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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0572; Project Identifier MCAI–2021–00391–R; Amendment 39–21778; AD 2021–22–05]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model A119 and AW119 MKII helicopters. This AD was prompted by reports of abnormal play on the collective torque tube on two Model AW119 MKII helicopters. This AD requires repetitive inspections of affected torque tube assemblies for any deficiency and corrective action if necessary; and the replacement of any affected part with a serviceable part, which is terminating action for the repetitive inspections, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 3, 2022.

ADDRESSES: For EASA material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N 321, Fort Worth, TX 76177. For information on the availability of the EASA material at the FAA, call (817) 222–5110. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0572.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0572; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0096, dated March 31, 2021 (EASA AD 2021–0096), to correct an unsafe condition for Leonardo S.p.A. Helicopters, formerly Finmeccanica S.p.A., AgustaWestland S.p.A., Agusta S.p.A.; and AgustaWestland Philadelphia Corporation, formerly Agusta Aerospace Corporation, Model A119 and AW119 MKII helicopters, all serial numbers.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Leonardo S.p.a. Model A119 and AW119 MKII helicopters. The NPRM published in the **Federal Register** on July 20, 2021 (86 FR 38242). The NPRM was prompted by reports of abnormal play on the collective torque tube on two Model AW119 MKII helicopters. Investigations revealed that these events were due to an erroneous manufacturing process, affecting certain collective torque tube assemblies. The affected batch numbers were identified. Leonardo S.p.a. Model A119 helicopters are similar in design and may be subject to the same unsafe condition revealed on the Model AW119 MKII helicopters. The NPRM proposed to require repetitive inspections of affected torque tube assemblies for any deficiency and corrective action if necessary; and the replacement of any affected part with a serviceable part, which is terminating action for the repetitive inspections, as specified in EASA AD 2021–0096.

The FAA is issuing this AD to address abnormal play on the collective torque tube, which could result in reduced control of the helicopter, resulting in a forced landing and consequent damage to the helicopter and injury to occupants. See EASA AD 2021–0096 for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received one comment from Air Methods Corporation (Air Methods). The following presents the comment received on the NPRM and the FAA's response to that comment.

Request To Apply Inspection and Replacement Criteria to Additional Torque Tube Batch Numbers

Air Methods requested that paragraph (h)(6) in the ''Exceptions to EASA AD 2021–0096'' paragraph of the proposed AD be revised to allow additional appropriate actions for torque tubes that have batch numbers that are ''doubted.'' The commenter stated that applying the Group 1 inspection and replacement criteria to any torque tube, regardless of batch number, is the most conservative action possible within the scope of the service information referenced in EASA AD 2021–0096.

The FAA does not agree with the commenter's request. The intent of this AD is match the intent of EASA AD 2021–0096, which does not include torque tube batch numbers that are unknown or ''in doubt'' within the Group 1 helicopters. Also, if a ''doubted'' torque tube batch number is ultimately determined not to be within the number ranges designated as Group 1 or Group 2 in EASA AD 2021–0096, then it would be unnecessary to subject

that torque tube to the inspection and replacement requirements for Group 1 helicopters. In addition, once this AD is published, any person may request an alternative method of compliance (AMOC) by using the procedures specified in paragraph (j) of this AD. The FAA has not changed this AD regarding this issue.

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0096 requires repetitive inspections of the affected torque tube assemblies for any deficiency (*i.e.,* any play) by marking the torque tube assembly and the collar and applying specific loads to determine if there is any play; and replacement of any affected part that has any play with a serviceable part. EASA AD 2021–0096 also requires the eventual replacement of any affected part with a serviceable part, and specifies that replacement of an affected part on a helicopter constitutes terminating action for the repetitive inspections for that helicopter.

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

Differences Between This AD and the EASA AD

EASA AD 2021–0096 supersedes EASA AD 2019–0057, dated March 20, 2019 (EASA AD 2019–0057). The Group 1 helicopters identified in both EASA AD 2021–0096 and EASA AD 2019–0057 are helicopters with collective stick torque tube assemblies having part number (P/N) 109–0011–03–105 and batch number 823207 or earlier. Paragraph (1) of EASA AD 2021–0096 addresses Group 1 helicopters that have incorporated the actions required by paragraph (2) of EASA AD 2019–0057. The FAA did not issue an AD that corresponds to EASA AD 2019–0057, therefore, this AD requires, for Group 1 helicopters, an initial inspection of the torque tube assembly within 50 hours time-in-service (TIS) after the effective date of the FAA AD and repetitive inspections thereafter at intervals not to exceed 100 hours TIS.

In addition, where paragraph (5) of EASA AD 2021–0096 specifies, for Group 1 helicopters, replacement of an affected part with a serviceable part ''within 36 months after April 3, 2019 [the effective date of EASA AD 2019–0057]'', for this AD, the compliance time is within 24 months after the effective date of this AD.

Costs of Compliance

The FAA estimates that this AD affects 136 helicopters 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
Inspection	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle	$23,120 per inspection cycle.
Replacement	16 work-hours × $85 per hour = $1,360.	$9,928	$11,288	$1,535,168.

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:

2021–22–05 Leonardo S.p.a.: Amendment 39–21778; Docket No. FAA–2021–0572; Project Identifier MCAI–2021–00391–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 3, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Leonardo S.p.a. Model A119 and AW119 MKII helicopters, certificated in any category, all serial numbers.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6700, Rotorcraft Flight Control.

(e) Unsafe Condition

This AD was prompted by reports of abnormal play on the collective torque tube on two Model AW119 MKII helicopters. The FAA is issuing this AD to address abnormal play on the collective torque tube, which could result in reduced control of the helicopter, resulting in a forced landing and consequent damage to the helicopter and injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0096, dated March 31, 2021 (EASA AD 2021–0096).

(h) Exceptions to EASA AD 2021–0096

(1) Where EASA AD 2021–0096 refers to flight hours (FH), this AD requires using hours time-in-service (TIS).

(2) Where EASA AD 2021–0096 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraphs (1) and (2) of EASA AD 2021–0096 specify the compliance times for Group 1 helicopters to inspect the affected part, this AD requires an initial inspection within 50 hours TIS after the effective date of this AD, and thereafter at intervals not to exceed 100 hours TIS.

(4) Where paragraph (5) of EASA AD 2021–0096 specifies, for Group 1 helicopters, replacement of an affected part with a serviceable part ''within 36 months after April 3, 2019 [the effective date of EASA AD 2019–0057],'' for this AD, that replacement must be done within 24 months after the effective date of this AD.

(5) Where the service information referenced in EASA AD 2021–0096 specifies to return a torque tube assembly to the manufacturer, this AD does not include that requirement.

(6) Where the service information referenced in EASA AD 2021–0096 specifies to contact the manufacturer ''in case of doubt'' regarding the batch number on a torque tube assembly, determining the batch number is required by this AD but contacting the manufacturer is not required.

(7) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0096.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0096 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Andrea Jimenez, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 1600 Stewart Ave., Mail Stop: Room 410, Westbury, NY 11590; telephone (516) 228–7330; email *andrea.jimenez@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0096, dated March 31, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0096, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* Internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

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

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

Issued on October 13, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25690 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0197; Project Identifier 2018–SW–107–AD; Amendment 39–21789; AD 2021–22–16]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for Airbus Helicopters Model EC 155B and EC155B1 helicopters. This AD was prompted by the failure of a main gearbox (MGB) second stage planet gear. This AD requires replacing the MGB, or as an alternative, replacing the epicyclic reduction gear module for certain serial numbered planet gear assemblies installed on the MGB. This AD also requires inspecting the MGB magnetic plugs and MGB filter for particles, and for certain serial-numbered planet gear assemblies, inspecting the oil sump for particles. Depending on the outcome of these inspections, this AD requires further inspections and replacing certain parts. This AD also prohibits installing certain parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2022.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of January 3, 2022.

ADDRESSES: For service information identified in this final rule, contact Airbus Helicopters, 2701 North 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 the referenced 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. Service information

that is incorporated by reference is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0197.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0197; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD, 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: Rao Edupuganti, Aerospace Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, Policy & Innovation Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *rao.edupuganti@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 Airbus Helicopters Model EC 155B and EC155B1 helicopters. The NPRM published in the **Federal Register** on July 22, 2021 (86 FR 38608). In the NPRM, the FAA proposed to require for helicopters with at least one Type Y planet gear assembly with a certain serial number (S/N) installed, or at least one Type Z planet gear assembly with a certain S/N installed, within 10 hours time-in-service (TIS) after the effective date of the AD and thereafter at intervals not to exceed 10 hours TIS, inspecting the MGB magnetic plugs for particles. If there are particles, the NPRM proposed to require further inspections and analyses and replacing the MGB, depending on the type and the size of the particles.

