No. 2); Docket No. FD 36472 (Sub-No. 3); Docket No. FD 36472 (Sub-No. 4); Docket No. FD 36472 (Sub-No. 5); Docket No. AB 1312X]

CSX Corporation and CSX Transportation, Inc., et al.—Control and Merger—Pan Am Systems, Inc., Pan Am Railways, Inc., Boston and Maine Corporation, Maine Central Railroad Company, Northern Railroad, Pan Am Southern LLC, Portland Terminal Company, Springfield Terminal Railway Company, Stony Brook Railroad Company, and Vermont & Massachusetts Railroad Company; Norfolk Southern Railway—Trackage Rights Exemption—CSX Transportation, Inc.; Norfolk Southern Railway—Trackage Rights Exemption—Providence & Worcester Railroad; Norfolk Southern Railway—Trackage Rights Exemption—Boston & Maine Corp.; Norfolk Southern Railway—Trackage Rights Exemption—Pan Am Southern LLC; Pittsburg & Shawmut Railroad—Operation Exemption—Pan Am Southern LLC; SMS Rail Lines of New York, LLC—Discontinuance Exemption—in Albany County, N.Y.

AGENCY: Surface Transportation Board.

ACTION: Decision No. 3 in STB Finance Docket No. 36472 et al.; notice of rejection of application.

SUMMARY: The Board rejects as incomplete an application seeking approval for CSX Corporation (CSXC), CSX Transportation, Inc. (CSXT), and 747 Merger Sub 2, Inc., to acquire control of seven rail carriers owned by Pan Am Systems, Inc. (Systems), and Pan Am Railways, Inc. (PAR), and to

³⁴ 17 CFR 200.30-3(a)(12).

merge six of those railroads into CSXT. The Board finds that the application fails to include the information needed to satisfy the Market Analysis requirement for a “significant” transaction application under our regulations. However, the applicants are permitted to file a revised application.

DATES: The effective date of the Board’s decision is May 26, 2021. Applicants may file a revised application at any time after issuance of the Board’s decision, but no later than August 26, 2021. Applicants are directed to file a letter in this docket by June 7, 2021, indicating if and when they anticipate filing a revised application.

ADDRESSES: Any filing submitted in these proceedings should be filed with the Board via e-filing on the Board’s website. In addition, one copy of each filing must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CSX’s¹ and 747 Merger Sub 2’s representative, Anthony J. LaRocca, Steptoe & Johnson LLP, 1330 Connecticut Ave. NW, Washington, DC 20036; (4) Systems’,² PAR’s, and PAR Railroads’ representative, Robert B. Culliford, Pan Am Systems, Inc., 1700 Iron Horse Park, North Billerica, MA 01862; and (5) any other person designated as a Party of Record on the service list.

FOR FURTHER INFORMATION CONTACT:

Amy Ziehm at (202) 245–0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: On April 26, 2021, CSX Corporation CSXC, CSXT, 747 Merger Sub 2, Inc. (747 Merger Sub 2), Systems, PAR, Boston and Maine Corporation (Boston & Maine), Maine Central Railroad Company (Maine Central), Northern Railroad (Northern), Portland Terminal Company (Portland Terminal), Springfield Terminal Railway Company (Springfield Terminal), Stony Brook Railroad Company (Stony Brook), and Vermont &

Massachusetts Railroad Company (V&M) (collectively, Applicants) filed an application (Application) for Board approval for: (1) CSXC, CSXT, and 747 Merger Sub 2 to control the seven PAR Railroads controlled by Systems and PAR, and (2) CSXT to merge six of the seven railroads into CSXT. This proposal is referred to as the Merger Transaction. In addition to the Application for the proposed Merger Transaction, there are several related filings for transactions related to the Merger Transaction: Four notices of exemption for Norfolk Southern Railway Company to acquire trackage rights over existing lines owned by four separate railroads; a petition for exemption to allow Pittsburg & Shawmut Railroad, LLC d/b/a Berkshire & Eastern Railroad, to replace Springfield Terminal as the operator of Pan Am Southern LLC; and a notice of exemption to allow SMS Rail Lines of New York, LLC to discontinue service on and terminate its lease of a rail line known as the Voorheesville Running Track.

The Board finds that the Application fails to include the information needed to satisfy the Market Analysis requirement for a “significant” transaction application under 49 CFR 1180.7. Accordingly, the Board is rejecting the Application as incomplete. However, Applicants are permitted to file a revised application to remedy the deficiencies identified in the Board’s decision.

Additional information is contained in the Board’s decision served on May 26, 2021, which is available at www.stb.gov.

Decided: May 26, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

Regena Smith-Bernard,
Clearance Clerk.

[FR Doc. 2021–11507 Filed 6–1–21; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans).

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to

announce actions taken by Caltrans that are final. The actions relate to a proposed highway project, interchange improvement of Valley Boulevard at Interstate 605 and Temple Avenue in the City of Industry, Los Angeles County, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 1, 2021. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that short time period applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Jason Roach, Senior Environmental Planner/Branch Chief, Caltrans Division of Environmental Planning, District 7, 100 South Main Street, Los Angeles, CA 90012. Office Hours: 8:00 a.m.–5:00 p.m., Pacific Standard Time, telephone (213) 310–2653 or email Jason.Roach@dot.ca.gov. For FHWA, contact David Tedrick at (916) 498–5024 or email david.tedrick@dot.gov.

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, FHWA assigned, and Caltrans assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(l)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California. Caltrans, in cooperation with Los Angeles County Metropolitan Transportation Authority (LA Metro), San Gabriel Valley Council of Governments (SGVCOG), Gateway Cities Council of Governments (GCCOG), Los Angeles County Department of Public Works (LACDPW), and City of Industry propose to improve mobility and relieve congestion, capacity constraints, and other related deficiencies on Interstate 605 (I–605) at the Valley Boulevard interchange including high accident rate locations, inadequate truck turn paths, nonstandard lane and shoulder widths along loop ramps, and noncompliant Americans with Disabilities Act (ADA) facilities. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Initial Study with Negative Declaration (ND)/Finding of No Significant Impact (FONSI) for the project, approved on April 7, 2021, and in other documents in Caltrans’ project

¹ CSXT is a wholly owned subsidiary of CSXC. CSXC and CSXT are referred to collectively as CSX.

² Systems directly and wholly owns PAR, which in turn directly and wholly owns four rail carriers: Boston & Maine, Maine Central, Portland Terminal, and Springfield Terminal. Boston & Maine directly and wholly owns Northern and Stony Brook, as well as a 98% interest in V&M. These seven rail carriers will be referred to collectively as the PAR Railroads.

records. The ND/FONSI and other project records are available by contact Caltrans at the addresses provided above. The Caltrans ND/FONSI and other project records can be viewed and downloaded at the following Metro Early Action I-605 Valley Blvd. Interchange Improvement Project website.

This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. Council on Environmental Quality Regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et. seq.*
3. Federal-Aid Highway Act of 1970, 23 U.S.C. 109
4. MAP-21, the Moving Ahead for Progress in the 21st Century Act (Pub. L. 112-141)
5. Clean Air Act Amendments of 1990 (CAAA)
6. Clean Water Act of 1977 and 1987
7. Federal Water Pollution Control Act of 1972 (see Clean Water Act of 1977 & 1987)
8. Paleontological Resources Preservation Act (16 U.S.C. 470aaa)
9. Historic Sites Act of 1935
10. Safe Drinking Water Act of 1944, as amended
11. Endangered Species Act of 1973
12. Executive Order 11990, Protection of Wetlands
13. Executive Order 13112, Invasive Species
14. Executive Order 13186, Migratory Birds
15. Fish and Wildlife Coordination Act of 1934, as amended
16. Migratory Bird Treaty Act
17. Department of Transportation Act of 1966, 49 U.S.C. 303
18. Energy Policy and Conservation Act of 1975 (42 U.S.C. Section 6201)
19. Energy Policy Act of 2005, 109th Congress H.R.6 (2005-2006)
20. Title VI of the Civil Rights Act of 1964, as amended
21. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations
22. Comprehensive Environmental Response
23. Compensation and Liability Act (CERCLA) of 1980
24. Resource Conservation and Recovery Act (RCRA) of 1976

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: May 26, 2021.

Rodney Whitfield,

Director, Financial Services, Federal Highway Administration, California Division.

[FR Doc. 2021-11535 Filed 6-1-21; 8:45 am]

BILLING CODE 4910-RY-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA-2020-0159 (Notice No. 2021-05)]

Hazardous Materials: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICRs) discussed below will be forwarded to the Office of Management and Budget (OMB) for renewal and extension. These ICRs describe the nature of the information collections and their expected burdens. A notice and request for comments with a 60-day comment period on these ICRs was published in the **Federal Register** on February 23, 2021 under Docket No. PHMSA-2020-0159 (Notice No. 2021-01). PHMSA did not receive any comments in response to this notice.

DATES: Interested persons are invited to submit comments on or before July 2, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collections should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

We invite comments on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (2) the accuracy of the Department's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Docket: For access to the Dockets to read background documents or comments received, go to <http://www.regulations.gov>.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or Shelby Geller, Standards and Rulemaking Division, (202) 366-8553, ohmspra@dot.gov,

Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), title 5, Code of Federal Regulations (CFR) requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests PHMSA will be submitting to the Office of Management and Budget (OMB) for renewal and extension. These information collections are contained in 49 CFR 171.6 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171-180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. Please note that in the February 23, 2021 (86 FR 11052), notice and request for comments, PHMSA included an additional information collection under OMB Control Number 2137-0022 titled "Testing, Inspection, and Marking Requirements for Cylinders." However, since that publication, PHMSA received a 3-year renewal for this collection based on changes associated with a final rule PHMSA published on December 28, 2020, titled "*Hazardous Materials: Miscellaneous Amendments Pertaining to DOT-Specification Cylinders*" (HM-234; 85 FR 85380). As this collection has been renewed until May 31, 2024, OMB Control Number 2137-0022 is no longer contained in this notice for comment and subsequent renewal. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a 3-year term of approval for each information collection activity and will publish a notice in the **Federal Register** upon OMB's approval.

PHMSA requests comments on the following information collections:
Title: Cargo Tank Specification Requirements.

OMB Control Number: 2137-0014.

Summary: This information collection consolidates and describes the information collection provisions in parts 107, 178, and 180 of the HMR

involving the manufacture, qualification, maintenance, and use of all specification cargo tank motor vehicles. It also includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification, and maintenance of DOT specification cargo tank motor vehicles. The types of information collected include:

(1) *Registration Statements:* Cargo tank manufacturers and repairers, as well as cargo tank motor vehicle assemblers, are required to be registered with DOT and must furnish information relative to their qualifications to

perform the functions in accordance with the HMR. DOT uses the registration statements to identify these persons to ensure they possess the knowledge and skills necessary to perform the required functions and that they are performing the specified functions in accordance with the applicable regulations.

(2) *Requalification and Maintenance Reports:* These reports are prepared by persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained, and in proper condition for

the transportation of hazardous materials.

(3) *Manufacturers' Data Reports, Certificates, and Related Papers:* These reports are prepared by cargo tank manufacturers and certifiers. They are used by cargo tank owners, operators, users, and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification.

The following information collections and their burdens are associated with this OMB Control Number. Please note that these estimates may be rounded for readability:

Information collection	Annual respondents	Total annual responses	Time per response	Total annual burden hours
Registration—Cargo Tank Manufacturers	24	24	20 minutes	8
Registration—Repair Facilities	33	33	20 minutes	11
Registration—Design Certifying Engineers & Registered Inspectors	1,110	1,110	20 minutes	370
Registration—Recordkeeping	117	117	15 minutes	29
Updating a Cargo Tank Registration	145	145	15 minutes	36
Design Certificates for Prototypes	55	55	2.5 hours	138
Design Certificates for Prototypes—Recordkeeping	7	7	15 minutes	2
Manufacture's Data Reports or Certificate and Related Papers	145	6,960	30 minutes	3,480
Manufacture's Data Reports or Certificate and Related Papers—Record-keeping	700	700	15 minutes	175
Completion of Manufacturer's Data Report—New Cargo Tanks	145	4,785	30 minutes	2,393
Completion of Manufacturer's Data Report—Remanufactured Cargo Tanks	145	1,015	30 minutes	508
Completion of Manufacturer's Data Report—Recordkeeping	145	580	15 minutes	145
Cargo Tank Repair/Modification Reports	195	15,015	5 minutes	1,251
Testing and Inspection of Cargo Tanks—Visual Inspections	1,654	24,600	30 minutes	12,300
Testing and Inspection of Cargo Tanks—External Visual Inspections	1,654	123,000	30 minutes	61,500

Affected Public: Manufacturers, assemblers, repairers, requalifiers, certifiers, and owners of cargo tanks.

Annual Reporting and Recordkeeping Burden:

- Number of Respondents:* 6,274.
- Total Annual Responses:* 178,146.
- Total Annual Burden Hours:* 82,346.
- Frequency of Collection:* On occasion.

Title: Container Certification Statements.

OMB Control Number: 2137-0582.
Summary: Shippers of explosives, in freight containers or transport vehicles by vessel, are required to certify on shipping documentation that the freight container or transport vehicle meets minimal structural serviceability requirements. This requirement ensures

an adequate level of safety for the transport of explosives aboard vessel and consistency with similar requirements in international standards. The following information collections and their burdens are associated with this OMB Control Number. Please note that these estimates may also be rounded for readability:

Information collection	Annual respondents	Total annual responses	Time per response (minutes)	Total annual burden hours
Freight Container Packing Certification	620	890,000	1	14,833
Class 1 (explosives) Container Structural Serviceability Statement	30	4,500	1	75

Affected Public: Shippers of explosives in freight containers or transport vehicles by vessel.

Annual Reporting and Recordkeeping Burden:

- Number of Respondents:* 650.
- Total Annual Responses:* 894,500.
- Total Annual Burden Hours:* 14,908.
- Frequency of Collection:* On occasion.

Issued in Washington, DC, on May 27, 2021, under authority delegated in 49 CFR 1.97.

William A. Quade,
Deputy Associate Administrator of Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.

[FR Doc. 2021-11566 Filed 6-1-21; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning application procedures for qualified intermediary status under final qualified intermediary withholding agreement.

DATES: Written comments should be received on or before August 2, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this form should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Application Procedures for Qualified Intermediary Status Under Section 1441; Final Qualified Intermediary Withholding Agreement.

OMB Number: 1545-1597.

Revenue Procedure Number: 2000-12 (Revenue Procedure 2000-12 is modified by Announcement 2000-50, Revenue Procedure 2003-64, Revenue Procedure 2004-21, and Revenue Procedure 2005-77.)

Abstract: This revenue procedure gives guidance for entering into a withholding agreement with the IRS to be treated as a Qualified Intermediary (QI) under regulation section 1.1441-1(e)(5). It describes the application procedures for becoming a QI and the terms that the IRS will ordinarily require in a QI withholding agreement. The objective of a QI withholding agreement is to simplify withholding and reporting obligations with respect to payments of income made to an account holder through one or more foreign intermediaries.

Current Actions: There are no changes to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 88,504.

Estimated Number of Responses: 1,097,991.

Estimated Time per Respondent: 16 minutes.

*** Estimated Time for a QI:* 2,093 hours.

Estimated Total Annual Burden

Hours: 301,018.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 26, 2021.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2021-11511 Filed 6-1-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5305-SEP

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service (IRS), 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 information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

DATES: Written comments should be received on or before August 2, 2021 to be assured of consideration.

ADDRESSES: Direct all written comments to Kinna Brewington, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, at (202) 317-5753, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at Martha.R.Brinson@irs.gov.

SUPPLEMENTARY INFORMATION:

Title: Simplified Employee Pension-Individual Retirement Accounts Contribution Agreement.

OMB Number: 1545-0499.

Form Number: 5305-SEP.

Abstract: Form 5305-SEP is used by an employer to make an agreement to provide benefits to all employees under a Simplified Employee Pension (SEP) described in Internal Revenue Code section 408(k). This form is not to be filed with the IRS but is to be retained in the employer's records as proof of establishing a SEP and justifying a deduction for contributions to the SEP.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 100,000.

Estimated Time per Respondent: 4hr., 57 mins.

Estimated Total Annual Burden Hours: 495,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. Comments will be of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 26, 2021.

Martha R. Brinson,

Tax Analyst.

[FR Doc. 2021-11509 Filed 6-1-21; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Treasury International Capital

AGENCY: Departmental Offices, U.S. Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury will submit the following information collection requests to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. The public is invited to submit comments on this request.

DATES: Comments must be received on or before July 2, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to www.reginfo.gov/public/do/PRAMain. Find this particular information collection by selecting "Currently under 30-day Review—Open for Public Comments" or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submissions may be obtained from Molly Stasko by emailing PRA@treasury.gov, calling (202) 622-8922, or viewing the entire information collection request at www.reginfo.gov.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form SLT, "Aggregate Holdings, Purchases and Sales, and Fair Value Changes of Long-Term Securities by U.S. and Foreign Residents."

OMB Control Number: 1505-0235.

Type of Review: Revision of a currently approved collection.

Description: Form SLT is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Form SLT is a monthly report on cross-border portfolio investment in long-term marketable securities by U.S. and foreign residents. This information is used by the U.S. Government in the formulation of international financial and monetary policies and for the preparation of the U.S. balance of payments accounts and the U.S. international investment position.

Current Actions: (1) Justification: One important aim of this revision of the SLT data collection is to create, for the first time, a data collection of "changes in fair value" for the TIC securities data. Users of TIC data often compare the change in the holdings of long-term securities reported on the Form SLT, with the net purchases (purchases less sales) of long-term securities reported on the Form S. There is general agreement that the difference between the change in holding and the net purchases is due largely to the change in fair value of the securities, with less important factors making up the remainder of the difference. In mathematical terms, "Change in holdings" equals "purchases less sales" plus "change in fair value" plus "other factors". Different assessments between TIC data users often arise because each one has to create their own estimates of the "change in fair value" despite lacking detailed information on the holdings of, and transactions in, the many securities in the TIC system. Another aim of this revision of the SLT data collection is to obtain the three main data types (holdings, purchases and sales, and change in fair value) from the same source. The result should greatly improve the connections between the holdings data and the purchases and sales data and the "change in fair value" data. Lastly, while there is an increase in the reporting burden on custodians from the revision of the SLT, after 2022 it is expected that this increase in burden will be significantly offset by the decrease in burden when the Form S is discontinued. (2) No changes are made in the collection of holdings data; *i.e.*, no changes are made in the columns and rows of the Form SLT or in the instructions regarding the holdings of long-term securities. In both the current and revised Form SLT there are eleven such columns covering three types of

foreign securities and four types of U.S. securities, where for each type of U.S. security there is a column for foreign-official-held and a separate column for other-foreign-held. (3) To accomplish the aims in (1) above, both the Form SLT and the instructions are expanded to add the collection of data on the total change in the fair (market) value over the month for all securities held at the end of the month for each type of long-term security. In the Form SLT, one column is added for each of the 11 columns of holdings mentioned in (2) above; in the instructions, sections II.F.4 and III.G are added. (4) To accomplish the aims in (1) above, both the Form SLT and the instructions are expanded to add the collection of data on U.S. purchases and U.S. sales of long-term securities by U.S.-residents with foreign-residents; in the Form SLT, two columns are added for each of the 11 columns of holdings mentioned in (2) above; in the instructions, sections II.F.3, II.F.5, III.E and III.F are added. (5) Note that while purchases and sales in the revised SLT data collection appear to be generally the same as in the Form S data collection, there are three important differences: (i) Purchases and sales in the Form SLT are reported by the custodian or issuer or end-investor that is also reporting the holdings, while in the Form S purchases and sales are reported by a trader (*e.g.*, broker-dealer, prime broker, principal trading firm); (ii) the Form SLT data are recorded from the U.S. point of view, while the Form S data are recorded from the foreign point-of-view (*e.g.*, Form SLT "purchases" are made by U.S. residents from foreign-residents, whereas Form S "purchases" are made by foreign-residents from U.S.-residents); and (iii) purchases and sales of foreign securities in Form SLT are recorded opposite the foreign country that issued the security, whereas the Form S data are recorded opposite the country that purchased or sold the security. The Form SLT data are much more informative about U.S. claims on individual foreign countries. (6) The revised Form SLT no longer has Parts A and B, where previously a custodian reported data in part A and an issuer and/or end-investor reported data in part B. In the revised Form SLT the reporting firm must check one or both of the two boxes in the top-center section of the cover page to specify whether the data is from a custodian or from an issuer and/or end-investor or from both; see II.A in the instructions. So a firm that reports data for both a custodian and an issuer/end-user can combine both types of data into one report, and no longer needs to report

them separately in part A and part B. (7) To allow time for respondents to revise their reporting systems, the revised form and instructions are scheduled to become effective for reports as of November 2022. (8) Until the revised form becomes effective in 2022, the currently-approved Form SLT and instructions will continue to be in effect. (9) The name of the revised Form SLT on the cover page and elsewhere is expanded to “Aggregate Holdings, Purchases and Sales, and Fair Value Changes of Long-Term Securities by U.S. and Foreign Residents.” Added on the cover page under the name, is the phrase “Effective for reports beginning as of November 2022”. (10) After the revised Form SLT becomes effective in November 2022, there will be a duplication of the Purchase and Sales data with the Form S for roughly three months. This period of overlap for comparison of the two sources of data will allow the agencies to make any necessary adjustments to the revised Form SLT and/or instructions. After the overlap period ends, and if the purchases and sales data from the revised Form SLT are acceptable, then the Form S will be discontinued. (11) Some other clarifications and format changes may be made to improve the instructions.

Form: Treasury Form SLT.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 438.

Frequency of Response: Monthly.

Estimated Total Number of Annual Responses: 5,256.

Estimated Time per Response: Average 11.7 hours per respondent per filing. The estimated average burden per respondent varies, from about 21.6 hours per filing for a U.S.-resident custodian to about 9.3 hours for a U.S.-resident issuer or U.S.-resident end-investor.

Estimated Total Annual Burden Hours: 61,722 hours.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: May 27, 2021.

Molly Stasko,

Treasury PRA Clearance Officer.

[FR Doc. 2021-11599 Filed 6-1-21; 8:45 am]

BILLING CODE 4810-AK-P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act Meetings Notice; Unified Carrier Registration Plan Board of Directors Meeting

TIME AND DATE: June 8, 2021, from 12:00 p.m. to 3:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and screen sharing. Any interested person may call 877-853-5247 (U.S. toll free), 888-788-0099 (U.S. toll free), +1 929-205-6099 (U.S. toll), or +1 669-900-6833 (U.S. toll), Conference ID 945 5272 6109, to participate in the meeting. The website to participate via Zoom meeting and screen share is <https://kellen.zoom.us/j/94552726109>.

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the “Board”) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of the meeting will include:

Agenda

I. Welcome and Call to Order—UCR Board Chair

The UCR Board Chair will welcome attendees, call the meeting to order, call roll for the Board, confirm the presence of a quorum, and facilitate self-introductions.

II. Verification of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Board Agenda—UCR Board Chair

For Discussion and Possible Action

The proposed Agenda will be reviewed, and the Board will consider adoption.

Ground Rules

➤ Board actions taken only in designated areas on agenda

IV. Approval of Minutes of the April 22, 2021 UCR Board Meeting—UCR Board Chair

For Discussion and Possible Action

Draft Minutes of the April 22, 2021 UCR Board meeting will be reviewed. The Board will consider action to approve.

V. Report of the Federal Motor Carrier Safety Administration (FMCSA)—FMCSA Representative

The FMCSA will provide a report on any relevant activity.

VI. Updates Concerning UCR Legislation—UCR Board Chair

The UCR Board Chair will call for any updates regarding UCR legislation since the last Board meeting.

VII. Chief Legal Officer Report—UCR Chief Legal Officer

The UCR Chief Legal Officer will provide an update on the status of the March 2019 data event.

VIII. New Master Services Agreement Between the UCR Plan and Seikosoftware—UCR Board Chair, UCR Chief Legal Officer, and UCR Executive Director

For Discussion and Possible Action

The UCR Board Chair, the UCR Chief Legal Officer, and the UCR Executive Director will lead a discussion on a new proposed Master Services Agreement between the UCR Plan and Seikosoftware as the current Master Services Agreement expires on September 30, 2021. The Board may decide to adopt a new Master Services Agreement between the UCR Plan and Seikosoftware containing additional developer assistance beginning June 15, 2021.

IX. Discussion of the Final Report Received From the UCR Plan’s External Auditor Regarding the Audited Statements of Cash Receipts and Disbursements of the Depository for the Calendar Years Ended December 31, 2019 and December 31, 2018—UCR Chief Legal Officer and UCR Executive Director

The UCR Chief Legal Officer and the UCR Executive Director will lead a discussion of the Final Audit Report of Audited Statements of Cash Receipts and Disbursements of the Depository for Calendar Years Ended December 31, 2019 and December 31, 2018 from our external auditor, Williams Benator and Libby, LLP, including a material weakness identified in a letter dated May 12, 2021.

X. Subcommittee Reports

Audit Subcommittee—UCR Audit Subcommittee Chair

A. 2021 Inspection Audits—UCR Audit Subcommittee Vice-Chair

For Discussion and Possible Action

The Audit Subcommittee Vice-Chair will lead a discussion regarding possibly requiring participating states to audit 100% of the motor carriers

identified through roadside inspection. The Board may take action to require participating states to audit all unregistered motor carriers identified through roadside enforcement. The UCR Audit Subcommittee recommends that the Board adopt this action.

B. Review the Current Focused Anomaly Reviews (FARs) Audits Assigned to the States—UCR Audit Subcommittee Vice-Chair

For Discussion and Possible Action

The UCR Audit Subcommittee Vice-Chair will lead a discussion regarding the current number of FARs assigned to the states and consider options to increase the number of FARs assigned. The Board may take action to increase the number of FARs required to be processed annually by each participating state. The UCR Audit Subcommittee recommends that the Board adopt this action.

C. Definition of Commercial Motor Vehicle for UCR Purposes—UCR Audit Subcommittee Chair and UCR Executive Director

For Discussion and Possible Action

The UCR Audit Subcommittee Chair and the UCR Executive Director will provide proposed modifications to the definition of a “Commercial Motor Vehicle” for UCR purposes. The proposed changes are intended to include clarifying language while retaining the definition of Commercial Motor Vehicle as set forth by reference to the UCR Act (49 U.S. Code 31101.) The Board may take action to adopt the proposed modifications for inclusion in the UCR Handbook. The UCR Audit Subcommittee recommends that the Board adopt the proposed modifications to this definition.

D. State UCR Audit Reports for Registration Year 2020—UCR Audit Subcommittee Chair

The UCR Audit Subcommittee Chair will lead a discussion regarding the states’ obligations to complete audit reports for registration year 2020 and discuss the preliminary status of audit reports for registration year 2020 that were due on June 1, 2021.

Finance Subcommittee—UCR Finance Subcommittee Chair

- UCR Registration Fee Recommendation for 2023—Calculation Methodology—UCR Finance Subcommittee Chair and UCR Depository Manager

For Discussion and Possible Action

The UCR Finance Subcommittee Chair and the UCR Depository Manager will lead a discussion regarding the merits of using an “average collections” method for estimating the remaining fees collected before the end of the 2021 registration year on September 30, 2022 versus the “minimum collections” method used for estimating fee collections over the same period. The Board may take action to select the most appropriate method to use. The UCR Finance Subcommittee recommends that the Board adopt the “average collections” method for calculating and recommending the UCR registration fee to the U.S. Department of Transportation Secretary and FMCSA for the 2023 UCR registration year.

Education and Training Subcommittee—UCR Education and Training Subcommittee Chair

- Update on Basic Audit Training Module and Flow Chart/Decision Tree—UCR Education and Training Subcommittee Chair

The UCR Education and Training Subcommittee Chair will provide an update on the development of the Basic Audit Training Module and Flow Chart/Decision Tree and other possible training modules going forward.

XI. Contractor Reports—UCR Executive Director

- *UCR Executive Director’s Report*
The UCR Executive Director will provide a report covering recent activity for the UCR Plan.
- *DSL Transportation Services, Inc.*
DSL Transportation Services, Inc. will report on the latest data from the FARs program, discuss motor carrier inspection results, and other matters.
- *Seikosoftware*
Seikosoftware will provide an update on recent/new activity related to the National Registration System.
- *UCR Administrator Report (Kellen)—UCR Operations and Depository Manager*

The UCR Staff will provide a management report covering recent activity for the Depository, Operations, and Communications.

XII. Other Business—UCR Board Chair

The UCR Board Chair will call for any other items Board members would like to discuss.

XIII. Adjournment—UCR Board Chair

The UCR Board Chair will adjourn the meeting.

This agenda will be available no later than 5:00 p.m. Eastern time, May 28, 2021 at: <https://plan.ucr.gov>.

CONTACT PERSON FOR MORE INFORMATION: Elizabeth Leaman, Chair, Unified Carrier Registration Plan Board of Directors, (617) 305-3783, eleaman@board.ucr.gov.

Alex B. Leath,
Chief Legal Officer, Unified Carrier Registration Plan.

[FR Doc. 2021-11655 Filed 5-28-21; 4:15 pm]

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DEPARTMENT OF VETERANS AFFAIRS

Veterans and Community Oversight and Engagement Board, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2, that the Veterans and Community Oversight and Engagement Board will meet virtually on June 29, 2021. The meeting will begin and end as follows:

Date	Time
June 29, 2021	3:00 p.m. to 6:00 p.m. EST.

The meetings are open to the public and will be recorded. Members of the public can attend the meeting by registering at the link below: <https://veteransaffairs.webex.com/veteransaffairs/onstage/g.php?MTID=e47738a7af470cfd8abf11982d6705057>.

The Board was established by the West Los Angeles Leasing Act of 2016 on September 29, 2016. The purpose of the Board is to provide advice and make recommendations to the Secretary of Veterans Affairs on: Identifying the goals of the community and Veteran partnership; improving services and outcomes for Veterans, members of the Armed Forces, and the families of such Veterans and members; and on the implementation of the Draft Master Plan approved by the Secretary on January 28, 2016, and on the creation and implementation of any successor master plans.

On June 29, the agenda will include opening remarks from the Committee Chair, Executive Sponsor, and other VA

officials. There will be a general update from Veterans Administration Greater Los Angeles Healthcare System (VAGLAHS) on a revised Draft Master Plan timeline based upon engineering challenges, the proposed plan to work with State/County/City considering recent rebalance of State budget, the target timeframe to house next compliment of Veterans as a result of executing the Draft Master Plan, and the strategy moving forward regarding encampment of Veterans located outside the campus gates. The San Francisco VA Health Care System will provide a presentation on a model of care and programs to serve medically and behaviorally complex homeless veterans, and the Hope of the Valley Rescue Mission will provide an overview of its Tiny Home initiative. The Board's Master Plan with Services and Outcomes subcommittee and Outreach and Community Engagement with Services and Outcomes

subcommittee, will report on activities since the last meeting, followed by an out brief to the full Board on any draft recommendations considered for forwarding to the SECVA.

A public comment session will occur from 5:05 p.m. to 5:55 p.m. Individuals wishing to make public comments are required to register during the WEBEX registration process. In the interest of time management, speakers will be held to a 5-minute time limit and selected in the order of event registration. If time expires and your name was not selected, or you did not register to provide public comment and would like to do so, you are asked to submit public comments via email at VEOFACA@va.gov for inclusion in the official meeting record.

To attend the meeting, use the registration instructions—Registration Instructions: Select the “Register” hyperlink in event status or the “Register” button located bottom center of the page. Attendees will then be

asked to identify themselves by first name, last name, email address, affiliation (if any) and interest in making a public comment. Please select “Submit” to finish registration. You will receive a confirmation email from WEBEX shortly after registration. The confirmation email will include a calendar event invitation and instructions to join the meeting via web browser or telephone. Attempts to join the meeting will not work until the host opens the meeting approximately ten minutes prior to start time.

Any member of the public seeking additional information should contact Mr. Eugene W. Skinner, Jr. at (202) 631-7645 or at Eugene.Skinner@va.gov.

Dated: May 27, 2021.

Jelessa M. Burney,
Federal Advisory Committee Management Officer.

[FR Doc. 2021-11568 Filed 6-1-21; 8:45 am]

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Part II

Securities and Exchange Commission

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as Boston Security Token Exchange LLC; Notice

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–92017; File No. SR–BOX–2021–06]

Self-Regulatory Organizations; BOX Exchange LLC; Notice of Filing of Proposed Rule Change To Adopt Rules Governing the Trading of Equity Securities on the Exchange Through a Facility of the Exchange Known as Boston Security Token Exchange LLC

May 25, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”),¹ and Rule 19b–4 thereunder,² notice is hereby given that on May 12, 2021, BOX Exchange LLC (the “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 as amended (“Exchange Act”),³ BOX Exchange LLC (“BOX” or the “Exchange”) is filing with the Securities and Exchange Commission (“SEC” or “Commission”) a proposed rule change to adopt rules to govern the trading of equity securities on the Exchange through a facility of the Exchange known as Boston Security Token Exchange LLC (“BSTX”). As described more fully below, BSTX would operate a fully automated, price/time priority execution system for the trading of “Securities,” which would be equity securities that meet BSTX listing standards and for which certain information regarding orders and executions on BSTX would be recorded and disseminated on a proprietary market data feed that BSTX operates using a proprietary blockchain system (“BSTX Market Data Blockchain”). The proposed additions to the Exchange’s Rules setting forth new Rule Series 17000–29000 have been submitted with the proposal as Exhibit 5A. All text set forth in Exhibit 5A would be added to the Exchange’s rules and therefore underlining of the text is omitted to improve readability. Forms proposed to be used in connection with the

proposed rule change, such as the application to become a BSTX Participant, have been submitted with the proposal as Exhibits 3A through 3L.

In addition, the Exchange proposes to make certain amendments to several existing BOX Rules to facilitate trading on BSTX. The proposed changes to the existing BOX Rules would not change the core purpose of the subject Rules or the functionality of other BOX trading systems and facilities. Specifically, the Exchange is seeking to amend BOX Rules 100, 2020, 2060, 3180, 7130, 7150, 7230, 7245, IM–8050–3, 11010, 11030 and 12140. These proposed changes are set forth in Exhibit 5B. Material proposed to be added to the Rule as currently in effect is underlined and material proposed to be deleted is bracketed.

All capitalized terms not defined herein have the same meaning as set forth in the Exchange’s Rules.⁴

The text of the proposed rule change is available from the principal office of the Exchange, at the Commission’s Public Reference Room and also on the Exchange’s internet website at <http://boxoptions.com>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization 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 is proposing to adopt a series of rules to govern the trading of certain equity securities through a facility of the Exchange known as BSTX and make certain amendments to the existing BOX rules to facilitate trading on BSTX. As described more fully below, BSTX would operate a fully automated, price/time priority execution system (“BSTX System”) for the trading of certain equity securities that would be considered “Securities”

under the proposed rules. The “Securities”⁵ under the proposed rules would be equity securities that meet BSTX listing standards and that trade on the BSTX System. The Exchange would operate the BSTX Market Data Blockchain, which would record certain information regarding orders and transactions occurring on BSTX with respect to Securities. All BOX Participants would be eligible to participate in BSTX provided that they become a BSTX Participant pursuant to the proposed rules. Under the proposed rules, BSTX would serve as the listing market for eligible companies and issuers of exchange traded products (“ETPs”) that wish to issue their registered securities as Securities. Securities would trade as NMS stock.⁶ The Exchange is not proposing rules that would support its extension of unlisted trading privileges (“UTP”) to other NMS stock, and accordingly the Exchange does not intend to extend any such UTP in connection with this proposal. The Exchange would therefore only trade Securities listed on BSTX unless and until it proposes and receives Commission approval for rules that would support trading in other types of securities, including through any extension of UTP to other NMS stock. A guide to the structure of the proposed rule change is described immediately below.