The NPRM also proposed to require for helicopters with a Type Y planet gear assembly with a certain S/N installed, within 25 hours TIS after the effective date of the AD, inspecting the MGB filter for particles. If there are particles, the NPRM proposed to require further inspections and analyses and replacing the MGB, depending on the type and the size of the particles. The NPRM proposed to require for helicopters with at least one Type Y planet gear assembly with a certain S/N installed, within 50 hours TIS after the effective date of the AD, replacing the MGB. As an alternative to replacing the MGB, the NPRM would allow replacing the epicyclic reduction gear in the affected MGB.

Additionally, the NPRM proposed to require, for helicopters without any Type Y planet gear assembly but at least one Type Z planet gear assembly with a certain S/N installed, replacing the MGB within 50 hours TIS after the effective date of the AD or before any planet gear assembly accumulates 1,800 total hours TIS, whichever occurs later. As an alternative to replacing the MGB, the NPRM would allow replacing the epicyclic reduction gear in the affected MGB.

The NPRM also proposed to require, for helicopters with at least one Type Z planet gear with a certain S/N installed, within certain compliance times specified in the figures in this AD, inspecting the MGB filter and inspecting the oil sump for particles. If there are particles, the NPRM proposed to require further inspections and analyses, and replacing the MGB, depending on the type and the size of the particles.

The NPRM also proposed to prohibit installing an MGB with a certain serial numbered Type Y planet gear assembly and proposed to prohibit installing a Type Y planet gear assembly with a certain S/N on any helicopter.

Additionally, the NPRM proposed to prohibit installing certain serial numbered Type Z planet gear assemblies that have accumulated 1,800 or more total hours TIS and prohibit installing an MGB with certain serial numbered Type Z planet gear assemblies that have accumulated 1,800 or more total hours TIS.

Finally, the NPRM proposed to prohibit installing an MGB if the type of the planet gear assembly cannot be determined and also prohibit installing any planet gear assembly if the type cannot be determined.

The NPRM was prompted by EASA AD 2018–0263, dated December 7, 2018 (EASA AD 2018–0263), issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Airbus Helicopters Model EC 155 B and EC 155 B1 helicopters. EASA advises that after an accident on a Model EC225 helicopter, an investigation revealed the failure of an MGB second stage planet gear. EASA states that one of the two types of planet gear used in the MGB epicyclic module is subject to higher outer race contact pressures and therefore is more susceptible to spalling and cracking. This condition, if not addressed, could result in failure of a MGB planet gear assembly, failure of the MGB, and subsequent loss of helicopter control.

Accordingly, EASA AD 2018–0263 requires repetitive inspections of the MGB magnetic plugs, the MGB filer, and the oil sump for particles, and depending on the results of those inspections, removing or replacing certain parts. EASA AD 2018–0263 also requires reducing the life limit of Type Z planet gear assemblies. EASA AD 2018–0263 also requires, if certain gear assemblies are installed, either replacing the MGB or replacing the epicyclic reduction gear. Finally, EASA AD 2018–0263 prohibits installing a Type Y planet gear assembly or an MGB with a Type Y planet gear assembly on any helicopter.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from one commenter. The following presents the comments received on the NPRM and the FAA's response.

Request to Revise the Required Actions Section of the NPRM

Airbus Helicopters Inc., requested that the FAA revise the Required Actions section of this AD dealing with the 25 hours TIS inspection for the oil sump (also referred to as inspecting the bottom housing of the MGB) by removing that repetitive inspection and explained that some of the proposed actions are unclear and not in line with the original equipment manufacturer's (OEM) service information. The commenter also provided an example of a similar AD, AD 2021–12–06, Amendment 39–21593 (86 FR 31612, June 15, 2021) (AD 2021–12–06), stating that AD 2021–12–06 is clear in explaining both the required repetitive actions and the limits provided by the OEM for the MGB oil filter inspection after finding particle(s) on the chip detector. The commenter stated that, as written, the proposed actions would create extra work, which could lead to an unwanted condition exposing the dynamic component to possible contamination and possibly foreign object debris.

The FAA agrees that the repetitive 25 hours TIS oil sump inspection for Type Y planet gears is not necessary and has revised paragraph (g)(1) of the Required Actions section in this final rule by deleting this inspection.

Conclusion

The FAA reviewed the relevant data, considered the comments received, and

determined that air safety and the public interest require adopting this AD as proposed, except for the change described previously, updating the service information for the optional replacement of the epicyclic reduction gear module in paragraphs (g)(3) and (4) of this AD, and for clarity, deleting the corrective actions when there are no 16NCD13 particles. The FAA has determined that these changes will not increase the economic burden on any operator or increase the scope of this final rule.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Airbus Helicopters Alert Service Bulletin ASB No. EC155–05A034, Revision 5, dated December 4, 2018 (ASB EC155–05A34 Rev 5) for Model EC 155 helicopters, which specifies periodic inspections of the MGB magnetic plugs, the MGB filter, and the oil sump for particles. ASB EC155–05A34 Rev 5 also specifies identifying the type of gear assembly installed in the MGB and replacing any Type Y planet gear assembly within 50 hours TIS. For Type Z gear assemblies that have logged less than 1,800 hours TIS since new, this service information specifies replacing the gear assembly before exceeding 1,800 total hours TIS, and for Type Z gear assemblies that have logged 1,800 or more total hours TIS, replacing the gear assembly within 600 hours TIS.

The FAA also reviewed Airbus Helicopters Service Bulletin SB No. EC155–63–016, Revision 5, dated March 6, 2019, for Model EC 155 helicopters. This service information specifies procedures for replacing the MGB epicyclic reduction gear without removing the MGB.

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.

Interim Action

The FAA considers this AD to be an interim action. If final action is later identified, the FAA might consider further rulemaking then.

Differences Between This AD and EASA AD 2018–0263

EASA AD 2018–0263 specifies compliance times based on flight hours and calendar dates. This AD sets compliance times based on hours TIS or before further flight. EASA AD 2018–0263 allows a pilot to inspect the MGB magnetic plugs for particles, while this AD does not. For helicopters with at least one affected Type Z planet gear assembly that has accumulated 1,800 or more total hours TIS installed, EASA AD 2018–0263 requires replacing the MGB or epicyclic reduction gear within 600 flight hours after March 16, 2018, whereas this AD requires either of those replacements within 50 hours TIS after the effective date of this AD instead. If 16NCD13 particles are present, EASA AD 2018–0263 requires taking a 1 liter sample of oil and returning it to Airbus Helicopters and removing the MGB for depot-level inspection, whereas this AD requires replacing the MGB instead.

Costs of Compliance

The FAA estimates that this AD affects 14 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Inspecting the magnetic plugs for particle deposits takes about 1 work-hour for an estimated cost of $85 per helicopter per inspection cycle.

Inspecting the MGB filter or oil sump for particle deposits takes about 1 work-hour for an estimated cost of $85 per helicopter per inspection cycle.

Replacing an MGB takes about 42 work-hours, and parts cost about $295,000 (overhauled) for an estimated total cost of $298,570 per helicopter.

Replacing the epicyclic reduction gear takes about 56 work-hours and parts cost about $11,404 for an estimated total cost of $16,164 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 helicopters 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:

2021–22–16 Airbus Helicopters: Amendment 39–21789; Docket No. FAA–2021–0197; Project Identifier 2018–SW–107–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 3, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model EC 155B and EC155B1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6300, Main Rotor Drive System.

(e) Unsafe Condition

This AD was prompted by the failure of a main gearbox (MGB) second stage planet gear. The FAA is issuing this AD to prevent failure of an MGB planet gear assembly. The unsafe condition, if not addressed, could result in failure of the MGB and subsequent loss of helicopter control.

(f) Compliance

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

(g) Required Actions

(1) For helicopters with at least one Type Y planet gear assembly with a serial number (S/N) listed in Appendix 4.A. of Airbus Helicopters Alert Service Bulletin ASB No. EC155–05A034, Revision 5, dated December 4, 2018 (ASB EC155–05A034 Rev 5) or with at least one Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 installed, within 10 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 10 hours TIS, inspect the MGB magnetic plugs for particles. If there are any particles that consist of any scale, flake, splinter, or other particle other than cotter pin fragments, pieces of lock wire, swarf, abrasion, or miscellaneous non-metallic waste, and any of the planet gears have accumulated less than 50 total hours TIS, before further flight, inspect the MGB filter for particles. Thereafter, for 25 hours TIS, continue to inspect the MGB plugs for particles before each flight, inspect the MGB filter for particles at intervals not to exceed 25 hours TIS, and inspect the cumulative surface area of the particles collected from the magnetic plugs, the MGB filter, since last MGB overhaul, or since new if no overhaul has been performed.