Guide to the Scope of the Proposed Rule Change

The proposal for trading of Securities through BSTX generally involves changes to existing BOX Rules and new BOX Rules pertaining specifically to BSTX (“BSTX Rules”). In addition, the Exchange plans to submit a separate proposed rule change pertaining to BSTX’s corporate governance documents. To support the trading of Securities through BSTX, certain conforming changes are proposed to existing BOX Rules and entirely new BSTX Rules are also proposed as Rule Series 17000 through 29000.⁷ Each of those new Rule Series and the provisions thereunder are described in greater detail below. Where the BSTX Rules are based on existing rules of another national securities exchange, the source rule from the relevant exchange is noted along with a

⁵ As discussed further below, BSTX proposes to use the term “Security” to refer to BSTX-listed securities to distinguish them from other securities issued by an issuer that the issuer does not list on BSTX.

⁶ 17 CFR 242.600(b)(48).

⁷ The proposed changes to BOX Rules and the proposed BSTX Rules have been submitted with this proposal as Exhibits 5B and 5A, respectively.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b–4.

³ 15 U.S.C. 78s(b)(1).

⁴ The Exchange’s Rules can be found on the Exchange’s public website: <https://boxoptions.com/regulatory/rulebook-filings/>.

discussion of notable differences between the source rule and the proposed BSTX Rule. The proposed BSTX Rules are addressed in Part III below and they generally cover the following areas:

- Section 17000—General Provisions of BSTX;
- Section 18000—Participation on BSTX;
- Section 19000—Business Conduct for BSTX Participants;
- Section 20000—Financial and Operational Rules for BSTX Participants;
- Section 21000—Supervision;
- Section 22000—Miscellaneous Provisions;
- Section 23000—Trading Practice Rules;
- Section 24000—Discipline and Summary Suspension;
- Section 25000—Trading Rules;
- Section 25200—Market Making on BSTX;
- Section 26000—BSTX Listing Rules Other Than for Exchange Traded Products;
- Section 27000—Suspension and Delisting;
- Section 27100—Guide to Filing Requirements;
- Section 27200—Procedures for Review of Exchange Listing Determinations; and
- Section 28000—Trading and Listing of Exchange Traded Products;
- Section 29000—Dues, Fees, Assessments and Other Charges.

Overview of BSTX and Considerations Related to the Listing, Trading and Clearance and Settlement of Securities The Joint Venture and Ownership of BSTX

On June 19, 2018, t0.com Inc. (“tZERO”) and BOX Digital Markets LLC (“BOX Digital”) announced a joint venture to facilitate the trading of Securities on the Exchange.⁸ As part of the joint venture, BOX Digital, which is a subsidiary of BOX Holdings Group LLC, and tZERO each own 50% of the voting class of equity and over 45% economic interest of BSTX LLC. Pursuant to the BSTX LLC Agreement, BOX Digital and tZERO will perform certain specified functions with respect to the operation of BSTX. As noted, these details, as well as the proposed governance structure of the joint venture will be the subject of a separate

⁸ See tZERO and BOX Digital Markets Sign Deal to Create Joint Venture, Business Wire (June 19, 2018), <https://www.businesswire.com/news/home/20180619005897/en/tZERO-and-BOX-Digital-Markets-Sign-Deal-to-Create-Joint-Venture>.

proposed rule change that the Exchange will submit to the Commission.

BSTX Would Be a Facility of BOX That Would Support Trading in the New Asset Class of Securities for BOX

BSTX would operate as a facility⁹ of BOX, which is a national securities exchange registered with the SEC. As a facility of BOX, BSTX’s operations would be subject to applicable requirements in Sections 6 and 19 of the Exchange Act, among other applicable rules and regulations.¹⁰ Currently, BOX functions as an exchange only for standardized options. At the time that BSTX commences operations it would support trading in Securities that are equity securities (including certain ETPs), as described in more detail below. Accordingly, the proposal represents a new asset class for BOX, and the discussion below sets forth the changes and additions to the Exchange’s Rules to support the trading of equity securities as Securities on BSTX.

The Exchange proposes to use the term “Security”¹¹ to describe a NMS stock trading on the BSTX system. The legal significance, therefore, of a “Security” is that it would be an equity security that is approved for listing on BSTX and that trades on the BSTX System. A security that is offered by an issuer with the intent of it becoming listed on BSTX would therefore not become a “Security” under the proposed BSTX Rules unless and until it actually does become listed on BSTX and trades on the BSTX System.¹²

Securities Would Be NMS Stocks

The Securities would qualify as NMS stocks pursuant to Regulation NMS,¹³ which defines the term “NMS security” in relevant part to mean “any security or class of securities for which transaction reports are collected, processed and made available pursuant to an effective transaction reporting plan

⁹ 15 U.S.C. 78c(a)(2). Section 3(a)(2) of the Exchange Act, provides that “the term ‘facility’ when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.” Because BSTX will share certain systems of the Exchange, BSTX would be a facility of the Exchange.

¹⁰ 15 U.S.C. 78f; 15 U.S.C. 78s.

¹¹ The Exchange proposes to define the term “Security” to mean a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. See proposed Rule 17000(a)(31).

¹² *Id.*

¹³ 17 CFR 242.600 through .613.

. . . .”¹⁴ The Exchange plans to join existing transaction reporting plans, as discussed in Part VIII below, for the purposes of Security quotation and transaction reporting.¹⁵ The term “NMS stock” means “any NMS security other than an option”¹⁶ and therefore Securities traded on BSTX would be classified as NMS stock.

Securities would meet the definition of NMS stock and would trade, clear, and settle in the same manner as all other NMS stocks traded today. As described in further detail below, the operation of the BSTX Market Data Blockchain would in no way modify or alter market participants’ obligations under Regulation NMS.

BSTX Would Support Trading of Registered Securities

All Securities traded on BSTX would generally be required to be registered with the Commission under both Section 12 of the Exchange Act¹⁷ and Section 6 of the Securities Act of 1933 (“Securities Act”).¹⁸ BSTX would not support trading of Securities offered under an exemption from registration for public offerings, with the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards.

Issuance and Clearance and Settlement of Securities

BSTX would maintain certain rules, as described below, to address custody, clearance and settlement in connection with Securities. All transactions in Securities would clear and settle in accordance with the rules, policies and procedures of registered clearing agencies. Specifically, BSTX anticipates that at the time it commences operations, Securities that are listed and traded on BSTX would be securities that have been made eligible for services by The Depository Trust Company (“DTC”) and that DTC would serve as the securities depository¹⁹ for such

¹⁴ 17 CFR 242.600(b)(47).

¹⁵ 17 CFR 242.601(a)(1). The Rule states in relevant part that “every national securities exchange shall file [with the SEC] a transaction reporting plan regarding transactions in listed equity and Nasdaq securities executed through its facilities”

¹⁶ 17 CFR 242.600(b)(47).

¹⁷ 15 U.S.C. 78l.

¹⁸ 15 U.S.C. 77f.

¹⁹ 15 U.S.C. 78c(a)(23)(A). Section 3(a)(23)(A) of the Exchange Act defines the term “clearing agency” to include “any person, such as a securities depository, who (i) acts as a custodian of securities in connection with a system for the handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned, or pledged by bookkeeping entry without

Securities. It is also expected that confirmed trades in Securities on BSTX would be transmitted to National Securities Clearing Corporation (“NSCC”) for clearing such that NSCC would clear the trades through its systems to produce settlement obligations that would be due for settlement between participants at DTC. BSTX believes that this custody, clearance and settlement structure is the same general structure that exists today for other exchange-traded equity securities. Importantly, for purposes of NSCC’s clearing activities and DTC’s settlement activities in respect of the Securities, the relevant Securities would be cleared and settled by NSCC and DTC in exactly the same manner as those activities are performed by NSCC and DTC currently regarding a class of NMS Stock.

The operation of the BSTX Market Data Blockchain will have no impact or effect on the manner in which a Security clears and settles. The BSTX Market Data Blockchain would be implemented through the operation of the proposed BSTX Rules and would occur separate and apart from the clearance and settlement process. The Security would be an ordinary equity security for NSCC’s and DTC’s purposes. The BSTX Market Data Blockchain would be a separate set of market data that uses distributed ledger technology to record certain order and transaction information regarding orders and transactions in Securities on BSTX.

Issuance of Equity Securities Eligible To Become a Security

With the exception of certain offerings under Regulation A that meet the proposed BSTX listing standards, all Securities traded on BSTX will have been offered and sold in registered offerings under the Securities Act, which means that purchasers of the Securities will benefit from all of the protections of registration. The Division of Corporation Finance will need to make a public interest finding in order to accelerate the effectiveness of the registration statements for these offerings. Because BSTX would be a facility of a national securities exchange, all Securities would be registered under Section 12(b) of the Exchange Act, thereby subjecting all of these issuers to the reporting regime in Section 13(a) of the Exchange Act.

All offerings of securities that are intended to be listed as Securities on

physical delivery of securities certificates, or (ii) otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates.”

BSTX would be conducted in the same general manner in which offerings of exchange-listed equity securities are conducted today under the federal securities laws. An issuer will enter into a firm commitment or best efforts underwriting agreement with a sole underwriter or underwriting syndicate; the underwriter(s) will market the securities and distribute them to purchasers; and secondary trading in the securities (that are intended to trade on BSTX as Securities) will thereafter commence on BSTX.

Issuers on BSTX could include both (1) new issuers who do not currently have any class of securities registered on a national securities exchange, and (2) issuers who currently have securities registered on a national securities exchange and who are seeking registration of a separate class of equity securities for listing on BSTX as Securities. BSTX does not intend for Securities listed, or intended to be listed, on BSTX to be fungible with any other class of securities from the same issuer.²⁰ If an issuer sought to list securities on BSTX that are not a separate class of an issuer’s securities, BSTX does not intend to approve such a class of security for listing on BSTX as a Security, pursuant to BSTX’s authority under BSTX Rule 26101. At the commencement of BSTX’s operations, certain equities (including ETPs) would be eligible for listing as Securities. This would be addressed by BSTX Rules 26102 (Equity Issues), 26103 (Preferred Securities), 26105 (Warrant Securities) and the Rule 28000 Series (Trading and Listing of Exchange Traded Products), which would be part of BSTX’s listing rules and would contemplate that only those specified types of equity securities would be eligible for listing.

Securities Depository Eligibility

BSTX would maintain rules that would promote a structure in which Securities would be held in “street

²⁰ The Exchange notes that distinct classes of securities issued by an issuer that are Securities would not be fungible with another class of securities of the same issuer because no class of an issuer’s securities is fungible with a separate class of its securities—otherwise they would be the same class of security. To the extent that two classes of an issuer’s shares had identical voting and economic rights but were registered with the Commission as separate classes (e.g., Class A shares and Class B shares), the two classes of shares could be economically fungible with one another insofar as they convey the same economic and beneficial rights and interests to investors, but this would not mean that ownership of a Class A share is the same as ownership of a Class B share notwithstanding that each class provides the same economic benefits. In any case, nothing herein proposes any change to the existing framework for different classes of securities.

name” with DTC.²¹ BSTX Rule 26137 would require that for an issuer’s security to be eligible to be a Security, BSTX must have received a representation from the issuer that a CUSIP number that identifies the security is included in a file of eligible issues maintained by a securities depository that is registered with the SEC as a clearing agency. This is based on rules that are currently maintained by other equities exchanges.²² In practice, BSTX Rule 26137 requires the Security to have a CUSIP number that is included in a file of eligible securities that is maintained by DTC because the Exchange believes that DTC currently is the only clearing agency registered with the SEC that provides securities depository services.²³

Book-Entry Settlement at a Securities Depository

BSTX would also maintain Proposed BSTX Rule 26135 regarding uniform book-entry settlement. The rule would require each BSTX Participant to use the facilities of a securities depository for the book-entry settlement of all transactions in depository eligible securities with another BSTX Participant or a member of a national securities exchange that is not BSTX or a member of a national securities association.²⁴ Proposed BSTX Rule 26135 is based on the depository eligibility rules of other equities exchanges and Financial Industry Regulatory Authority (“FINRA”).²⁵ Those rules were first adopted as part of a coordinated industry effort in 1995 to promote book-entry settlement for the vast majority of initial public offerings

²¹ The term “street name” refers to a securities holding structure in which DTC, through its nominee Cede & Co., would be the registered holder of the securities and, in turn, DTC would grant security entitlements in such securities to relevant accounts of its participants. Proposed BSTX Rule 26136 would also provide, with certain exceptions, that securities listed on BSTX must be eligible for a direct registration program operated by a clearing agency registered under Section 17A of the Exchange Act. DTC operates the only such program today, known as the Direct Registration System, which permits an investor to hold a security as the registered owner in electronic form on the books of the issuer.

²² Proposed BSTX Rule 26137 is based on current NYSE Rule 777.

²³ See Exchange Act Release No. 78963 (September 28, 2016), 81 FR 70744, 70748 (October 13, 2016) (footnote 46 and the accompanying text acknowledge that DTC is the only registered clearing agency that provides securities depository services for the U.S. securities markets).

²⁴ FINRA is currently the only national securities association registered with the SEC.

²⁵ See e.g., FINRA Rule 11310. Book-Entry Settlement and NYSE Rule 776. Book-Entry Settlement of Transactions.

and “thereby reduce settlement risk” in the U.S. national market system.²⁶

Participation in a Registered Clearing Agency That Uses a Continuous Net Settlement System

Under proposed BSTX Rule 25140, each BSTX Participant would be required to either (i) be a member of a registered clearing agency that uses a continuous net settlement (“CNS”) system, or (ii) clear transactions executed on BSTX through a member of such a registered clearing agency. The Exchange believes that today NSCC is the only registered clearing agency that uses a CNS system to clear equity securities, and proposed BSTX Rule 25140 further specifies that BSTX will maintain connectivity and access to the Universal Trade Capture system of NSCC to transmit confirmed trade details to NSCC regarding trades executed on BSTX. The proposed rule would also address the following: (i) A requirement that each Security transaction executed through BSTX must be executed on a locked-in basis for automatic clearance and settlement processing; (ii) the circumstances under which the identity of contra parties to a Security transaction that is executed through BSTX would be required to remain anonymous or may be revealed; and (iii) certain circumstances under which a Security transaction may be cleared through arrangements with a member of a foreign clearing agency. Proposed BSTX Rule 25140 is based on a substantially identical rule of the Investor’s Exchange, LLC (“IEX”), which, in turn, is consistent with the rules of other equities exchanges.²⁷

BSTX believes that the operation of its depository eligibility rule and its book-entry services rule would promote a framework in which Securities that would be eligible to be listed and traded on BSTX would be equity securities that have been made eligible for services by a registered clearing agency that operates as a securities depository and that are settled through the facilities of the securities depository by book-entry.

²⁶ These coordinated depository eligibility rules resulted from proposed listing rules amendments developed by the Legal and Regulatory Subgroup of the U.S. Working Committee, Group of Thirty Clearance and Settlement Project. See Securities Exchange Act Release Nos 35774 (May 26, 1995) (SR-NASD-95-24), 60 FR 28813 (June 2, 1995); 35773 (May 26, 1995), 60 FR 28817 (June 2, 1995) (SR-NYSE-95-19).

²⁷ See IEX Rule 11.250 (Clearance and Settlement; Anonymity), which was approved by the Commission in 2016 as part of its approval of IEX’s application for registration as a national securities exchange. Exchange Act Release No. 78101 (June 17, 2016); 81 FR 41142 (June 23, 2016); see also Choe BZX Rule 11.14 (Clearance and Settlement; Anonymity).

The Exchange believes that because DTC currently is the only clearing agency registered with the SEC that provides securities depository services, at the commencement of BSTX’s operations, Securities would be securities that have been made eligible for services by DTC, including book-entry settlement services.

Settlement Cycle

Proposed BSTX Rule 25100(d) would address settlement cycle considerations regarding trades in Securities. Security trades that result from orders matched against the electronic order book of BSTX would be required to clear and settle pursuant to the rules, policies and procedures of a registered clearing agency. As noted above in connection with the description of proposed BSTX Rule 25140, the Exchange expects that at the commencement of operations by BSTX it would transmit confirmed trade details to NSCC regarding Security trades that occur on BSTX and that NSCC would be the registered clearing agency that clears Security trades.

As described in greater detail below in Part III, the Exchange is also proposing that BSTX Participants would be able to include parameters in orders submitted to BSTX to indicate a preference to use faster settlement cycles that are currently available through NSCC and DTC under certain circumstances. BSTX believes that allowing BSTX Participants to use these faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities due to faster settlement. BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6-1 for a security trade that involves a broker-dealer.²⁸ Furthermore, BSTX understands that NSCC does already clear trades in accordance with this authority.

The BSTX Market Data Blockchain

BSTX will make available to BSTX Participants certain market data related to trading activity occurring on BSTX through the use of a private,

²⁸ 17 CFR 240.15c6-1. Under SEC Rule 15c6-1, with certain exceptions, a broker-dealer is not permitted to enter a contract for the purchase or sale of security that provides for payment of funds and delivery of securities later than the second business day after the date of the contract unless otherwise expressly agreed to by the parties at the time of the transaction.

permitted blockchain maintained by the Exchange. As described further below, a BSTX Participant would have the ability to see detailed information about its trading activity on BSTX but only anonymized information with respect to the trading activity of other BSTX Participants. BSTX Participants would have no obligations with respect to providing information to, accessing, maintaining, or using the BSTX Market Data Blockchain. The Exchange believes that the information made available on the BSTX Market Data Blockchain would be generally similar to Daily Trade and Quote (“TAQ”) data made available by New York Stock Exchange LLC except that the Exchange would use distributed ledger or “blockchain” technology to record such information, a BSTX Participant would be able to see non-anonymized information about its own trading activity on BSTX, and the market data would pertain only to trading activity on BSTX and not the broader market (e.g., an over-the-counter (“OTC”)²⁹ transaction in a Security reported to the consolidated tape).³⁰

Background on Blockchain Technology

In general, a blockchain is essentially a ledger that can maintain digital records of assets, transactions, or other information. A blockchain’s central function is to encode transitions or changes to the ledger. Whenever one change to the blockchain ledger occurs to record a state transition, the entire blockchain is immutably changed to reflect the state transition.

There are broadly two types of blockchains: (i) Public blockchains that are decentralized, open to anyone running the same protocol;³¹ and (ii) a private, permission-based blockchains where only those granted access may view or take other actions with respect to the blockchain.

BSTX Market Data Blockchain as a Private Permissioned Network

The BSTX Market Data Blockchain would operate as a private, permission-based blockchain accessible only to BSTX Participants. The Exchange would control all aspects of the BSTX Market Data Blockchain. Pursuant to proposed Rule 17020(b), each BSTX Participant would be assigned a BSTX Market Data Blockchain address that corresponds to the BSTX Participant’s trading activity

²⁹ OTC in this context refers to trading occurring otherwise than on a national securities exchange.

³⁰ See e.g., NYSE, Daily TAQ Fact Sheet, https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Fact_Sheet.pdf.

³¹ A “protocol” in this context generally means a set of rules governing the format of messages that are exchanged between the participants.

on BSTX. The Exchange will also issue login credentials to each BSTX Participant through which the BSTX Participant may access the BSTX Market Data Blockchain to see its order and transaction information on BSTX as well as certain anonymized market data from other BSTX Participants, as discussed further below.

The BSTX Market Data Blockchain would generally operate by collecting information from two sources, which the Exchange would then translate into information capable of being recorded to the BSTX Market Data Blockchain. Specifically, the data inputs for the BSTX Market Data Blockchain would come from (i) the BSTX System³² to capture information such as executed transactions and (ii) each BSTX Participant's order/message information passing through the financial information exchange ("FIX") gateway through which all orders and messages pass in order to connect to the BSTX System. For example, if a BSTX Participant sends an order to buy 100 shares of Security XYZ, when that order is sent to the Exchange, the Exchange would capture this information as it passes through the FIX gateway in an automated process that results in the BSTX Participant being able to see that order on the BSTX Market Data Blockchain through its login credentials.

The BSTX Market Data Blockchain does not require any affirmative action on the part of a BSTX Participant in order for its information to be recorded to the BSTX Market Data Blockchain. Rather, the BSTX Market Data Blockchain captures trading activity that occurs on BSTX in the normal course and is made available to BSTX Participants as an additional resource that they may choose to use in their discretion in the same general manner that a market participant might use TAQ data.

Information Available on the BSTX Market Data Blockchain

As set forth in proposed Rule 17020(c), there are two types of information that would be available on the BSTX Market Data Blockchain: (i) A BSTX Participant's own order and transaction information related to its trading activity on BSTX ("Participant Proprietary Data"); and (ii) anonymized, general market data available to all BSTX Participants ("General Market Data"). With respect to Participant Proprietary Data, a BSTX Participant would be able to see the following

information with respect to all orders and messages and executions submitted to and occurring on BSTX:

- (1) Symbol, side (buy/sell), limit price, quantity, time-in-force
- (2) Order type (e.g., limit order, ISO)
- (3) Order capacity (principal/agent)
- (4) Short/long sale order marking
- (5) Message type (e.g., order, modification, cancellation)
- (6) A unique identification number attributable to each order, execution, or other message (e.g., cancellation or modification)
- (7) Such other information regarding a BSTX Participant's trading activity on BSTX as the Exchange may determine and set forth via Regulatory Circular.

Participant Proprietary Data would effectively contain a record of all of a BSTX's Participant's trading activity on BSTX. Participant Proprietary Data would only be available to the BSTX Participant from which such data derived. That is, a BSTX Participant would not have access to the Participant Proprietary Data of another BSTX Participant. As a result, no BSTX Participant would be provided with access to trading information of another BSTX Participant in a manner that would allow for reverse engineering of trading strategies or otherwise compromise the confidential nature of each BSTX Participant's trading information. The Exchange proposes to allow for flexibility to provide additional Participant Proprietary Data to each BSTX Participant via Regulatory Circular in order to provide the Exchange with the ability to enhance the content of Participant Proprietary Data based on feedback from BSTX Participants.

General Market Data is the second type of information that would be available on the BSTX Market Data Blockchain, which would consist of:

- (1) All orders, modifications, cancellations, and executions occurring on BSTX in an anonymized format.
- (2) Administrative data and other information from the Exchange (e.g., trading halts, or technical messages).
- (3) Such other anonymized trading activity or general information as the Exchange may determine and set forth via Regulatory Circular.

General Market Data is intended to allow BSTX Participants to be able to observe the BSTX Order Book, changes thereto, and executions occurring on BSTX in generally the same manner that a market participant can today see order and transaction information on an exchange by subscribing to an exchange's proprietary market data feed. The Exchange notes that the General Market Data that would be available on

the BSTX Market Data Blockchain would be the same substantive information that would be available through the Exchange's proprietary market data feeds, so access to the BSTX Market Data Blockchain would not provide additional information that could not otherwise be obtained through the Exchange's proprietary market data feed.³³ The Exchange proposes to allow for flexibility to provide additional, anonymized trading activity or general information to BSTX Participants via Regulatory Circular in order to provide the Exchange with the ability to enhance the content of General Market Data based on feedback from BSTX Participants or in the event that new data elements become relevant in the future.

General Market Data would be anonymized, meaning that a BSTX Participant would not be able to determine the identity of another BSTX Participant's orders, quotes, cancellations, or other messages. For the avoidance of doubt, the alphanumeric address assigned to each BSTX Participant to facilitate the BSTX Market Data Blockchain would not be visible as part of General Market Data.³⁴ As a result, there should not be cause for concern regarding potential trading information leakage or the ability to reverse engineer another BSTX Participant's trading strategies given the anonymous nature of General Market Data. BSTX Participants would generally have available to them via the BSTX Market Data Blockchain the same information they would have today with respect to other BSTX Participants trading activity in subscribing to an exchange's proprietary data feed.

The Exchange proposes to append timestamps to the information made available. Timestamps related to all information on the BSTX Market Data Blockchain would indicate the time to the microsecond at which an order posted to the BSTX Book or that the BSTX System took other action with respect to an order (e.g., effects a cancellation, execution, modification). Information would be posted to the BSTX Market Data Blockchain on a delayed basis of at least 5 minutes. As a result, the BSTX Market Data Blockchain would not function as a

³³ The BSTX Market Data Blockchain may include certain non-material information, such as a unique order identification number specific to the blockchain that would not be available through proprietary market data products.

³⁴ For example, in looking at General Market Data, BSTX Participant X would not be able to determine by name, address, or otherwise that a particular order, modification to an existing order, or executed transaction involved BSTX Participant Y or any other BSTX Participant.

³² The "BSTX System" refers to the automated trading system used by BSTX for the trading of Securities. See proposed Rule 17000(a)(15).

substitute for real-time market data. A BSTX Participant would have the ability to download market data from the BSTX Market Data Blockchain, which it could use to, for example, back test trading strategies or evaluate executions received on BSTX.

Finally, in order to promote clarity with respect to how a BSTX Participant may use the BSTX Market Data Blockchain, the Exchange proposes to provide in Rule 17020(c)(3) that the information available on the BSTX Market Data Blockchain does not act as a substitute for any recordkeeping obligations of a BSTX Participant. The Exchange notes that broker-dealers recordkeeping obligations generally require a much broader set of records covering the entirety of a broker-dealers trading activity across all trading centers.³⁵ As a result, the Exchange would not expect that a BSTX Participant would ever rely on the BSTX Market Data Blockchain, which would contain only its trading activity on BSTX, as a substitute for its independent recordkeeping obligations.

Periodic Audit of the BSTX Market Data Blockchain by the Exchange

To help ensure the proper functioning of the BSTX Market Data Blockchain and accuracy of information thereon, the Exchange proposes in Rule 17020(c)(3) to periodically audit the BSTX Market Data Blockchain. Specifically, the Exchange proposes to perform the audit at least bi-annually to ensure that the BSTX Market Data Blockchain accurately captures order and transaction data on BSTX. The Exchange expects that it will initially audit the BSTX Market Data Blockchain more frequently (*e.g.*, monthly) during the first year of operation to make sure the BSTX Market Data Blockchain operates as intended during the period of time when the Exchange expects BSTX Participants to be familiarizing themselves with the BSTX Market Data Blockchain.

Benefits of the BSTX Market Data Blockchain

The Exchange believes that there are two primary benefits related to the BSTX Market Data Blockchain. First, the Exchange believes that a BSTX Participant may find the information useful to them for a variety of purposes such as to review the BSTX Participant's trading activity on BSTX, determine what the market was at a particular point in time on BSTX for a given Security, evaluate execution quality on BSTX, or download the data to back-test

trading strategies. As proposed, the BSTX Market Data Blockchain requires no affirmative obligation on the part of the BSTX Participant. As a result, if a BSTX Participant does not find the BSTX Market Data Blockchain to be of use to it, it could simply ignore it without cost or penalty.

Second, the Exchange believes that the BSTX Market Data Blockchain will help familiarize BSTX Participants with the use and capabilities of blockchain technology in a manner that does not impose any burden on them or other market participants. The Commission has stated that it is "mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . ." ³⁶ stating further that "[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets." ³⁷ Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that "[t]he market will ultimately prove the worth of technology—whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs." ³⁸ Consistent with these statements, the Exchange believes that promoting use of blockchain technology through the BSTX Market Data Blockchain will allow BSTX Participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that operates within the current equity market infrastructure and that the proposal will thereby advance and protect the public's interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.³⁹

³⁶ Securities and Exchange Commission, The Impact of Recent Technological Advances on the Securities Markets (Sep. 1997), <https://www.sec.gov/news/studies/techrp97.htm>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94-75, at 8 (1975) (expressing Congress' finding that new data processing and communications systems create the opportunity for more efficient and effective markets). While the Exchange believes that its proposal represents an introductory step in pairing the benefits of blockchain technology with the current equity market infrastructure, other market participants and FINRA have recognized additional potential benefits to blockchain technology in various applications related to the securities markets. FINRA has stated "[o]ne of the proposed benefits of [blockchain technology] is the ability to offer a timestamped, sequential, audit trail of transaction records. This may provide regulators and other interested parties (*e.g.*, internal audit, public auditors) with the opportunity to leverage

Moreover, the Exchange believes that new technology, such as blockchain technology, may be able to help perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.⁴⁰

In the event of any disruption to the BSTX Market Data Blockchain or a BSTX Participant's access to the BSTX Market Data Blockchain, there would be no impact on the ability of market participants to trade Securities, which the Exchange believes furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.⁴¹ There would also be no disruption in the distribution of market data related to Securities because the BSTX Market Data Blockchain operates as a separate and distinct service of the Exchange.

Trading Securities on Other National Securities Exchanges

Securities would be eligible for trading on other national securities exchanges that extend UTP to them, other than with respect to Thinly Traded Securities as discussed below in Part II.H. As described above in Part II.E, Securities would be held in "street name" at DTC, have a CUSIP number, and would clear and settle through the facilities of a clearing agency registered with the SEC (*i.e.*, NSCC and DTC respectively). As a result, Securities would be able to trade on other exchanges and OTC in the same manner as other NMS stock. Accordingly, other exchanges would generally be able to extend UTP to Securities in accordance with Commission rules. The BSTX Market Data Blockchain would not

the technology to view the complete history of a transaction where it may not be available today and enhance existing records related to securities transactions." Financial Industry Regulatory Authority, *Distributed Ledger Technology: Implications of Blockchain for the Securities Industry* (January 2017), available at: https://www.finra.org/sites/default/files/FINRA_Blockchain_Report.pdf. Further, Paxos Trust Company echoed similar themes in connection with its receipt of no-action relief from the Commission staff, and explained in its request letter certain benefits of blockchain technology including "greater data accuracy and transparency, advanced security, and increased levels of availability and operational efficiency . . ." See Letter from Jeffrey S. Mooney, Division of Trading and Markets, Securities and Exchange Commission to Charles Cascarilla and Daniel Burstein, Paxos Trust Company, LLC re: Clearing Agency Registration Under Section 17A(b)(1) of the Securities Exchange Act of 1934 (October 28, 2019), <https://www.sec.gov/divisions/marketreg/mr-noaction/2019/paxos-trust-company-102819-17a.pdf>. The Exchange believes such benefits may be generally relevant to future potential applications of blockchain technology.

⁴⁰ 15 U.S.C. 78f(b)(5).

⁴¹ *Id.*

³⁵ See *e.g.*, 17 CFR 240.17a-3.

impact the ability of Securities to trade on other exchanges or OTC.

Qualifying Thinly Traded Securities Trading Only on BSTX

The Exchange proposes to suspend UTP in Securities that meet the proposed definition of a “Thinly Traded Security” in order to concentrate displayed liquidity for such Securities, make market making in such securities more attractive, and thereby improve the market quality for such Securities. As proposed, Thinly Traded Securities would still be able to trade OTC, but would not be eligible for trading on another national securities exchange for as long as the Security meets the definition of a Thinly Traded Security, described below.

The Commission, Commission staff, the U.S. Department of Treasury,⁴² academics, and a broad spectrum of market participants have recognized that “the current ‘one-size-fits-all’ equity market structure, as largely governed under Regulation NMS, may not be optimal for thinly traded securities”⁴³ and that “more needs to be done to promote liquidity and to improve the listing and trading environment for thinly traded stocks.”⁴⁴ The Commission noted that the “secondary market for thinly traded securities faces liquidity challenges that can have a negative effect on both investors and issuers traded securities faces liquidity challenges that can have a negative effect on both investors and issuer” including “wider spreads and less displayed size relative to securities that trade in greater volume, often resulting in higher transaction costs for investors.”⁴⁵ These concerns have been echoed in statements by former Commission Chairman Jay Clayton,⁴⁶

⁴² See U.S. Department of the Treasury, “A Financial System That Creates Economic Opportunities: Capital Markets” (October 2017), <https://www.treasury.gov/press-center/press-releases/Documents/A-Financial-System-Capital-MarketsFINAL-FINAL.pdf> (“Treasury Report”).

⁴³ Commission Statement on Market Structure Innovation for Thinly Traded Securities (Oct. 17, 2019), 84 FR 56956 (Oct. 24, 2019) (“Commission Statement on Thinly Traded Securities”).

⁴⁴ See Division of Trading and Markets, Commission, “Background Paper on the Market Structure for Thinly Traded Securities,” at 9 (Oct. 17, 2019), <https://www.sec.gov/rules/policy/2019/thinly-traded-securities-tm-background-paper.pdf> (“TM Background Paper”) (summarizing the views of certain participants in the Commission staff’s Roundtable on the Market Structure for Thinly Traded Securities in April 2018).

⁴⁵ Commission Statement on Thinly Traded Securities at 56956.

⁴⁶ “Illiquidity hampers [thinly-traded issuers] in many areas, including in their ability to raise additional capital, obtain research coverage, engage in mergers and acquisitions, and hire and retain personnel.” Chairman Jay Clayton, Commission,

former Director of the Division of Trading and Market Brett Redfearn,⁴⁷ the Commission’s Small Business Advisory Committee⁴⁸ and demonstrated through empirical analyses by the Division of Trading and Market’s Office of Analytics and Research (“OAR”)⁴⁹ and academics.⁵⁰

A frequently discussed potential solution to these liquidity and poor market quality issues facing thinly traded securities has been the suspension of UTP for such securities, allowing for displayed liquidity to be concentrated on a single exchange.⁵¹

Equity Market Structure 2019: Looking Back & Moving Forward, Remarks at Gabelli School of Business, Fordham University, New York, New York (March 8, 2019) (“2019 Market Structure Remarks”), <https://www.sec.gov/news/speech/clayton-redfearn-equity-market-structure-2019>.

⁴⁷ “I believe there are serious questions, however, about whether the current market structure that works relatively well for very active stocks is optimal for thinly traded securities.” Brett Redfearn, Director of the Division of Trading and Markets, Commission, Modernizing U.S. Equity Market Structure (June 22, 2020) (“2020 Market Structure Remarks”), <https://www.sec.gov/news/speech/clayton-redfearn-modernizing-us-equity-market-structure-2020-06-22>.

⁴⁸ Advisory Committee on Small and Emerging Companies, Commission, Recommendation Regarding Separate U.S. Equity Market for Securities of Small and Emerging Companies (February 1, 2013) (generally finding that the U.S. equity markets frequently fail to offer a satisfactory trading venue for small and emerging companies, which (i) has discouraged initial public offerings of the securities of such companies, (ii) undermines entrepreneurship, and (iii) weakens the broader U.S. economy), <https://www.sec.gov/info/smallbus/acsec/acsecrecommendation-032113-emerg-co-ltr.pdf>.