Note 1 to the introductory text of paragraph (g)(1): Airbus Helicopters service information refers to an MGB filter as an oil filter.

(i) If the total surface area of the particles is less than 3 mm^2, examine the particles with the largest surface area (S), greatest length (L), and greatest thickness (e).

(A) If any (S) of all of the particles is less than or equal to 1 mm^2, the (L) is less than or equal to 1.5 mm, and the (e) is less than or equal to 0.2 mm, inspect the MGB plugs for particles before further flight, and inspect the MGB filter for particles within 25 hours TIS. Thereafter:

(*1*) For 25 hours TIS, continue to inspect the MGB plugs for particles before each flight and perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(*2*) Inspect the MGB filter for particles at intervals not to exceed 25 hours TIS and perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(B) If any (S) is greater than 1 mm^2, (L) is greater than 1.5 mm, or (e) is greater than 0.2 mm, perform a metallurgical analysis for any 16NCD13 particles, using a method in accordance with FAA-approved procedures.

(C) If there are any 16NCD13 particles, before further flight, replace the MGB with an airworthy MGB.

(ii) If the total surface area of collected particles is greater than or equal to 3 mm^2, before further flight, perform a metallurgical analysis for any 16NCD13 particles using a method in accordance with FAA-approved procedures. If there are any 16NCD13 particles, before further flight, replace the MGB with an airworthy MGB.

(2) For helicopters with at least one Type Y planet gear assembly with an S/N listed in Appendix 4.A. of ASB EC155–05A034 Rev 5 installed, within 25 hours TIS after the effective date of this AD, inspect the MGB filter for particles. If there are any particles that consist of any scale, flake, splinter, or particle other than cotter pin fragments, pieces of lock wire, swarf, abrasion, or miscellaneous non-metallic waste, and any of the planet gears have accumulated more than 50 total hours TIS, before further flight, perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

(3) For helicopters with at least one Type Y planet gear assembly with an S/N listed in Appendix 4.A. of ASB EC155–05A034 Rev 5 installed, within 50 hours TIS after the effective date of this AD, replace the MGB or as an alternative to replacing an affected MGB, replace the epicyclic reduction gear module in the affected MGB in accordance with paragraph 3.B.2. of the Accomplishment Instructions of Airbus Helicopters Service Bulletin SB No. EC155–63–016, Revision 5, dated March 6, 2019 (SB EC155–63–016 Rev 5), except you are not required to contact Airbus Helicopters.

(4) For helicopters without any Type Y planet gear assembly installed but with at least one Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 installed, within 50 hours TIS after the effective date of this AD, or before any gear accumulates 1,800 total hours TIS, whichever occurs later, replace the MGB or as an alternative to replacing an affected MGB, replace the epicyclic reduction gear module in the affected MGB in accordance with paragraph 3.B.2. of the Accomplishment Instructions of SB EC155–63–016 Rev 5, except you are not required to contact Airbus Helicopters.

(5) For helicopters with at least one Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 installed, inspect the MGB filter for particles within the compliance times specified in Figure 1 to paragraph (g)(5) of this AD and inspect the oil sump for particles within the compliance times specified in Figure 2 to paragraph (g)(5) of this AD, based on the total hours TIS accumulated by the Type Z planet gear with the most total hours TIS accumulated since first installation in an MGB. If there are particles, before further flight, perform the actions required by paragraphs (g)(1)(i) and (ii) of this AD.

FIGURE 1 TO PARAGRAPH (g)(5)

Total hours TIS accumulated	Compliance time for initial inspection	Compliance time for repetitive inspections
Less than 400 total hours TIS	Within 55 hours TIS after the effective date of this AD.	Within 55 hours TIS.
400 or more total hours TIS	Within 25 hours TIS after the effective date of this AD.	Within 25 hours TIS.

FIGURE 2 TO PARAGRAPH (g)(5)

Total hours TIS accumulated	Compliance time for initial inspection	Compliance time for repetitive inspections
Less than 400 total hours TIS	Before exceeding 400 hours TIS after the effective date of this AD.	Within 55 hours TIS.
400 or more total hours TIS	Within 55 hours TIS after the effective date of this AD.	Within 55 hours TIS.

(6) As of the effective date of this AD, do not install a type Y planet gear assembly with an S/N listed in Appendix 4.A. of ASB EC155–05A034 Rev 5 on any helicopter, and do not install an MGB with a Type Y planet gear assembly with an S/N listed in Appendix 4.A. of ASB EC155–05A034 Rev 5 on any helicopter.

(7) As of the effective date of this AD, do not install a Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 that has accumulated 1,800 or more total hours TIS on any helicopter, and do not install an MGB with at least one Type Z planet gear assembly with an S/N listed in Appendix 4.B. of ASB EC155–05A034 Rev 5 that has accumulated 1,800 or more total hours TIS on any helicopter.

(8) As of the effective date of this AD, do not install any planet gear on any helicopter if the planet gear assembly type cannot be determined, and do not install any MGB on any helicopter if any of the planet gear assembly types cannot be determined.

(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 Rao Edupuganti, Aerospace Engineer, Dynamic Systems Section, Technical Innovation Policy Branch, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *rao.edupuganti@faa.gov.*

(2) The subject of this AD is addressed in European Aviation Safety Agency (now European Union Aviation Safety Agency) (EASA) AD 2018–0263, dated December 7, 2018. You may view the EASA AD at *https://www.regulations.gov* in Docket No. FAA–2021–0197.

(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 No. EC155–05A034, Revision 5, dated December 4, 2018.

(ii) Airbus Helicopters Service Bulletin SB No. EC155–63–016, Revision 5, dated March 6, 2019.

(3) For service information identified in this AD, contact Airbus Helicopters, 2701 North 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: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on October 19, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25703 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0714; Project Identifier 2019–CE–016–AD; Amendment 39–21794; AD 2021–22–21]

RIN 2120–AA64

Airworthiness Directives; ASI Aviation (Type Certificate Previously Held by Reims Aviation S.A.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all ASI Aviation (type certificate previously held by Reims Aviation S.A.) Model F406 airplanes. This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI identifies the unsafe condition as failure of a circuit breaker (CB) switch. This AD requires replacing certain CB switches and establishing a life limit for the CB switches. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 3, 2022.

ADDRESSES: For service information identified in this final rule, contact ASI Aviation, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone: +33 3 26 48 46 84; fax: +33 3 26 49 18 57; email: *contact@asi-aviation.fr;* website: *https://asi-aviation.fr/page-Accueil.html.* 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–2021–0714.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0714; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the MCAI, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Gregory Johnson, Aviation Safety Engineer, International Validation Section, FAA, 901 Locust, Room 301, Kansas City, MO 64106–2641; phone: (720) 626–5462; email: *gregory.johnson@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all ASI Aviation (type certificate previously held by Reims Aviation S.A.) Model F406 airplanes. The NPRM published in the **Federal Register** on August 27, 2021 (86 FR 48067). The NPRM was prompted by MCAI originated by the European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union. EASA issued AD 2019–0015, dated January 29, 2019 (referred to after this as ''the MCAI''), to correct an unsafe condition on ASI Aviation (type certificate previously held by Reims Aviation S.A.) Model F406 airplanes. The MCAI states:

> After the Federal Aviation Administration issued AD 2005–20–25 [70 FR 59237, October 12, 2005], applicable to Cessna 400 series aeroplanes equipped with certain avionics bus CB switches, it was determined that, due to design commonality, one of the affected avionics bus CB switches, P/N [part number] CM3589–50, was also installed on Reims F 406 aeroplanes.
>
> This condition, if not corrected, could lead to smoke and/or burning smell in the cockpit, possibly resulting in reduced control of the aeroplane.
>
> To address that potential unsafe condition, RAI issued SB [service bulletin] F406–62 to provide instructions to remove certain switches from service. Consequently, EASA issued AD 2006–0134 to require identification of the date code of P/N CM3589–50 CB switches and, depending on findings, replacement with improved design CB switches, P/N 4061–2400–1. That [EASA] AD also imposed a life limit on the affected CB switches P/N CM3589–50.

Since that [EASA] AD was issued, in-service occurrences of smoke and burning smell in the cockpit have been reported on F 406 aeroplanes. Technical investigations revealed that these were due to failure of CB switches P/N CM3589–20, which are used to control the propeller de-icing circuit. Prompted by these events, ASI Aviation issued the applicable SB (as defined in this [EASA] AD) to provide instructions to replace the affected parts with serviceable parts.

For the reasons described above, this [EASA] AD retains the requirements of EASA AD 2006–0134, which is superseded, expands the range of affected parts, and requires replacement of P/N CM3589–20 CB switches with improved design CB switches P/N 406E2450–00000–100. This [EASA] AD also replaces the previous life limit, 1 000 flight hours (FH) for certain P/N CM3589–50 CB switches, with a 6 year calendar time life limit, and also imposes that limit on the improved design CB switches.