⁴⁹ Division of Trading and Markets, Commission, “Empirical Analysis of Liquidity Demographics and Market Quality,” (April 10, 2018) (“OAR Report”), https://www.sec.gov/files/thinly_traded_eqs_data_summary.pdf (finding, among other things, that thinly traded securities (i) had, on average, fewer exchanges quoting at the national best bid or national best offer than more actively traded securities; (ii) had quoted depths at the inside (*i.e.*, the volume of shares available at the highest bid and lowest offer) were smaller and quoted spreads (*i.e.*, the difference between bid and offer prices) and relative quoted spreads were greater for these thinly traded securities relative to more actively traded securities; and (iii) likely face a trading environment with less market making activity at the inside (*i.e.*, the highest bid and lowest offer) or in larger order size, which may make finding a counterparty to execute a particular trade more difficult). See also TM Background Paper at 2–3 (summarizing the findings from the OAR Report).

⁵⁰ See *e.g.*, TM Background Paper at 6–7 (noting that “the economic literature in this area [of liquidity and trading volume] has consistently documented that stocks with lower trading volume tend to have higher transaction costs” and “[n]umerous studies have found evidence linking lower liquidity to lower stock prices, which suggests that diminished liquidity may also impact stock prices. These analyses show that investors must be paid a premium in order to hold less liquid stocks. Consequently, thinly traded securities may have lower stock prices due to diminished liquidity.”) (internal citations omitted).

⁵¹ See *e.g.*, Treasury Report at 60 (“Treasury recommends that issuers of less-liquid stocks, in

Indeed, as former Chairman Jay Clayton noted, the Commission’s Statement on Market Structure Innovation for Thinly Traded Securities specifically invites “market participants to submit innovative proposals designed to improve the secondary market for thinly traded securities, including, in connection with such proposals, requests to suspend or terminate unlisted trading privileges, known as UTP.”⁵² In response to the Commission’s call and to improve the market quality for thinly traded securities, the Exchange proposes a suspension of UTP for qualifying “Thinly Traded Securities,” as detailed further below.

Thinly Traded Securities Defined

The Exchange proposes in Rule 25150(a) to define “Thinly Traded Securities” as a Security⁵³ of an operating company that meets certain market capitalization and average daily volume of trading (“ADV”) requirements. The Exchange proposes two separate, but similar, types of eligibility criteria depending on if a Security has been publicly traded for at least six months or if the Security is just beginning to trade publicly (*i.e.*, publicly traded for less than six months). Specifically, the Exchange proposes that a Security that has been publicly traded for at least six months shall be considered a Thinly Traded Security if the Security has (i) market capitalization of less than \$1 billion, and (ii) an average daily volume of trading of 100,000 shares or less during at least four (4) of the preceding six (6) calendar months (“Ongoing Eligibility Criteria”). For a Security that has not been publicly traded for at least six months, the Exchange proposes that a Security shall be considered a Thinly Traded Security if during the first three

consultation with their underwriter and listing exchange, be permitted to partially or fully suspend UTP for their securities and select the exchanges and venues upon which their securities will trade.”); 2019 Market Structure Remarks, at n.13 (noting that several panelists on the Roundtable on Market Structure for Thinly-Traded Securities, supported the approach of limiting unlisted trading privileges, with some suggesting going even further and considering whether Regulation NMS rules should be eliminated in this segment of the market).

⁵² 2020 Market Structure Remarks. See also Commission Statement on Thinly Traded Securities at 56957 (“[t]herefore, for thinly traded securities, the Commission is interested in considering proposals for market structure innovations in conjunction with the potential suspension or termination of UTP and/or the possibility of exemptive relief from Regulation NMS and other rules under the Exchange Act.”).

⁵³ The Exchange proposes to define a “Security” to mean a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. See proposed Rule 17000(a)(31).

(3) months of public trading in the Security, the Security has a (i) market capitalization of less than \$1 billion, and (ii) an average daily volume of trading of 100,000 shares or less (“Initial Eligibility Criteria”).

Thinly Traded Security Criteria Thresholds

The Exchange believes that the criteria of a market capitalization of less than \$1 billion and an ADV of 100,000 shares or less are appropriate thresholds to determine whether a security is thinly traded. The ADV requirement is the primary indicator of whether a security is thinly traded as it helps indicate how much liquidity there is in a stock and the relative ease through which an investor may get into and out of positions in that stock. The Commission staff’s OAR Report found that NMS stocks with ADV of less than 100,000 “face a trading environment with less market making activity at the inside (*i.e.*, the highest bid and lowest offer) or in larger order size, which may make finding a counterparty to execute a particular trade more difficult.” The OAR Report also found, among other things, that NMS stocks with an ADV of less than 100,000: (i) Have on average, fewer exchanges quoting at the national best bid or offer (“NBBO”); (ii) more volume executing away from exchange venues indicating that exchange venues are a relatively less attractive venue for executions in such securities; and (iii) have a smaller number of block trades than more actively traded securities.⁵⁴ The Treasury Report also recommended the use of ADV as a simple approach “to differentiate between liquid and illiquid stocks.”⁵⁵ Accordingly, the Exchange believes that a threshold of an ADV of trading at or below 100,000 is appropriate because it would limit the Securities for which UTP is suspended only to those Securities that are in fact thinly traded and for which the Commission’s OAR found concerns with respect to market quality relative to more widely-traded securities.⁵⁶

The Exchange believes that it is also appropriate to set a maximum market capitalization threshold for Thinly Traded Securities to ensure that the suspension of UTP (discussed below) is limited to small, thinly traded companies. The Exchange believes that companies with a market capitalization

greater than \$1 billion may be more likely to have or soon have an ADV above 100,000 shares. The OAR Report indicates that the median market capitalization for common stocks with an ADV between 50,000 to 100,000 shares is \$313 million.⁵⁷ This same figure for common stocks with an ADV above 100,000 shares is \$1.313 billion.⁵⁸ Accordingly, the Exchange believes that most, if not all, stocks that have an ADV of 100,000 shares or less will also have a market capitalization of less than \$1 billion. The primary purpose of the market capitalization threshold is therefore to limit the availability of Thinly Traded Security status to smaller issuers and remove companies whose securities may soon reach an ADV of more than 100,000.

The Exchange proposes to set forth how it will calculate market capitalization in proposed Rule 25150(a)(4). For Ongoing Eligibility Criteria, market capitalization would be determined as the product of (a) the number outstanding shares of the Security as reported in the most recent quarterly or annual report of the company; and (b) the average closing price of the Security over the preceding six (6) full calendar months. For Initial Eligibility Criteria, market capitalization would be determined as the product of (a) the number of outstanding shares of the Security as reported in the most recent quarterly or annual report of the company; and (b) the average closing price of the Security over the first three months during which the Security has been publicly traded. The Exchange believes that this is a standard method for calculating the market capitalization of a security.

Average daily volume would be measured in accordance with the terms of the proposed Rules—*e.g.*, for Ongoing Eligibility Criteria, the analysis would be the average daily share volume of trading in the Security over the preceding six months of trading to determine whether the ADV is 100,000 shares or less for four out of those six months. The Exchange believes the use of a look back of four out of the previous six months is a reasonable approach to determine whether a stock is thinly traded and is similar to other mechanisms used in Commission rules to evaluate differing regulatory treatment.⁵⁹ Under this formulation, a Security could have an ADV that exceeded 100,000 shares in up to two of

the previous six months, but would be required to continuously meet the requirement of an ADV at or below 100,000 shares for four of the preceding six months on a rolling basis.

Thinly Traded Exchange Traded Products

Importantly, the Exchange proposes to limit the availability of Thinly Traded Security status to operating companies. This means that an ETP that is a Security would not be eligible to be considered a Thinly Traded Security even if it otherwise meets the criteria. The Exchange proposes to exclude ETPs from eligibility because ETPs, even those with an ADV of 100,000 shares or less, do not necessarily have the same problems of a lack of liquidity as thinly traded shares of an operating company. For example, participants in the Commission’s Roundtable on Market Structure for Thinly-Traded Securities (the “Roundtable”) noted that “as opposed to a corporate stock, an ETP that is thinly traded may still be highly liquid, and that therefore the level of secondary market trading does not correlate as closely with liquidity as it does for corporate stocks.”⁶⁰ Given that the purpose of the Exchange’s proposal with respect to Thinly Traded Securities is to improve liquidity and market quality for small issuers, the Exchange believes that it is appropriate to exclude ETPs that, while perhaps thinly traded, do not appear to suffer from the same liquidity issues as those faced by the securities of thinly traded operating companies.

Initial and Ongoing Criteria

As described above, the Exchange proposes different sets of criteria to become a Thinly Traded Security depending on how long a Security has been publicly traded. As proposed, the earliest in time that a Security could become eligible for status as a Thinly Traded Security (and therefore eligible for suspension of UTP, as discussed below) would be three months after the initial public offering of the Security. The Exchange believes that every Security that undergoes an initial public offering should initially be available for UTP because there is no way to determine *a priori* whether or not a Security will be thinly traded. Only after there is some empirical evidence based on the first three months of public trading that a Security appears to be

⁵⁴ See OAR Report and TM Background Paper at 2.

⁵⁵ Treasury Report at 60.

⁵⁶ The Exchange notes that OAR’s criteria used an ADV of less than 100,000 shares while the Exchange proposes to use a criteria of 100,000 shares or less. The Exchange believes that this *de minimis* difference is immaterial.

⁵⁷ OAR Report at 4.

⁵⁸ *Id.*

⁵⁹ See *e.g.*, 17 CFR 242.301(b)(5) (regarding the triggering of fair access requirements under Regulation ATS) and 17 CFR 242.1000 (defining a SCI ATS with reference to the volume of its trading).

⁶⁰ Background Paper at 19. Other Roundtable participants similarly noted that “. . . as a practical matter, ETPs have ‘unlimited liquidity’ and an ETP can be both thinly traded and very liquid at the same time.” *Id.*

thinly traded would the Security become eligible.

The Exchange proposes in Rule 25150(a)(3) that a Security that becomes a Thinly Traded Security under the Initial Eligibility Criteria would be considered a Thinly Traded Security until it has been publicly traded for at least six months, at which time the Security would have to meet the Ongoing Eligibility Criteria. In effect, the Exchange proposes that a Security that meets the Initial Eligibility Criteria would be deemed to meet such criteria until it has been publicly traded for long enough to determine whether it meets the Ongoing Eligibility Criteria. The Exchange notes that any suspension of UTP, as discussed further below, would not be effective for at least thirty days after publication of a rule filing with the Commission in the **Federal Register**. As a result, a Security that meets the Initial Eligibility Criteria for the first three months that it trades publicly could only have UTP suspended at the earliest at the commencement of month four and more likely at the four and one half month mark.⁶¹ Thus, a Security that meets the Initial Eligibility Requirements and for which UTP was suspended would be deemed to be a Thinly Traded Security for 1.5 to two months before it would have to meet the Ongoing Eligibility Criteria.

The Exchange believes that this approach of initially allowing a Security to be eligible for UTP promotes consistency with Section 6(b)(5) of the Exchange Act⁶² by helping to perfect the mechanism of a free and open market and by promoting just and equitable principles of trade. Specifically, the Exchange believes that companies engaged in an initial public offering should not have UTP suspended until it can be determined whether those shares have an ADV of 100,000 shares or less and market capitalization of less than \$1 billion, thereby ensuring that IPOs resulting in a high ADV or market capitalization are

⁶¹ After a seven business day review period during which the Commission may reject a rule filing submitted by the Exchange under certain circumstances (15 U.S.C. 78s(b)(10)), the Commission must publish a proposed rule change by the Exchange within 15 days after the initial submission by the Exchange to the Commission (15 U.S.C. 78s(b)(2)(E)). As a result, a rule filing seeking suspension of UTP for a qualifying Thinly Traded Security would likely only be published in the **Federal Register** at the earliest after the Security had been trading for 3.5 months and the suspension of UTP would only commence thirty days thereafter (*i.e.*, after the Security had traded for 4.5 months). Suspension of UTP would then last for a minimum of 1.5 months, at which time, the Security would need to meet the Ongoing Eligibility requirements to continue to have UTP continue to be suspended.

⁶² 15 U.S.C. 78f(b)(5).

freely and openly available on all venues and equitably available on other exchange venues. The Exchange believes that three months is a sufficient amount of time to determine whether a Security that recently underwent its IPO is thinly traded given that interest in a Security is likely to be highest around the time of its IPO in connection with underwriter's selling efforts and the media attention that often accompanies an IPO. Thus, if a Security has an ADV of 100,000 shares or less during its first three months of trading despite this time period being among the most likely to have the highest market interest in the Security, the Security is likely to benefit from a suspension of UTP. The Exchange therefore proposes the Initial Eligibility Criteria as an early on-ramp to the suspension of UTP for a Security that has not yet traded for a full four to six months to be able to determine whether it meets the Ongoing Eligibility Criteria.

Suspension of Unlisted Trading Privileges

As noted above, the Exchange proposes that a Security that qualifies as a Thinly Traded Security would be eligible for a suspension of UTP. The Exchange proposes that an issuer of a qualifying Thinly Traded Security would have to affirmatively request in writing that UTP be suspended. The Exchange believes that issuers should be empowered to make the decision as to whether UTP should be suspended with respect to the issuer's Thinly Traded Security.

Thereafter, in order to effectuate a suspension of UTP and to provide notice to market participants of the suspension of UTP, the Exchange would submit an immediately effective rule filing pursuant to Section 19(b)(3)(A) of the Exchange Act,⁶³ with the effectiveness of such suspension of UTP occurring at least 30 calendar days after publication of the rule filing in the **Federal Register**.⁶⁴ Conversely, when a Security no longer meets the definition of a Thinly Traded Security under the Exchange's Rules, the Exchange would similarly submit a rule filing pursuant to Section 19(b)(3)(A) within 14 calendar days of the Thinly Traded Security no longer qualifying as a Thinly Traded Security (and therefore no longer eligible to have UTP suspended).⁶⁵ The resumption of UTP with respect to the former Thinly Traded Security would be effective

⁶³ 15 U.S.C. 78s(b)(3)(A).

⁶⁴ See proposed Rule 25150(b)(1).

⁶⁵ See proposed Rule 25150(b)(2).

upon publication of the rule filing in the **Federal Register**.

The Exchange believes that these rule filings to effectuate the suspension of UTP would be appropriately filed pursuant to Section 19(b)(3)(A) and Rule 19b-4(f) thereunder as a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.⁶⁶ Specifically, the proposed rule change would provide notice of the Exchange's upcoming enforcement of proposed Rule 25150 to suspend UTP (or remove a suspension of UTP) with respect to a qualifying Thinly Traded Security.

The Exchange believes that exchanges are readily capable of suspending trading in a security that is currently traded on their exchange. Exchanges need and provide for the ability to suspend trading in securities on their exchange for regulatory halts, triggering of market wide or single stock circuit breakers, and to comply with the Commission's authority to order a trading halt pursuant to Section 12(k) of the Exchange Act.⁶⁷ Accordingly, the Exchange believes that voluntarily delaying the implementation of the suspension of UTP by 30 calendar days will provide other exchanges and market participants with adequate notice and sufficient time to prepare for a suspension of UTP in the relevant Thinly Traded Security. The Exchange also believes that exchanges are also readily capable of extending UTP to a Security that is not currently traded on the exchange.⁶⁸ Accordingly, the Exchange believes that other exchanges would be able to extend UTP to a Security for which the suspension of UTP is lifted shortly after the effectiveness of the rule filing providing notice of a resumption in UTP with respect to the Security.

The Exchange recognizes that suspending UTP and making BSTX the only national securities exchange on which a Thinly Traded Security trades would increase both the relative importance of BSTX as a trading venue for such Thinly Traded Security and the disruption that might arise if access to BSTX were somehow disrupted. Accordingly, the Exchange proposes to run a live, parallel system in addition to the Exchange's primary system supporting trading in any Thinly Traded

⁶⁶ 15 U.S.C. 78s(b)(3)(A). 17 CFR 240.19b-4(f)(1).

⁶⁷ 15 U.S.C. 78l(k).

⁶⁸ For example, in November 2000, the Commission adopted amendment to Rule 12f-2 lifting a limitation that previously prevented an exchange from extending UTP until the day after trading commenced on the primary listing exchange. See Exchange Act Release No. 43217, 65 FR 53560 (Sept. 5, 2000).

Securities for which UTP has been suspended in order to guard against a potential disruption in trading access. The Exchange would maintain the ability to automatically fail over to the other live or “hot” parallel system in the event of any disruption to the primary system.

In addition, because Thinly Traded Securities would no longer trade on other exchanges via UTP at the election of an issuer and a determination by the Exchange that the Security qualifies as a Thinly Traded Security, the Exchange plans to remove quotation and trading activity in Thinly Traded Securities from the revenue allocation formulas of the appropriate NMS plan for consolidated market data through an amendment to such plan(s).⁶⁹ The Exchange believes that it would be appropriate to exclude such Thinly Traded Securities from the revenue allocation formula so that the Exchange does not receive undue compensation from the NMS plan for consolidated market data arising from the Thinly Traded Securities. The existing and proposed revenue allocation formulas apportion revenues from the NMS plan in part based on the amount of trading and quoting occurring on each exchange in “Eligible Securities” as defined under the NMS plan.⁷⁰ As a result, BSTX might receive additional profits under the revenue allocation formula if Thinly Traded Securities were not excluded from “Eligible Securities” given that BSTX would be the only venue able to quote and trade Thinly Traded Securities.

Finally, the Exchange proposes to make available each month anonymized trade and quotation data relating to Thinly Traded Securities to regulators, academics, and others requesting such market data from the Exchange for the purpose of studying the effects of the suspension of UTP. The Exchange intends to additionally perform its own analysis on the impact of the suspension of UTP for Thinly Traded Securities to evaluate its efficacy. The Exchange will evaluate market quality for Thinly Traded Securities across a variety of metrics including an analysis of: (i) Relative trading volumes on BSTX versus OTC; (ii) improvements in ADV;

(iii) changes in quotation size; (iv) changes in the depth of liquidity; (v) changes in spreads (quoted spread and realized spread); and (vi) changes in trade size. The Exchange will perform this analysis at least annually (provided there is sufficient sample data from the preceding year) and make public its findings with respect to how the market for Thinly Traded Securities has changed as a result of the suspension of UTP.

Request for Exemptive Relief

The Exchange believes that it is in the public interest and consistent with protection of investors, pursuant to Section 6(b)(5) of the Exchange Act,⁷¹ as well as in furtherance of the perfection of a free and open market and national market system to suspend UTP under this proposal with respect to Thinly Traded Securities to improve liquidity and overall market quality for such Securities. Consistent with the Department of the Treasury’s recommendations, the Exchange believes that “[c]onsolidating trading to fewer venues would simplify the process of making markets in those stocks and thereby encourage more market makers to provide more liquidity in those issues.”⁷² Also consistent with the Department of the Treasury’s recommendations, the Exchange proposes that there be no limitation on trading OTC in order “maintain a basic level of competition for execution” and that an issuer would be provided a choice as to whether its qualifying Thinly Traded Security have UTP suspended.⁷³

In addition, the Exchange believes that, consistent with the OAR Report which found that NMS stocks with an ADV of less than 100,000 shares experience more trading on off-exchange venues than on-exchange and have less quoted depth at the inside of the market, much of the poor market quality is attributable to deficiencies in displayed quotations of Thinly Traded Securities. As a result the Exchange believes that it is appropriate to suspend trading on other exchanges—*i.e.*, other venues displaying liquidity—in order to concentrate displayed liquidity on a single exchange, while still allowing trading to occur in the OTC market.

The Exchange does not believe that the suspension of UTP for Thinly Traded Securities will impose a burden on competition not necessary or appropriate in furtherance of the

Exchange Act⁷⁴ because other exchanges could similarly be granted a suspension of UTP for qualifying thinly traded securities listed on their markets. Exchanges can compete with each other in attracting issuers of thinly traded securities to be singly-listed and traded on their respective exchanges. Exchanges would still be able to compete with one another for listings and the market for all thinly traded securities could be improved. Moreover, if the suspension of UTP has the desired effect of improving the overall liquidity of a Thinly Traded Security, such Security should hopefully exceed the 100,000 share ADV or \$1 billion market capitalization thresholds and become available for UTP, thus removing any barrier to competition once the purpose for which the suspension of UTP was initiated has been fulfilled.

Similarly, consistent with Section 6(b)(5) of the Exchange Act,⁷⁵ the Exchange believes that the proposed suspension of UTP for Thinly Traded Securities would not permit unfair discrimination between customers, issuers, brokers or dealers, because the suspension is for the purpose of furthering the regulatory objective of improving market quality for securities that are thinly traded. Although non-Thinly Traded Securities would not be able to have UTP suspended, this discriminatory treatment is not “unfair” given the substantial public interest, as demonstrated through the Commission’s statements and by market participants at the Roundtable, in improving market conditions for thinly traded securities. The Exchange believes that the proposed suspension of UTP would help protect investors and the public interest, consistent with Section 6(b)(5), by concentrating displayed liquidity on a single venue, thereby providing greater incentives for market makers in Thinly Traded Securities and in turn making it easier for investors to buy and sell shares of Thinly Traded Securities. The Exchange believes that there is a general consensus among members of Commission staff, former Commissioners (including former Chairman Jay Clayton), the Department of the Treasury, and market participants, as well as empirical evidence, making clear that operating company stocks with an ADV of less than 100,000 shares suffer significant liquidity and market quality challenges not faced by stocks with greater trading volume. It is for this reason, the Exchange believes, that the Commission specifically solicited requests from

⁶⁹ The Exchange notes that certain exchanges have challenged the Commission’s May 6, 2020, order directing the self-regulatory organizations to develop a new NMS plan for consolidated market data. Exchange Act Release No. 88827 (May 5, 2020), 85 FR 28702 (May 13, 2020). The Exchange would seek to amend the new NMS plan or the existing NMS plans as appropriate.

⁷⁰ See *e.g.*, Exchange Act Release No. 90096 (Oct. 6, 2020), 85 FR 64565, Exhibit D (Oct. 13, 2020) <https://www.sec.gov/rules/sro/nms/2020/34-90096.pdf>.

⁷¹ 15 U.S.C. 78f(b)(5).

⁷² Treasury Report at 60.

⁷³ *Id.*

⁷⁴ 15 U.S.C. 78f(b)(8).

⁷⁵ 15 U.S.C. 78f(b)(5).

exchanges for innovative approaches to improve the market for thinly traded securities, including requests for suspension of UTP.⁷⁶

Accordingly, the Exchange plans to submit an application for the suspension of UTP for Thinly Traded Securities, as described above, to the Commission pursuant to Rule 12f-3 of the Exchange Act, which rule allows issuers, broker-dealers who make markets in a security admitted to UTP, “or any other person having a bona fide interest in the question of termination or suspension of such unlisted trading privileges” to submit an application for the suspension of UTP consistent with certain specified requirements.⁷⁷ The Exchange believes that there is good cause for the suspension of UTP to promote efficiency, competition, and capital formation⁷⁸ by facilitating the trading of Thinly Traded Securities in a manner that addresses structural market quality challenges in today’s markets for such securities.

Ability for BSTX Participants To Include a Parameter for a Preference for Settlement of Transactions in Securities Faster Than T+2

As described above in Section II.E.5., BSTX believes that NSCC already has authority under its rules, policies and procedures to clear certain trades on a T+1 or T+0 basis, which are shorter settlement cycles than the longest settlement cycle of T+2 that is generally permitted under SEC Rule 15c6-1 for a security trade that involves a broker-dealer.⁷⁹ Furthermore, BSTX understands that NSCC does already clear trades in accordance with this authority.

The Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.⁸⁰ Any such orders would at the time of order entry represent orders that would be regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater detail below, however, orders in a Security that include a parameter indicating a preference for settlement on

a T+0 basis (“Order with a T+0 Preference”) or on a T+1 basis (“Order with a T+1 Preference”) would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing agency.⁸¹ Any such preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis, as described in more detail below. This means that at the time of order entry all orders in Securities would be regular way orders that would be presumed to settle on a T+2 basis. Faster settlement consistent with the rules, policies and procedures of a registered clearing agency would occur if and only if two orders execute against each other in a manner that meets the conditions in Rule 25060(h).

As proposed, an Order with a T+0 Preference will execute against any order against which it is marketable with settlement occurring on a standard settlement cycle (T+2) except where: (i) The Order with a T+0 Preference executes against another Order with a T+0 Preference, in which case settlement shall occur on the trade date, or (ii) the Order with a T+0 Preference executes against an Order with a T+1 Preference, in which case settlement shall occur the next trading day after the trade date (*i.e.*, T+1). Similarly, as proposed, an Order with a T+1 Preference will execute against any order against which it is marketable with settlement occurring on a standard settlement cycle (T+2) except where: (i) The Order with a T+1 Preference executes against another Order with a T+1 Preference or an Order with a T+0 Preference, in which case settlement occurs on the next trading day after the trade date (*i.e.*, T+1). In all cases, an order not marked with a preference for either T+0 or T+1 settlement would be assured under the settlement timing logic in proposed Rule 25060(h) of settlement on T+2. The possibility of a shortened settlement time would have no impact on the Exchange’s proposed price time priority structure for order matching.⁸²

As a result of this structure, all orders in Securities would be eligible to match and execute against any order against which they are marketable with settlement to occur at the later settlement date of any two matching orders. Only where an Order with a T+1 Preference or an Order with a T+0 Preference match with another Order with a T+1 Preference or Order with a T+0 Preference will those orders (or matching portions thereof) be eligible to settle more quickly than the standard settlement cycle of T+2. As previously noted in Part II.E, the Exchange believes that the clearance and settlement processes at NSCC and DTC are already capable of facilitating such shortened settlement times.

The Exchange believes that facilitating shorter settlement cycles as permitted under the rules, policies, and procedures of a registered clearing agency is consistent with Section 6(b)(5) of the Exchange Act⁸³ because it is in the public interest and furthers the protection of investors as well as helps perfect the mechanism of a free and open market and the national market system. Specifically, the Exchange believes that BSTX Participants have an interest in being able to access risk-reducing market functionality that is presently available and compatible with market structure, such as shorter settlement cycles, and that this can reduce costs for market participants settling trading obligations in that Security and reduce settlement risk. For example, market participants settling trades in a Security on a T+2 basis must post margin collateral to NSCC for two trading days. The margin collateral cannot otherwise be used until settlement on T+2. In addition, by shortening the timing of settlement from T+2 to T+1 or T+0, the risk horizon for a potential default in settling the trade is correspondingly shortened as well. This means that market participants engaged in a transaction settling transactions on shorter settlement cycles than T+2 receive the benefits of not having to encumber collateral assets for as long and facing a shorter period of settlement risk. The Exchange believes that these benefits in turn free up assets to be used elsewhere in financial markets, thereby helping to promote the efficient allocation of capital and perfecting the mechanism of a free and

Order C) and resting Order C (marked as an Order with a T+0 Preference but with priority second to that of Order B). Order A will interact first with Order B, notwithstanding that Order C is also marketable against Order A and is also marked as an Order with a T+0 Preference.

⁸³ 15 U.S.C. 78(f)(b)(5).

⁷⁶ Commission Statement on Thinly Traded Securities at 56956.

⁷⁷ 17 CFR 240.12f-3.

⁷⁸ 15 U.S.C. 78c(f).

⁷⁹ See *supra* note 28.

⁸⁰ See proposed Rule 25060(h).

⁸¹ See proposed Rule 25100(d).

⁸² For example, assume Order A is marked as an Order with a T+0 Preference and it is sent to BSTX and is marketable against both resting Order B (standard T+2 settlement, with time priority over

open market.⁸⁴ All else being equal, the Exchange believes that a BSTX participant may find that between two otherwise identical stocks, one for which it may be able to settle the transaction more quickly is more attractive than one that settles over a longer duration and potentially requires collateral to be held for a longer period.

The Exchange notes that the proposed potential for shortened settlement timing for an Order with a T+0 Preference or an Order with a T+1 Preference will in no way impact or prevent any market participant that desires to effect a trade in a Security on BSTX from doing so. This is because under proposed Rule 25060(h), any Order with a T+1 Preference or Order with a T+0 Preference will continue to interact with any other order in the Security against which it is marketable (including any order in the Security that does not include a parameter indicating a preference for settlement faster than T+2) and a resulting execution will always settle using the latest settlement timing associated with two matching orders. Accordingly, non-BSTX Participants seeing a quote in a Security on BSTX will remain able to execute against that quote posted on BSTX even if that quote includes a latent parameter for a preference for T+0 or T+1 settlement where consistent with the rules, policies and procedures of a registered clearing agency. In this way, the Exchange believes that the proposal is fully compatible with the current market structure and would help perfect the mechanism of a free and open market by allowing for shorter settlement times than T+2 where consistent with the rules, policies and procedures of a registered clearing agency and where both parties to a transaction in a Security indicate a preference for faster settlement than T+2.

Finally, because all orders in Securities submitted to BSTX would at the time of the order entry be presumed to settle on a regular way T+2 basis and would interact with any other order against which the order is marketable, the Exchange believes that Orders with a T+0 Preference and Orders with a T+1 Preference would be considered “protected” within the meaning of Rule 611 of the Exchange Act.⁸⁵ Orders with a T+0 Preference and Orders with a T+1 Preference would not fall within the exception for protected quotation status set forth in Rule 611(b)(2) of the Exchange Act because they will only settle more quickly than T+2 where all

of the conditions in Rule 25060(h) are met, as described above, where settlement faster than T+2 is consistent with the rules, policies and procedures of a registered clearing agency.⁸⁶

In adopting amendments to SEC Rule 15c6-1 in 2017 to shorten the standard settlement cycle for most broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs central counterparty⁸⁷ (“CCP”) services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting “reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP’s risk management process . . .” and that “[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.”⁸⁸ The Commission went on to state its belief that shortening the settlement cycle “would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors” such as “quicker access to funds and securities following trade execution” and “reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[.]”⁸⁹ The Commission also “noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]”⁹⁰ BSTX agrees with these statements by the Commission and has therefore proposed BSTX Rules 25060(h) and 25100(d) in a form that would promote the benefits of available, shorter settlement cycles.⁹¹

⁸⁶ 17 CFR 242.611(b)(2).

⁸⁷ See 17 CFR 240.17Ad-22(a)(2) (defining the term “central counterparty” to mean “a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer”).

⁸⁸ Exchange Act Release No. 80295 (March 22, 2017), 82 FR 15564, 15570–71 (March 29, 2017).

⁸⁹ *Id.* at 15571.

⁹⁰ *Id.* at 15582.

⁹¹ As described in this Part II.I, an order for a Security marked for T+0 or T+1 could still interact with any other order, including an order with the default T+2 settlement, with settlement to occur at

Proposed BSTX Rules

The discussion in this Part III addresses the proposed BSTX Rules that would be adopted as Rule Series 17000 through 29000.

General Provisions of BSTX and Definitions (Rule 17000 Series)

The Exchange proposes to adopt as its Rule 17000 Series (General Provisions of BSTX) a set of general provisions relating to the trading of Securities and other rules governing participation on BSTX. Proposed Rule 17000 sets forth the defined terms used throughout the BSTX Rules. The majority of the proposed definitions are substantially similar to defined terms used in other equities exchange rulebooks, such as with respect to the term “customer.”⁹² The Exchange proposes to set forth new definitions for certain terms to specifically identify systems, agreements, or persons as they relate to BSTX and as distinct from other Exchange systems, agreements, or persons that may be used in connection with the trading of other options on the Exchange.⁹³ The Exchange also proposes to define certain unique terms relating to the trading of Securities, including the term “Security” itself⁹⁴ and “Thinly Traded Securities,”⁹⁵ as well as for other features of BSTX such

the later of any two matched orders (e.g., if a T+1 order matches with a T+2 order, the orders would settle T+2). Only where an order marked for a shorter settlement time matches with another order similarly marked would a shorter settlement time occur. Consequently, the proposed use of shorter settlement times would not adversely impact any market participant seeking T+2 settlement in a transaction for a Security.

⁹² Proposed Rule 17000(a)(17) defines the term “customer” to not include a broker or dealer, which parallels the same definition in other exchange rulebooks. See e.g., IEX Rule 1.160(j). Similarly, the Exchange proposes to define the term “Regular Trading Hours” as the time between 9:30 a.m. and 4:00 p.m. Eastern Time. See proposed Rule 17000(a)(29) cf. IEX Rule 1.160(gg) (defining “Regular Market Hours” in the same manner).

⁹³ For example, the Exchange proposes to define the term “BSTX” to mean the facility of the Exchange for executing transaction in Securities, the term “BSTX Participant” to mean a Participant or Options Participant (as those terms are defined in the Exchange’s Rule 100 Series) that is authorized to trade Securities, and the term “BSTX System” to mean the automated trading system used by BSTX for the trading of Securities. See proposed Rule 17000(a)(8), (11), and (15).

⁹⁴ Proposed Rule 17000(a)(31) provides that the term “Security” means a NMS stock, as defined in Rule 600(b)(47) of the Exchange Act, trading on the BSTX System. The proposed definition further specifies that references to a “security” or “securities” in the Rules may include Securities.

⁹⁵ Proposed Rule 17000(a)(32) provides that the term “Thinly Traded Security” is defined in Rule 25150. See Part II.H for further discussion of Thinly Traded Securities and the definition set forth in proposed Rule 25150.

⁸⁴ *Id.*

⁸⁵ 17 CFR 242.611.

as the “BSTX Market Data Blockchain.”⁹⁶

In addition to setting forth proposed definitions used throughout the proposed Rules, the Exchange proposes to specify in proposed Rule 17010 (Applicability) that the Rules set forth in the Rule 17000 Series to Rule 29000 Series apply to the trading, listing, and related matters pertaining to the trading of Securities. Proposed Rule 17010(b) provides that, unless specific Rules relating to Securities govern or unless the context otherwise requires, the provisions of any Exchange Rule (*i.e.*, including Exchange Rules in the Rule 100 through 16000 Series) shall be applicable to BSTX Participants.⁹⁷ This is intended to make clear that BSTX Participants are subject to all of the Exchange’s Rules that may be applicable to them, notwithstanding that their trading activity may be limited solely to trading Securities. The Exchange believes that the proposed definitions set forth in Rule 17000 are consistent with Section 6(b)(5) of the Exchange Act⁹⁸ because they protect investors and the public interest by setting forth clear definitions that help BSTX Participants understand and apply Exchange Rules. Without clearly defining terms used in the Exchanges Rules and providing clarity as to the Exchange Rules that may apply, market participants could be confused as to the application of certain rules, which could cause harm to investors.

Participation on BSTX (Rule 18000 Series)

The Exchange proposes to adopt as its Rule 18000 Series (Participation on BSTX), three rules setting forth certain requirements relating to participation on BSTX. Proposed Rule 18000 (BSTX Participation) establishes “BSTX Participants” as a new category of Exchange participation for effecting transactions on the BSTX System, provided they: (i) Complete the BSTX Participant Application, Participation Agreement, and User Agreement;⁹⁹ (ii)

⁹⁶ Proposed Rule 17000(a)(9) provides that the term “BSTX Market Data Blockchain” means the private, permissioned blockchain network through which a BSTX Participant may access certain order and transaction data related to trading activity on BSTX. See Part II.F for further discussion of the BSTX Market Data Blockchain.