You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0714.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI and service information referenced above. The FAA 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 ASI Aviation Service Bulletin No. F406–62, Revision 01, dated December 14, 2018, which specifies inspecting the CB switches to determine the date code, replacing CB switches with certain date codes, and establishing a life limit of 6 years for the new CB switches. The FAA also reviewed ASI Aviation Service Bulletin No. F406–90, dated December 14, 2018, which specifies replacing the CB switches and establishing a life limit of 6 years for the new CB switches. 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**.

Differences Between This AD and the MCAI

The MCAI allows installation of an affected CB switch until the airplane is modified. This AD prohibits installation of an affected CB switch as of the effective date of this AD.

Costs of Compliance

The FAA estimates that this AD affects 4 airplanes of U.S. registry.

The FAA also estimates that it would take about 5 work-hours per airplane to comply with the inspection required by this AD. The average labor rate is $85 per work-hour.

Based on these figures, the FAA estimates the inspection cost of this AD on U.S. operators to be $1,700 or $425 per airplane.

In addition, the FAA estimates that each replacement required by this AD would take about 1 work-hour and require parts costing $350. Based on these figures, the FAA estimates the replacement cost of this AD on U.S. operators to be $435 per airplane.

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 DIRECTIVE

■ 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:

2021–22–21 ASI Aviation (Type Certificate Previously Held by Reims Aviation S.A.): Amendment 39–21794; Docket No. FAA–2021–0714; Project Identifier 2019–CE–016–AD.

(a) Effective Date

This airworthiness directive (AD) is effective January 3, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to ASI Aviation (type certificate previously held by Reims Aviation S.A.) Model F406 airplanes, all serial numbers, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2400, Electrical Power System.

(e) Unsafe Condition

This AD was prompted by mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as failure of a circuit breaker (CB) switch. The FAA is issuing this AD to prevent smoke and burning smell in the cockpit caused by failure of CB switches. The unsafe condition, if not addressed, could result in reduced controllability of the airplane.

(f) Compliance

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

(g) Inspection and Corrective Actions

Within 200 hours time-in-service (TIS) or within 12 months, whichever occurs first after the effective date of this AD, prepare the airplane and gain access in accordance with steps 1 through 7 of the Accomplishment Instructions in ASI Aviation Service Bulletin No. F406–62, Revision 01, dated December 14, 2018 (SB F406–62R1), and inspect each avionics bus CB switch part number (P/N) CM3589–50 to identify the date code.

(1) If a CB switch does not have a date code, before further flight, remove the CB switch from service and install CB switch P/N 4061–2400–1 in accordance with steps 9 through 14 of the Accomplishment Instructions in SB F406–62R1.

(2) If a CB switch has a date code earlier than 0434, before the CB switch exceeds 1,000 hours TIS since first installation on an airplane, remove the CB switch from service and install CB switch P/N 4061–2400–1 in accordance with steps 9 through 14 of the Accomplishment Instructions in SB F406–62R1.

(3) If a CB switch has a date code 0434 or later, before the CB switch exceeds 6 years since first installation on an airplane or within 12 months after the effective date of this AD, whichever occurs later, remove the CB switch from service and install CB switch P/N 4061–2400–1 in accordance with steps 9 through 14 of the Accomplishment Instructions in SB F406–62R1.

(h) Replacements

Within 200 hours TIS or within 12 months, whichever occurs first after the effective date of this AD, remove each CB switch P/N CM3589–20 from service, re-identify the CB panel, and install CB switches with P/N 406E2450–00000–100 in accordance with Part 1, steps 1 through 13, of the Accomplishment Instructions in ASI Aviation Service Bulletin No. F406–90, dated December 14, 2018 (SB F406–90).

(i) Life Limit

Before exceeding 6 years since first installation on an airplane and thereafter at intervals not to exceed 6 years, remove each CB switch P/N 4061–2400–1 and P/N 406E2450–00000–100 from service and replace it in accordance with steps 9 through 14 of the Accomplishment Instructions in SB F406–62R1 or Part 1, steps 1 through 13, of the Accomplishment Instructions in SB F406–90, as applicable.

(j) Parts Installation Prohibition

As of the effective date of this AD, do not install a CB switch P/N CM3589–50 or P/N CM3589–20 on any airplane.

(k) Credit for Previous Actions

You may take credit for the actions required by paragraph (g) of this AD if you performed those actions before the effective date of this AD using Reims Aviation Industries Service Bulletin No. F406–62, dated March 8, 2006.

(l) Alternative Methods of Compliance (AMOCs)

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

(m) Related Information

(1) For more information about this AD, contact Gregory Johnson, Aviation Safety Engineer, International Validation Section, FAA, 901 Locust, Room 301, Kansas City, MO 64106–2641; phone: (720) 626–5462; email: *gregory.johnson@faa.gov.*

(2) Refer to European Aviation Safety Agency (EASA) AD 2019–0015, dated January 29, 2019, for more information. You may examine the EASA AD in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0714.

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

(n) 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) ASI Aviation Service Bulletin No. F406–62, Revision 01, dated December 14, 2018.

(ii) ASI Aviation Service Bulletin No. F406–90, dated December 14, 2018.

(3) For service information identified in this AD, contact ASI Aviation, Aérodrome de Reims Prunay, 51360 Prunay, France; telephone: +33 3 26 48 46 84; fax: +33 3 26 49 18 57; email: *contact@asi-aviation.fr;* website: *https://asi-aviation.fr/page-Accueil.html.*

(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: *fr.inspection@nara.gov,* or go to: *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued on October 22, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25688 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0461; Project Identifier MCAI–2021–00156–R; Amendment 39–21775; AD 2021–22–02]

RIN 2120–AA64

Airworthiness Directives; Leonardo S.p.a. Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Leonardo S.p.a. Model AB139 and AW139 helicopters. This AD was prompted by a report of a short circuit caused by chafing of the electrical wiring in the overhead panel. This AD requires an initial detailed inspection inside the overhead panel for certain helicopters, repetitive detailed inspections inside the overhead panel for all helicopters, and corrective actions if necessary, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 3, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* internet: *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call 817–222–5110. It is also available in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0461.

Examining the AD Docket

You may examine the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0461; 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, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: (817) 222–4130; email: *jacob.fitch@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0044, dated February 5, 2021 (EASA AD 2021–0044) (also referred to as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Leonardo S.p.a. Model AB139 and AW139 helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Leonardo S.p.a. Model AB139 and AW139 helicopters. The NPRM published in the **Federal Register** on June 14, 2021 (86 FR 31451). The NPRM was prompted by a report of a short circuit caused by chafing of the electrical wiring in the overhead panel. The NPRM proposed to require an initial detailed inspection inside the overhead panel for certain helicopters, repetitive detailed inspections inside the overhead panel for all helicopters, and corrective actions if necessary, as specified in EASA AD 2021–0044.

The FAA is issuing this AD to address a short circuit caused by chafing of the electrical wiring in the overhead panel, which could cause damaged electrical wiring, possible fire in the overhead panel, and loss of control of the helicopter. See the MCAI for additional background information.

Comments

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

Request To Include Credit for Later Service Information

An anonymous commenter requested that the FAA revise the NPRM to include a paragraph that allows credit for the use of a later revision of the service information referenced in EASA AD 2021–0044.

The FAA disagrees with the request because, in this case, credit is unnecessary. The FAA is incorporating by reference EASA AD 2021–0044 as the method for accomplishing the actions required by this AD. EASA AD 2021–0044 includes the Ref. Publications section, which allows the use of later approved revisions of the service information referenced in EASA AD 2021–0044. Therefore, no change has been made to this AD.

Conclusion

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

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

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0044 requires an initial detailed inspection (for certain helicopters) inside the overhead panel for chafing of the cable harnesses and for correct clearance between the anchor nuts/screws and the cable harnesses, of the screws for correct length, and of the supports for sound bonding, and corrective actions if necessary; repetitive detailed inspections (for all helicopters) inside the overhead panel for the condition of the white protective tape on the anchor nuts, and for chafing of the cable harnesses and for correct clearance between the anchor nuts/screws and the cable harnesses, and corrective actions if necessary. Corrective actions include applying a white protective tape on the anchor nuts, replacement of incorrect length screws, replacement of damaged cables and fuses, rerouting of cable harnesses, replacement of supports, and removal and replacement of the white protective tape.

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

Differences Between This AD and the MCAI

Although EASA AD 2021–0044 and the service information referenced in EASA AD 2021–0044 specify to submit certain information to the manufacturer, this AD does not include that requirement.

Interim Action

The FAA considers this AD interim action. If final action is later identified, the FAA might consider further rulemaking then.