⁹⁷ Proposed Rule 17010 further specifies that to the extent the provisions of the Rules relating to the trading of Securities contained in Rule 17000 Series to Rule 29000 Series are inconsistent with any other provisions of the Exchange Rules, the Rules relating to Security trading shall control.

⁹⁸ 15 U.S.C. 78f(b)(5).

⁹⁹ The BSTX Participant Application, Participation Agreement, and User Agreement have been submitted as Exhibits 3A, 3B, and 3C to the proposal respectively.

be an existing Options Participant or become a Participant of the Exchange pursuant to the Rule 2000 Series; and (iii) provide such other information as required by the Exchange.¹⁰⁰ Proposed Rule 18010 (Requirements for BSTX Participants) sets forth certain requirements for BSTX Participants including requirements that each BSTX Participant comply with Rule 15c3–1 under the Exchange Act, comply with applicable books and records requirements, and be a member of a registered clearing agency or clear Security transactions through another BSTX Participant that is a member/participant of a registered clearing agency.¹⁰¹ Finally, proposed Rule 18020 (Associated Persons) provides that associated persons of a BSTX Participant are bound by the Rules of the Exchange to the same extent as each BSTX Participant.

The Exchange believes that the proposed Rule 18000 Series (Participation on BSTX) is consistent with Section 6(b)(5) of the Exchange Act¹⁰² because these proposed rules are designed to promote just and equitable principles of trade, and protect investors and the public interest by setting forth the requirements to become a BSTX Participant and specifying that associated persons of a BSTX Participant are bound by Exchange Rules. Under proposed Rule 18000, a BSTX Participant must first become an Exchange Participant pursuant to the Exchange Rule 2000 Series which the Exchange believes would help assure that BSTX Participants meet the appropriate standards for trading on BSTX in furtherance of the protection of investors.¹⁰³

¹⁰⁰ Proposed Rule 18000 also sets forth the Exchange’s review process regarding BSTX Participation Agreements and certain limitations on the ability to transfer BSTX Participant status (*e.g.*, in the case of a change of control). In addition proposed Rule 18000(b)(2) provides that a BSTX Participant shall continue to abide by all applicable requirements of the Rule 2000 Series, which would include, for example, IM–2040–5, which specifies continuing education requirements of Exchange Participants and their associated persons.

¹⁰¹ Proposed Rule 18010(b) is similar to the rules of existing exchanges. See *e.g.*, IEX Rule 2.160(c). Proposed Rule 18010(a) is also similar to the rules of existing exchanges. See *e.g.*, IEX Rule 1.160(s) and Cboe BZX Rule 17.2(a).

¹⁰² 15 U.S.C. 78f(b)(5).

¹⁰³ The Exchange notes that the approach of requiring members of a facility of an exchange to first become members of the exchange is consistent with the approach used by another national securities exchange. See Cboe BZX Rule 17.1(b)(3) (requiring that a Cboe BZX options member be an existing member or become a member of the Cboe BZX equities exchange pursuant to the Cboe BZX Chapter II Series).

Business Conduct for BSTX Participants (Rule 19000 Series)

The Exchange proposes to adopt as its Rule 19000 Series (Business Conduct for BSTX Participants), twenty two rules relating to business conduct requirements for BSTX Participants that are substantially similar to business conduct rules of other exchanges.¹⁰⁴ The proposed Rule 19000 Series would specify business conduct requirements with respect to: (i) Just and equitable principles of trade;¹⁰⁵ (ii) adherence to law;¹⁰⁶ (iii) use of fraudulent devices;¹⁰⁷ (iv) false statements;¹⁰⁸ (v) know your customer;¹⁰⁹ (vi) fair dealing with customers;¹¹⁰ (vii) suitability;¹¹¹ (viii) the prompt receipt and delivery of securities;¹¹² (ix) charges for services performed;¹¹³ (x) use of information obtained in a fiduciary capacity;¹¹⁴ (xi) publication of transactions and quotations;¹¹⁵ (xii) offers at stated

¹⁰⁴ See Cboe BZX Chapter 5 rules. See also IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

¹⁰⁵ Proposed Rule 19000 (Just and Equitable Principles of Trade) provides that no BSTX Participant, including its associated persons, shall engage in acts or practices inconsistent with just and equitable principles of trade.

¹⁰⁶ Proposed Rule 19010 (Adherence to Law) generally requires BSTX Participants to adhere to applicable laws and regulatory requirements.

¹⁰⁷ Proposed Rule 19020 (Use of Fraudulent Devices) generally prohibits BSTX Participants from effecting a transaction in any security by means of a manipulative, deceptive or other fraudulent device or contrivance.

¹⁰⁸ Proposed Rule 19030 (False Statements) generally prohibits BSTX Participants and their associated persons from making false statements or misrepresentations in communications with the Exchange.

¹⁰⁹ Proposed Rule 19040 (Know Your Customer) requires BSTX Participants to comply with FINRA Rule 2090 as if such rule were part of the Exchange Rules.

¹¹⁰ Proposed Rule 19050 (Fair Dealing with Customers) generally requires BSTX Participants to deal fairly with customers and specifies certain activities that would violate the duty of fair dealing (*e.g.*, churning or overtrading in relation to the objectives and financial situation of a customer).

¹¹¹ Proposed Rule 19060 (Suitability) provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2111 as if such rule were part of the Exchange Rules.

¹¹² Proposed Rule 19070 (Prompt Receipt and Delivery of Securities) would generally prohibit a BSTX Participant from accepting a customer’s purchase order for a security until it can determine that the customer agrees to receive the securities against payment.

¹¹³ Proposed Rule 19080 (Charges for Services Performed) generally requires that charges imposed on customers by broker-dealers shall be reasonable and not unfairly discriminatory.

¹¹⁴ Proposed Rule 19090 (Use of Information Obtained in a Fiduciary Capacity) generally restricts the use of information as to the ownership of securities when acting in certain capacities (*e.g.*, as a trustee).

¹¹⁵ Proposed Rule 19100 (Publication of Transactions and Quotations) generally prohibits a BSTX Participant from disseminating a transaction

prices;¹¹⁶ (xiii) payments involving publications that influence the market price of a security;¹¹⁷ (xiv) customer confirmations;¹¹⁸ (xv) disclosure of a control relationship with an issuer of Securities;¹¹⁹ (xvi) discretionary accounts;¹²⁰ (xvii) improper use of customers' securities or funds and a prohibition against guarantees and sharing in accounts;¹²¹ (xviii) the extent to which sharing in accounts is permissible;¹²² (xix) communications with customers and the public;¹²³ (xx) gratuities;¹²⁴ (xxi) telemarketing;¹²⁵ and (xxii) mandatory systems testing.¹²⁶ The Exchange notes that the proposed financial responsibility rules are virtually identical to those of other national securities exchanges other than changes to defined terms and certain

or quotation information unless the BSTX Participant believes it to be bona fide.

¹¹⁶ Proposed Rule 19110 (Offers at Stated Prices) generally prohibits a BSTX Participant from offering to transact in a security at a stated price unless it is in fact prepared to do so.

¹¹⁷ Proposed Rule 19120 (Payments Involving Publications that Influence the Market Price of a Security) generally prohibits direct or indirect payments with the aim of disseminating information that is intended to effect the price of a security.

¹¹⁸ Proposed Rule 19130 (Customer Confirmations) requires that BSTX Participants comply with Rule 10b-10 of the Exchange Act. 17 CFR 240.10b-10.

¹¹⁹ Proposed Rule 19140 (Disclosure of Control Relationship with Issuer) generally requires BSTX Participants to disclose any control relationship with an issuer of a security before effecting a transaction in that security for the customer.

¹²⁰ Proposed Rule 19150 (Discretionary Accounts) generally provides certain restrictions on BSTX Participants handling of discretionary accounts, such as by effecting excessive transactions or obtained authorization to exercise discretionary powers.

¹²¹ Proposed Rule 19160 (Improper Use of Customers' Securities or Funds and Prohibition against Guarantees and Sharing in Accounts) generally prohibits BSTX Participants from making improper use of customers securities or funds and prohibits guarantees to customers against losses.

¹²² Proposed Rule 19170 (Sharing in Accounts; Extent Permissible) generally prohibits BSTX Participants and their associated persons from sharing directly or indirectly in the profit or losses of the account of a customer unless certain exceptions apply such as where an associated person receives prior written authorization from the BSTX Participant with which he or she is associated.

¹²³ Proposed Rule 19180 (Communications with Customers and the Public) generally provides that BSTX Participants and their associated persons shall comply with FINRA Rule 2210 as if such rule were part of the Exchange Rules.

¹²⁴ Proposed Rule 19190 (Gratuities) requires BSTX Participants to comply with the requirements set forth in BOX Exchange Rule 3060 (Gratuities).

¹²⁵ Proposed Rule 19200 (Telemarketing) requires that BSTX Participants and their associated persons comply with FINRA Rule 3230 as if such rule were part of the Exchange's Rules.

¹²⁶ Proposed Rule 19210 (Mandatory Systems Testing) requires that BSTX Participants comply with Exchange Rule 3180 (Mandatory Systems Testing).

other provisions that would not apply to the trading of Securities on the BSTX System.¹²⁷

The Exchange believes that the proposed Rule 19000 Series (Business Conduct) is consistent with Section 6(b)(5) of the Exchange Act¹²⁸ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by setting forth appropriate standards of conduct applicable to BSTX Participants in carrying out their business activities. For example, proposed Rule 19000 (Just and Equitable Principles of Trade) and 19010 (Adherence to Law) would prohibit BSTX Participants from engaging in acts or practices inconsistent with just and equitable principles of trade or that would violate applicable laws and regulations. Similarly, proposed Rule 19050 (Fair Dealing with Customers) would require that BSTX Participants deal fairly with their customers and proposed Rule 19030 (False Statements) would generally prohibit BSTX Participants, or their associated persons from making false statements or misrepresentations to the Exchange. The Exchange believes that requiring that BSTX Participants comply with the proposed business conduct rules in the Rule 19000 Series would further the protection of investors and the public interest by promoting high standards of commercial honor and integrity. In addition, each of the rules in the proposed Rule 19000 Series (Business Conduct) is substantially similar to supervisory rules of other exchanges.¹²⁹

Financial and Operational Rules for BSTX Participants (Rule 20000 Series)

The Exchange proposes to adopt as its Rule 20000 Series (Financial and Operational Rules), ten rules relating to financial and operational requirements for BSTX Participants that are substantially similar to financial and operational rules of other exchanges.¹³⁰ The proposed Rule 20000 Series would specify financial and operational requirements with respect to: (i)

¹²⁷ For example, the Exchange is not proposing to adopt a rule contained in other exchanges' business conduct rules relating to disclosures that broker-dealers give to their customers regarding the risks of effecting securities transactions during times other than during regular trading hours (e.g., higher volatility, possibly lower liquidity) because executions may only occur during regular trading hours on the BSTX System. See e.g., IEX Rule 3.290, Cboe BZX Rule 3.21.

¹²⁸ 15 U.S.C. 78f(b)(5).

¹²⁹ See *supra* note 1044.

¹³⁰ See Cboe BZX Chapter 6 rules and IEX Chapter 5 rules.

Maintenance and furnishing of books and records;¹³¹ (ii) financial reports;¹³² (iii) net capital compliance;¹³³ (iv) early warning notifications pursuant to Rule 17a-11 under the Exchange Act;¹³⁴ (v) authority of the Chief Regulatory Officer to impose certain restrictions;¹³⁵ (vi) margin;¹³⁶ (vii) day-trading margin;¹³⁷ (viii) customer account information;¹³⁸ (ix) maintaining records of customer complaints;¹³⁹ and (x) disclosure of financial condition.¹⁴⁰

The Exchange believes that the proposed Rule 20000 (Financial and Operational Rules) Series is consistent with Section 6(b)(5) of the Exchange Act¹⁴¹ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by subjecting BSTX Participants to certain recordkeeping,

¹³¹ Proposed Rule 20000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) requires that BSTX Participants comply with current Exchange Rule 1000 (Maintenance, Retention and Furnishing of Books, Records and Other Information) and that BSTX Participants shall submit to the Exchange order, market and transaction data as the Exchange may specify by Information Circular.

¹³² Proposed Rule 20010 (Financial Reports) provides that BSTX Participants shall comply with the requirements of current Exchange Rule 10020 (Financial Reports).

¹³³ Proposed Rule 20020 (Capital Compliance) provides that each BSTX Participant subject to Rule 15c3-1 under the Exchange Act (17 CFR 240.15c3-1) shall comply with such rule and other financial and operational rules contained in the proposed Rule 20000 series.

¹³⁴ 17 CFR 240.17a-11. Proposed Rule 20030 ("Early Warning" Notification) provides that BSTX Participants subject to the reporting or notifications requirements of Rule 17a-11 under the Exchange Act (17 CFR 240.17a-11) or similar "early warning" requirements imposed by other regulators shall provide the Exchange with certain reports and financial statements.

¹³⁵ Proposed Rule 20040 (Power of CRO to Impose Restrictions) generally provides that the Exchange's Chief Regulatory Officer may impose restrictions and conditions on a BSTX Participant subject to the early warning notification requirements under certain circumstances.

¹³⁶ Proposed Rule 20050 (Margin) sets forth the required margin amounts for certain securities held in a customer's margin account.

¹³⁷ Proposed Rule 20060 (Day Trading Margin) sets forth additional requirements with respect to customers that engage in day trading.

¹³⁸ Proposed Rule 20070 (Customer Account Information) requires that BSTX Participants comply with FINRA Rule 4512 as if such rule were part of the Exchange Rules and further clarifies certain cross-references within FINRA Rule 4512.

¹³⁹ Proposed Rule 20080 (Record of Written Customer Complaints) requires that BSTX Participants comply with FINRA Rule 4513 as if such rule were part of the Exchange Rules.

¹⁴⁰ Proposed Rule 20090 (Disclosure of Financial Condition) generally requires that BSTX Participants make available certain information regarding the BSTX Participant's financial condition upon request of a customer.

¹⁴¹ 15 U.S.C. 78f(b)(5).

disclosure, and related requirements designed to ensure that BSTX Participants conduct themselves in a financially responsible manner. For example, proposed Rule 20000 would require BSTX Participants to comply with existing Exchange Rule 1000, which sets forth certain recordkeeping responsibilities and the obligation to furnish these to the Exchange upon request so that the Exchange can appropriately monitor the financial condition of a BSTX Participant and its compliance with applicable regulatory requirements. Similarly, proposed Rule 20050 would set forth the margin requirements that BSTX Participants must retain with respect to customers trading in a margin account to ensure that BSTX Participants are not extending credit to customers in a manner that might put the financial condition of the BSTX Participant in jeopardy. Each of the proposed rules in the Rule 20000 Series (Financial and Operational Rules) is substantially similar to existing rules of other exchanges or incorporates an existing rule of the Exchange or another self-regulatory organization (“SRO”) by reference.

Supervision (Rule 21000 Series)

The Exchange proposes to adopt as its Rule 21000 Series (Supervision), six rules relating to certain supervisory requirements for BSTX Participants that are substantially similar to supervisory rules of other exchanges.¹⁴² The Proposed Rule 21000 Series would specify supervisory requirements with respect to: (i) Enforcing written procedures to appropriately supervise the BSTX Participant’s conduct and compliance with applicable regulatory requirements;¹⁴³ (ii) designation of an individual to carry out written supervisory procedures;¹⁴⁴ (iii) maintenance and keeping of records carrying out the BSTX Participant’s written supervisory procedures;¹⁴⁵ (iv) review of activities of each of a BSTX Participant’s offices, including periodic examination of customer accounts to detect and prevent irregularities or abuses;¹⁴⁶ (v) the prevention of the misuse of material non-public

¹⁴² See Choe BZX Chapter 5 rules. See also IEX Rule 5.150 with respect to proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information).

¹⁴³ Proposed Rule 21000 (Written Procedures).

¹⁴⁴ Proposed Rule 21010 (Responsibility of BSTX Participants) would also require that a copy of a BSTX’s written supervisory procedures be kept in each office and makes clear that final responsibility for proper supervision rests with the BSTX Participant.

¹⁴⁵ Proposed Rule 21020 (Records).

¹⁴⁶ Proposed Rule 21030 (Review of Activities).

information;¹⁴⁷ and (vi) implementation of an anti-money laundering (“AML”) compliance program.¹⁴⁸ These rules are designed to ensure that BSTX Participants are able to appropriately supervise their business activities, review and maintain records with respect to such supervision, and enforce specific procedures relating insider-trading and AML.

The Exchange believes that the proposed Rule 21000 (Supervision) Series is consistent with Section 6(b)(5) of the Exchange Act¹⁴⁹ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants have appropriate supervisory controls in place to carry out their business activities in compliance with applicable regulatory requirements. For example, proposed Rule 21000 (Written Procedures) would require BSTX Participants to enforce written procedures which enable them to supervise the activities of their associated persons and proposed Rule 21010 (Responsibility of BSTX Participants) would require a BSTX Participant to designate a person in each office to carry out written supervisory procedures. Requiring appropriate supervision of a BSTX Participant’s business activities and associated persons would promote compliance with the federal securities laws and other applicable regulatory requirements in furtherance of the protection of investors and the public interest.¹⁵⁰ In addition, each of the rules in the proposed Rule 21000 Series (Supervision) is substantially similar to supervisory rules of other exchanges.¹⁵¹

Miscellaneous Provisions (Rule 22000 Series)

The Exchange proposes to adopt as its Rule 22000 Series (Miscellaneous Provisions), six rules relating to a variety of miscellaneous requirements applicable to BSTX Participants that are

¹⁴⁷ Proposed Rule 21040 (Prevention of the Misuse of Material, Non-Public Information) generally requires BSTX Participants to enforce written procedures designed to prevent misuse of material non-public information and sets forth examples of conduct that would constitute a misuse of material, non-public information.

¹⁴⁸ Proposed Rule 21050 (Anti-Money Laundering Compliance Program). The Exchange already has rules with respect to Exchange Participants enforcing an AML compliance program set forth in Exchange Rule 10070 (Anti-Money Laundering Compliance Program), so proposed Rule 21050 specifies that BSTX Participants shall comply with the requirements of that pre-existing rule.

¹⁴⁹ 15 U.S.C. 78f(b)(5).

¹⁵⁰ *Id.*

¹⁵¹ See *supra* note 142.

substantially similar to rules of other exchanges.¹⁵² These miscellaneous provisions relate to: (i) Comparison and settlement requirements;¹⁵³ (ii) failures to deliver and failures to receive;¹⁵⁴ (iii) forwarding of proxy and other issuer-related materials;¹⁵⁵ (iv) commissions;¹⁵⁶ (v) regulatory services agreements;¹⁵⁷ and (vi) transactions involving Exchange employees.¹⁵⁸ These rules are designed to capture additional regulatory requirements applicable to BSTX Participants, such as setting forth their obligation to deliver proxy materials at the request of an issuer and to incorporate by reference Rule 200–203 of Regulation SHO.¹⁵⁹

The Exchange believes that the proposed Rule 22000 (Miscellaneous Provisions) Series is consistent with Section 6(b)(5) of the Exchange Act¹⁶⁰ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices,

¹⁵² See Choe BZX Chapter 13 rules. See also IEX Rule 6.180 with respect to proposed Rule 22050 (Transactions Involving BOX Employees).

¹⁵³ Proposed Rule 22000 (Comparison and Settlement Requirements) provides that a BSTX Participant that is a member of a registered clearing agency shall implement comparison and settlement procedures as may be required under the rules of such entity. The proposed rule would further provide that, notwithstanding this general provision, the Board may extend or postpone the time of delivery of a BSTX transaction whenever the Board determines that it is called for by the public interest, just and equitable principles of trade or to address unusual conditions. In such a case, delivery will occur as directed by the Board.

¹⁵⁴ Proposed Rule 22010 (Failure to Deliver and Failure to Receive) provides that borrowing and deliveries must be effected in accordance with Rule 203 of Regulation SHO (17 CFR 242.203) and incorporates Rules 200–203 of Regulation SHO by reference into the rule (17 CFR 242.200 through .203).

¹⁵⁵ Proposed Rule 22020 (Forwarding of Proxy and Other Information; Proxy Voting) generally provides that BSTX Participants shall forward proxy materials when requested by an issuer and sets forth certain conditions and limitations for BSTX Participants to give a proxy to vote stock that is registered in its name.

¹⁵⁶ Proposed Rule 22030 (Commissions) provides that the Exchange Rules or practices shall not be construed to allow a BSTX Participant or its associated persons to agree or arrange for the charging of fixed rates commissions for transactions on the Exchange.

¹⁵⁷ Proposed Rule 22040 (Regulatory Service Agreement) provides that the Exchange may enter into regulatory services agreements with other SROs to assist in carrying out regulatory functions, but the Exchange shall retain ultimate legal responsibility for, and control of, its SRO responsibilities.

¹⁵⁸ Proposed Rule 22040 (Transactions Involving Exchange Employees) sets forth conditions and limitations on a BSTX Participant providing loans or supporting the account of an Exchange employee (e.g., promptly obtaining and implementing an instruction from the employee to provide duplicate account statement to the Exchange) in order to mitigate any potential conflicts of interest that might arise from such a relationship.

¹⁵⁹ 17 CFR 242.200 through .203.

¹⁶⁰ 15 U.S.C. 78f(b)(5).

promote just and equitable principles of trade, and protect investors and the public interest by ensuring that BSTX Participants comply with additional regulatory requirements, such as Rule 203 of Regulation SHO¹⁶¹ as provided in proposed Rule 22010 (Failure to Deliver and Failure to Receive), in connection with their participation on BSTX. For example, proposed Rule 22030 (Commissions) prohibits BSTX Participants from charging fixed rates of commissions for transactions on the Exchange consistent with Section 6(e)(1) of the Exchange Act.¹⁶² Similarly, proposed Rule 22050 (Transactions involving Exchange Employees) sets forth certain requirements and prohibitions relating to a BSTX Participant providing certain financial services to an Exchange employee, which the Exchange believes helps prevent potentially fraudulent and manipulative acts and practices and furthers the protection of investors and the public interest.

Trading Practice Rules (Rule 23000 Series)

The Exchange proposes to adopt as its Rule 23000 Series (Trading Practice Rules), 14 rules relating to trading practice requirements for BSTX Participants that are substantially similar to trading practice rules of other exchanges.¹⁶³ The proposed Rule 23000 Series would specify trading practice requirements related to: (i) Market manipulation; (ii) fictitious transactions; (iii) excessive sales by a BSTX Participant; (iv) manipulative transactions; (v) dissemination of false information; (vi) prohibition against trading ahead of customer orders; (vii) joint activity; (viii) influencing data feeds; (ix) trade shredding; (x) best execution; (xi) publication of transactions and changes; (xii) trading ahead of research reports; (xiii) front running of block transactions; and (xiv) a prohibition against disruptive quoting and trading activity. The purpose of the trading practice rules is to set forth standards and rules relating to the trading conduct of BSTX Participants, primarily with respect to prohibiting forms of market manipulation and specifying certain obligations broker-dealers have to their customers, such as the duty of best execution. For example, proposed Rule 23000 (Market Manipulation) sets forth a general prohibition against a BSTX Participant purchasing a security at successively higher prices or sales of a security at

successively lower prices, or to otherwise engage in activity for the purpose of creating or inducing a false, misleading or artificial appearance of activity in such security.¹⁶⁴ Proposed Rule 23010 (Fictitious Transactions) similarly prohibits BSTX Participants from fictitious transaction activity, such as executing a transaction which involves no beneficial change in ownership, and proposed Rule 23020 (Excessive Sales by a BSTX Participant) prohibits a BSTX Participant from executing purchases or sales in any security trading on the Exchange for any account in which it has an interest, which are excessive in view of the BSTX Participant's financial resources or in view of the market for such security.¹⁶⁵ Proposed Rule 23060 (Joint Activity) prohibits a BSTX Participant from directly or indirectly holding any interest or participation in any joint account for buying or selling a security traded on the Exchange unless reported to the Exchange with certain information provided and proposed Rule 23090 (Best Execution) reaffirms BSTX Participants best execution obligations to their customers.¹⁶⁶

Proposed Rule 23050 (Prohibition against Trading Ahead of Customer Orders) is substantially similar to FINRA 5320 and rules adopted by other

¹⁶⁴ Proposed Rule 23030 (Manipulative Transactions) specifies further prohibitions relating to potential manipulation by prohibiting BSTX Participants from, among other things, participating or having any direct or indirect interest in the profits of a manipulative operation or knowingly managing or financing a manipulative operation.

¹⁶⁵ Other proposed rules relating to potential manipulation include: (i) Rule 23040 (Dissemination of False Information), which generally prohibits, consistent with Exchange Rule 3080, BSTX Participants from spreading information that is false or misleading; (ii) Rule 23070 (Influencing Data Feeds), which generally prohibits transactions to influence data feeds; (iii) Rule 23080 (Trade Shredding), which generally prohibits conduct that has the intent or effect of splitting any order into multiple smaller orders for the primary purpose of maximizing remuneration to the BSTX Participant; (iv) Rule 23110 (Trading Ahead of Research Reports), which generally prohibits BSTX Participants from trading based on non-public advance knowledge of a research policy and requires BSTX Participants to enforce policies and procedures to limit information flow from research personnel to trading personnel that might trade on such information; (v) Rule 23120 (Front Running Block Transactions), which incorporates FINRA Rule 5270 as though it were part of the Exchange's Rules; and (vi) Rule 23130 (Disruptive Quoting and Trading Activity Prohibited), which incorporates Exchange Rule 3220 by reference.

¹⁶⁶ In addition, proposed Rule 23100 (Publication of Transactions and Changes) provides that the Exchange will disseminate transaction information to appropriate data feeds, BSTX participants must provide information necessary to facilitate the dissemination of such information, and that an Exchange official shall be responsible for approving corrections to any reports transmitted over data feeds.

exchanges,¹⁶⁷ and generally prohibits BSTX Participants from trading ahead of customer orders unless certain enumerated exceptions are available and requires BSTX Participants to have a written methodology in place governing execution priority to ensure compliance with the Rule. The Exchange proposes to adopt each of the exceptions to the prohibition against trading ahead of customer orders as provided in FINRA Rule 5320 other than the exception related to trading outside of normal market hours, since trading on the Exchange would be limited to regular trading hours.

The Exchange proposes to adopt the order handling procedures requirement in proposed Rule 23050(i) consistent with the rules of other exchanges.¹⁶⁸ Specifically, proposed Rule 23050(i) would provide that a BSTX Participant must make every effort to execute a marketable customer order that it receives fully and promptly and must cross customer orders when they are marketable against each other consistent with the proposed Rule.

The Exchange proposes to adopt a modified version of the exception set forth in FINRA Rule 5320.06 relating to minimum price improvement standards as proposed in Rule 23050(h). Under proposed Rule 23050(h), BSTX Participants would be permitted to execute an order on a proprietary basis when holding an unexecuted limit order in that same security without being required to execute the held limit order provided that they give price improvement of \$0.01 to the unexecuted held limit order. While FINRA Rule 5320.06 sets forth alternate, lower price improvement standards for securities priced below \$1, the Exchange proposes to adopt a uniform price improvement requirement of \$0.01 for Securities traded on the BSTX System consistent with the Exchange's proposed uniform minimum price variant of \$0.01 set forth in proposed Rule 25030.

In addition, the Exchange proposes to adopt an exception for bona fide error transactions as proposed in Rule 25030(g) which would allow a BSTX Participant to trade ahead of a customer order if the trade is to correct a bona fide error, as defined in the rule. This proposed exception is nearly identical to similar exceptions of other exchanges¹⁶⁹ except that other exchange rules also provide an exception whereby firms may submit a proprietary order ahead of a customer order to offset a customer order that is

¹⁶¹ 17 CFR 242.203.

¹⁶² 15 U.S.C. 78ff(e)(1).

¹⁶³ See Cboe BZX Chapter 12 rules.

¹⁶⁷ See e.g., Cboe BZX Rule 12.6.

¹⁶⁸ See e.g., Cboe BZX Rule 12.6.07.

¹⁶⁹ See e.g., Cboe BZX Rule 12.5.05.

in an amount other than a round lot (*i.e.*, 100 shares). The Exchange is not adopting an exception for odd-lot orders under these circumstances because the minimum unit of trading for Securities pursuant to proposed Rule 25020 is one Security. The Exchange believes that there may be a notable amount of trading in amounts of less than 100 Securities (*i.e.*, trading in odd-lot amounts), and the Exchange accordingly does not believe that it is appropriate to allow BSTX Participants to trade ahead of customer orders just to offset an odd-lot customer order.

The Exchange believes that the proposed Rule 23000 Series relating to trading practice rules is consistent with Section 6(b)(5) of the Exchange Act¹⁷⁰ because these proposed rules are designed to prevent fraudulent and manipulative acts and practices that could harm investors and to promote just and equitable principles of trade. The proposed rules in the Rule 23000 Series are substantially similar to the rules of other exchanges and generally include a variety of prohibitions against types of trading activity or other conduct that could potentially be manipulative, such as prohibitions against market manipulation, fictitious transactions, and the dissemination of false information. The Exchange has proposed to exclude certain provisions from, or make certain modifications to, comparable rules of other SROs, as detailed above, in order to account for certain unique aspects related to the proposed trading of Securities. The Exchange believes that it is consistent with applicable requirements under the Exchange Act to exclude these provisions and exceptions because they set forth requirements that would not apply to BSTX Participants trading in Securities and are not necessary for the Exchange to carry out its functions of facilitating Security transactions and regulating BSTX Participants.

Disciplinary Rules (Rule 24000 Series)

With respect to disciplinary matters, the Exchange proposes to adopt Rule 24000 (Discipline and Summary Suspension), which provides that the provisions of the Exchange Rule 11000 Series (Summary Suspension), 12000 Series (Discipline), 13000 Series (Review of Certain Exchange Actions), and 14000 Series (Arbitration) of the Exchange Rules shall be applicable to BSTX Participants and trading on the BSTX System. The Exchange already has Rules pertaining to discipline and suspension of Exchange Participants that it proposes to extend to BSTX

Participants and trading on the BSTX System. The Exchange also proposes to adopt as Rule 24010 a minor rule violation plan with respect to transactions on BSTX.¹⁷¹

Proposed Rule 24000 incorporates by reference existing rules that have already been approved by the Commission.

Trading Rules and the BSTX System (Rule 25000 Series)

Rule 25000—Access to and Conduct on the BSTX Marketplace

The Exchange proposes to adopt Rule 25000 (Access to and Conduct on the BSTX Marketplace) to set forth rules relating to access to the BSTX System and certain conduct requirements applicable to BSTX Participants. Specifically, proposed Rule 25000 provides that only BSTX Participants, including their associated persons, that are approved for trading on the BSTX System shall effect any transaction on the BSTX System. Proposed Rule 25000(b) generally requires that a BSTX Participant maintain a list of authorized traders that may obtain access to the BSTX System on behalf of the BSTX Participant, have procedures in place reasonably designed to ensure that all authorized traders comply with Exchange Rules and to prevent unauthorized access to the BSTX System, and to provide the list of authorized traders to the Exchange upon request. Proposed Rule 25000(c) and (d) restate provisions that are already set forth in Exchange Rule 7000, generally providing that BSTX Participants shall not engage in conduct that is inconsistent with the maintenance of a fair and orderly market or the ordinary and efficient conduct of business, as well as conduct that is likely to impair public confidence in the operations of the Exchange. Examples of such prohibited conduct include failure to abide by a determination of the Exchange, refusal to provide information requested by the Exchange, and failure to adequately supervise employees. Proposed Rule 25000(f) provides the Exchange with authority to suspend or terminate access to the BSTX System under certain circumstances.

The Exchange believes that proposed Rule 25000 is consistent with Section 6(b)(5) of the Exchange Act¹⁷² because it is designed to protect investors and the public interest and promote just and equitable principles of trade by ensuring

that BSTX Participants would not allow for unauthorized access to the BSTX System and would not engage in conduct detrimental to the maintenance of fair and orderly markets.

Rule 25010—Days/Hours

Proposed Rule 25010 sets forth the days and hours during which BSTX would be open for business and during which transactions may be effected on the BSTX System. Under the proposed rule, transactions may be executed on the BSTX System between 9:30 a.m. and 4:00 p.m. Eastern Time. The proposed rule also specifies certain holidays BSTX would not be open (*e.g.*, New Year's Day) and provides that the Chief Executive Officer, President, or Chief Regulatory Officer of the Exchange, or such person's designee who is a senior officer of the Exchange, shall have the power to halt or suspend trading in any Securities, close some or all of BSTX's facilities, and determine the duration of any such halt, suspension, or closing, when such person deems the action necessary for the maintenance of fair and orderly markets, the protection of investors, or otherwise in the public interest.

The Exchange believes that proposed Rule 25010 is designed to protect investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,¹⁷³ by setting forth the days and hours that trades may be effected on the BSTX System and by providing officers of the Exchange with the authority to halt or suspend trading when such officers believe that such action is necessary or appropriate to maintain fair and orderly markets or to protect investors or in the public interest.

Rule 25020—Units of Trading

Proposed Rule 25020 sets forth the minimum unit of trading on the BSTX System, which shall be one Security. The Exchange believes that proposed Rule 25020 is consistent with Section 6(b)(5) of the Exchange Act¹⁷⁴ because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum unit of trading of Securities on the BSTX System. In addition, other exchanges similarly provide that the minimum unit of trading is one share for their market and/or for certain securities.¹⁷⁵

¹⁷¹ The proposed additions to the Exchange's minor rule violation plan pursuant to proposed Rule 24010 are discussed below in Part IV.

¹⁷² 15 U.S.C. 78f(b)(5).

¹⁷³ 15 U.S.C. 78f(b)(5).

¹⁷⁴ 15 U.S.C. 78f(b)(5).

¹⁷⁵ See *e.g.*, IEX Rule 11.180.

¹⁷⁰ 15 U.S.C. 78f(b)(5).

Rule 25030—Minimum Price Variant

Proposed Rule 25030 provides the minimum price variant for Securities shall be \$0.01. The Exchange believes that proposed Rule 25030 is consistent with Section 6(b)(5) of the Exchange Act because it fosters cooperation and coordination of persons engaged in facilitating transactions in securities by specifying the minimum price variant for Securities and promotes compliance with Rule 612 of Regulation NMS.¹⁷⁶ Under Rule 612 of Regulation NMS, the Exchange is, among other things, prohibited from displaying, ranking or accepting from any person a bid or offer or order in an NMS stock in an increment smaller than \$0.01 if that bid or offer or order is priced equal to or greater than \$1.00 per share. Where a bid or offer or order is priced less than or equal to \$1.00 per share, the minimum acceptable increment is \$0.0001. Proposed Rule 25030 sets a uniform minimum price variant for all Securities of \$0.01 irrespective of whether the Security is trading below \$1.00.