Costs of Compliance

The FAA estimates that this AD affects 128 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for chafing, clearance, screw length, and bonding.	1 work-hour × $85 per hour = $85	$0	$85	$10,880.
Repetitive inspections for chafing, clearance, and tape condition.	1 work-hour × $85 per hour = $85 per inspection cycle.	$0 per inspection cycle	$85 per inspection cycle	$10,880 per inspection cycle.

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
Replace screws, cables, fuses, supports, and protective tape; reroute harnesses.	5 work-hours × $85 per hour = $425	$600	$1.025
Apply protective tape	1 work-hour × $85 per hour = $85	50	135
Replace cables, fuses and protective tape	1 work-hour × $85 per hour = $85	600	685

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:

2021–22–02 Leonardo S.p.a.: Amendment 39–21775; Docket No. FAA–2021–0461; Project Identifier MCAI–2021–00156–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 3, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Leonardo S.p.a. Model AB139 and AW139 helicopters, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC) Code 2400, Electrical Power System.

(e) Unsafe Condition

This AD was prompted by a report of a short circuit caused by chafing of the electrical wiring in the overhead panel. The FAA is issuing this AD to address a short circuit caused by chafing of the electrical wiring in the overhead panel, which could cause damaged electrical wiring, possible fire in the overhead panel, and loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0044, dated February 5, 2021 (EASA AD 2021–0044).

(h) Exceptions to EASA AD 2021–0044

(1) Where EASA AD 2021–0044 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0044 does not apply to this AD.

(3) Where EASA AD 2021–0044 refers to flight hours (FH), this AD requires using hours time-in-service.

(4) Where paragraphs (3) and (5) of EASA AD 2021–0044 refer to ''any discrepancy,'' for this AD, discrepancies include chafing of the cable harnesses or incorrect clearance between the anchor nuts/screws and the cable harnesses, incorrect length of the screws, inadequately bonded supports, and poor condition of the white protective tape.

(i) No Reporting Requirement

Although EASA AD 2021–0044 and the service information referenced in EASA AD 2021–0044 specify to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the helicopter can be modified (if the operator elects to do so), provided the flight is straight, level, and avoids areas of known turbulence.

(k) 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 (l) 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.

(l) Related Information

For more information about this AD, contact Jacob Fitch, Aerospace Engineer, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; phone: (817) 222–4130; email: *jacob.fitch@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0044, dated February 5, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0044, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone: +49 221 8999 000; email: *ADs@easa.europa.eu;* Internet: *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this 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. This material may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0461.

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

Issued on October 13, 2021.

Gaetano A. Sciortino,

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

[FR Doc. 2021–25691 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–0693; Project Identifier MCAI–2020–01666–R; Amendment 39–21788; AD 2021–22–15]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Airbus Helicopters Model AS332L2 and EC225LP helicopters. This AD was prompted by a design deficiency. This AD requires modifying the hoist control power supply, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 3, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 3, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0693.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0693; 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: Ronnea Derby, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 E 68th Ave., Mail Stop: Room 214, Denver, CO 80249; telephone (303) 342–1093; email *Ronnea.L.Derby@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2020–0281, dated December 16, 2020 (EASA AD 2020–0281), to correct an unsafe condition for certain serial-numbered Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale Model AS 332 L2 and EC 225 LP helicopters.

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 Airbus Helicopters Model AS332L2 and EC225LP helicopters. The NPRM published in the **Federal Register** on August 25, 2021 (86 FR 47420). The NPRM was prompted by a design deficiency involving the incorrect wiring routing of the electrical hoist installation. The affected wiring was not protected by the circuit breaker that was intended to provide electrical protection for that wiring. The NPRM proposed to require modifying the hoist control power supply, as specified in EASA AD 2020–0281.

The FAA is issuing this AD to correct the electrical hoist installation wiring routing. See EASA AD 2020–0281 for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

The FAA reviewed the relevant data and determined that air safety and the public interest require adopting this final rule as proposed.

Related Service Information Under 1 CFR Part 51

EASA AD 2020–0281 requires modifying the hoist control power supply.

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

Costs of Compliance

The FAA estimates that this AD affects 5 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Modifying the electrical hoist control power supply takes about 4 work-hours and parts cost about $10, for an estimated cost of $350 per helicopter and $1,750 for the affected U.S. fleet.

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:

2021–22–15 Airbus Helicopters: Amendment 39–21788; Docket No. FAA–2021–0693; Project Identifier MCAI–2020–01666–R.

(a) Effective Date

This airworthiness directive (AD) is effective January 3, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Airbus Helicopters Model AS332L2 and EC225LP helicopters, certificated in any category, as identified in European Union Aviation Safety Agency (EASA) AD 2020–0281, dated December 16, 2020 (EASA AD 2020–0281).

(d) Subject

Joint Aircraft Service Component (JASC) Code: 2500, Cabin Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a design deficiency. The FAA is issuing this AD to correct the electrical hoist installation wiring routing. The unsafe condition, if not addressed, could result in a short circuit of the hoist control electrical harness and subsequent hoist shear command and hoisted load loss, possibly resulting in injury to a person being lifted or injury to persons on the ground.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2020–0281.

(h) Exceptions to EASA AD 2020–0281

(1) Where EASA AD 2020–0281 requires compliance within 30 days after its effective date, this AD requires compliance within 30 hours time-in-service after the effective date of this AD.

(2) This AD does not require the ''Remarks'' section of EASA AD 2020–0281.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2020–0281 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

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

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

(k) Related Information

For more information about this AD, contact Ronnea Derby, Aerospace Engineer, Denver ACO Branch, Compliance & Airworthiness Division, FAA, 26805 E 68th Ave., Mail Stop: Room 214, Denver, CO 80249; telephone (303) 342–1093; email *Ronnea.L.Derby@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2020–0281, dated December 16, 2020.

(ii) [Reserved]

(3) For EASA AD 2020–0281, contact the EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this 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. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–0693.

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

Issued on October 15, 2021.

Lance T. Gant,

Director,Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25687 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0896; Airspace Docket No. 20–ANM–17]

RIN 2120–AA66

Modification of Class D Airspace; McChord Field (Joint Base Lewis-McChord), WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace at McChord Field (Joint Base Lewis-McChord), Tacoma, WA. After a review of the airspace, the FAA found it necessary to amend the existing airspace for the safety and management of Instrument Flight Rules (IFR) operations at this location and Visual Flight Rules (VFR) at a satellite airport. This action removes a reference to the McChord Very High Frequency Omnidirectional Range beacon (VOR) from the legal description, updates the airport name and city, and amends the

geographical coordinates for the airport to match the FAA's database.

DATES: Effective 0901 UTC, January 27, 2022. 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 JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the Class D airspace to support IFR operations at McChord Field (Joint Base Lewis-McChord), Tacoma, WA.

History

The FAA initiated a review of the assigned airspace at McChord Field (Joint Base Lewis-McChord), Tacoma, WA due to three events. The FAA decommissioned the McChord VOR because the U.S. Air Force will no longer maintain the NAVAID. As a result of the decommissioning, the FAA is required to redefine the airspace that uses the VOR as a reference and remove the reference from the associated airspace descriptions. The U.S. Air Force requested the elimination of airspace previously excluded for operations at Spanaway Airport (S44). In response, the FAA completed an airspace review to evaluate that request and the Class D airspace had not been examined in the previous two years as required by FAA Orders.

The FAA published a notice of proposed rulemaking; supplemental in the **Federal Register** (86 FR 39986; July 26, 2021) for Docket No. FAA–2020–0896 to modify the Class D airspace at McChord Field (Joint Base Lewis-McChord), Tacoma, WA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. There were 29 comments received, with two of those from the Air Force. The military was not in favor of the proposal to provide Shady Acres Airpark (3B8) with airspace to accommodate their operations. However, FAA policy requires the use of shelves and/or cutouts to the extent practicable to exclude satellite airports from the Class D airspace. 3B8, from the north end of its runway, is only 0.3 nautical miles from the Class D airspace.

The Air Force declared that 3B8 is ''requesting a shelf like the current Spanaway shelf that is being given back to TCM.'' The FAA does not agree, as the two areas are neither similar in size nor shape. The proposal recommends a shelf for 3B8 of approximately 1.07 square miles and the shelf provided for S44 is approximately 11.21 square miles. In addition, the FAA is not ''giving back'' airspace to the Air Force, but rather assigning regulations for the use of the public's airspace to maximize safety and protect the public's right of transit. Title 49 of the United States Code (49 U.S.C.) Section 40103, entitled ''Sovereignty and use of airspace'', is what provides the FAA its legal authority to manage the NAS. In that reference, it states, ''A citizen of the United States has a public right of transit through the navigable airspace.'' Minimizing the volume of airspace identified to satisfy justified airspace requirements when establishing or validating airspace actions ensures the FAA is being consistent with its legislated responsibilities. While the FAA is proposing to amend the exclusionary language for the area that was provided previously for operations at S44, it is doing so to protect aircraft operating under Instrument Flight Rules (IFR) at TCM and Visual Flight Rules (VFR) at 3B8.The military further stated they have developed a low level C–17 demonstration team and that the C–17s will fly throughout their Class D airspace at low altitudes for training. They also indicated a potential use of the Class D area to the southeast for practice approaches by Gray Army Airfield helicopters. Several factors mitigate these concerns.