Rule 25040—Opening the Marketplace

Proposed Rule 25040 sets forth the opening process for the BSTX System for BSTX-listed Securities and non-BSTX-listed securities. For BSTX-listed Securities, the Exchange proposes to allow for order entry to commence at 8:30 a.m. ET during the Pre-Opening Phase. Proposed Rule 25040(a) provides that orders will not execute during the Pre-Opening Phase, which lasts until regular trading hours begin at 9:30 a.m. ET.¹⁷⁷ Similar to how the Exchange's opening process works for options trading, BSTX would disseminate a theoretical opening price ("TOP") to BSTX Participants, which is the price at which the opening match would occur at a given moment in time.¹⁷⁸ Under the proposed rule, the Exchange will also broadcast other information during the Pre-Opening Phase. Specifically, in addition to the TOP, the Exchange would disseminate pursuant to proposed Rule 25040(a)(3): (i) "Paired Securities," which is the quantity of Securities that would execute at the TOP; (ii) the "Imbalance Quantity," which is the number of Securities that may not be matched with other orders at the TOP at the time of dissemination; and (iii) the "Imbalance Side," which is

the buy/sell direction of any imbalance at the time of dissemination (collectively, with the TOP, "Broadcast Information").¹⁷⁹ Broadcast Information would be recalculated and disseminated every time a new order is received or cancelled and where such event causes the TOP or Paired Securities to change. With respect to priority during the opening match for all Securities, consistent with proposed Rule 25080 (Execution and Price/Time Priority), among multiple orders at the same price, execution priority during the opening match is determined based on the time the order was received by the BSTX System.

Consistent with the manner in which the Exchange opens options trading, the BSTX System would determine a single price at which a BSTX-listed Security would be opened by calculating the optimum number of Securities that could be matched at a price, taking into consideration all the orders on the BSTX Book.¹⁸⁰ Proposed Rule 25040(a)(6) provides that the opening match price is the price which results in the matching of the highest number of Securities. If two or more prices would satisfy this maximum quantity criteria, the price leaving the fewest resting Securities in the BSTX Book will be selected at the opening price and where two or more prices would satisfy the maximum quantity criteria and leave the fewest Securities in the BSTX Book, the price closest to the previous day's closing price will be selected.¹⁸¹ The opening price must also be within the "Collar Price Range" as set forth in proposed Rule 25040(a)(5), which is designed to ensure that a Security opens in an fair and orderly manner and under market conditions where there is sufficient quotation interest (*e.g.*, a national best bid and offer), the market is not crossed, and where the opening price will not drastically depart from the market at the time of the auction or the preceding day's closing price.¹⁸² Unexecuted trading interest during the opening match will move to the BSTX Book and will preserve price time

priority.¹⁸³ When the BSTX System cannot determine an opening price of a BSTX-listed Security at the start of regular trading hours, BSTX would nevertheless open the Security for trading and move all trading interest received during the Pre-Opening Phase to the BSTX Book.¹⁸⁴

For initial public offerings of Securities ("Initial Security Offerings"), the process would be generally the same as regular market openings. However, in advance of an Initial Security Offering auction ("Initial Security Offering Auction"), the Exchange shall announce a "Quote-Only Period" that shall be between fifteen (15) and thirty (30) minutes plus a short random period prior to the Initial Security Offering Auction.¹⁸⁵ The Quote-Only Period may be extended in certain cases.¹⁸⁶ As with regular market openings the Exchange would disseminate Broadcast Information at the commencement of the Quote Only Period, and Broadcast Information would be re-calculated and disseminated every time a new order is received or cancelled and where such event causes the TOP price or Paired Securities to change.¹⁸⁷ In the event of any extension to the Quote-Only Period or a trading pause, the Exchange will notify market participants regarding the circumstances and length of the extension.¹⁸⁸ Orders will be matched and executed at the conclusion of the Quote-Only Period, rather than at 9:30 a.m. Eastern Time.¹⁸⁹ Following the initial cross at the end of the Quote-Only Period wherein orders will execute based on price/time priority consistent with proposed Rule 25080, the Exchange will transition to normal trading pursuant to proposed Rule 25040(a)(6).¹⁹⁰

¹⁸³ See proposed Rule 25040(a)(7).

¹⁸⁴ *Id.*

¹⁸⁵ See proposed Rule 25040(b)(1).

¹⁸⁶ Such cases are when: (i) There is no TOP; (ii) the underwriter requests an extension; (iii) the TOP moves the greater of 10% or fifty (50) cents in the fifteen (15) seconds prior to the initial cross; or (iv) in the event of a technical or systems issue at the Exchange that may impair the ability of BSTX Participants to participate in the Initial Security Offering or of the Exchange to complete the Initial Security Offering. See proposed Rule 25040(b)(2).

¹⁸⁷ See proposed Rule 25040(b)(3).

¹⁸⁸ See proposed Rule 25040(b)(4). The Exchange also proposes that if a trading pause is triggered by the Exchange or if the Exchange is unable to reopen trading at the end of the trading pause due to a systems or technology issue, the Exchange will immediately notify the single plan processor responsible for consolidation of information for the security pursuant to Rule 603 of Regulation NMS under the Securities Exchange Act of 1934. *Id.*

¹⁸⁹ See proposed Rule 25040(b)(5).

¹⁹⁰ As with the regular opening process, orders marked IOC submitted during the Pre-Opening Phase of an Initial Security Offering Auction would be rejected. See proposed Rule 25040(b)(6).

¹⁷⁹ Pursuant to proposed Rule 25040(a)(3), any orders which are at a better price (*i.e.*, bid higher or offer lower) than the TOP would be shown only as a total quantity on the BSTX Book at a price equal to the TOP.

¹⁸⁰ See proposed Rule 25040(a)(4)(ii).

¹⁸¹ With respect to an initial public offering of a Security where there is no previous day's closing price, the opening price would be the price assigned to the Security by the underwriter for the offering, referred to as the "Initial Security Offering Reference Price." See Proposed Rule 25040(a)(5)(ii)(3).

¹⁸² See proposed Rule 25040(a)(5). The Exchange notes that the auction collars proposed in Rule 25040(a)(5) are substantially similar to those of Cboe BZX. See Cboe BZX Rule 11.23.

¹⁷⁶ 17 CFR 242.611.

¹⁷⁷ As a result, orders marked IOC submitted during the Pre-Opening Phase would be rejected by the BSTX System. See proposed Rule 25040(a)(7).

¹⁷⁸ The TOP can only be calculated where the BSTX Book is crossed during the Pre-Opening Phase. See proposed Rule 25040(a)(2).

The Exchange also proposes a process for reopening trading following a Limit Up-Limit Down Halt or trading pause (“Halt Auctions”). For Halt Auctions, the Exchange proposes that in advance of reopening, the Exchange shall announce a Quote-Only Period that shall be five (5) minutes prior to the Halt Auction.¹⁹¹ This Quote-Only Period may be extended in certain circumstances.¹⁹² The Exchange proposes to disseminate the same Broadcast Information as it does for an Initial Security Offering Auction and would similarly provide notification of any extension to the quote-only period as with an Initial Security Offering Auction.¹⁹³ The transition to normal trading would also occur in the same manner as Initial Security Offering Auctions, as described above.¹⁹⁴

The Exchange also proposes to adopt certain contingency procedures in proposed Rule 25040(d) that would provide that when a disruption occurs that prevents the execution of an Initial Security Offering Auction the Exchange will publicly announce the Quote-Only Period for the Initial Security Offering Auction, and the Exchange will then cancel all orders on the BSTX Book and disseminate a new scheduled time for the Quote-Only Period and opening match.¹⁹⁵ Similarly, when a disruption occurs that prevents the execution of a Halt Auction, the Exchange will publicly announce that no Halt Auction will occur, and all orders in the halted Security on the BSTX Book will be canceled after which the Exchange will

open the Security for trading without an auction.¹⁹⁶

The opening process with respect to non-BSTX-listed securities is set forth in proposed Rule 25040(e). Pursuant to that Rule, BSTX Participants who wish to participate in the opening process may submit orders and quotes for inclusion in the BSTX Book, but such orders and quotes cannot execute until the termination of the Pre-Opening Phase (“Opening Process”). Orders that are canceled before the Opening Process will not participate in the Opening Process. The Exchange will attempt to perform the Opening Process and will match buy and sell orders that are executable at the midpoint of the NBBO.¹⁹⁷ Generally, the price of the Opening Process will be at the midpoint of the first NBBO subsequent to the first two-sided quotation published by the listing exchange after 9:30:00 a.m. Eastern Time. Pursuant to proposed Rule 25040(e)(4), if the conditions to establish the price of the Opening Process set forth above do not occur by 9:45:00 a.m. Eastern Time, orders will be handled in time sequence, beginning with the order with the oldest time stamp, and will be placed on the BSTX Book cancelled, or executed in accordance with the terms of the order. A similar process will occur for reopening a non-BSTX-listed security subject to a halt.¹⁹⁸ The proposed opening process for Securities listed on another exchange serves as a placeholder in anticipation of other exchanges eventually listing and trading Securities, or the equivalent thereof, given that there are no other exchanges currently trading Securities. The proposed process for opening Securities listed on another exchange is similar to existing exchange rules governing the opening of trading of a security listed on another exchange.¹⁹⁹

Consistent with Section 6(b)(5) of the Exchange Act,²⁰⁰ the Exchange believes that the proposed process for opening trading in BSTX-listed Securities and Securities listed on other exchanges will promote just and equitable principles of trade and will help perfect the

mechanism of a free and open market by establishing a uniform process to determine the opening price of Securities.²⁰¹ Proposed Rule 25040 provides a mechanism by which BSTX Participants may submit orders in advance of the start of regular trading hours, perform an opening cross, and commence regular hours trading in Securities listed on BSTX or otherwise. Where an opening cross is not possible in a BSTX-listed Security, the Exchange will proceed by opening regular hours trading in the Security anyway, which is consistent with the manner in which other exchanges open trading in securities.²⁰² With respect to initial public offerings of Securities and openings after a Limit Up-Limit Down halt or trading pause, BSTX proposes to use a process with features similar to its normal opening process. There are a variety of different ways in which an exchange can open trading in securities, including with respect to an initial public offering of a Security, and the Exchange believes that proposed Rule 25040 provides a simple and clear method for opening transactions that is consistent with the protection of investors and the public interest.²⁰³ Additionally, proposed Rule 25040 applies to all BSTX Participants in the same manner and is therefore not designed to permit unfair discrimination among BSTX Participants.

Rule 25050—Trading Halts

BSTX proposes to adopt rules relating to trading halts²⁰⁴ that are substantially

¹⁹¹ See proposed Rule 25040(c)(1). Orders marked IOC submitted during the Quote-Only Period would be rejected. In addition, Halt Auctions would be subject to the proposed Halt Auction Collar, as set forth in proposed Rule 25040(c)(2)(i) and (ii). These proposed collars for Halt Auctions are substantially similar to those provided by Cboe BZX, and are designed to make sure that the Exchange is able to reopen trading in a Security in a fair and orderly manner. See Cboe BZX Rule 11.23(d). To the extent an Halt Auction would occur at an “Impermissible Price” (i.e., a price outside of the proposed Halt Auction collars), the Exchange would extend the period of Halt Auction and gradually expand the scope of the collar price range over time until it is able to re-open trading in the Security in a manner consistent with proposed Rule 25040(c)(2).

¹⁹² See proposed Rule 25040(c)(2). The Quote-Only Period shall be extended for an additional five (5) minutes should a Halt Auction be unable to be performed due to the absence of a TOP (“Initial Extension Period”). After the Initial Extension Period, the Exchange proposes that the Quote-Only Period shall be extended for additional five (5) minute periods should a Halt Auction be unable to be performed due to absence of a TOP (“Additional Extension Period”) until a Halt Auction occurs. Under the proposed Rule, the Exchange shall attempt to conduct a Halt Auction during the course of each Additional Extension Period. *Id.*

¹⁹³ See proposed Rule 25040(c)(3)–(5).

¹⁹⁴ *Id.*

¹⁹⁵ See proposed Rule 25040(d)(1).

¹⁹⁶ See proposed Rule 25040(d)(2). The Exchange notes that these contingency procedures are substantially similar to those of another exchange (see e.g., IEX Rule 11.350(c)(4)) and are designed to ensure that the Exchange has appropriate mechanisms in place to address possible disruptions that may arise in an Initial Security Offering Auction or Halt Auction, consistent with the protection of investors and the public interest pursuant to Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

¹⁹⁷ See proposed Rule 25040(e)(2).

¹⁹⁸ See proposed Rule 25040(e)(5).

¹⁹⁹ See e.g., Cboe BZX Rule 11.24.

²⁰⁰ 15 U.S.C. 78f(b)(5).

²⁰¹ The Exchange has not proposed to operate a closing auction at this time. As a result, the closing price of a Security on BSTX would be the last regular way transaction occurring on BSTX, which the Exchange believes is a simple and fair way to establish the closing price of a Security that does not permit unfair discrimination among customers, issuers, or broker-dealers consistent with Section 6(b)(5) of the Exchange Act. *Id.* This proposed process is consistent with the overall proposed simplified market structure for BSTX, which does not include a variety of order types offered by other exchanges such as market-on-close and limit-on-close orders. The Exchange believes that a simplified market structure, including the proposed manner in which a closing price would be determined, promotes the public interest and the protection of investors consistent with Section 6(b)(5) of the Exchange Act through reduced complexity. *Id.*

²⁰² See e.g., BOX Rule 7070.

²⁰³ The Exchange notes that its proposed opening, Initial Security Offering Auction, and Halt Auction processes are substantially similar to those of another exchange. See Cboe BZX Rule 11.23. The key differences between the Exchange’s proposed processes and those of the Cboe BZX exchange are that the Exchange has substantially fewer order types, which make its opening process less complex.

²⁰⁴ The Exchange notes that rules on opening trading for non-BSTX-listed security are set forth in proposed Rule 25040(e).

similar to other exchange rules adopted in connection with the NMS Plan to Address Extraordinary Market Volatility (“LULD Plan”), with certain exceptions that reflect Exchange functionality. BSTX intends to join the LULD Plan prior to the commencement of trading Securities. Below is an explanation of BSTX’s approach to certain categories of orders during a trading halt:

- *Short Sales*—BSTX cancels all orders on the book during a halt and rejects any new orders, so rules relating to the repricing of short sale orders during a trading halt that certain other exchanges have adopted have been omitted.
- *Pegged Orders*—BSTX would not support pegged orders, at least initially, so rules relating to pegged orders during a trading halt have been omitted.
- *Routable Orders*—Pursuant to proposed Rule 25130, the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange (rather than routing such order or quotation), and therefore rules relating to handling of routable orders during a trading halt have been omitted.
- *Limit Orders*—Because BSTX would cancel resting order interest and reject incoming orders during a trading halt, specific rules relating to the repricing of limit-priced interest that certain other exchanges have adopted have been omitted.²⁰⁵
- *Auction Orders, Market Orders, and FOK Orders*—BSTX would not support these order types, at least initially, so rules relating to these order types during a trading halt have been omitted.²⁰⁶

Pursuant to proposed Rule 25050(d), the Exchange would cancel all resting orders in a non-BSTX listed security subject to a trading halt, reject any incoming orders in that Security, and will only resume accepting orders following a broadcast message to BSTX Participants indicating a forthcoming re-opening of trading.²⁰⁷

BSTX believes that it is in the public interest and furthers the protection of investors, consistent with Section 6(b)(5) of the Exchange Act²⁰⁸ to provide for a mechanism to halt trading in Securities during periods of extraordinary market volatility consistent with the LULD Plan. However, the Exchange has excluded rules relating to order types and other aspects of the LULD Plan that would not

be supported by the Exchange, such as market orders and auction orders. The Exchange has also reserved the right in proposed Rule 25050(f) to halt or suspend trading in other circumstances where the Exchange deems it necessary to do so for the protection of investors and in the furtherance of the public interest.

The Exchange believes that canceling resting order interest during a trading halt and rejecting incoming orders received during the trading halt is consistent with Section 6(b)(5) of the Exchange Act²⁰⁹ because it is not designed to permit unfair discrimination among BSTX Participants. The orders and trading interest of all BSTX Participants would be canceled in the event of a trading halt and each BSTX Participant would be required to resubmit any orders they had resting on the order book.

Rule 25060—Order Entry

Proposed Rule 25060 sets forth the manner in which BSTX Participants may enter orders to the BSTX System. The BSTX System would initially only support limit orders.²¹⁰ Orders that do not designate a limit price would be rejected.²¹¹ The BSTX System would also only support two time-in-force (“TIF”) designations initially: (i) DAY; and (ii) immediate or cancel (“IOC”). DAY orders will queue during the Pre-Opening Phase, may trade during regular market hours, and, if unexecuted at the close of the trading day (4:00 p.m. ET), are canceled by the BSTX System.²¹² All orders are given a default TIF of DAY. BSTX Participants may also designate orders as IOC, which designation overrides the default TIF of DAY. IOC orders are not accepted by the BSTX System during the Pre-Opening Phase. During regular trading hours, IOC orders will execute in whole or in part immediately upon receipt by the BSTX System. The BSTX System will not support modification of resting orders. To change the price or quantity of an order resting on the BSTX Book, a BSTX Participant must cancel the resting order and submit a new order, which will result in a new time stamp for purposes of BSTX Book priority. In addition, all orders on BSTX will be displayed, and

²⁰⁹ *Id.*

²¹⁰ The BSTX System will also accept incoming Intermarket Sweep Orders (“ISO”) pursuant to proposed Rule 25060(c)(2). ISOs must be limit orders, are ineligible for routing, may be submitted with a limit price during Regular Trading Hours, and must have a time-in-force of IOC. Proposed Rule 25060(c)(2) is substantially similar to rules of other national securities exchanges. See *e.g.*, Cboe BZX Rule 11.9(d).

²¹¹ Proposed Rule 25060(c)(1).

²¹² Proposed Rule 25060(d)(1).

the BSTX System will not support hidden orders or undisplayed liquidity, as set forth in proposed Rule 25100. The Exchange has also proposed an additional order parameter for BSTX Participants to indicate a preference for T+0 or T+1 settlement, as previously described in Item 3, Part II.I.

Consistent with Section 6(b)(5) of the Exchange Act,²¹³ the Exchange believes that the proposed order entry rules will promote just and equitable principles of trade and help perfect the mechanism of a free and open market by establishing the types of orders and modifiers that all BSTX Participants may use in entering orders to the BSTX System. Because these order types and TIFs are available to all BSTX Participants, the proposed rule does not unfairly discriminate among market participants, consistent with Section 6(b)(5) of the Exchange Act. The proposed rule sets forth a very simple exchange model whereby there is only one order type—limit orders—and two TIFs. Upon the initial launch of BSTX, there will be no hidden orders, price sliding, pegged orders, or other order type features that add complexity. The Exchange believes that creating a simplified exchange model is designed to protect investors and is in the public interest because it reduces complexity, thereby helping market participants better understand how orders would operate on the BSTX System.

Rule 25070—Audit Trail

Proposed Rule 25070 (Audit Trail) is designed to ensure that BSTX Participants provide the Exchange with information to be able to identify the source of a particular order and other information necessary to carry out the Exchange’s oversight functions. The proposed rule is substantially similar to existing BOX Rule 7120 but eliminates certain information unique to orders for options contracts (*e.g.*, exercise price) because Securities are equity securities. The proposed rule also provides that BSTX Participants that employ an electronic order routing or order management system that complies with Exchange requirements will be deemed to comply with the Rule if the required information is recorded in an electronic format. The proposed rule also specifies that order information must be kept for no less than three years and that where specific customer or account number information is not provided to the Exchange, BSTX Participants must maintain such information on their books and records.

The Exchange believes that proposed Rule 25070 is designed to protect

²¹³ 15 U.S.C. 78f(b)(5).

²⁰⁵ See *e.g.*, Cboe BZX 11.18(e)(5)(B).

²⁰⁶ IOC orders would be handled pursuant to proposed Rule 25050(g)(5).

²⁰⁷ Trading would resume pursuant to proposed Rule 25040(e)(5). See proposed Rule 25050(g)(7).

²⁰⁸ 15 U.S.C. 78f(b)(5).

investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act,²¹⁴ because it will provide the Exchange with information necessary to carry out its oversight role. Without being able to identify the source and terms of a particular order, the Exchange's ability to adequately surveil its market, with or through another SRO, for trading inconsistent with applicable regulatory requirements would be impeded. In order to promote compliance with Rule 201 of Regulation SHO, proposed Rule 25080(b)(3) provides that when a short sale price test restriction is in effect, the execution price of the short sale order must be higher than (*i.e.*, above) the best bid, unless the sell order is marked "short exempt" pursuant to Regulation SHO.

Rule 25080—Execution and Price Time Priority

Proposed Rule 25080 governs the execution of orders on the BSTX System, providing a price-time priority model. The proposed rule provides that orders of BSTX Participants shall be ranked and maintained in the BSTX Book according to price-time priority, such that within each price level, all orders shall be organized by the time of entry. The proposed rule further provides that sell orders may not execute a price below the best bid in the marketplace and buy orders cannot execute at a price above the best offer in the marketplace. Further, the proposed rule ensures compliance with Regulation SHO, Regulation NMS, and the LULD Plan, in a manner consistent with the rulebooks of other national securities exchanges.²¹⁵

The Exchange believes that proposed Rule 25080 is consistent with Section 6(b)(5) of the Exchange Act²¹⁶ because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by setting forth the order execution priority scheme for Security transactions. Numerous other exchanges similarly operate a price-time priority structure for effecting transactions. The proposed rule also does not permit unfair discrimination among BSTX Participants because all BSTX Participants are subject to the same price-time priority structure. In addition, the Exchange believes that specifying in proposed Rule 25080(b)(3) that execution of short sale orders when a short sale price test restriction is in

effect must occur at a price above the best bid unless the order is market "short exempt," is consistent with the Exchange Act because it is intended to promote compliance with Regulation SHO in furtherance of the protection of investors and the public interest.

Rule 25090—BSTX Risk Controls

Proposed Rule 25090 sets forth certain risk controls applicable to orders submitted to the BSTX System. The proposed risk controls are designed to prevent the submission and execution of potentially erroneous orders. Under the proposed rule, the BSTX System will reject orders that exceed a maximum order size, as designated by each BSTX Participant. The Exchange, however, may set default values for this control. The proposed rule also provides a means by which all of a BSTX Participant's orders will be canceled in the event that the BSTX Participant loses its connection to the BSTX System. Proposed Rule 25090(c) provides a risk control that prevents incoming limit orders from being accepted by the BSTX System if the order's price is more than a designated percentage away from the National Best Bid or Offer in the marketplace. Proposed Rule 25090(d) provides a maximum order rate control whereby the BSTX System will reject an incoming order if the rate of orders received by the BSTX System exceeds a designated threshold. With respect to both of these risk controls (price protection for limit orders and maximum order rate), BSTX Participants may designate the appropriate thresholds, but the Exchange may also provide default values and mandatory minimum levels.

The Exchange believes the proposed risk controls in Rule 25090 are consistent with Section 6(b)(5) of the Exchange Act²¹⁷ because they are designed to help prevent the execution of potentially erroneous orders, which furthers the protection of investors and the public interest. Among other things, erroneous orders can be disruptive to the operation of an exchange marketplace, can lead to temporary price dislocations, and can hinder price formation. The Exchange believes that offering configurable risk controls to BSTX Participants, along with default values where a BSTX Participant has not designated its desired controls, will protect investors by reducing the number of erroneous executions on the BSTX System and will remove impediments to and perfect the mechanism of a free and open market

system. The proposed risk controls are also similar to existing risk controls provided by the Exchange to Options Participants.

Rule 25100—Trade Execution, Reporting, and Dissemination of Quotations

Proposed Rule 25100 provides that the Exchange shall collect and disseminate last sale information for transactions executed on the BSTX system. The proposed rule further provides that the aggregate of the best-ranked non-marketable Limit Order(s), pursuant to Rule 25080, to buy and the best-ranked non-marketable Limit Order(s) to sell in the BSTX Book shall be collected and made available to quotation vendors for dissemination. Proposed Rule 25100 further provides that the BSTX System will operate as an "automated market center" within the meaning of Regulation NMS and will display "automated quotations" at all times except in the event of a system malfunction.²¹⁸ In addition, the proposed Rule specifies that the Exchange shall identify all trades executed pursuant to an exception or an exemption of Regulation NMS. The Exchange will disseminate last sale and quotation information pursuant to Rule 602 of Regulation NMS and will maintain connectivity to the securities information processors for dissemination of quotation information.²¹⁹ BSTX Participants may obtain access to this information through the securities information processors.

Proposed Rule 25100(d) provides that executions that occur as a result of orders matched against the BSTX Book, pursuant to Rule 25080, shall clear and settle pursuant to the rules, policies, and procedures of a registered clearing agency. Rule 25100(e) obliges BSTX Participants, or a clearing member/participant clearing on behalf of a BSTX Participant to honor trades effected on the BSTX System on the scheduled settlement date, and the Exchange shall not be liable for the failure of BSTX

²¹⁸ 17 CFR 242.600(b)(4) and (5). The general purpose of an exchange being deemed an "automated trading center" displaying "automated quotations" relates to whether or not an exchange's quotations may be considered protected under Regulation NMS. See Exchange Act Release No. 51808, 70 FR 37495, 37520 (June 29, 2005). Other trading centers may not effect transactions that would trade through a protected quotation of another trading center. The Exchange believes that it is useful to specify that it will operate as an automated trading center at this time to make clear to market participants that it is not operating a manual market with respect to Securities.

²¹⁹ 17 CFR 242.602.

²¹⁴ 15 U.S.C. 78f(b)(5).

²¹⁵ See *e.g.*, Choe BZX Rule 11.13(a)(2)–(3) governing regular trading hours.

²¹⁶ 15 U.S.C. 78f(b)(5).

²¹⁷ 15 U.S.C. 78f(b)(5).

Participants to satisfy these obligations.²²⁰

The Exchange believes that proposed Rule 25100 is consistent with Section 6(b)(5) of the Exchange Act²²¹ because it will foster cooperation and coordination with persons processing information with respect to, and facilitating transactions in securities by requiring the Exchange to collect and disseminate quotation and last sale transaction information to market participants. BSTX Participants will need last sale and quotation information to effectively trade on the BSTX System, and proposed Rule 25100 sets forth the requirement for the Exchange to provide this information as well as the information to be provided. The proposed rule is similar to rules of other exchanges relating to the dissemination of last sale and quotation information. The Exchange believes that requiring BSTX Participants (or firms clearing trades on behalf of other BSTX Participants) to honor their trade obligations on the settlement date is consistent with the Exchange Act because it will foster cooperation with persons engaged in clearing and settling transactions in Securities, consistent with Section 6(b)(5) of the Exchange Act.²²²

Rule 25110—Clearly Erroneous

Proposed Rule 25110 sets forth the manner in which BSTX will resolve clearly erroneous executions that might occur on the BSTX System and is substantially similar to comparable clearly erroneous rules on other exchanges. Under proposed Rule 25100, transactions that involve an obvious error such as price or quantity, may be canceled after review and a determination by an officer of BSTX or such other employee designee of BSTX (“Official”).²²³ BSTX Participants that believe they submitted an order erroneously to the Exchange may request a review of the transaction, and must do so within thirty (30) minutes of execution and provide certain information, including the factual basis for believing that the trade is clearly erroneous, to the Official.²²⁴ Under

²²⁰ These proposed provisions are substantially similar to those of exchanges. See *e.g.*, Nasdaq Rule 4627 and IEX Rule 10.250.

²²¹ 15 U.S.C. 78f(b)(5).

²²² *Id.*

²²³ A transaction made in clearly erroneous error and canceled by both parties or determined by the Exchange to be clearly erroneous would be removed from the Consolidated Tape. Proposed Rule 25110(a).

²²⁴ Proposed Rule 25110(b). The Official may also consider certain “outlier” transactions on a case by case basis where the request for review is submitted after 30 minutes but no longer than sixty (60)

proposed Rule 25100(c), an Official may determine that a transaction is clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the “Reference Price”²²⁵ by an amount that equals or exceeds specified “Numerical Guidelines.”²²⁶ The Official may consider additional factors in determining whether a transaction is clearly erroneous, such as whether trading in the security had recently halted or overall market conditions.²²⁷ Similar to other exchanges’ clearly erroneous rules, the Exchange may determine that trades are clearly erroneous in certain circumstances such as during a system disruption or malfunction, on a BSTX Officer’s (or senior employee designee) own motion, during a trading halt, or with respect to a series of transactions over multiple days.²²⁸ Under proposed Rule 25110(e)(2), BSTX Participants affected by a determination by an Official may appeal this decision to the Chief Regulatory Officer of BSTX, provided such appeal is made within thirty (30) minutes after the party making the appeal is given notice of the initial determination being appealed.²²⁹ The Chief Regulatory Officer’s determination shall constitute final action by the Exchange on the matter at issue pursuant to proposed Rule 25110(e)(2)(ii).

The Exchange believes that proposed Rule 25110 is consistent with Section 6(b)(5) of the Exchange Act,²³⁰ because

minutes after the transaction. Proposed Rule 2511(d).

²²⁵ The Reference Price would be equal to the consolidated last sale immediately prior to the execution(s) under review except for in circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest. Proposed Rule 25110(c)(1).

²²⁶ The proposed Numerical Guidelines are 10% where the Reference Price ranges from \$0.00 to \$25.00, 5% where the Reference Price is greater than \$25.00 up to and including \$50.00, and 3% where the Reference Price ranges is greater than \$50. Proposed Rule 25110(c)(1).

²²⁷ Proposed Rule 25110(c)(1).

²²⁸ See proposed Rule 25110(f)–(j). These provisions are virtually identical to similar provisions of other exchanges’ clearly erroneous rules other than by making certain administrative edits (*e.g.*, replacing the term “security” with “Security”).

²²⁹ Determinations by an Official pursuant to proposed Rule 25110(f) relating to system disruptions or malfunctions may not be appealed if the Official made a determination that the nullification of transactions was necessary for the maintenance of a fair and orderly market or the protection of investors and the public interest. Proposed Rule 25110(d)(2).

²³⁰ 15 U.S.C. 78f(b)(5).

it would promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by setting forth the process by which clearly erroneous trades on the BSTX System may be identified and remedied. Proposed Rule 25110 would apply equally to all BSTX Participants and is therefore not designed to permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act.²³¹ The proposed rule is substantially similar to the clearly erroneous rules of other exchanges.²³² For example, proposed Rule 25110 does not include provisions related to clearly erroneous transactions for routed orders because orders for Securities will not route to other exchanges.²³³ Securities would also only trade during regular trading hours (*i.e.*, 9:30 a.m. ET to 4:00 p.m. ET), so provisions from comparable exchange rules relating to clearly erroneous executions occurring outside of regular trading hours have been excluded. Proposed Rule 25110 also excludes provisions from comparable clearly erroneous rules of certain other exchanges relating to clearly erroneous executions in unlisted trading privileges securities that are subject to an initial public offering.²³⁴

The Exchange believes that its proposed process for BSTX Participants to appeal clearly erroneous execution determinations made by an Exchange Official pursuant to proposed Rule 25110 to the Chief Regulatory Officer of BSTX is consistent with Section 6(b)(5) of the Exchange Act²³⁵ because it

²³¹ *Id.*

²³² See *e.g.*, Cboe BZX Rule 11.17. Similar to other exchanges’ comparable rules, proposed Rule 25110 provides BSTX with the ability to determine clearly erroneous trades that result from a system disruption or malfunction, a BSTX Official acting on his or her own motion, trading halts, multi-day trading events, multi-stock events involving five or more (but less than twenty) securities whose executions occurred within a period of five minutes or less, multi-stock events involving twenty or more securities whose executions occurred within a period of five minutes or less, securities subject to the LULD Plan, and for leveraged ETP Securities.

²³³ Other exchange clearly erroneous rules reference removing trades from the Consolidated Tape. Because Security transactions would be reported pursuant to a separate transaction reporting plan, proposed Rule 25110 eliminates references to the “Consolidated Tape” and provides that clearly erroneous Security transactions will be removed from “all relevant data feeds disseminating last sale information for Security transactions.” See proposed Rule 25110(a).

²³⁴ The Exchange notes that not all equities exchanges have a provision with respect to trade nullification for UTP securities that are the subject of an initial public offering. See IEX Rule 11.270.

²³⁵ 15 U.S.C. 78f(b)(5).

promotes just and equitable principles of trade and fosters cooperation and coordination with persons regulating, settling, and facilitating transactions in securities by providing a clear and expedient process to appeal determinations made by an Official. BSTX Participants benefit from having a quick resolution to potentially clearly erroneous executions and giving the Chief Regulatory Officer discretion to decide any appeals of an Official's determination provides an efficient means to resolve potential appeals that applies equally to all BSTX Participants and therefore does not permit unfair discrimination among BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. The Exchange notes that, with respect to options trading on the Exchange, the Exchange's Chief Regulatory Officer similarly has sole authority to overturn or modify obvious error determinations made by an Exchange Official and that such determination constitutes final Exchange action on the matter at issue.²³⁶ In addition, proposed Rule 25110(e)(2)(iii) provides that any determination made by an Official or the Chief Regulatory Officer of BSTX under proposed Rule 25110 shall be rendered without prejudice as to the rights of the parties to the transaction to submit their dispute to arbitration. Accordingly, there is an additional safeguard in place for BSTX Participants to seek further review of the Exchange's clearly erroneous determination.

To the extent Securities become tradeable on other national securities exchanges or other changes arise that may necessitate changes to proposed Rule 25110 to conform more closely with the clearly erroneous execution rules of other exchanges, the Exchange intends to implement changes as necessary through a proposed rule change filed with the Commission pursuant to Section 19 of the Exchange Act²³⁷ at such future date.

Rule 25120—Short Sales

Proposed Rule 25120 sets forth certain requirements with respect to short sale orders submitted to the BSTX System that is virtually identical to similar rules on other exchanges.²³⁸ Specifically, proposed Rule 25120 requires BSTX Participants to appropriately mark orders as long, short, or short exempt and provides that the BSTX System will not execute or display a short sale order not marked short exempt with respect to

a "covered security"²³⁹ at a price that is less than or equal to the current national best bid if the price of that security decreases by 10% or more, as determined by the listing market for the covered security, from the covered security's closing price on the listing market as of the end of Regular Trading Hours on the prior day (the "Trigger Price"). The proposed rule further specifies the duration of the "Short Sale Price Test" and that the BSTX System shall determine whether a transaction in a covered security has occurred at a Trigger Price and shall immediately notify the responsible single plan processor.²⁴⁰

The Exchange believes that proposed Rule 25120 is consistent with Section 6(b)(5) of the Exchange Act,²⁴¹ because it would promote just and equitable principles of trade and further the protection of investors and the public interest by enforcing rules consistent with Regulation SHO. Pursuant to Regulation SHO, broker-dealers are required to appropriately mark orders as long, short, or short exempt,²⁴² and trading centers are required to establish, maintain, and enforce written policies and procedures reasonably designed to, among other things, prevent the execution or display of a short sale order of a covered security at a price that is less than or equal to the current national best bid if the price of that covered security decreases by 10% or more from its closing price on the primary listing market on the prior day.²⁴³ Proposed Rule 25120 is designed to promote compliance with Regulation SHO, is nearly identical to similar rules of other exchanges, and would apply equally to all BSTX Participants.