- As explained, the FAA does not regulate airspace based on potential use, but rather justifiable need.
- The area proposed for 3B8 arrivals and departures is over congested areas of a city, town or settlement and aircraft must maintain a minimum altitude of 1,000 feet *above the highest obstacle* within a horizontal radius of 2,000 feet (.33 nm) of the aircraft, as outlined in Title 14 of the Code of Federal Regulations (CFR). The area proposed for 3B8 has a ceiling of 1,000 feet MSL or approximately 600 feet AGL. Due to the altitude restriction in Title 14, the C–17s would have to overfly most of this area at a minimum of 1,200 feet AGL to ensure they are 1,000 feet above the highest obstacles affecting the proposed airspace.
- The Traffic in this area, between October 2020 and October 2021, was operating at altitudes between 2,000 and 4,000 MSL except when entering the TCM Traffic Pattern, west of the proposed cutout, at 1,800 feet MSL.
- The area previously excluded from the Class D, which includes a much smaller area for 3B8, has been established for at least 30 years with a ceiling of 1,000 feet MSL, without adverse impact to the ''Demonstration Team.''
- TCM has no IFR approaches to the southeast for practice. All approaches and departures at TCM operate north and south.
- TCM has restricted areas and Military Operations Areas established that provide airspace for low level demonstration flights and practice approaches.
- The lateral boundary of TCM's Class D airspace has been expanded a mile beyond that which is normally provided for a location with similar IFR procedures and terminal VFR operations, extending to a radius of 5.4 nautical miles. This additional area provides protection due to the density and diversity of aircraft that can operate in the airspace and circling at TCM. The airspace also includes an additional 1.2 nautical miles of Class D to the south for helicopters to transition safely east of the base.

The remaining comments were from the Airport Manager, private pilots, the Aircraft Owners and Pilots Association (AOPA) and interested businesses and citizens. All of these comments supported airspace being provided for

operations at 3B8. Eight comments supported the proposal as drafted, five requested the airspace currently excluded for S44 be continued and ten commenters requested the FAA provide an exclusion from the Class D 1.5 miles west of 3B8 and 3 miles north, up to 1300 feet. AOPA recommended 2 miles west and a straight out approach to the north. Three comments were duplicates or additional comments from the same person. The FAA does not concur that the airspace excluded for S44 is necessary for the safety of VFR aircraft on approach or departure at 3B8. 3B8 is located 5.2 nm from the approach end of TCM runway (AER) 34 and is 0.3 nm outside the Class D area. S44, which is now closed, was within the lateral boundaries of the Class D at 2.8 nm from TCM AER 34. Also, the traffic pattern for 3B8 restricts approaches to east of the runway, mitigating interaction with the turbojets at TCM. However, the FAA does concur the thermal updrafts located 0.4 nm and 0.7 nm northeast of 3B8 and the potential for wake turbulence from C–17 overflights do pose a risk to operations and are a consideration in the design of the airspace.

Class D airspace designations are published in paragraph 5000 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11F.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This amendment to 14 CFR part 71 modifies the Class D airspace, extending upward from the surface, at McChord Field (Joint Base Lewis McChord), Tacoma, WA. The exclusion of Class D airspace that is southeast of the airport will be modified to facilitate the use of the airspace for aircraft arriving and departing 3B8, in keeping with FAA Directives. A portion of the airspace overlying Lakewood, WA would also be eliminated, as it is no longer needed.

In addition, the Legal Descriptions Heading will be corrected to identify the proper city and state, the name of the airport, and the geographical coordinates for McChord Field (Joint Base Lewis McChord) to match the FAA's National Airspace System Resource (NASR) database.

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

Regulatory Notices and Analyses

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

Environmental Review

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

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 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace Areas.

* * * * *

ANM WA D Tacoma, WA [AMEND]

McChord Field (Joint Base Lewis-McChord), WA

(Lat. 47°08′17″ N, long. 122°28′35″ W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 5.4-mile radius of the McChord Field (Joint Base Lewis-McChord), beginning at the point the 315° bearing intersects the 5.4-mile radius clockwise to the point where the 162° bearing intersects the 5.4-mile radius thence south to lat. 47°02′10″ N, long. 122°26′13″ W, thence west to lat. 47°02′21″ N, long. 122°31′31″ W, thence north to lat. 47°04′19″ N, long. 122°31′27″ W, thence northwest to lat. 47°08′47″ N, long. 122°35′11″ W, thence east to lat. 47°08′35″ N, long. 122°33′03″ W, thence north to the point of beginning; and excluding that airspace at and below 1,000 feet MSL within an area bounded by a line beginning at the point the 119° bearing intersects the 5.4-mile radius clockwise to the point the 145° bearing intersects the 5.4-mile radius to lat. 47°04′34″ N, long. 122°24′2″ W; thence to lat. 47°05′43″ N, long. 122°22′24″ W; thence to the point of beginning.

Issued in Des Moines, Washington, on November 18, 2021.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2021–25599 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0899; Airspace Docket No. 20–ANM–16]

RIN 2120–AA66

Modification of Class D Airspace; Gray AAF (Joint Base Lewis-McChord), WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies the Class D airspace at Gray AAF (Joint Base Lewis-McChord), Fort Lewis/Tacoma, WA. After a review of the airspace, the

FAA found it necessary to amend the existing airspace for the safety and management of Instrument Flight Rules (IFR) operations at this airport. This will also remove a reference to the McChord VORTAC from the legal description, update the airport and city name and amend the geographical coordinates for the airport to match the FAA's database.

DATES: Effective 0901 UTC, January 27, 2022. 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 JO 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov//air_traffic/publications/.* For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: Richard Roberts, Federal Aviation Administration, Western Service Center, Operations Support Group, 2200 S. 216th Street, Des Moines, WA 98198; telephone (206) 231–2245.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, part A, subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it will modify the Class D airspace to support IFR operations at Gray AAF (Joint Base Lewis-McChord), Fort Lewis/Tacoma, WA.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 71290; November 9, 2020) for Docket No. FAA–2020–0899 to modify the Class D airspace at Gray AAF (Joint Base Lewis-McChord), Fort Lewis/Tacoma, WA. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class D airspace designations are published in paragraph 5000 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in FAA Order JO 7400.11.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

The FAA is amending 14 CFR part 71 by modifying the lateral dimensions of the Class D airspace. The Class D airspace lateral boundary will be established within a 4-mile radius of the airport instead of a 4.3-mile radius. The additional airspace is no longer needed.

In addition, the name and city of the airport and the geographical coordinates for Gray AAF (Joint Base Lewis-McChord) will be updated to match the FAA's National Airspace System Resource (NASR) database.

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

Regulatory Notices and Analyses

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

Environmental Review

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

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 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANM WA D Fort Lewis/Tacoma, WA (Amend)

Gray AAF (Joint Base Lewis-McChord), WA
(Lat. 47°04′45″ N, long. 122°34′51″ W)
McChord Field (Joint Base Lewis-McChord), WA
(Lat. 47°08′17″ N, long. 122°28′35″ W)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4-mile radius of Gray AAF, excluding the portions within the McChord Field (Joint Base Lewis-McChord) Class D airspace area. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Chart Supplement.

Issued in Des Moines, Washington, on November 18, 2021.

B.G. Chew,

Acting Group Manager, Operations Support Group, Western Service Center.

[FR Doc. 2021–25823 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 744

[Docket No. 211117–0236]

RIN 0694–AI60

Addition of Entities and Revision of Entries on the Entity List; and Addition of Entity to the Military End-User (MEU) List

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this final rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) by adding twenty-seven entities to the Entity List. These twenty-seven entities have been determined by the U.S. Government to be acting contrary to the national security or foreign policy interests of the United States. These entities will be listed on the Entity List under the destinations of the People's Republic of China (China), Japan, Pakistan, and Singapore. This rule also revises one existing entry on the Entity List under the destination of China, adds addresses under the destination of Taiwan for a listed entity, and corrects an entry under the destination of China. In addition, this rule amends the EAR by adding one entity to the Military End-User (MEU) List under the destination of Russia.

DATES: This rule is effective November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Chair, End-User Review Committee, Office of the Assistant Secretary, Export Administration, Bureau of Industry and Security, Department of Commerce, Phone: (202) 482–5991, Fax: (202) 482–3911, Email: *ERC@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Entity List (supplement no. 4 to part 744 of the EAR) identifies entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities contrary to the national security or foreign policy interests of the United States. The EAR (15 CFR parts 730–774) impose additional license requirements on, and limit the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities. The license review policy for each listed entity is identified in the ''License Review Policy'' column on the Entity List, and the impact on the availability of license exceptions is described in the relevant **Federal Register** document adding entities to the Entity List. BIS places entities on the Entity List pursuant to part 744 (Control Policy: End-User and End-Use Based) and part 746 (Embargoes and Other Special Controls) of the EAR.

The MEU List (supplement no. 7 to part 744 of the EAR) identifies entities that have been determined by the End-User Review Committee (ERC) to be 'military end users' pursuant to § 744.21 of the EAR. That section imposes additional license requirements on, and limits the availability of most license exceptions for, exports, reexports, and transfers (in-country) to listed entities on the MEU List, as specified in supplement no. 7 to part 744 and in § 744.21 of the EAR. Entities are listed on the MEU List under the destinations of Burma, China, Russia, or Venezuela. The license review policy for each listed entity is identified in the introductory text of the MEU List (supplement no. 7 to part 744) and in § 744.21(e) of the EAR. The MEU List's introductory text and § 744.21 of the EAR also specify the scope of the license requirements and limitations on the use of EAR license exceptions.

The ERC, composed of representatives of the Departments of Commerce (Chair), State, Defense, Energy and, where appropriate, the Treasury, makes all decisions regarding additions to, removals from, or other modifications to the Entity List and the MEU List. The ERC makes all decisions to add an entry to the Entity List and MEU List by majority vote and all decisions to remove or modify an entry by unanimous vote.

Entity List Decisions

A. Additions to the Entity List

Under § 744.11(b) (Criteria for revising the Entity List) of the EAR, entities for which there is reasonable cause to believe, based on specific and articulable facts, that the entities have been involved, are involved, or pose a significant risk of being or becoming involved in activities that are contrary to the national security or foreign policy interests of the United States, and those acting on behalf of such entities, may be added to the Entity List. Paragraphs (b)(1) through (5) of § 744.11 provide an illustrative list of activities that could be considered contrary to the national security or foreign policy interests of the United States.

This rule implements the decision of the ERC to add twenty-seven entities to the Entity List. These twenty-seven entities will be listed on the Entity List under the destinations of China, Japan, Pakistan, and Singapore. The ERC made the decision to add the twenty-seven entities identified below under the standard set forth in § 744.11(b) of the EAR.

Specifically, the ERC decided to add three affiliates of Corad Technology Limited, an entity added to the Entity List under China (with a Hong Kong address) on August 14, 2019 (84 FR 40241), as follows: One affiliate in China (Corad Technology (Shenzhen) Ltd.); one affiliate in Singapore (Corad Technology Pte Ltd.); and one affiliate in Japan (Corad Technology Japan K.K.). These three affiliates of Corad Technology Limited have been involved in sales of technology from the United States and other Western nations to Iran's military and space programs, Democratic People's Republic of Korea (North Korea) front companies, and Chinese government and defense industry subordinate entities. BIS is also adding a reference under Taiwan to one of Corad Technology Limited's offices, the Corad Taiwan Representative Office, which has also been involved in such technology sales. Identifying the office in this manner provides notice to the public that the office is subject to the Entity List licensing requirements that apply to Corad Technology Limited. BIS is also making a conforming change to the entry for Corad Technology Limited located in Hong Kong that directs the public to the two addresses for the Corad Taiwan Representative Office in Taiwan.

The ERC decided to add the following five entities: Hangzhou Zhongke Microelectronics Co., Ltd., Hunan Goke Microelectronics, New H3C Semiconductor Technologies Co., Ltd., Xi'an Aerospace Huaxun Technology, and Yunchip Microelectronics, all located in China, for their support of the military modernization of the People's Liberation Army.

The ERC decided to add three entities in China (Hefei National Laboratory for Physical Sciences at Microscale, QuantumCTek Co., and Shanghai QuantumCTeck Co., Ltd.) to the Entity List for acquiring and attempting to acquire U.S.-origin items in support of military applications.

The ERC decided to add Shaanxi Zhi En Electromechanical Technology Co., Ltd. located in China; and Q&N Traders, U.H.L. Company, Jiuding Refrigeration & Air-conditioning Equipment Co (Pvt) Ltd, K–SOFT Enterprises, Seljuk Traders (SMC-Private) Limited, Global Tech Engineers, Asay Trade & Supplies, and Jade Machinery Pvt. Ltd., all located in Pakistan, to the Entity List based on their contributions to Pakistan's unsafeguarded nuclear activities.

The ERC decided to add Poly Asia Pacific Ltd. (PAPL) and Peaktek Company Ltd., both entities located in China, to the Entity List based on its contributions to Pakistan's unsafeguarded nuclear activities. The ERC also decided to add Al-Qertas, located in Pakistan, to the Entity List based on their contributions to Pakistan's unsafeguarded nuclear activities.

The ERC decided to add Broad Engineering located in Pakistan to the Entity List based on its contributions to Pakistan's ballistic missile program.

The ERC decided to add Prime Tech, located in Pakistan, and two of its employees, Muhammad Ashraf and Muhammad Farrukh, also located in Pakistan, to the Entity List for procuring items subject to the EAR on behalf of Techlinks, an entity located in Pakistan that was added to the Entity List in September 2018, without the licenses required by § 744.11(a) of the EAR. *See* 83 FR 44824 (September 4, 2018; 84 FR 61538 (November 13, 2019)).

Pursuant to § 744.11(b) of the EAR, the ERC determined that the conduct of the above-described twenty-seven entities raises sufficient concerns that prior review, via the imposition of a license requirement for exports, reexports, or transfers (in-country) of all items subject to the EAR involving these twenty-seven entities, is appropriate. The ERC also determined that the possible issuance of license denials or the possible imposition of license conditions on shipments to these entities will enhance BIS's ability to prevent violations of the EAR or otherwise protect U.S. national security or foreign policy interests.

For the twenty-seven entities added to the Entity List in this final rule described under this section, Section A, *Additions to the Entity List,* BIS imposes a license requirement that applies to all items subject to the EAR. In addition, no license exceptions are available for exports, reexports, or transfers (in-country) to the persons being added to the Entity List in this rule. BIS imposes a license review policy of a presumption of denial for these twenty-seven entities.

For the reasons described above, this final rule adds the following twenty-seven entities to the Entity List:

China

- Corad Technology (Shenzhen) Ltd.;
- Hangzhou Zhongke Microelectronics Co., Ltd.;
- Hefei National Laboratory for Physical Sciences at Microscale;
- Hunan Goke Microelectronics;
- New H3C Semiconductor Technologies Co., Ltd.;
- Peaktek Company Ltd.;
- Poly Asia Pacific Ltd., (PAPL);
- QuantumCTek Co., Ltd.;
- Shaanxi Zhi En Electromechanical Technology Co., Ltd.;
- Shanghai QuantumCTek Co., Ltd.;
- Xi'an Aerospace Huaxun Technology; *and*
- Yunchip Microelectronics.

Japan

- Corad Technology Japan K.K.

Pakistan

- Al-Qertas;
- Asay Trade & Supplies;
- Broad Engineering (Pakistan);
- Global Tech Engineers;
- Jade Machinery Pvt. Ltd.;
- Jiuding Refrigeration & Air-conditioning Equipment Co (Pvt) Ltd.;
- K–SOFT Enterprises;
- Muhammad Ashraf;
- Muhammad Farrukh;
- Prime Tech;
- Q&N Traders;
- Seljuk Traders (SMC-Private) Limited; *and*
- U.H.L. Company.

Singapore

- Corad Technology Pte Ltd.

The acronym ''a.k.a.,'' which is an abbreviation of ''also known as,'' is used in entries on the Entity List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the Entity List.

B. Revision to the Entity List

This rule implements a modification to one existing entry for ''Corad Technology Limited,'' first added to the Entity List under the destination of China on August 14, 2019 (84 FR 40241 (August 14, 2019)). Specifically, this rule modifies the entry for this entity by adding a parenthetical sentence that directs the public to the Corad Taiwan Representative Office's addresses in Taiwan. This rule also revises the Entity List under Taiwan to add a reference to the Corad Taiwan Representative office and its addresses.