Rule 25130—Locking or Crossing Quotations in NMS Stocks

Proposed Rule 25130 sets forth provisions related to locking or crossing quotations. The proposed rule is substantially similar to the rules of other national securities exchanges.²⁴⁴ Proposed Rule 25130 is designed to promote compliance with Regulation NMS and prohibits BSTX participants

from engaging in a pattern or practice of displaying quotations that lock or cross a protected quotation unless an exception applies. The Exchange proposes in Rule 25130(d) that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry.

The Exchange believes proposed Rule 25130 is consistent with Section 6(b)(5) of the Exchange Act²⁴⁵ because it is designed to promote just and equitable principles of trade and foster cooperation and coordination with persons facilitating transactions in securities by ensuring that the Exchange prevents display of quotations that lock or cross any protected quotation in an NMS stock, in compliance with applicable provisions of Regulation NMS.

Rule 25140—Clearance and Settlement: Anonymity

Proposed Rule 25140 provides that each BSTX Participant must either (1) be a member of a registered clearing agency that uses a CNS system, or (2) clear transactions executed on the Exchange through another Participant that is a member of such a registered clearing agency. The Exchange would maintain connectivity and access to the UTC of NSCC for transmission of executed transactions. The proposed Rule requires a Participant that clears through another participant to obtain a written agreement, in a form acceptable to the Exchange, that sets out the terms of such arrangement. The proposed Rule also provides that BSTX transaction reports shall not reveal contra party identities and that transactions would be settled and cleared anonymously. In certain circumstances, such as for regulatory purposes, the Exchange may reveal the identity of a Participant or its clearing firm such as to comply with a court order.

The Exchange believes that proposed Rule 25140 is consistent with Section 6(b)(5) of the Exchange Act²⁴⁶ because it would foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Proposed Rule 25140 is similar to rules of other exchanges relating to clearance and settlement.²⁴⁷

²³⁹ Proposed Rule 25120(b) provides that the terms "covered security," "listing market," and "national best bid" shall have the same meaning as in Rule 201 of Regulation SHO. 17 CFR 242.201(a).

²⁴⁰ Proposed Rule 25120(d). The proposed rule further provides in paragraph (d)(1) that if a covered security did not trade on BSTX on the prior trading day, BSTX's determination of the Trigger Price shall be based on the last sale price on the BSTX System for that Security on the most recent day on which the Security traded.

²⁴¹ 15 U.S.C. 78f(b)(5).

²⁴² 17 CFR 242.200(g).

²⁴³ 17 CFR 242.201(b)(1).

²⁴⁴ See IEX Rule 11.310.

²⁴⁵ 15 U.S.C. 78f(b)(5).

²⁴⁶ 15 U.S.C. 78f(b)(5).

²⁴⁷ See e.g. IEX Rule 11.250.

²³⁶ See BOX Rule 7170(n).

²³⁷ 15 U.S.C. 78s.

²³⁸ See e.g., IEX Rule 11.290.

Rule 25150—Thinly Traded Securities and Suspension of Unlisted Trading Privileges

Proposed Rule 25150 would set forth the criteria for eligible Securities to be considered “Thinly Traded Securities” for which UTP may be suspended at the election of the issuer. Discussion of this Rule is set forth above in Part II.H.

Market Making on BSTX (Rule 25200 Series)

The BSTX Market Making Rules (Rules 25200—25240) provide for registration and describe the obligations of Market Makers on the Exchange. The proposed Market Making Rules also provide for registration and obligations of Designated Market Makers (“DMMs”) in a given Security, allocation of a DMM to a particular Security, and parameters for business combinations of DMMs.

Proposed Rule 25200 sets forth the basic registration requirement for a BSTX Market Maker by noting that a Market Maker must enter a registration request to BSTX and that such registration shall become effective on the next trading day after the registration is entered, or, in the Exchange’s discretion, the registration may become effective the day that it is entered (and the Exchange will provide notice to the Market Maker in such cases). The proposed Rule further provides that a BSTX Market Maker’s registration shall be terminated by the Exchange if the Market Maker fails to enter quotations within five business days after the registration becomes effective.²⁴⁸

Proposed Rule 25210 sets forth the obligations of Market Makers, including DMMs. Under the proposed Rule, a BSTX Participant that is a Market Maker, including a DMM, is generally required to post two-sided quotes during the regular market session for each Security in which it is registered as a Market Maker.²⁴⁹ The Exchange proposes that such quotes must be entered within a certain percentage, called the “Designated Percentage,” of the National Best Bid (Offer) price in such Security (or last sale price, in the event there is no National Best Bid (Offer)) on the Exchange.²⁵⁰ The Exchange proposes that the Designated Percentage would be 30%.²⁵¹ The Exchange notes that the proposed Designated Percentage is substantially similar to the corresponding Designated Percentage for NYSE American market

makers with respect to Tier 2 NMS stocks (as defined under the LULD plan).²⁵² The Exchange believes that the proposed Designated Percentage for quotation obligations of Market Makers would be sufficient to ensure that there is adequate liquidity sufficiently close to the National Best Bid or Offer (“NBBO”) in Securities and to ensure fair and orderly markets. The Exchange notes that pursuant to proposed Rule 25210(a)(1)(iii), there is nothing to preclude a Market Maker from entering trading interest at price levels that are closer to the NBBO, so Market Makers have the ability to quote must closer to the NBBO than required by the Designated Percentage requirement if they so choose.

The Exchange proposes in Rule 25210(a)(4) that, in the event that price movements cause a Market Maker or DMM’s quotations to fall outside of the National Best Bid (Offer) (or last sale price in the event there is no National Best Bid (Offer)) by a given percentage, with such percentage called the “Defined Limit,” in a Security for which they are a Market Maker, the Market Maker or DMM must enter a new bid or offer at not more than the Designated Percentage away from the National Best Bid (Offer) in that Security. The Exchange proposes that the Defined Limit shall be 31.5%.²⁵³ Under the proposed Rules, a Market Maker’s quotations must be firm and automatically executable for their size, and, to the extent the Exchange finds that a Market Maker has a substantial or continued failure to meet its quotation obligations, such Market Maker may face disciplinary action from the Exchange.²⁵⁴ Under the proposed Market Maker and DMM Rules, Market Makers and DMMs’ two-sided quotation obligations must be maintained for a quantity of a “normal unit of trading” which is defined as one Security.²⁵⁵ The Exchange believes that Securities may initially trade in smaller increments relative to other listed equities and that reducing the two-sided quoting increment from one round lot (*i.e.*, 100 shares) to one Security will be sufficient

to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation.

The Exchange notes that proposed Rule 25210 is substantially similar to NYSE American Rule 7.23E, with the exceptions of: (i) The modified normal unit of trading, Designated Percentage, and Defined Limit (as discussed above); (ii) specifying that the minimum quotation increment shall be \$0.01; and (iii) specifying that Market Maker quotations must be firm for their displayed size and automatically executable. The Exchange believes that the additional specifications with respect to the minimum quotation increment and firm quotation requirement will add additional clarity to the expectations of Market Makers on the Exchange.

Proposed Rule 25220 sets forth the registration requirements for a DMM. Under proposed Rule 25220, a DMM must be a registered Market Maker and be approved as a DMM in order to receive an allocation of Securities pursuant to proposed Rule 25230, which is described below.²⁵⁶ For Securities in which a Participant serves as a DMM, it must meet the same obligations as if it were a Market Maker and must also maintain a bid or offer at the National Best Bid and Offer at least 25% of the day measured across all Securities in which such Participant serves as DMM.²⁵⁷ The proposed Rule provides, among other things, that there will be no more than one DMM per Security and that a DMM must maintain information barriers between the trading unit operating as a DMM and the trading unit operating as a BSTX Market Maker in the same Security (to the extent applicable).²⁵⁸ The Rule further provides a process by which a DMM may temporarily withdraw from its DMM status, which is similar to the same process for a BSTX Market Maker²⁵⁹ and similar to the same process for DMMs on other exchanges.²⁶⁰ The Exchange notes that proposed Rule 25220 is substantially similar to NYSE American Rule 7.24E with the exception that the Exchange proposes to add a provision stating that the Exchange is not required to assign a DMM if the Security has an adequate number of BSTX Market Makers assigned to such Security. The purpose

²⁵² See NYSE American Rule 7.23E(a)(1)(B)(iii) (providing that, other than during certain time periods around the market open and close, the Designated Percentage for Tier 2 NMS stocks priced below \$1.00 is 30% and for Tier 2 NMS stocks priced above \$1.00 is 28%).

²⁵³ See proposed Rule 25210(a)(1)(ii)(3).

²⁵⁴ See proposed Rule 25210(b) and (c). Pursuant to proposed Rule 25310(d), a BSTX Market Maker, other than a DMM, may apply for a temporary withdrawal from its Market Maker status provided it meets certain conditions such as demonstrating legal or regulatory requirements that necessitate its temporary withdrawal.

²⁵⁵ See proposed Rule 25210(a)(1).

²⁵⁶ See proposed 25220(b). DMMs would be approved by the Exchange pursuant to an application process an [sic].

²⁵⁷ See proposed Rule 25220(c).

²⁵⁸ See proposed Rule 25220(b).

²⁵⁹ See proposed Rule 25210(d).

²⁶⁰ See *e.g.*, NYSE American Rule 7.24E(b)(4).

²⁴⁸ Proposed Rule 25200 is substantially similar to IEX Rule 11.150.

²⁴⁹ See proposed Rule 25210(a)(1).

²⁵⁰ See proposed Rule 25210(a)(1)(ii)(A).

²⁵¹ See proposed Rule 25210(a)(1)(ii)(B).

of this requirement is to acknowledge the possibility that a Security need not necessarily have a DMM provided that each Security has been assigned at least three active Market Makers at initial listing and two Market Makers for continued listing, consistent with proposed Rule 26106 (Market Maker Requirement), which is discussed further below.

In proposed Rule 25230, the Exchange proposes to set forth the process by which a DMMs are allocated and reallocated responsibility for a particular Security. Proposed Rule 25230(a) sets forth the basic eligibility criteria for when a Security may be allocated to a DMM, providing that this may occur when the Security is initially listed on BSTX, when it is reassigned pursuant to Rule 25230, or when it is currently listed without a DMM assigned to the Security.²⁶¹ Proposed Rule 2530(a) also specifies that a DMM's eligibility to participate in the allocation process is determined at the time the interview is scheduled by the Exchange and specifies that a DMM must meet with the quotation requirements set forth in proposed Rule 25220(c) (DMM obligations). The proposed Rule further specifies how the Exchange will handle several situations in which the DMM does not meet its obligations, such as, for example, by issuing an initial warning advising of poor performance if the DMM fails to meet its obligations for a one-month period.²⁶²

Proposed Rule 25230(b) sets forth the manner in which a DMM may be selected and allocated a Security. Under proposed Rule 25230(b), an issuer may select its DMM directly, delegate the authority to the Exchange to select its DMM, or may opt to proceed with listing without a DMM, in which case a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing must be assigned to its Security consistent with proposed Rule 26106. Proposed Rule 25230(b) further sets forth provisions relating to the interview between the issuer and DMMs, the Exchange selection by delegation, and a requirement that a DMM serve as a

DMM for a Security for at least one year unless compelling circumstances exist for which the Exchange may consider a shorter time period. Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(1)–(3), with the exception that the Exchange may shorten the one year DMM commitment period in compelling circumstances.²⁶³ Proposed Rule 25230(b) further sets forth specific provisions related to a variety of different issuances and types of securities, including spin-offs or related companies, warrants, rights, relistings, equity Security listing after preferred Security, listed company mergers, target Securities, and closed-end management investment companies.²⁶⁴ Each of these provisions is substantially similar to corresponding provisions in NYSE American Rule 7.25E(b)(4)–(11).

Proposed Rule 25230(c) sets forth the reallocation process for a DMM in a manner that is substantially similar to corresponding provisions in NYSE American Rule 7.25E(c). Generally, under the proposed Rule, an issuer may request a reallocation to a new DMM and Exchange staff will review this request, along with any DMM response letter, and eventually make a determination.²⁶⁵ Proposed Rule 25230(d), (e), and (f), set forth provisions governing an allocation freeze, allocation sunset, and criteria for applicants that are not currently DMMs to be eligible to be allocated a Security as a DMM respectively. Each of these provisions are likewise substantially similar to corresponding provisions in NYSE American Rule 7.25E(d)–(f).

Finally, proposed Rule 25240 sets forth the DMM combination review policy. The proposed Rule, among other things, defines a proposed combination among DMMs, requires that DMMs provide a written submission to the Office of the Corporate Secretary of the Exchange and specifies, among other things, the items to be disclosed in the written submission, the criteria that the

Exchange will use to evaluate a proposed combination, and the timing for a decision by the Exchange, subject to the Exchange's right to extend such time period. The Exchange notes that proposed Rule 25240 is substantially similar to NYSE American Rule 7.26E.

The Exchange believes that the proposed Market Making Rules set forth in the Rule 25200 Series are consistent with Section 6(b)(5) of the Exchange Act²⁶⁶ because they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange notes that the proposed Rules are substantially similar to the market making rules of other exchanges, as detailed above,²⁶⁷ and that all BSTX Participants are eligible to become a Market Maker or DMM provided they comply with the proposed requirements.²⁶⁸ The proposed Market Maker Rules set forth the quotation and related expectations of BSTX Market Makers which the Exchange believes will help ensure that there is sufficient liquidity in Securities. Although the corresponding NYSE American rules upon which the proposed Rules are based provide for multiple tiers and classes of stocks that were each associated with a different Designated Percentage and Defined Limit, the Exchange has collapsed all such classes in to one category and provided a single Designated Percentage of 30% and Defined Limit of 31.5% for all Security trading on BSTX. The Exchange believes that simplifying the Rules in this manner can reduce the potential for confusion and allows for easier compliance and will still adequately serve the liquidity needs of investors of Security investors, which the Exchange believes promotes the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.²⁶⁹

The Exchange has also proposed that the minimum quotation size of Market Makers will be one Security. As noted above, the Exchange believes that Securities may initially trade in smaller increments relative to other listed

²⁶¹ As previously noted, pursuant to proposed Rule 26106, a Security may, in lieu of having a DMM assigned to it, have a minimum of three non-DMM Market Makers at initial listing and two non-DMM Market Makers for continued listing to be eligible for listing on the Exchange. Consequently, a Security might not have a DMM when it initially begins trading on BSTX, but may acquire a DMM later.

²⁶² See proposed Rule 25230(a)(4). The proposed handling of these scenarios where a DMM does not meet its obligations is substantially similar to parallel requirements in NYSE American Rule 7.25E(a)(4).

²⁶³ The Exchange believes that providing the Exchange with flexibility to shorten the one year commitment period is appropriate to accommodate unforeseen events or circumstances that might arise with respect to a DMM, such as a force majeure event, preventing a DMM from being able to carry out its functions.

²⁶⁴ See proposed Rule 25230(b)(4)–(11).

²⁶⁵ In addition, proposed Rule 25230(c)(2) sets forth provisions that allow for the Exchange's CEO to immediately initiate a reallocation proceeding upon written notice to the DMM and the issuer when the DMM's performance in a particular market situation was, in the judgment of the Exchange, so egregiously deficient as to call into question the Exchange's integrity or impair the Exchange's reputation for maintaining an efficient, fair, and orderly market.

²⁶⁶ 15 U.S.C. 78f(b)(5).

²⁶⁷ See NYSE American Rule 7, Section 2.

²⁶⁸ In this regard, the Exchange believes the proposed Market Making Rules are not designed to permit unfair discrimination between BSTX Participants, consistent with Section 6(b)(5) of the Exchange Act. 15 U.S.C. 78f(b)(5).

²⁶⁹ 15 U.S.C. 78f(b)(5).

equities and that reducing the two-sided quoting increment from one round lot (*i.e.*, 100 shares) to one Security would be sufficient to meet liquidity demands and would make it easier for Market Makers and DMMs to meet their quotation obligations, which in turn incentivize more Market Maker participation. The Exchange believes that adopting quotation requirements and parameters that are appropriate for the nature and types of securities that will trade on the Exchange will promote the protection of investors and the public interest by assuring that the Exchange Rules are appropriately tailored to its market.

BSTX Listing Rules Other Than for Exchange Traded Products and Suspension and Delisting Rules (Rule 26000 and 27000 Series)

The BSTX Listing Rules Other than for Exchange Traded Products (the “Non-ETP Listing Rules”) in the Rule Series 26000 and the Suspension and Delisting Rules in the Rule 27000 Series have been adapted from, and are substantially similar to, Parts 1—12 of the NYSE American LLC Company Guide.²⁷⁰ Except as described below, each proposed Rule in the BSTX 26000 and 27000 Series is substantially similar to a Section of the NYSE American Company Guide.²⁷¹ Below is further detail.

- The BSTX Rule 26100 Series are based on the NYSE American Original Listing Requirements (Sections 101–146).²⁷²
- The BSTX Original Listing Procedures (26200 Series) are based on the NYSE American Original Listing Procedures (Sections 201–222).
- The BSTX Additional Listings Rules (26300 Series) are based on the NYSE American Additional Listings Sections (Sections 301–350).

²⁷⁰ All references to various “Sections” in the discussion of these Listing Rules refer to the various Sections of the NYSE American Company Guide.

²⁷¹ The Exchange notes that while the numbering of BSTX’s Listing Rules generally corresponds to a Section of the NYSE American LLC Company Guide, BSTX did not integrate certain Sections of the NYSE American Company Guide that the Exchange deemed inapplicable to its operations, such as with respect to types of securities which the Exchange is not proposing to make eligible for listing (*i.e.*, bonds, debentures, securities of foreign companies (other than Canadian companies), investment trusts, and securities such as equity-linked term notes). The Exchange also proposes to modify cross-references in the proposed Non-ETP Listing Rules to accord with its Rules.

²⁷² Pursuant to proposed Rule 26136, all securities initially listing on BSTX, except securities which are book-entry only, must be eligible for a Direct Registration Program operated by a clearing agency registered under Section 17A of the Exchange Act. 15 U.S.C. 78q–1.

- The BSTX Disclosure Policies (26400 Series) are based on the NYSE American Disclosure Policies (Sections 401–404).
- The BSTX Dividends and Splits Rules (26500 Series) are based on the NYSE American Dividends and Stock Splits Sections (Sections 501–522).
- The BSTX Accounting; Annual and Quarterly Reports Rules (26600 Series) are based on the NYSE American Accounting; Annual and Quarterly Reports Sections (Sections 603–624).
- The BSTX Shareholders’ Meetings, Approval and Voting of Proxies Rules (26700 Series) are based on the NYSE American Shareholders’ Meetings, Approval and Voting of Proxies Sections (Sections 701–726).²⁷³
- The BSTX Corporate Governance Rules (26800 Series) are based on the NYSE American Corporate Governance Sections (Sections 801–809).
- The BSTX Additional Matters Rules (26900 Series) are based on the NYSE American Additional Matters Sections (Sections 920–994).
- The BSTX Suspension and Delisting Rules (27000 Series) are based on the NYSE American Suspension and Delisting Sections (Sections 1001–1011).
- The BSTX Guide to Filing Requirements (27100 Series) are based on the NYSE American Guide to Filing Requirements (Section 1101).
- The BSTX Procedures for Review of Exchange Listing Determinations (27200 Series) are based on the NYSE American Procedures for Review of Exchange Listing Determinations (Sections 1201–1211).

Notwithstanding that the proposed Rule 26000 and 27000 Series are substantially similar to those of other exchanges, BSTX proposes certain additions or modifications to these rules specific to its market. For example, BSTX proposes to add definitions that apply to the proposed BSTX Rule 26000 and 27000 Series. The definitions set forth in proposed Rule 26000 are designed to facilitate understanding of these Rule Series by market participants. Increased clarity may serve to remove impediments to and perfect the mechanism of a free and open market and a national market system and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities,

²⁷³ The Exchange notes that the proposed fees for certain items in the proposed Listing Rules (*e.g.*, proxy follow-up mailings) are the same as those charged by NYSE American. *See e.g.*, proposed IM–26722–8 *cf.* NYSE American Section 722.80.

consistent with Section 6(b)(5) of the Exchange Act.²⁷⁴

With respect to initial listing standards for non-ETP Securities, which begin at proposed Rule 26101, the Exchange proposes to adopt listing standards that are substantially similar to the NYSE American listing rules.²⁷⁵ The Exchange believes that adopting listing rules similar to those in place on other national securities exchanges will facilitate more uniform standards across exchanges, which helps foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.²⁷⁶ Market participants that are already familiar with NYSE American’s listing standards will already be familiar with most of the substance of the proposed listing rules. The Exchange also believes that adopting proposed listing standards that closely resemble those of NYSE American may also foster competition among listing exchanges for companies seeking to publicly list their securities. The Exchange is proposing an addition (relative to the NYSE American listing rules) to the initial listing standards for preferred Securities.²⁷⁷ Specifically, the Exchange proposes an additional standard for preferred Securities to list on the Exchange based on NASDAQ Rule 5510.²⁷⁸ The Exchange believes a

²⁷⁴ 15 U.S.C. 78f(b)(5).

²⁷⁵ *See* NYSE American Section 101. The Exchange understands that the Commission has extended relief to NYSE American with respect to certain quantitative listing standards that do not meet the thresholds of SEC Rule 3a51–1. 17 CFR 240.3a51–1. Initial listings of securities that do not meet such thresholds and are not subject to the relief provided to NYSE American would qualify as “penny stocks” and would be subject to additional regulation. BSTX notes that it is not seeking relief related to SEC Rule 3a51–1 and therefore has clarified proposed Rule 26101(a)(2) to ensure that issuers have at least one year of operating history. BSTX will also require new listings pursuant to proposed Rule 26102 to have a public distribution of 1 million Securities, 400 public Security holders, and a minimum market price of \$4 per Security. These provisions meet the requirements in SEC Rule 3a51–1 and are consistent with the rules of other national securities exchanges. *See e.g.*, Nasdaq Rule 5510. The quantitative thresholds specified in Rule 26102 are also reflected in the Sample Underwriter’s Letter that has been submitted as Exhibit 3L to this proposal. In addition, the Exchange notes that proposed Rule 26140, which governs the additional listing requirements of a company that is affiliated with the Exchange, is based on similar provisions in NYSE American Rule 497 and IEX 14.205.

²⁷⁶ 15 U.S.C. 78f(b)(5).

²⁷⁷ *See* proposed Rule 26103.

²⁷⁸ *See* proposed Rule 26103(b)(2). Preferred Security Distribution Standard 2 requires that a preferred Security listing satisfy the following conditions: Minimum bid price of at least \$4 per Security; at least 10 Round Lot holders; At least

proposed rule providing an additional initial listing standard for preferred Securities consistent with a similar provision of NASDAQ would expand the possible universe of issuances that would be eligible to list on the Exchange to include preferred Securities. The Exchange believes that such a rule would help remove impediments to and perfect the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act by giving issuers an additional means by which it could list a different type of security (*i.e.*, a preferred Security) and investors the opportunity to trade in such preferred Securities.²⁷⁹ Further, consistent with the public interest, rules that provide more opportunity for listings may promote competition among listing exchanges and capital formation for issuers.

With respect to the definitions in proposed Rule 26000, these are designed to facilitate understanding of the BSTX Non-ETP Listing Rules by market participants. The Exchange believes that allowing market participants to better understand and interpret the BSTX Non-ETP Listing Rules removes impediments to and perfects the mechanism of a free and open market and a national market system, and may also foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, consistent with Section 6(b)(5) of the Exchange Act.²⁸⁰

The Exchange also proposes certain enhancements to the notice requirements for listed companies to communicate to BSTX related to record dates and defaults.²⁸¹ The Exchange believes that these additional disclosure and communication obligations can help BSTX in monitoring for listed company compliance with applicable rules and regulations; such additional disclosure obligations are 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

200,000 Publicly Held Securities; and Market Value of Publicly Held Securities of at least \$3.5 million.

²⁷⁹ 15 U.S.C. 78f(b)(5).

²⁸⁰ *Id.*

²⁸¹ See Proposed Rule 26502, which requires, among other things, a listing company to give the Exchange at least ten days' notice in advance of a record date established for any other purpose, including meetings of shareholders.

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, consistent with Section 6(b)(5) of the Exchange Act.²⁸²

The Exchange's proposed Rules provide additional flexibility for listed companies in choosing how liquidity would be provided in their listings by allowing listed companies to meet either the DMM Requirement or Active Market Maker Requirement for initial listing and continued trading.²⁸³ Pursuant to proposed Rule 26205, a company may choose to be assigned a DMM by the Exchange or to select its own DMM.²⁸⁴ Alternatively, a company may elect, or the Exchange may determine, that, in lieu of a DMM, a minimum of three (3) market makers would be assigned to the Security at initial listing; such requirement may be reduced to two (2) market makers following the initial listing, consistent with proposed Rule 26106. The Exchange believes that such additional flexibility would promote the removal of impediments to and perfection of the mechanism of a free and open market and a national market system, consistent with Section 6(b)(5) of the Exchange Act.²⁸⁵ The Commission has previously approved exchange rules providing for three market makers to be assigned to a particular security upon initial listing

²⁸² 15 U.S.C. 78f(b)(5).

²⁸³ See proposed Rule 26205. BSTX-listed Securities must meet the criteria specified in proposed Rule 26106, which provides that unless otherwise provided, all Securities listed pursuant to the BSTX Listing Standards must meet one of the following requirements: (1) The DMM Requirement whereby a DMM must be assigned to a given Security; or (2) the Active Market Maker Requirement which states that (i) for initial inclusion the Security must have at least three registered and active Market Makers, and (ii) for continued listing, a Security must have at least two registered and active Market Makers, one of which may be a Market Maker entering a stabilizing bid.

²⁸⁴ Exchange personnel responsible for managing the listing and onboarding process would be responsible for determining to which DMM a Security would be assigned. As provided in proposed Rule 26205, the Exchange makes every effort to see that each Security is allocated in the best interests of the company and its shareholders, as well as that of the public and the Exchange. Similarly, the Exchange anticipates that these same personnel would be responsible for answering questions relating to the Exchange's listing rules pursuant to proposed Rule 26994 (New Policies). The Exchange notes that certain provisions in the NYSE American Listing Manual contemplate a "Listing Qualifications Analyst" that would perform a number of these functions. The Exchange is not proposing to adopt provisions that specifically contemplate a "Listing Qualifications Analyst," but expects to have personnel that will perform the same basic functions, such as advising issuers and prospective issuers with respect to relevant rules related to listing.

²⁸⁵ 15 U.S.C. 78f(b)(5).

and only two for continued listing.²⁸⁶ In accordance with these previously approved rules, the Exchange believes proposed Rule 26205 would ensure fair and orderly markets and would facilitate the provision of sufficient liquidity for Securities.

The Exchange also proposes a number of other non-substantive changes from the baseline NYSE American listing rules, such as to eliminate references to the concept of a "specialist," since BSTX will not have a specialist,²⁸⁷ or references to certificated equities, since Securities will be uncertificated equities.²⁸⁸ As another example, NYSE American Section 623 requires that three copies of certain press releases be sent to the exchange, while the Exchange proposes only that a single copy of such press release be shared with the Exchange.²⁸⁹ In addition, the Exchange proposes to adopt Rule 26720 in a manner that is substantially similar to NYSE American Section 720, but proposes to modify the internal citations to ensure consistency with its proposed Rulebook.²⁹⁰ In its proposed Rules, the

²⁸⁶ See *e.g.*, IEX Rule 14.206.

²⁸⁷ See *e.g.*, NYSE American Section 513(f), noting that open orders to buy and open orders to sell on the books of a specialist on an ex rights date are reduced by the cash value of the rights. Proposed Rule 26340(f) deletes this provision because BSTX will not have specialists. Similarly, because BSTX will not have specialists, the Exchange is not proposing to adopt a parallel rule to NYSE American Section 516, which specifies that certain types of orders are to be reduced by a specialist when a security is quoted ex-dividend, ex-distribution or ex-rights are set forth in NYSE American Rule 132.

²⁸⁸ See *e.g.*, NYSE American Section 117 including a clause relating to paired securities for which "the stock certificates of which are printed back-to-back on a single certificate"). Similarly, the Exchange has proposed to replace certain references to the "Office of General Counsel" contained in certain NYSE American Listing Rule (*see e.g.*, Section 1205) with references to the Exchange's "Legal Department" to accommodate differences in BSTX's organizational structure. See proposed Rule 27204. As another example, proposed Rule 27205 refers to the Exchange's "Hearing Committee" as defined in Section 6.08 of the Exchange's By-Laws to similarly accommodate organizational differences between the Exchange and NYSE American.

²⁸⁹ See proposed Rule 26623.

²⁹⁰ Specifically, proposed Rule 26720 would provide that participants must comply with Rules 26720 through 26725 and BSTX's Rule 22020 (Forwarding of Proxy and Other Issuer-Related Materials; Proxy Voting). NYSE American Section 726, upon which proposed Rule 26720 is based, includes cross-references to NYSE American's corresponding rules to proposed Rules 26720 through 26725, and also includes cross-references to NYSE American Rules 578 through 585, for which the Exchange is not proposing corresponding rules. These NYSE American rules for which the Exchange is not proposing to adopt a parallel rule relate to certain requirements specific to proxy voting (*e.g.*, requiring that a member state the actual number of shares for which a proxy is given—NYSE American Rule 578) or, in some cases, relate to certificated securities (*e.g.*, NYSE American Rule

Exchange has not included certain form letters related to proxy rules that are included in the NYSE American rules;²⁹¹ instead, these forms will be included in the BSTX Listing Supplement.²⁹² The Exchange is not proposing to adopt provisions relating to future priced securities at this time.²⁹³ In addition, the Exchange is not proposing to allow for listing of foreign companies, other than Canadian companies,²⁹⁴ or to allow for issuers to transfer their existing securities to

579), which would be inapplicable to the Exchange since it proposes to only list uncertificated securities. The Exchange believes that it does not need to propose to adopt parallel rules corresponding to NYSE American Rules 578–585 at this time and notes that other listing exchanges do not appear have corresponding versions of these NYSE American Rules. *See e.g.*, Cboe BZX Rules. The Exchange believes that proposed Rule 26720 and the Exchange's other proposed Rules governing proxies, including those referenced in proposed Rule 26720, are sufficient to govern BSTX Participants' obligations with respect to proxies.

²⁹¹ The forms found in NYSE American Section 722.20 and 722.40 would be included in the BSTX Listing Supplement.

²⁹² The BSTX Listing Supplement would contain samples of letters containing the information and instructions required pursuant to the proxy rules to be given to clients in the circumstances indicated in the appropriate heading. These are intended to serve as examples and not as prescribed forms. Participants would be permitted to adapt the form of these letters for their own purposes provided all of the required information and instructions are clearly enumerated in letters to clients. Pursuant to proposed Rule 26212, the BSTX Listing Supplement would also include a sample application for original listing, which the Exchange has submitted as Exhibit 3G. In addition, proposed Rule 26350 states that the BSTX Listing Supplement will include a sample cancellation notice; the Exchange expects such notice to be substantially in the same form as NYSE American's sample notice in NYSE American Section 350. Other examples of items that would appear in the BSTX Listing Supplement include certain certifications to be completed by the CEO of listed companies pursuant to proposed Rule 26810(a) and (c), and forms of letters to be sent to clients requesting voting instructions and other letters relating to proxy votes pursuant to proposed IM–26722–2 and IM–26722–4. The Exchange expects that these proposed materials in the BSTX Listing Supplement would be substantially similar to the corresponding versions of such samples used by NYSE American. The purpose of putting these sample letters and other information into the BSTX Listing Supplement rather than directly in the rules is to improve the readability of the Rules.

²⁹³ *See e.g.*, NYSE American Section 101, Commentary .02. The Exchange is also not proposing to adopt a parallel provision to NYSE American Section 950 (Explanation of Difference between Listed and Unlisted Trading Privileges) because the Exchange believes that such provision is not necessary and contains extraneous historical details that are not particularly relevant to the trading of Securities. The Exchange notes that numerous other listing exchanges do not have a similar provision to NYSE American Section 950. *See e.g.*, IEX Listing Rules.

²⁹⁴ *See* proposed Rule 26109. Because the Exchange does not propose to allow foreign issuers of Securities, it does not propose to adopt a parallel provision to NYSE American Section 110 and other similar provisions relating to foreign issuers—*e.g.*, NYSE American Section 801(f).

BSTX.²⁹⁵ Similarly, the Exchange is not proposing at this time to support debt securities (other than those that may be ETPs), so the Exchange has not proposed to adopt certain provisions from the NYSE American Listing Manual related to bonds/debt securities²⁹⁶ or the trading of units.²⁹⁷ The Exchange believes that the departures from the NYSE American rules upon which the proposed Rules are based, as described above, are non-substantive (*e.g.*, by not including provisions relating to instruments that will not trade on the Exchange), would apply to all issuers in the same manner and are therefore not designed to permit unfair discrimination, consistent with Section 6(b)(5) of the Exchange Act.²⁹⁸

The Exchange proposes in Rule 26507 to prohibit the issuance of fractional Securities and to provide that cash must be paid in lieu of any distribution or part of a distribution that might result in fractional interests in Securities.²⁹⁹ The Exchange believes that disallowing fractional shares reduces complexity. By extension, the requirement to provide cash in lieu of fractional shares simplifies the process related to share transfer and tracking of share ownership. The Exchange believes that this simplification promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, removes impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.³⁰⁰

Proposed BSTX Rule 26130 (Original Listing Applications) would require listing applicants to furnish a legal opinion that the applicant's Security is a security under applicable United States securities laws. Such a requirement provides assurance to the Exchange that Security trading relates to appropriate asset classes. The Exchange believes that this Rule promotes just and equitable principles of trade and, in general, protects investors and the

²⁹⁵ Consequently, the Exchange does not propose to adopt a parallel provision to NYSE American Section 113 at this time.

²⁹⁶ *See e.g.*, NYSE American Sections 1003(b)(iv) and (e).

²⁹⁷ *See e.g.*, NYSE American Sections 106(f), 401(i), and 1003(g).

²⁹⁸ 15 U.S.C. 78f(b)(5).

²⁹⁹ The Exchange also proposes certain conforming changes in Rule 26503 (Form of Notice) to reiterate that fractional interests in Securities are not permitted by the Exchange.

³⁰⁰ 15 U.S.C. 78f(b)(5).

public interest, consistent with Section 6(b)(5) of the Exchange Act.³⁰¹

The Exchange proposes to adopt corporate governance listing standards as its Rule 26800 Series that are substantially similar to the corporate governance listing standards set forth in Part 8 of the NYSE American Listing Manual. However, it includes certain clarifications, most notably that certain proposed provisions are not intended to restrict the number of terms that a director may serve³⁰² and that, if a limited partnership is managed by a general partner rather than a board of directors, the audit committee requirements applicable to the listed entity should be satisfied by the general partner.³⁰³ The Exchange also notes that, unlike the current NYSE American rules upon which the proposed Rules are based, the proposed Rules on corporate governance do not include provisions on asset-backed securities and foreign issues (other than those from Canada), since the Exchange does not propose to allow for such foreign issuers to list on BSTX at this time.

The Exchange proposes to adopt additional listing rules as its Rule 26900 Series that are substantially similar to the corporate governance listing standards set forth in Part 9 of the NYSE American Listing Manual. The only significant difference from the baseline NYSE American rules is that the proposed BSTX Rules do not include provisions related to certificated securities, since Securities listed on BSTX will be uncertificated.

The Exchange proposes to adopt suspension and delisting rules as its Rule 27000 Series that are substantially similar to the corporate governance listing standards set forth in Parts 10, 11, and 12 of the NYSE American Listing Manual. The proposed rules do not include concepts from the baseline NYSE American rules regarding foreign, fixed income securities, or other non-equity securities because the Exchange is not proposing to allow for listing of such securities at this time.³⁰⁴

The Exchange believes that the proposals in the Rule 26800 to Rule 27000 Series, which are based on the rules of NYSE American with the differences explained above, are

³⁰¹ *Id.*

³⁰² *See* proposed Rule 26802(d).

³⁰³ *See* proposed Rule 26801(b).

³⁰⁴ As with all sections of the proposed rules, references to "securities" have been changed to "Securities" where appropriate and, in the Rule 27000 Series, certain references have been conformed from the baseline NYSE American provisions to account for the differences in governance structure and naming conventions of BSTX.

designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, 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. Further, the differences in the proposals compared to the analogous NYSE American provisions appropriately reflect the differences between the two exchanges. The Exchange believes that ensuring that its systems are appropriately described in the BSTX Rules facilitates market participants' review of such Rules, which serves to remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange's rulebook. Therefore, the Exchange believes its proposals are consistent with Section 6(b)(5) of the Exchange Act.³⁰⁵

Trading and Listing Rules for Exchange-Traded Products (Rule 28000 Series)

The Exchange proposes as the Rule 28000 Series rules related to trading and listing ETPs. These proposed Rules allow for an array of different types of ETPs to be traded and listed on the Exchange and would provide individuals and institutions with diverse range of products in which to invest. The proposed Rules would set forth requirements and initial as well as continued listing standards for a variety of ETPs noted in the bulleted list below. The proposed Rules have been adapted from, and are substantially similar to, rules found in the NYSE Arca Inc. ("NYSE Arca") rulebook. Below is a list of the proposed Rules in the 28000 Series and the NYSE Arca rules on which it is based:

- Proposed Rule 28000 (Investment Company Units) is based on NYSE Arca Rule 5.2-E(j)(3)
- Proposed Rule 28001 (Equity Index-Linked Securities, Commodity-Linked Securities, Currency-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities and Multifactor Index-Linked Securities) is based on NYSE Arca Rule 5.2-E(j)(6)
- Proposed Rule 28002 (Exchange-Traded Fund Shares) is based on NYSE Arca Rule 5.2-E(j)(8)
- Proposed Rule 28003 (Trust Issued Receipts) is based on NYSE Arca Rule 8.200-E
- Proposed Rule 28004 (Commodity-Based Trust Shares) is based on NYSE Arca Rule 8.201-E

- Proposed Rule 28005 (Managed Fund Shares) is based on NYSE Arca Rule 8.600-E
- Proposed Rule 28006 (Active Proxy Portfolio Shares) is based on NYSE Arca Rule 8.601-E
- Proposed Rule 28007 (Managed Portfolio Shares) is based on NYSE Arca Rule 8.900-E

For each Rule in the 28000 Series, the Exchange proposes provisions that are substantially similar to provisions in the NYSE Arca rulebook, with adjustments made to ensure appropriate reference to concepts in other parts of the BSTX Rulebook. For example, in cases where the precedent NYSE Arca rule referred to a specific provision regarding delisting procedures, the Exchange has modified the proposed Rules to reference to the proposed Rule 27000 Series, which set forth the Exchange's proposed Rules governing suspension and delisting.³⁰⁶ As another example, the proposed definition of "ETP Holder," which closely parallels the same definition in the NYSE Arca Rulebook, but is located in a different place in the proposed BSTX Rulebook as compared to the NYSE Arca rulebook.³⁰⁷ In addition, certain products or concepts that are supported by NYSE Arca but are not supported by the Exchange have not been included in the proposal. For example, the Exchange notes that the NYSE Arca rulebook provides for trading of a Nasdaq-100 Index product, Currency Trust Shares, and Commodity Index Trust Shares,³⁰⁸ whereas the Exchange will not support trading in these specific ETPs and therefore has not included provisions relating to the listing and trading of such products in its proposal. The discussion below describes other notable variations from the NYSE Arca rules set forth in the proposed Rule Series 28000.

The Exchange believes that the proposals in the Rule 28000 Series help remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general promote the protecting of investors and the public interest because they will facilitate an additional exchange on which ETPs can be listed

³⁰⁶ As another example, the concept of "Core Trading Hours" in the NYSE Arca Rulebook (as defined therein) has no analog in the BSTX Rulebook. The BSTX Rulebook only allows for Regular Trading Hours and thus the proposal references the concept of Regular Trading Hours.

³⁰⁷ See proposed IM-28000-1g. In the NYSE Arca rule book, the comparable definition is set forth in NYSE Arca Rulebook Rule 1.

³⁰⁸ Specifically, Section 2 of Rule 8-E in the NYSE Arca rulebook allows for trading of a Nasdaq-100 Index product, Currency Trust Shares, and Commodity Index Trust Shares.

and traded. This adds competition to the marketplace for the listing of ETPs, providing greater choice for issuers of ETPs and an additional trading venue on which market participants can trade such products. As noted, the proposed Rule 28000 Series is substantially similar to the rules of NYSE Arca relating to ETPs, with only non-substantive differences, which differences appropriately reflect the differences between the two exchanges (e.g., internal cross-references within each rule book or excluding provisions related to products that the Exchange will not support).

Fees (Rule 29000 Series)

The Exchange proposes to set forth as its Rule 29000 Series (Fees) the Exchange's authority to prescribe reasonable dues, fees, assessments or other charges as it may deem appropriate. As provided in proposed Rule 29000 (Authority to Prescribe Dues, Fees, Assessments and Other Charges), these fees may include membership dues, transaction fees, communication and technology fees, regulatory fees, and other fees, which will be equitably allocated among BSTX Participants, issuers, and other persons using the Exchange's facilities.³⁰⁹ Proposed Rule 29010 (Regulatory Revenues) generally provides that any revenues received by the Exchange from fees derived from its regulatory function or regulatory fines will not be used for non-regulatory purposes or distributed to the stockholder, but rather, shall be applied to fund the legal and regulatory operations of the Exchange (including surveillance and enforcement activities).

The Exchange believes that the proposed Rule 29000 Series (Fees) is consistent with Sections 6(b)(5) of the Exchange Act because these proposed rules are designed to protect investors and the public interest by setting forth the Exchange's authority to assess fees on BSTX Participants, which would be used to operate the BSTX System and surveil BSTX for compliance with applicable laws and rules. The Exchange believes that the proposed Rule 29000 Series (Fees) is also consistent with Sections 6(b)(3) of the Exchange Act³¹⁰ because the proposed Rules specify that all fees assessed by the Exchange shall be equitably allocated among BSTX Participants, issuers and other persons using the

³⁰⁹ Proposed Rule 29000 further provides authority for the Exchange to charge BSTX Participants a regulatory transaction fee pursuant to Section 31 of the Exchange Act (15 U.S.C. 78ee) and that the Exchange will set forth fees pursuant to publicly available schedule of fees.

³¹⁰ 15 U.S.C. 78f(b)(5).

³⁰⁵ 15 U.S.C. 78f(b)(5).

Exchange's facilities. The Exchange notes that the proposed Rule 29000 Series is substantially similar to the existing rules of another exchange.³¹¹ The Exchange intends to submit a proposed rule change to the Commission setting forth the proposed fees relating to trading on BSTX in advance of the launch of BSTX.

Minor Rule Violation Plan

The Exchange's disciplinary rules, including Exchange Rules applicable to "minor rule violations," are set forth in the Rule 12000 Series of the Exchange's current Rules. Such disciplinary rules would apply to BSTX Participants and their associated persons pursuant to proposed Rule 24000. The Exchange's Minor Rule Violation Plan ("MRVP") specifies those uncontested minor rule violations with sanctions not exceeding \$2,500 that would not be subject to the provisions of Rule 19d-1(c)(1) under the Exchange Act³¹² requiring that an SRO promptly file notice with the Commission of any final disciplinary action taken with respect to any person or organization.³¹³ The Exchange's MRVP includes the policies and procedures set forth in Exchange Rule 12140 (Imposition of Fines for Minor Violations).

The Exchange proposes to amend its MRVP and Rule 12140 to include proposed Rule 24010 (Penalty for Minor Rule Violations). The Rules included in proposed Rule 24010 as appropriate for disposition under the Exchange's MRVP are: (a) Rule 20000 (Maintenance, Retention and Furnishing of Records); (b) Rule 25070 (Audit Trail); (c) Rule 25210(a)(1) (Two-Sided Quotation Obligations of BSTX Market Makers); and Rule 25120 (Short Sales). The rules included in proposed Rule 12140 are the same as the rules included in the MRVPs of other exchanges.³¹⁴ Upon implementation of this proposal, the Exchange will include the enumerated trading rule violations in the Exchange's

standard quarterly report of actions taken on minor rule violations under the MRVP. The quarterly report includes: The Exchange's internal file number for the case, the name of the individual and/or organization, the nature of the violation, the specific rule provision violated, the sanction imposed, the number of times the rule violation has occurred, and the date of disposition. The Exchange's MRVP, as proposed to be amended, is consistent with Sections 6(b)(1), 6(b)(5) and 6(b)(6) of the Exchange Act,³¹⁵ which require, in part, that an exchange have the capacity to enforce compliance with, and provide appropriate discipline for, violations of the rules of the Commission and of the exchange. In addition, because amended Rule 12140 will offer procedural rights to a person sanctioned for a violation listed in proposed Rule 24010, the Exchange will provide a fair procedure for the disciplining of members and associated persons, consistent with Section 6(b)(7) of the Exchange Act.³¹⁶

This proposal to include the rules listed in Rule 24010 in the Exchange's MRVP is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act, as required by Rule 19d-1(c)(2) under the Exchange Act,³¹⁷ because it should strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as an SRO in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation. In requesting the proposed change to the MRVP, the Exchange in no way minimizes the importance of compliance with Exchange Rules and all other rules subject to the imposition of fines under the MRVP. However, the MRVP provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Exchange will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the MRVP or whether a violation requires a formal disciplinary action.

Amendments to Existing BOX Rules

Due to the new BSTX trading facility and the introduction of trading in Securities= [sic] on the Exchange, the

Exchange proposes to amend those Exchange Rules that would apply to BSTX Participants, but that currently only contemplate trading in options. Therefore, the Exchange is seeking to amend the following Exchange Rules, each of which is set forth in Exhibit 5B submitted with the proposal:

- *Rule 100(a) (Definitions) "Options Participant" or "Participant"*: The Exchange proposes to change the definition of "Options Participant or Participant" to "Participant" to reflect Options Participants and BSTX Participants and to amend the definition as follows: "The term 'Participant' means a firm, or organization that is registered with the Exchange pursuant to the Rule 2000 Series for purposes of participating in trading on a facility of the Exchange and includes an 'Options Participant' and 'BSTX Participant.'"

- *Rule 100(a) (Definitions) "Options Participant"*: The Exchange proposes to add a definition of "Options Participant" that would be defined as follows: "The term 'Options Participant' is a Participant registered with the Exchange for purposes of participating in options trading on the Exchange."³¹⁸

- *Rule 2020(g)(2) (Participant Eligibility and Registration)*: The Exchange proposes to delete subsection (g)(2) and replace it with the following: "(2) Persons associated with a Participant whose functions are related solely and exclusively to transactions in municipal securities; (3) persons associated with a Participant whose functions are related solely and exclusively to transactions in commodities; (4) persons associated with a Participant whose functions are related solely and exclusively to transactions in securities futures, provided that any such person is appropriately registered with a registered futures association; and (5) persons associated with a Participant who are restricted from accessing the Exchange and that do not engage in the securities business of the Participant relating to activity that occurs on the Exchange."³¹⁹

- *Rule 2060 (Revocation of Participant Status or Association with a Participant)*: The Exchange proposes to amend Rule 2060 to refer to "securities

³¹⁸ In addition, as a result of these new defined terms, the Exchange proposes to renumber definitions set forth in Rule 100(a) to keep the definitions in alphabetical order.

³¹⁹ In addition to revising Rule 2020(g)(2) to broaden it to include securities activities beyond just options trading, the Exchange proposes to add greater specificity to define persons that are exempt from registration, consistent with the approach adopted by other exchanges. See e.g., IEX Rule 2.160(m).

³¹¹ See Cboe BZX Rules 15.1 and 15.2.

³¹² 17 CFR 240.19d-1(c)(1).

³¹³ The Commission adopted amendments to paragraph (c) of Rule 19d-1 to allow SROs to submit for Commission approval plans for the abbreviated reporting of minor disciplinary infractions. See Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Any disciplinary action taken by an SRO against any person for violation of a rule of the SRO which has been designated as a minor rule violation pursuant to such a plan filed with and declared effective by the Commission will not be considered "final" for purposes of Section 19(d)(1) of the Exchange Act if the sanction imposed consists of a fine not exceeding \$2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his administrative remedies.

³¹⁴ See e.g., IEX Rule 9.218 and Cboe BZX Rule 8.15.01.

³¹⁵ 15 U.S.C. 78f(b)(1), 78f(b)(5) and 78f(b)(6).

³¹⁶ 15 U.S.C. 78f(b)(7).

³¹⁷ 17 CFR 240.19d-1(c)(2).

transactions” rather than “options securities transactions.”

- *Rule 3180(a) (Mandatory Systems Testing)*: The Exchange proposes to amend subsection (a)(1) of Rule 3180 to also include BSTX Participants, in addition to the categories of Market Makers and OFPs.

- *Rule 7130(a)(2)(v) Execution and Price/Time Priority*: The Exchange proposes to update the cross reference to Rule 100(a)(58) to refer to Rule 100(a)(59), which defines the term “Request for Quote” or “RFQ” under the Rules after the proposed renumbering.

- *Rule 7150(a)(2) (Price Improvement Period)*: The Exchange proposes to amend Rule 7150(a)(2) to update the cross reference to the definition of a Professional in Rule 100(a)(51) to instead refer to Rule 100(a)(52), which is where that term would be defined in the Rules after the proposed renumbering.

- *Rule 7230 (Limitation of Liability)*: The Exchange proposes to amend the references in Rule 7230 to “Options Participants” to simply “Participants.”

- *Rule 7245(a)(4) (Complex Order Price Improve Period)*: The Exchange proposes to update the cross reference to Rule 100(a)(51) to refer to Rule 100(a)(52), which defines the term “Professional” after the proposed renumbering.

- *IM-8050-3*: The Exchange proposes to update the cross reference to Rule 100(a)(56) to refer to Rule 100(a)(57), which defines the term “quote” or “quotation” after the proposed renumbering.

- *Rule 11010(a) “Investigation Following Suspension”*: The Exchange proposes to amend subsection (a) of Rule 11010 to remove the reference to “in BOX options contracts” and to modify the word “position” with the word “security” as follows: “. . . the amount owing to each and a complete list of each open long and short security position maintained by the Participant and each of his or its Customers.”

- *Rule 11030 (Failure to Obtain Reinstatement)*: The Exchange proposes to amend Rule 11030 to replace the reference to “Options Participant” to simply “Participant.”

- *Rule 12140 (Imposition of Fines for Minor Rule Violations)*: The Exchange proposes to amend Rule 12140 to replace references to “Options Participant” to simply “Participant.” In addition, the Exchange proposes to add paragraph (f) to Rule 12140, to incorporate the aforementioned modifications to the Exchange’s MRVP. New paragraph (f) of Rule 12140 would provide: “(f) Transactions on BSTX.

Rules and penalties relating to trading on BSTX that are set forth in Rule 24010 (Penalty for Minor Rule Violations).”

The Exchange believes that the proposed amendments to the definitions set forth in Rule 100 are consistent with Section 6(b)(5) of the Exchange Act³²⁰ because they protect investors and the public interest by setting forth clear definitions that help BOX and BSTX Participants understand and apply Exchange Rules. Without defining terms used in the Exchange Rules clearly, market participants could be confused as to the application of certain rules, which could cause harm to investors.

The Exchange believes that the proposed amendments to the other Exchange Rules detailed above are consistent with Section 6(b)(5) of the Exchange Act³²¹ because the proposed rule change is designed to foster cooperation and coordination with persons engaged in facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange believes that the proposed rule change would remove impediments to and perfect the mechanism of a free and open market and a national market system by ensuring that market participants can easily navigate, understand and comply with the Exchange’s rulebook. The Exchange believes that the proposed rule change enables the Exchange to continue to enforce the Exchange’s rules. The Exchange notes that none of the proposed changes to the current Exchange rulebook would materially alter the application of any of those Rules, other than by extending them to apply to BSTX Participants and trading on the BSTX System. As such, the proposed amendments would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national exchange system. Further, the Exchange believes that, by ensuring the rulebook accurately reflects the intention of the Exchange’s rules, the proposed rule change reduces potential investor or market participant confusion.

Forms To Be Used in Connection With BSTX

In connection with the operation of BSTX, the Exchange proposes to use a series of new forms to facilitate

becoming a BSTX Participant and for issuers to list their Securities. These forms have been submitted with the proposal as Exhibits 3A–3L. Each are described below.

BSTX Participant Application

Pursuant to proposed Rule 18000(b), in order to become a BSTX Participant, an applicant must complete a BSTX Participant Application, which has been submitted with the proposal as Exhibit 3A. The proposed BSTX Participant Application requires the applicant to provide certain basic information such as identifying the applicants name and contact information, Designated Examining Authority, organizational structure, and Central Registration Depository (“CRD”) number. The BSTX Participant Application also requires applicants to provide additional information including certain beneficial ownership information, the applicant’s current Form BD, an organization chart, a description of how the applicant receives orders from customers, how it will send orders to BSTX, and a copy of written supervisory procedures and information barrier procedures.

In addition, the BSTX Participant Application allows applicants to indicate whether they are applying to be a BSTX Market Maker or a Designated Market Maker. Applicants wishing to become a BSTX Market Maker or Designated Market Maker must provide certain additional information including a list of each of the applicant’s trading representatives (including a copy of each representative’s Form U4), a copy of the applicant’s written supervisory procedures relating to market making, a description of the source and amount of the applicant’s capital, and information regarding the applicant’s other business activities and information barrier procedures.

BSTX Participant Agreement

Pursuant to Exchange Rule 18000(b), to transact business on BSTX, prospective BSTX Participants must complete a BSTX Participant Agreement. The BSTX Participant Agreement has been submitted with the proposal as Exhibit 3B. The BSTX Participant Agreement provides that a BSTX Participant must agree with the Exchange as follows:

1. Participant agrees to abide by the Rules of the Exchange and applicable bylaws, as amended from time to time, and all circulars, notices, interpretations, directives and/or decisions adopted by the Exchange.

2. Participant acknowledges that BSTX Participant and its associated

³²⁰ 15 U.S.C. 78f(b)(5).

³²¹ *Id.*

persons are subject to the oversight and jurisdiction of the Exchange.

3. Participant authorizes the Exchange to make available to any governmental agency or SRO any information it may have concerning the BSTX Participant or its associated persons, and releases the Exchange from any and all liability in furnishing such information.

4. Participant acknowledges its obligation to update any and all information contained in any part of the BSTX Participant's application, including termination of membership with another SRO.

These provisions of the BSTX Participant Agreement and others therein are generally designed to reflect the Exchange's SRO obligations to regulate BSTX Participants.

Accordingly, these provisions contractually bind a BSTX Participant to comply with Exchange rules, acknowledge the Exchange's oversight and jurisdiction, authorize the Exchange to disclose information regarding the Participant to any governmental agency or SRO and acknowledge the obligation to update any and all Application contained in the Participant's application.

BSTX User Agreement

In order to become a BSTX Participant, prospective participants must also execute a BSTX User Agreement pursuant to proposed Rule 18000(b). The BSTX User Agreement, submitted with the proposal as Exhibit 3C, includes provisions related to the term of the agreement, compliance with exchange rules, right and obligations under the agreement, changes to BSTX, proprietary rights under the agreement, use of information received under the relationship, disclaimer of warranty, limitation of liability, indemnification, termination and assignment. The information is necessary to outline the rights and obligations of the prospective Participant and the Exchange under the terms of the agreement. Both the BSTX Participant Agreement and BSTX User Agreement will be available on the Exchange's website (*boxoptions.com*).

BSTX Security Market Designated Market Maker Selection Form

In accordance with proposed Rule 25230(b)(1), BSTX will maintain the BSTX Security Designated Market Maker Selection Form, which has been submitted with the proposal as Exhibit 3D. The issuer may select its DMM from among a pool of DMMs eligible to participate in the process. Within two business days of the issuer selecting its DMM, it will use the BSTX Security Market Designated Market Maker

Selection form to notify BSTX of the selection. The form must be signed by a duly authorized officer as specified in proposed Rule 25230(b)(1).

Clearing Authorization Forms

In accordance with proposed Rule 18010, BSTX Participants that are not members/participants of a registered clearing agency must clear their transactions through a BSTX Participant that is a member of a registered clearing agency. A BSTX Participant clearing through another BSTX Participant would do so using, as applicable, either the BSTX Clearing Authorization (non-Market Maker) form (submitted with the proposal as Exhibit 3E) or the BSTX Participant Clearing Authorization (Market Maker) form (submitted with the proposal as Exhibit 3F). Each form would be maintained by BSTX and each form specifies that the BSTX Participant clearing on behalf of the other BSTX Participant accepts financial responsibility for all transactions on BSTX that are made by the BSTX Participant designated on the form.

BSTX Listing Applications

The Exchange proposes to specify the required forms of listing application, listing agreement and other documentation that listing applicants and listed companies must execute or complete (as applicable) as a prerequisite for initial and ongoing listing on the Exchange, as applicable (collectively, "listing documentation"). As proposed, the listing forms are substantially similar to those currently in use by NYSE American LLC, with certain differences to account for the trading of Securities. All listing documentation will be available on the Exchange's website (*boxoptions.com*). Each of the listing documents form a duly authorized representative of the company must sign an affirmation that the information provided is true and correct as of the date the form was signed. In the event that in the future the Exchange makes any substantive changes (including changes to the rights, duties, or obligations of a listed company or listing applicant or the Exchange, or that would otherwise require a rule filing) to such documents, it will submit a rule filing in accordance with Rule 19b-4.³²²

Pursuant to Rule 26130 and 26300 of the Exchange Rules, a company must file and execute the BSTX Original Listing Application (submitted with the proposal as Exhibit 3G) or the BSTX

Additional Listing Application (submitted with the proposal as Exhibit 3H) to apply for the listing of Securities on BSTX.³²³ The BSTX Original Listing Application provides information necessary, and in accordance with Section 12(b) of the Exchange Act,³²⁴ for Exchange regulatory staff to conduct a due diligence review of a company to determine if it qualifies for listing on the Exchange. The BSTX Additional Listing Application requires certain further information for an additional listing of Securities. Relevant factors regarding the company and securities to be listed would determine the type of information required. The following describes each category and use of application information:

1. Corporate information regarding the issuer of the security to be listed, including company name, address, contact information, Central Index Key Code (CIK), SEC File Number, state and country of incorporation, date of incorporation, whether the company is a foreign private issuer, website address, SIC Code, CUSIP number of the security being listed and the date of fiscal year end. This information is required of all applicants and is necessary in order for the Exchange's regulatory staff to collect basic company information for recordkeeping and due diligence purposes, including review of information contained in the company's SEC filings.

2. For original listing applications only, corporate contact information including the company's Chief Executive Officer, Chief Financial Officer, Corporate Secretary, General Counsel and Investor Relations Officer. This information is required of all initial applicants and is necessary in order for the Exchange's regulatory staff to collect current company contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

3. For original listing applications only, offering and security information regarding an offering, including the type of offering, a description of the issue, par value, number of Securities outstanding or offered, total Securities unissued, but reserved for issuance, date authorized, purpose of Securities to be issued, number of Securities authorized, and information relating to payment of dividends. This information is required of all applicants listing Securities on the

³²² The Exchange will not submit a rule filing if the changes made to a document are solely typographical or stylistic in nature.

³²³ Pursuant to proposed Exchange Rule 26130, an applicant seeking the initial listing of its Security must also provide a legal opinion that the applicant's Security is a security under applicable United States securities laws.

³²⁴ 15 U.S.C. 781(b).

Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

4. For original listing applications only, information regarding the company's transfer agent. Transfer agent information is required for all applicants. This information is necessary in order for the Exchange's regulatory staff to collect current contact information for such company transfer agent for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

5. For original listing applications only, contact information for the outside counsel with respect to the listing application, if any. This information is necessary in order for the Exchange's regulatory staff to collect applicable contact information for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant and assess compliance with Exchange Rule 26130.

6. For original listing applications only, a description of any security preferences. This information is necessary to determine whether the Applicant issuer has any existing class of common stock or equity securities entitling the holders to differential voting rights, dividend payments, or other preferences.

7. For original listing applications only, type of Security listing, including the type of transaction (initial public offering of a Security, merger, spin-off, follow on offering, reorganization, exchange offer or conversion) and other details related to the transaction, including the name and contact information for the investment banker/ financial advisor contacts. This information is necessary in order for the Exchange's regulatory staff to collect information for such company for purposes of obtaining any additional due diligence information to complete a listing qualification review of the applicant.

8. For original listing applications only, exchange requirements for listing consideration. This section notes that to be considered for listing, the Applicant Issuer must meet the Exchange's minimum listing requirements, that the Exchange has broad discretion regarding the listing of any Security and may deny listing or apply additional or more stringent criteria based on any event, condition or circumstance that makes the listing of an Applicant Issuer's Security inadvisable or unwarranted in the opinion of the Exchange. The section also notes that even if an Applicant Issuer meets the Exchange's

listing standards for listing on the BSTX Security Market, it does not necessarily mean that its application will be approved. This information is necessary in order for the Exchange's regulatory staff to assess whether an Applicant Issuer is qualified for listing.

9. For original listing applications only, regulatory review information, including a certification that no officer, board member or non-institutional shareholder with greater than 10% ownership of the company has been convicted of a felony or misdemeanor relating to financial issues during the past ten years or a detailed description of any such matters. This section also notes that the Exchange will review background materials available to it regarding the aforementioned individuals as part of the eligibility review process. This regulatory review information is necessary in order for the Exchange's regulatory staff to assess whether there are regulatory matters related to the company that render it unqualified for listing.

10. For original listing applications only, supporting documentation required prior to listing approval includes a listing agreement, corporate governance affirmation, listing application checklist and underwriter's letter. This documentation is necessary in order to support the Exchange's regulatory staff listing qualification review (corporate governance affirmation, listing application checklist and underwriter's letter) and to effectuate the listed company's agreement to the terms of listing (listing agreement).

11. For additional listing applications only, transaction details, including the purpose of the issuance, total Securities, date of board authorization, date of shareholder authorization and anticipated date of issuance. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

12. For additional listing applications only, insider participation and future potential issuances, including whether any director, officer or principal shareholder of the company has a direct or indirect interest in the transaction, and if the transaction potentially requires the company to issue any Securities in the future above the amount they are currently applying for. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

13. For additional listing applications only, information for a technical original listing, including reverse Security splits and changes in states of incorporation. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order for the Exchange's regulatory staff to collect basic information about the offering.

14. For additional listing applications only, information for a forward Security split or Security dividend, including forward Security split ratios and information related to Security dividends. This information is required of all applicants listing additional Securities on the Exchange, and is necessary in order to determine the rights associated with the Securities.

15. For additional listing applications only, relevant company documents. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review.

16. For additional listing applications only, reconciliation for technical original listing, including Securities issued and outstanding after the technical original event, listed reserves previously approved for listing, and unlisted reserves not yet approved by the Exchange. This information is required of all applicants listing additional Securities on the Exchange, and is necessary to assess to support the Exchange's regulatory staff listing qualification review and to obtain all of the information relevant to the offering.

Checklist for Original Listing Application

In order to assist issuers seeking to list its Securities on BSTX, the Exchange has provided a checklist for issuers to seeking to file an original listing application with BSTX. The BSTX Listing Application Checklist, submitted with the proposal as Exhibit 3I, provides that issuers must provide BSTX with a listing application, listing agreement, corporate governance affirmation, underwriter's letter (for an initial public offering of a Security only) and relevant SEC filings (*e.g.*, 8-A, 10, 40-F, 20-F). Each of the above referenced forms are fully described herein. The checklist is necessary to assist issuers and the Exchange regulatory staff in assessing the completion of the relevant documents.

BSTX Security Market Listing Agreement

Pursuant to proposed Exchange Rule 26132, to apply for listing on the

Exchange, a company must execute the BSTX Security Market Listing Agreement (the "Listing Agreement"), which has been submitted with this proposal as Exhibit 3J. Pursuant to the proposed Listing Agreement, a company agrees with the Exchange as follows:

1. Company certifies that it will comply with all Exchange rules, policies, and procedures that apply to listed companies as they are now in effect and as they may be amended from time to time, regardless of whether the Company's organization documents would allow for a different result.

2. Company shall notify the Exchange at least 20 days in advance of any change in the form or nature of any listed Securities or in the rights, benefits, and privileges of the holders of such Securities.

3. Company understands that the Exchange may remove its Securities from listing on the BSTX Security Market, pursuant to applicable procedures, if it fails to meet one or more requirements of Paragraphs 1 and 2 of this agreement.

4. In order to publicize the Company's listing on the BSTX Security Market, the Company authorizes the Exchange to use the Company's corporate logos, website address, trade names, and trade/service marks in order to convey quotation information, transactional reporting information, and other information regarding the Company in connection with the Exchange. In order to ensure the accuracy of the information, the Company agrees to provide the Exchange with the Company's current corporate logos, website address, trade names, and trade/service marks and with any subsequent changes to those logos, trade names and marks. The Listing Agreement further requires that the Company specify a telephone number to which questions regarding logo usage should be directed.

5. Company indemnifies the Exchange and holds it harmless from any third-party rights and/or claims arising out of use by the Exchange or, any affiliate or facility of the Exchange ("Corporations") of the Company's corporate logos, website address, trade names, trade/service marks, and/or the trading symbol used by the Company.

6. Company warrants and represents that the trading symbol to be used by the Company does not violate any trade/service mark, trade name, or other intellectual property right of any third party. The Company's trading symbol is provided to the Company for the limited purpose of identifying the Company's security in authorized quotation and trading systems. The Exchange reserves the right to change the Company's

trading symbol at the Exchange's discretion at any time.

7. Company agrees to furnish to the Exchange on demand such information concerning the Company as the Exchange may reasonably request.

8. Company agrees to pay when due all fees associated with its listing of Securities on the BSTX Security Market, in accordance with the Exchange's Rules.

9. Company agrees to file all required periodic financial reports with the SEC, including annual reports and, where applicable, quarterly or semi-annual reports, by the due dates established by the SEC.

The various provisions of the Listing Agreement are designed to accomplish several objectives. First, clauses 1–3 and 6–8 reflect the Exchange's SRO obligations to assure that only listed companies that are compliant with applicable Exchange rules may remain listed. Thus, these provisions contractually bind a listed company to comply with Exchange rules, provide notification of any corporate action or other event that will cause the company to cease to be in compliance with Exchange listing requirements, evidence the company's understanding that it may be removed from listing (subject to applicable procedures) if it fails to be in compliance or notify the Exchange of any event of noncompliance, furnish the Exchange with requested information on demand, pay all fees due and file all required periodic reports with the SEC. Clauses four and five contain standard legal representations and agreements from the listed company to the Exchange regarding use of its logo, trade names, trade/service marks, and trading symbols as well as potential legal claims against the Exchange in connection thereto.

BSTX Security Market Company Corporate Governance Affirmation

In accordance with the proposed Rule 26800 Series, companies listed on BSTX would be required to comply with certain corporate governance standards, relating to, for example, audit committees, director nominations, executive compensation, board composition, and executive sessions. In certain circumstances the corporate governance standards that apply vary depending on the nature of the company. In addition, there are phase-in periods and exemptions available to certain types of companies. The proposed BSTX Security Market Corporate Governance Affirmation, submitted with this proposal as Exhibit 3K, enables a company to confirm to the Exchange that it is in compliance with

the applicable standards, and specify any applicable phase-ins or exemptions. Companies are required to submit a BSTX Security Market Corporate Governance Affirmation upon initial listing on the Exchange and thereafter when an event occurs that makes an existing form inaccurate. This BSTX Security Market Corporate Governance Affirmation assists the Exchange regulatory staff in monitoring listed company compliance with the corporate governance requirements.

Sample Underwriter's Letter

In accordance with proposed Rule 26101, an initial public offering of a Security must meet certain listing requirements. The Exchange seeks to require the issuer's underwriter to execute a letter setting forth the details of the offering, including the name of the offering and why the offering meets the criteria of the BSTX rules. This information, set forth in the proposed Sample Underwriter's Letter and submitted with this proposal as Exhibit 3L, is necessary to assist the Exchange's regulatory staff in assessing the offering's compliance with BSTX listing standards for an initial public offering of a Security.

Regulation

In connection with the operation of BSTX, the Exchange will leverage many of the structures it established to operate a national securities exchange in compliance with Section 6 of the Exchange Act.³²⁵ Specifically, the Exchange will extend its Regulatory Services Agreement with FINRA to cover BSTX Participants and trading on the BSTX System. This Regulatory Services Agreement will govern many aspects of the regulation and discipline of BSTX Participants, just as it does for options regulation. The Exchange will perform Security listing regulation, authorize BSTX Participants to trade on the BSTX System, and conduct surveillance of Security trading on the BSTX System.

Section 17(d) of the Exchange Act³²⁶ and the related Exchange Act rules permit SROs to allocate certain regulatory responsibilities to avoid duplicative oversight and regulation. Under Exchange Act Rule 17d–1,³²⁷ the SEC designates one SRO to be the Designated Examining Authority, or DEA, for each broker-dealer that is a member of more than one SRO. The DEA is responsible for the financial aspects of that broker-dealer's regulatory

³²⁵ 15 U.S.C. 78f.

³²⁶ 15 U.S.C. 78q(d).

³²⁷ 17 CFR 240.17d–1.

oversight. Because Exchange Participants, including BSTX Participants, also must be members of at least one other SRO, the Exchange would generally not be designated as the DEA for any of its members.³²⁸

Rule 17d-2 under the Exchange Act³²⁹ permits SROs to file with the Commission plans under which the SROs allocate among each other the responsibility to receive regulatory reports from, and examine and enforce compliance with specified provisions of the Exchange Act and rules thereunder and SRO rules by, firms that are members of more than one SRO (“common members”). If such a plan is declared effective by the Commission, an SRO that is a party to the plan is relieved of regulatory responsibility as to any common member for whom responsibility is allocated under the plan to another SRO. The Exchange plans to join the Plan for the Allocation of Regulatory Responsibilities Regarding Regulation NMS.³³⁰ The Exchange may choose to join certain Rule 17d-2 agreements such as the agreement allocating responsibility for insider trading rules.³³¹

For those regulatory responsibilities that fall outside the scope of any Rule 17d-2 agreements that the Exchange may join, subject to Commission approval, the Exchange will retain full regulatory responsibility under the Exchange Act. However, as noted, the Exchange will extend its existing Regulatory Services Agreement with FINRA to provide that FINRA personnel will operate as agents for the Exchange in performing certain regulatory functions with respect to BSTX. As is the case with the Exchange’s options trading platform, the Exchange will supervise FINRA and continue to bear ultimate regulatory responsibility for BSTX. Consistent with the Exchange’s existing regulatory structure, the Exchange’s Chief Regulatory Officer shall have general supervision of the regulatory operations of BSTX, including responsibility for overseeing the surveillance, examination, and enforcement functions and for administering all regulatory services agreements applicable to BSTX. Similarly, the Exchange’s existing Regulatory Oversight Committee will be responsible for overseeing the adequacy and effectiveness of Exchange’s

regulatory and self-regulatory organization responsibilities, including those applicable to BSTX. Finally, as it does with options, the Exchange will perform automated surveillance of trading on BSTX for the purpose of maintaining a fair and orderly market at all times and monitor BSTX to identify unusual trading patterns and determine whether particular trading activity requires further regulatory investigation by FINRA.

In addition, the Exchange will oversee the process for determining and implementing trade halts, identifying and responding to unusual market conditions, and administering the Exchange’s process for identifying and remediating “clearly erroneous trades” pursuant to proposed Rule 25110.

NMS Plans

The Exchange intends to join the Order Execution Quality Disclosure Plan, the Plan to Address Extraordinary Market Volatility, the Plan Governing the Process of Selecting a Plan Processor, and the applicable plan(s) for consolidation and dissemination of market data. The Exchange is already a participant in the NMS plan related to the Consolidated Audit Trail. Consistent with Section 6(b)(5) of the Exchange Act,³³² the Exchange believes that joining the same set of NMS plans that all other national securities exchanges that trade equities must join fosters cooperation and coordination with other national securities exchanges and other market participants engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of the Exchange Act,³³³ in general and with Section 6(b)(5) of the Exchange Act,³³⁴ in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority

conferred by this title matters not related to the purposes of this title or the administration of the Exchange.

The Exchange believes that BSTX will benefit individual investors, other market participants, and the equities market generally. The Exchange proposes to establish BSTX as a facility of the Exchange that would trade equities in a similar manner to how equities presently trade on other exchanges. BSTX would also make available to BSTX Participants the BSTX Market Data Blockchain, which provides certain order and transaction information with respect to a BSTX Participant’s trading activity on BSTX, as well as anonymized order and transaction data with respect to all trading activity occurring on BSTX. The Exchange believes that the content of information available on the BSTX Market Data Blockchain would generally be similar to TAQ data made available by NYSE today, except that (i) the BSTX Market Data Blockchain would use a private, permissioned network controlled by the Exchange to make the market data available to BSTX Participants; (ii) a BSTX Participant would be able to certain see non-anonymized information about its own trading activity on BSTX;³³⁵ and (iii) the BSTX Market Data Blockchain would include market data only with respect to trading activity occurring on BSTX, while the Exchange understands that TAQ data includes certain trading and quotation data that may occur on other markets.³³⁶ The Exchange believes that the use of blockchain technology, through a private permissioned network that operates in manner that is fully compatible with the existing regulatory structures for trading, recordkeeping, and clearance and settlement that market participants are familiar with is an appropriate way to introduce blockchain to the current market structure. BSTX Participants would have not have affirmative obligations to provide information to the blockchain nor would they be required to access or use it. The data inputs to the BSTX Market Data Blockchain would be captured in the ordinary course as BSTX Participants’ orders and messages are

³³⁵ All non-anonymized information would be available only to the BSTX Participant who provided such information to the Exchange through its trading activity on BSTX.

³³⁶ See e.g., NYSE, Daily TAQ Fact Sheet, (noting that TAQ data “provides users access to all trades and quotes for all issues traded on NYSE, Nasdaq and the regional exchanges for a single trading day” and is “a comprehensive history of daily activity from NYSE markets and the U.S. Consolidated Tape covering U.S. Equities instruments (CTA and UTP participating markets”) https://www.nyse.com/publicdocs/nyse/data/Daily_TAQ_Fact_Sheet.pdf.

³²⁸ See Exchange Rule 2020(a) (requiring that a Participant be a member of another registered national securities exchange or association).

³²⁹ 17 CFR 240.17d-2.

³³⁰ Exchange Act Release No. 85046 (February 4, 2019), 84 FR 2643 (February 7, 2019).

³³¹ Exchange Act Release No. 84392 (October 10, 2018), 83 FR 52243 (October 16, 2018).

³³² 15 U.S.C. 78f(b)(5).

³³³ 15 U.S.C. 78a *et seq.*

³³⁴ 15 U.S.C. 78f(b)(5).

sent to the Exchange through the FIX gateway. The BSTX Market Data Blockchain, therefore, would be optional functionality available to all BSTX Participants on equal terms, and therefore is not unfairly discriminatory, consistent with Section 6(b)(5) of the Exchange Act.³³⁷

The Exchange has proposed to make the BSTX Market Data Blockchain available only to BSTX Participants rather than other market participants that are not BSTX Participants primarily because the Exchange believes that BSTX Participants would be the most likely to be interested in potentially using the BSTX Market Data Blockchain. The BSTX Market Data Blockchain would consist of information that pertains solely to trading activity on BSTX and not other exchanges. The Exchange believes, therefore, that most persons interested in market data relating to trading on BSTX would likely become a BSTX Participant, at which time they would have access to the BSTX Market Data Blockchain. The Exchange solicits comment from the public as to whether non-BSTX Participants would be interested in having access to the BSTX Market Data Blockchain and the anticipated uses of the BSTX Market Data Blockchain by such non-BSTX Participants.³³⁸ To the extent that non-BSTX Participants are interested in access to General Market Data (*i.e.*, anonymized market data) available on the BSTX Market Data Blockchain, the Exchange would consider providing access to such persons on an ad hoc basis³³⁹ or may consider amendments to the proposal (or subsequent rule filings) to provide regular access to General Market Data on the BSTX Market Data Blockchain if there is sufficient interest or demand from non-BSTX Participants. The Exchange notes that the anonymized data that would be available on the BSTX Market Data Blockchain would be the same information that would be available through the Exchange's proprietary market data feeds, which any person (*i.e.*, both BSTX Participants and non-BSTX Participants) would be able to acquire. Accordingly, under the proposal, non-BSTX Participants would still be able to access the same anonymized market data information

available on the BSTX Market Data Blockchain as BSTX Participants, but through a different means (*i.e.*, through the proprietary market data feeds rather than via the BSTX Market Data Blockchain). Because the same anonymized information would be available to non-BSTX Participants through another means, the Exchange believes that the proposed limitation of access to the BSTX Market Data Blockchain is not unfairly discriminatory and does not impose a burden on competition, consistent with Sections 6(b)(5) and 6(b)(8) of the Exchange Act.³⁴⁰

In addition, because the BSTX Market Data Blockchain only captures information with respect to trading activity on BSTX, it would have no effect or impact on other exchanges, promoting consistency with Section 6(b)(8) of the Exchange Act, which prohibits an exchange's rules from imposing a burden on competition not necessary or appropriate in furtherance of the Exchange Act.³⁴¹ The entry of an innovative competitor such as BSTX seeking to implement a measured introduction of blockchain technology in connection with the trading of equity securities may promote competition by encouraging other market participants to find ways of using blockchain technology in connection with securities transactions. The proposed regulation of BSTX and BSTX Participants, as well as the execution of Securities using a price-time priority model and the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency will all operate in a manner substantially similar to existing equities exchanges. In this way, the Exchange believes that BSTX provides a robust regulatory structure that protects investors and the public interest while introducing the use of blockchain technology as an additional feature in connection with Securities traded on the Exchange.

In connection with the clearance and settlement of Securities pursuant to the rules, policies and procedures of a registered clearing agency, the Exchange proposes that BSTX Participants would be able to include in their orders in Securities that are submitted to BSTX certain parameters to indicate a preference for settlement on a same day (T+0) or next trading day (T+1) basis when certain conditions are met.³⁴² Any such orders would at the time of order entry represent orders that would be

regular-way and would be presumed to settle on a T+2 basis just like any other order submitted by a BSTX Participant that does not include a parameter indicating a preference for faster settlement. As described in greater detail above, however, an Order with a T+0 Preference or an Order with a T+1 Preference would only result in executions that would actually settle more quickly than on a T+2 basis if, and only if, all of the conditions in Rule 25060(h) are met and the execution that is transmitted to NSCC is eligible for T+0 or T+1 settlement under the rules, policies and procedures of a registered clearing agency.³⁴³ Any such preference included by a BSTX Participant would only become operative if the order happens to execute against another order from a BSTX Participant that also includes a parameter indicating a preference for settlement on a T+0 or T+1 basis.

The Exchange believes that the proposed ability for BSTX Participants to indicate a preference for shorter settlement times as described above is consistent with the Exchange Act and in particular Section 6(b)(5) of the Exchange Act because it would help remove impediments to and perfect the mechanism of a free and open market and is not designed to permit unfair discrimination between or among market participants.³⁴⁴ Specifically, allowing for BSTX Participants to potentially reduce the settlement time for transactions on BSTX pursuant to the rules, policies and procedures of a registered clearing agency helps remove impediments to and perfects a free and open market by allowing greater choice for BSTX Participants who may want to avail themselves of currently available functionality at registered clearing agencies. Moreover, the Commission has previously noted a number of positive effects relating to the liquidity risks and costs faced by members in a clearing agency, and the Exchange believes that this proposed functionality on BSTX would help realize such positive effects.³⁴⁵ Proposed Rule 25060(h) is not designed to permit unfair discrimination between market participants consistent with Section 6(b)(5)³⁴⁶ because the Rule would allow all orders that are marketable against one another—regardless of the settlement preference of the BSTX Participant submitting the order (or their customer)—to execute against each

³³⁷ 15 U.S.C. 78f(b)(5).

³³⁸ The Exchange reiterates that non-anonymized market data available on the BSTX Market Data Blockchain would only ever be accessible by the BSTX Participant who provided such market data through its trading on BSTX.

³³⁹ For example, the Exchange might provide temporary access to the BSTX Market Data Blockchain to academics studying equity markets.

³⁴⁰ 15 U.S.C. 78f(b)(5) and (8).

³⁴¹ 15 U.S.C. 78f(b)(8).

³⁴² See proposed Rule 25060(h).

³⁴³ See proposed Rule 25100(d).

³⁴⁴ 15 U.S.C. 78f(b)(5).

³⁴⁵ See *supra* notes 888–91 and accompanying text.

³⁴⁶ 15 U.S.C. 78f(b)(5).

other. A BSTX Participant that would like settlement of T+2 could still interact with orders on BSTX that indicate a preference for a shorter settlement cycle and vice-versa. Only where two orders that both indicate a preference for a shorter settlement cycle match on BSTX would a shorter settlement cycle be possible.

The Exchange also proposes to suspend unlisted trading privileges for Securities that qualify as Thinly Traded Securities, which the Exchange also believes is consistent with the Exchange Act for the reasons detailed in Part II.H above.³⁴⁷ The Exchange proposes to suspend UTP only for Securities that qualify as Thinly Traded Securities, which are generally those with an ADV of trading of 100,000 or less and a market capitalization of less than \$1 billion, and where an issuer of a Thinly Traded Security elects to have UTP suspended. The Exchange believes that the proposed suspension of UTP is consistent with Section 6(b)(5) of the Exchange Act³⁴⁸ because it is designed 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 by concentrating displayed liquidity on a single exchange, which many, including the Commission, have suggested could potentially improve the market quality for thinly traded securities. The Exchange believes that concentrating displayed liquidity on a single venue could make market making more attractive in Thinly Traded Securities, thereby increasing the overall amount and depth of liquidity in the market and in turn making it easier for investors to acquire and dispose of positions in Thinly Traded Securities, which furthers the protection of investors and the public interest, consistent with Section 6(b)(5) of the Exchange Act.³⁴⁹ The Exchange would make available order and transaction data relating to Thinly Traded Securities to regulators, academics, and others upon request to evaluate how the suspension of UTP has impacted Thinly Traded Securities. The Exchange will also perform its own analysis across a range of market quality metrics to evaluate whether the suspension of UTP has had the intended effect of improving market quality for Thinly Traded Securities.³⁵⁰ The Exchange believes that by studying the effect of the suspension of UTP for Thinly Traded Securities and making

available market data for others to make similar studies, the Exchange can help ensure that the suspension of UTP is in fact having the intended effect of improving market quality for Thinly Traded Securities and/or determine what else might be necessary to improve market quality, all of which the Exchange believes will help further the protection of investors and the public interest.

Similarly, consistent the Exchange believes that the proposed suspension of UTP for Thinly Traded Securities would not permit unfair discrimination between customers, issuers, brokers or dealers, because the suspension is for the purpose of furthering the regulatory objective of improving market quality for securities that are thinly traded. Although non-Thinly Traded Securities would not be able to have UTP suspended, this discriminatory treatment is not “unfair” given the substantial public interest, as demonstrated through the Commission’s statements and by market participants at the Roundtable, in improving market conditions for thinly traded securities. The Exchange believes that the proposed suspension of UTP would help protect investors and the public interest, consistent with Section 6(b)(5), by concentrating displayed liquidity on a single venue, thereby providing greater incentives for market makers in Thinly Traded Securities and in turn making it easier for investors to buy and sell shares of Thinly Traded Securities. The Exchange believes that there is a general consensus among members of Commission staff, former Commissioners (including former Chairman Jay Clayton), the Department of the Treasury, and market participants, as well as empirical evidence, making clear that operating company stocks with an ADV of less than 100,000 shares suffer significant liquidity and market quality challenges not faced by stocks with greater trading volume. It is for this reason, the Exchange believes, that the Commission specifically solicited requests from exchanges for innovative approaches to improve the market for thinly traded securities, including requests for suspension of UTP.³⁵¹

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance

of the purposes of the Exchange Act.³⁵² The Exchange operates in an intensely competitive global marketplace for transaction services. The Exchange competes for the privilege of providing market services to broker-dealers through the Exchange’s service offerings and associated benefits it is able to provide. The Exchange’s ability to compete in this environment is based in large part on the quality of its trading systems, the overall quality of its market and its attractiveness to market participants who evaluate the Exchange on, among other things, speed, reliability, the likelihood and costs of executions, as well as spreads, fairness, and transparency.

The Exchange believes that the primary areas where the proposed rule change could potentially result in a burden on competition are with regard to the terms on which: (1) Issuers may list their securities for trading, (2) market participants may access BSTX as a facility of the Exchange and use its services including the BSTX Market Data Blockchain, (3) Security transactions may be cleared and settled, (4) Security transactions would occur OTC (5) Security transactions would occur on other exchanges through an extension of UTP to Securities that are not Thinly Traded Securities; and (6) there would be a suspension of UTP for Thinly Traded Securities.

Regarding considerations (1) and (2), and as described in detail in Item 3 above, the BSTX Rules are drawn substantially from the existing rules of other exchanges that the Commission has already found to be consistent with the Exchange Act, including regarding whether they impose any burden on competition that is not necessary or appropriate in furtherance of its purposes. For example, the BSTX Non-ETP Listing Rules in the 26000 Series and Suspension and Delisting Rules in the 27000 Series that affect issuers and their ability to list Securities for trading are based substantially on the current rules of NYSE American. Additionally, the BSTX Trading and Listing of ETPs Rules in the 28000 Series that concern issuers and their ability to list Securities that are exchange-traded products are based substantially on the current rules of NYSE Arca. Additionally, the BSTX Rules regarding membership and access to and use of the facilities of BSTX are also substantially based on existing exchange rules. Specifically, the relevant BSTX Rules are as follows: participation on BSTX (Rule 18000 Series); business conduct for BSTX participants (Rule 19000 Series);

³⁴⁷ See *supra* notes 71–76 and accompanying text.

³⁴⁸ 15 U.S.C. 78f(b)(5).

³⁴⁹ *Id.*

³⁵⁰ See Part II.H.5.

³⁵¹ Commission Statement on Thinly Traded Securities at 56956.

³⁵² 15 U.S.C. 78f(b)(8).

financial and operational rules for BSTX participants (Rule 20000 Series); supervision (Rule 21000 Series); miscellaneous provisions (Rule 22000 Series); trading practices (Rule 23000 Series); discipline and summary suspension (Rule 24000 Series); trading (Rule 25000 Series); market making (Rule 25200 Series); and dues, fees, assessments, and other charges (Rule 28000 [sic] Series). As described in detail in Item 3, these rules are substantially based on analogous rules of the following exchanges, as applicable: BOX; Investors Exchange LLC; Cboe BZX Exchange, Inc.; The Nasdaq Stock Market LLC; and NYSE American LLC.

Regarding consideration (2) and use of the BSTX Market Data Blockchain, the terms on which BSTX would operate the BSTX Market Data Blockchain under Rule 17020 would apply equally to all BSTX Participants and would therefore not impose any different burden on one BSTX Participant compared to another. As described in detail in Item 3, BSTX would issue login credentials to each BSTX Participant through which the BSTX Participant may choose to access the BSTX Market Data Blockchain. Accessing the BSTX Market Data Blockchain would not be required. If a Participant chooses to do so, it would be able to see its order and transaction information on BSTX as well as certain anonymized General Market Data from other BSTX Participants. Because the General Market Data would be anonymized, the Exchange believes that there would not be cause for concern regarding potential trading information leakage or the ability for a BSTX Participant to reverse engineer another BSTX Participant's trading strategies. Moreover, the BSTX Market Data Blockchain would not require any affirmative action on the part of a BSTX Participant for its information to be recorded to the BSTX Market Data Blockchain. Rather the Exchange would control all aspects of the BSTX Market Data Blockchain as a private, permission-based blockchain accessible to BSTX Participants, and the BSTX Market Data Blockchain would capture order and execution activity that occurs in the normal course on BSTX and is made available to BSTX Participants as an additional resource that they may use in their discretion. The BSTX Market Data Blockchain would functionally provide market data similarly to what NYSE offers through TAQ data, but would simply provide it using distributed ledger technology. Accordingly, although capturing a different set of market data than

captured by NYSE TAQ data, the BSTX Market Data Blockchain is pro-competitive by offering a similar type of market data and using an innovative technology to do so. For these reasons, the Exchange believes that the BSTX Market Data Blockchain would not impose any burden on competition.

In addition to not imposing any burden on competition, the Exchange believes that the BSTX Market Data Blockchain would provide two primary benefits to BSTX Participants. First, the Exchange believes that BSTX Participants that choose to access the BSTX Market Data Blockchain may find the information useful as a focused source of market data regarding order and transaction information on BSTX.³⁵³ Second, the Exchange believes that the BSTX Market Data Blockchain would help familiarize BSTX Participants that access the market data with the capabilities of blockchain technology in a manner that does not impose any burden on competition on them or others. The Commission has stated that it is "mindful of the benefits of increasing use of new technologies for investors and the markets, and has encouraged experimentation and innovation . . ." stating further that "[i]nformation and communications technologies are critical to healthy and efficient primary and secondary markets."³⁵⁴ Regarding the judgment of whether the benefits of certain technologies are meritorious, the Commission has explained its view that "[t]he market will ultimately prove the worth of technology—whether the benefits to the industry and its investors of developing and using new services are greater than the associated costs."³⁵⁵ Consistent with these statements, the Exchange believes that promoting use of the functionality of blockchain technology through the BSTX Market Data Blockchain will allow BSTX Participants to observe and increase their familiarity with the capabilities and potential benefits of blockchain technology in a context that operates within the current equity market infrastructure and thereby advances and protects the public's interest in the use and development of new data processing techniques that may create opportunities for more efficient, effective and safe securities markets.³⁵⁶

³⁵³ For example, a BSTX Participant may wish to use the market data to review its trading activity on BSTX, determine what the market quality was at a particular time for a given Security or to evaluate execution quality on BSTX.

³⁵⁴ See *supra* n. 366–38 and accompanying text.

³⁵⁵ *Id.*

³⁵⁶ See *supra* n. 39 and accompanying text.

Regarding consideration (3) and the manner in which Security transactions may be cleared and settled, the Exchange proposes under BSTX Rule 25100(d) to clear and settle transactions in Securities in accordance with the rules, policies and procedures of a registered clearing agency. The Exchange believes that this is consistent with how other exchange-listed equity securities are cleared and settled today. Therefore, BSTX's rules regarding clearance and settlement of Security transactions do not impose any relative burden on competition regarding the manner in which trades may be cleared and settled because market participants would be able to clear and settle Security transactions in the same manner as they already do in other types of NMS stock. The Exchange believes that this is equally true regarding the proposed ability of BSTX Participants to submit to BSTX orders in Securities in which they include a parameter expressing a preference for T+1 or T+0 settlement, consistent with the rules, policies and procedures of a registered clearing agency, as proposed in the operation of proposed BSTX Rules 25060(h) and 25100(d). As described in detail in Item 3 above, BSTX believes that NSCC and DTC already have authority under their rules policies and procedures to clear and settle certain trades on a T+1 or T+0 basis and that these clearing agencies do already clear and settle trades in accordance with this authority.

The Exchange believes that answering the question of whether a burden on competition is imposed by the proposal to allow BSTX Participants to specify an order parameter indicating a preference for potential settlement on a T+0 or T+1 basis requires an assessment under three general circumstances for order submissions and executions. The first possible circumstance contemplates orders that BSTX Participants would submit to the BSTX System and that would result in an execution on BSTX. Here, it would be entirely the choice of any BSTX Participant regarding whether to include an order parameter indicating a preference for T+0 or T+1 settlement where possible under the settlement logic in BSTX Rule 25060(h). If no such additional parameter is included in the order, the order defaults to settle on a regular-way T+2 basis under the settlement logic in proposed BSTX Rule 25060(h). As described in Part II.I of Item 3, an order that includes a parameter indicating a preference for potential T+0 settlement will execute against any order against which it is marketable with settlement occurring on

a regular-way settlement cycle of T+2 except where: (i) The order with the parameter for potential settlement on T+0 executes against another order with a parameter for potential settlement on T+0 (in which case settlement would occur on the trade date if the transaction is also eligible for settlement on T+0 under the rules, policies and procedures of a registered clearing agency) or (ii) the order with a parameter for potential settlement on T+0 executes against an order with a parameter for potential settlement on T+1 (in which case settlement would occur T+1). Similarly, as proposed, an order that includes a parameter for potential settlement on T+1 will execute against any order against which it is marketable with settlement occurring on a regular-way settlement date of T+2 except where: (i) An order that includes a parameter for potential settlement on T+1 executes against another such order or an order that includes a parameter for potential settlement on T+0 (in which case settlement would occur T+1). In all cases under the settlement logic in proposed BSTX Rule 25060(h), an order that does not include an optional parameter indicating a preference for potential settlement on T+0 or T+1 would be a regular way order that would always receive T+2 settlement if it executes against any other order in the BSTX System. In this way, all of the orders submitted to BSTX would be regular way orders that in and of themselves would be presumed to settle on T+2. Only where a BSTX Participant includes the optional parameters to express a preference for potential T+0 or T+1 settlement (where consistent with the rules, policies and procedures of a registered clearing agency) and the order matches against another order seeking a shorter settlement time than T+2 could a transaction settle more quickly than T+2 under the settlement logic in proposed BSTX Rule 25060(h) and as described immediately above. Thus, every market participant seeking T+2 settlement for an execution on BSTX would be able to interact with any order against which their order is marketable, including those marked for possible T+0 or T+1 settlement. In addition, the possibility of shortened settlement timing would have no impact on the Exchange's price time priority.³⁵⁷ For these reasons, the Exchange believes that no burden on competition is imposed in this first possible circumstance.

The second possible circumstance arises when an order that would be required under Exchange Act Rule

611,³⁵⁸ the Commission's "order protection rule", to be routed to BSTX from a third party exchange that extends UTP to a Security. This required routing of the order in such a Security would occur in this setting because the NBBO existed on BSTX at the time of the entry of the order. Under proposed BSTX Rule 25060(h), the order routed to BSTX would execute against any order against which it is marketable without regard to whether a BSTX Participant may have included an optional parameter for potential T+0 or T+1 settlement where the order executes against another order that also has an optional parameter for potential T+0 or T+1 settlement under the settlement logic in BSTX Rule 25060(h). In the event the order routed to BSTX executes against another order on BSTX against which it is marketable, that executed transaction in the Security would be bound for regular way T+2 settlement under BSTX Rule 25060(h) because the Exchange believes that the routed order from a third party exchange would not include a parameter for T+0 or T+1 settlement. This is because the Exchange believes that no other exchange currently includes any such optional parameters to be able to indicate a preference for potential T+0 or T+1 settlement. This structure means that any non-BSTX Participant that sees a quote in a Security on BSTX would remain able to execute against that quote even if that quote includes an optional parameter indicating a preference for T+0 or T+1 settlement where an executed order becomes eligible for any such settlement on a basis that is faster than T+2 under the settlement logic in BSTX Rule 25060(h). The Exchange believes that no burden on competition results in this second possible circumstance because an order routed to BSTX would interact against any order on BSTX against which it is marketable. All orders in a Security that are submitted directly to BSTX by BSTX Participants or that may be routed to BSTX would be regular way orders that when viewed in isolation would be presumed to settle on a T+2 basis at the time of order entry. It would only be upon execution against another order that also includes an order parameter expressing a preference for settlement on a T+0 or T+1 basis that the executed transaction (*i.e.*, not the initial orders) would become eligible for settlement faster than T+2 under the settlement logic in Rule 25060(h). The Exchange believes this imposes no burden on competition on BSTX Participants because inclusion of any T+0 or T+1 parameter would be entirely

optional and any BSTX Participant that includes such a parameter would do so with an ex-ante understanding of the settlement logic in BSTX Rule 25060 that could cause an executed transaction to settle more quickly than T+2. As noted, the Exchange believes that orders in a Security that would be required to be routed to BSTX, for example under the Commission's Order Protection Rule, would also not impose any burden on competition because other exchanges do not have rules that similarly contemplate the inclusion of a T+0 or T+1 parameter, such routed orders would therefore result in T+2 settlement if executed against any other order on BSTX against which the order is marketable (regardless of whether the order against which it executes includes an optional parameter indicating a preference for T+0 or T+1 settlement). Therefore, any order routed to BSTX would be able to interact with any other order on BSTX against which it is marketable and would settle on a regular way T+2 basis just as occurs today regarding any order in an NMS stock that is routed to a national securities exchange.

The third possible circumstance contemplates an order that must be routed under the order protection rule from BSTX to a third party exchange that extends UTP for a Security because the third party exchange has the NBBO at that time. The Exchange believes that this setting is not relevant under the proposed rules of BSTX. Specifically, the Exchange believes that it is not relevant because proposed BSTX Rule 25130(d) states that the BSTX System will reject any order or quotation that would lock or cross a protected quotation of another exchange at the time of entry. Therefore, any such orders that would otherwise be required to be routed by BSTX to another exchange will instead be rejected by the BSTX System. Accordingly, any specification by a BSTX Participant of a T+0 or T+1 settlement timing parameter for an order in this setting could not create any burden on competition because the order will be rejected and would never lead to an execution.

In addition to not imposing any burden on competition, the Exchange believes that allowing BSTX Participants to use faster settlement cycles where consistent with the rules, policies and procedures of a registered clearing agency would mitigate settlement risk for transactions in such Securities, consistent with the benefits the Commission has noted in this area. Namely, in adopting amendments to SEC Rule 15c6-1 in 2017 to shorten the standard settlement cycle for most

³⁵⁷ See *supra* n. 82 and accompanying text.

³⁵⁸ 17 CFR 242.611.

broker-dealer transactions in securities from T+3 to T+2, the Commission stated its belief that the shorter settlement cycle would have positive effects regarding the liquidity risks and costs faced by members in a clearing agency, like NSCC, that performs CCP services, and that it would also have positive effects for other market participants. Specifically, the Commission stated its belief that the resulting “reduction in the amount of unsettled trades and the period of time during which the CCP is exposed to risk would reduce the amount of financial resources that the CCP members may have to provide to support the CCP’s risk management process . . .” and that “[t]his reduction in the potential need for financial resources should, in turn, reduce the liquidity costs and capital demands clearing broker-dealers face . . . and allow for improved capital utilization.”³⁵⁹ The Commission went on to state its belief that shortening the settlement cycle “would also lead to benefits to other market participants, including introducing broker-dealers, institutional investors, and retail investors” such as “quicker access to funds and securities following trade execution” and “reduced margin charges and other fees that clearing broker-dealers may pass down to other market participants[.]”³⁶⁰ The Commission also “noted that a move to a T+1 standard settlement cycle could have similar qualitative benefits of market, credit, and liquidity risk reduction for market participants[.]”³⁶¹ The Exchange agrees with these statements by the Commission and has therefore proposed BSTX Rule 25100(d) in a form that would promote the benefits of shorter settlement cycles for Securities without imposing burdens on other national securities exchanges or market participants that are not BSTX Participants.

With respect to consideration (4) above, as previously noted, market participants would not be limited in their ability to trade Securities OTC because Securities could be traded OTC, including Thinly Traded Securities for which UTP has been suspended, and would be cleared and settled in the same manner as other NMS stocks through the facilities of a registered clearing agency. Thus, the Exchange does not believe that its proposal will place any new burden on competition with respect to OTC trading, given that trading, clearance and settlement will

take place in the same manner as for other NMS stocks.

With respect to consideration (5) noted above regarding other exchanges extending UTP to Securities that are not Thinly Traded Securities (and for which the issuer elected to suspend UTP), the Exchange does not believe that the proposed Rules would impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. This is because, with the exception of Thinly Traded Securities described below, other national securities exchanges would be able to extend UTP to Securities in accordance with Commission rules just as they can regarding any other NMS stock.

Regarding consideration (6) and suspensions of UTP for Thinly Traded Securities, the Exchange believes that proposed BSTX Rule 25150 would impose a burden on competition as described below. However, for the reasons described below the Exchange believes that the degree of the burden on competition is justified under the Exchange Act because it is necessary and appropriate to promote other express objectives of the Exchange Act.

If an operating company that is an issuer of a Security gives written notice to the Exchange under BSTX Rule 25150(b) that it elects a suspension of UTP and the Exchange determines that the Security qualifies as a Thinly Traded Security, the Thinly Traded Security would be eligible to trade only on BSTX and OTC while the suspension of UTP is in effect. This would burden competition regarding other national securities exchanges for the time that the suspension of UTP is in effect because it would mean that the exchanges would not be permitted to extend UTP to the Thinly Traded Security and therefore the Thinly Traded Security would only trade on BSTX and OTC. The Exchange believes, however, that this burden on other exchanges is appropriately limited to the subset of Securities that are Thinly Traded Securities because it would only apply (i) in the event that the Security meets the average daily trading volume thresholds in BSTX Rule 25150 and (ii) the issuer elects to notify the Exchange in writing that it wishes to suspend UTP. Therefore, the burden on other exchanges would never apply regarding a Security that is not a Thinly Traded Security.

As also described in Item 3, Part II.H, the Exchange believes that this limited burden on other exchanges would be offset and necessary and appropriate under Section 6(b)(8) of the Exchange

Act³⁶² because the suspension of UTP has the potential to help solve market quality problems for Thinly Traded Securities that have been publicly identified by the Commission, Commission staff, the U.S. Department of Treasury, academics, and a broad spectrum of market participants.³⁶³ The Exchange agrees with the views expressed in the related publications that “the current ‘one-size-fits-all’ equity market structure, as largely governed under Regulation NMS, may not be optimal for thinly traded securities”³⁶⁴ and that “more needs to be done to promote liquidity and to improve the listing and trading environment for thinly traded stocks.”³⁶⁵ The Commission noted that the “secondary market for thinly traded securities faces liquidity challenges that can have a negative effect on both investors and issuers traded securities faces liquidity challenges that can have a negative effect on both investors and issuer” including “wider spreads and less displayed size relative to securities that trade in greater volume, often resulting in higher transaction costs for investors.”³⁶⁶ These concerns have been echoed in statements by former Commission Chairman Jay Clayton, former Director of the Division of Trading and Market Brett Redfearn, the Commission’s Small Business Advisory Committee and demonstrated through empirical analyses by the Division of Trading and Market’s Office of Analytics and Research (OAR) and academics.³⁶⁷ A frequently discussed potential solution to these liquidity and poor market quality issues facing thinly traded securities has been the suspension of UTP for such securities, allowing for displayed liquidity to be concentrated on a single exchange.³⁶⁸ The Exchange has thus proposed the suspension of UTP in response to these concerns. The Exchange notes that it proposes to use the same criteria as used by OAR (*i.e.*, an ADV of less than 100,000 shares)³⁶⁹ to distinguish thinly traded securities from more actively traded securities with the additional conditions that only the Securities of an operating company and must have a market capitalization of less than \$1

³⁶² 15 U.S.C. 78f(b)(8).

³⁶³ See *supra* n. 42–50 and accompanying text.

³⁶⁴ *Id.*

³⁶⁵ *Id.*

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ See *supra* note 51–52.

³⁶⁹ See *supra* note 56 noting the immaterial difference between the construction used by OAR of an ADV of less than 100,000 shares versus the Exchange’s proposed construction of an ADV of 100,000 shares or less.

³⁵⁹ See *supra* n. 88–91 and accompanying text.

³⁶⁰ *Id.*

³⁶¹ *Id.*

billion, which the Exchange believes helps ensure that the competitive burden imposed by the proposed suspension of UTP is narrowly tailored to address liquidity and market quality concerns for securities that are thinly traded.³⁷⁰ It is for these reasons that the Exchange believes that the burden on competition through the suspension of UTP for Thinly Traded Securities (at the election of the issuer) is justified in furtherance of goal of improving market quality for securities that are thinly traded.

In addition, the Exchange does not believe that the suspension of UTP for Thinly Traded Securities will impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act³⁷¹ because other exchanges could similarly be granted a suspension of UTP for qualifying thinly traded securities listed on their markets. Exchanges can compete with each other in attracting issuers of thinly traded securities to be singly-listed and traded on their respective exchanges. Exchanges would still be able to compete with one another for listings and the market for all thinly traded securities could be improved. Moreover, if the suspension of UTP has the desired effect of improving the overall liquidity of a Thinly Traded Security, such Security should hopefully exceed the 100,000 share ADV or \$1 billion market capitalization thresholds and become available for UTP, thus removing any barrier to competition once the purpose for which the suspension of UTP was initiated has been fulfilled.

³⁷⁰ In addition, the Exchange proposes to work with other SROs to amend the revenue allocation formula of the applicable NMS plan(s) for consolidated market data to exclude Thinly Traded Securities in order to prevent the Exchange from unduly profiting from the suspension of UTP under such formula. See *supra* notes 70–71 and accompanying text.

³⁷¹ 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve or disapprove the 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 Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an email to rule-comments@sec.gov. Please include File Number SR–BOX–2021–06 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–BOX–2021–06. 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–BOX–2021–06 and should be submitted on or before June 23, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.³⁷²

J. Matthew DeLesDernier,
Assistant Secretary.

[FR Doc. 2021–11410 Filed 6–1–21; 8:45 am]

BILLING CODE 8011–01–P

³⁷² 17 CFR 200.30–3(a)(12).

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