C. Correction to the Entity List

This rule implements a correction to one existing entry on the Entity List under the destination of China. The correction is to the entity ''Shenzhen Cobber Information Technology Co., Ltd.'' This entity was added to the Entity List on July 12, 2021 (86 FR 36499 (July 12, 2021)) (''the July 12 rule''). The July 12 rule inadvertently included a semicolon in the middle of one of the six aliases, ''Shenzhen Kehao Information; Technology Co., Ltd.,'' thereby raising a question as to the name of this alias and whether BIS intended to list two separate aliases. This rule removes the semicolon from this alias, resulting in the corrected name, ''Shenzhen Kehao Information Technology Co., Ltd.,'' and clarifying that BIS listed only six aliases in total.

ERC MEU List Decision

Addition to the MEU List

Under § 744.21(b) of the EAR, BIS may inform persons either individually by specific notice, through amendment to the EAR published in the **Federal Register,** or through a separate notice published in the **Federal Register,** that a license is required for specific exports, reexports, or transfers (in-country) of any item because there is an unacceptable risk of use in or diversion to a 'military end use' or 'military end user' in Burma, China, Russia, or Venezuela. Under § 744.21(b)(1) of the EAR, BIS may identify entities subject to this additional prohibition under paragraph (b) that have been determined by the ERC to be a 'military end user' pursuant to § 744.21. These entities will be added to supplement no. 7 to part 744 ('Military End-User' (MEU) List) in **Federal Register** notices published by BIS.

This rule implements the decision of the ERC to add one entity to the MEU List. This entity, the Moscow Institute of Physics and Technology, will be listed on the MEU List under the destination of Russia. The ERC made the decision to add this entity under the standard set forth in § 744.21 of the EAR, including the criteria for what constitutes a 'military end use' under paragraph (f) and 'military end user' under paragraph (g). Specifically, the ERC determined to add the entity on the basis of its production of military end-use products for a military end-user.

The license requirement for this entity applies to the export, reexport, or transfer (in-country) of any item subject to the EAR listed in supplement no. 2 to part 744. For this entity, BIS imposes a license review policy of a presumption of denial as set forth in § 744.21(e) of the EAR.

No license exceptions apart from License Exception GOV (items

authorized under § 740.11(b)(2)(i) and (ii) of the EAR) are available for exports, reexports, or transfers (in-country) to listed entities on the MEU List for items specified in supplement no. 2 to part 744.

The acronym ''a.k.a.,'' which is an abbreviation of ''also known as,'' is used in entries on the MEU List to identify aliases, thereby assisting exporters, reexporters, and transferors in identifying entities on the MEU List.

For the reasons described above, this rule adds the following one entity to the MEU List:

Russia

- Moscow Institute of Physics and Technology.

Savings Clause

Shipments of items removed from eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR) as a result of this regulatory action that were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on November 26, 2021, pursuant to actual orders for export, reexport, or transfer (in-country) to or within a foreign destination, may proceed to that destination under the previous eligibility for a License Exception or export, reexport, or transfer (in-country) without a license (NLR).

Export Control Reform Act of 2018

On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which included the Export Control Reform Act of 2018 (ECRA) (50 U.S.C. 4801–4852). ECRA provides the legal basis for BIS's principal authorities and serves as the authority under which BIS issues this rule.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated to be not significant for purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to or be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by OMB under control number 0694–0088, Simplified Network Application Processing System, which includes, among other things, license applications, and carries a burden estimate of 29.6 minutes for a manual or electronic submission. Total burden hours associated with the PRA and OMB control number 0694–0088 are not expected to increase as a result of this rule.

3. This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

4. Pursuant to section 1762 of ECRA (*see* 50 U.S.C. 4821), this action is exempt from the Administrative Procedure Act (5 U.S.C. 553) requirements for notice of proposed rulemaking, opportunity for public participation, and delay in effective date.

5. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* are not applicable. Accordingly, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 744

Exports, Reporting and recordkeeping requirements, Terrorism.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

■ 1. The authority citation for 15 CFR part 744 is revised to read as follows:

Authority: 50 U.S.C. 4801–4852; 50 U.S.C. 4601 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 3201 *et seq.;* 42 U.S.C. 2139a; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13099, 63 FR 45167, 3 CFR, 1998 Comp., p. 208; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; E.O. 13224, 66 FR 49079, 3 CFR, 2001 Comp., p. 786; Notice of September 15, 2021, 86 FR 52069 (September 17, 2021); Notice of November 10, 2021, 86 FR 62891 (November 12, 2021).

■ 2. Supplement No. 4 to part 744 is amended:

■ a. Under CHINA, PEOPLE'S REPUBLIC OF:

■ i. By revising the entry for ''Corad Technology Limited'';

■ ii. By adding in alphabetical order entries for ''Corad Technology (Shenzhen) Ltd.,'' ''Hangzhou Zhongke Microelectronics Co., Ltd.,'' ''Hefei National Laboratory for Physical Sciences at Microscale,'' ''Hunan Goke Microelectronics,'' ''New H3C Semiconductor Technologies Co., Ltd.,'' ''Peaktek Company Ltd.,'' ''Poly Asia Pacific Ltd., (PAPL),'' ''QuantumCTek Co., Ltd.,'' ''Shaanxi Zhi En Electromechanical Technology Co., Ltd.,'' and ''Shanghai QuantumCTek Co., Ltd.'';

■ iii. By revising the entry for ''Shenzhen Cobber Information Technology Co., Ltd.''; and

■ iv. By adding in alphabetical order entries for ''Xi'an Aerospace Huaxun Technology'' and ''Yunchip Microelectronics'';

■ b. Under JAPAN, by adding in alphabetical order, an entry for ''Corad Technology Japan K.K.;''

■ c. Under PAKISTAN, by adding in alphabetical order, entries for ''Al-Qertas,'' ''Asay Trade & Supplies,'' ''Broad Engineering (Pakistan),'' ''Global Tech Engineers,'' ''Jade Machinery Pvt. Ltd.,'' ''Jiuding Refrigeration & Air-conditioning Equipment Co (Pvt) Ltd.,'' ''K–SOFT Enterprises,'' ''Muhammad Ashraf,'' ''Muhammad Farrukh,'' ''Prime Tech,'' ''Q&N Traders,'' ''Seljuk Traders (SMC-Private) Limited,'' and ''U.H.L. Company'';

■ d. Under SINGAPORE, by adding in alphabetical order, entry for ''Corad Technology Pte Ltd.''; and

■ e. Under TAIWAN, by adding in alphabetical order, an entry for ''Corad Taiwan Representative Office.''

The additions and revisions read as follows:

Supplement No. 4 to Part 744—Entity List

* * * * *

Country	Entity	License requirement	License review policy	**Federal Register** citation
*	* * *	*	* *	*
CHINA, PEOPLE'S REPUBLIC OF.	* * *	*	* *	*
	Corad Technology Limited, a.k.a., the following one alias: —Corad Technology (China) Limited. Unit 1306, 13/F, Nanyang Plaza 57 Hung To Road Kwun Tong, Hong Kong; *and* Room K, 5/F, Winner Factory Building No. 55 Hung To Road Kwun Tong Kowloon, Hong Kong. (See also addresses under Taiwan for this entry, which is listed as Corad Taiwan Representative Office).	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	84 FR 40241, 8/14/19, 85 FR 83769, 12/23/20. 86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	Corad Technology (Shenzhen) Ltd., a.k.a., the following one alias: —Corad Technology Ltd. (Shenzhen). Rm 0919 1# Xinye Bldg, NO388 Tianlin Road, Shanghai, China 518033.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Hangzhou Zhongke Microelectronics Co., Ltd., 10th Floor, Chuangxin Building, No. 3850 Jiangnan Ave., High-Tech Binjiang District, Hangzhou City, Zhejiang Province, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Hefei National Laboratory for Physical Sciences at Microscale, a.k.a., the following two aliases: —National Research Center for Microscale; *and* —Microscale National Research Center. No. 96, Jinzhai Road, Hefei National Laboratory for Physical Sciences at the Microscale, University of Science & Technology of China, Hefei, Anhui, 230026 China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Hunan Goke Microelectronics, a.k.a., the following two aliases: —Hunan Guoke Microelectronics; *and* —Guokewei. No. 9, South Section of Dongshi Road, Quantang Street, Changsha Economic and, Technological Development Zone, China; *and*, Room 812, 8th Floor, No. 1, No. 26 Jiannei Street, Dongcheng District, Beijing, China, *and*, 1305–1308, Building 1, Xunmei Technology Plaza, No. 8, Keyuan Road, Shenzhen, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	New H3C Semiconductor Technologies Co., Ltd., No. 1, Floor 1, Unit 1, Building 4, No. 219, Tianhua 2nd Rd., Chengdu High-Tech Zone, China (Sichuan) Pilot Free Trade Zone, China; *and* Beijing Branch—Room 401, 4th Floor, Building 1, No. 8 Yard, Yongjia North Road, Haidian District, Beijing, China; *and* Shanghai Branch—No. 666 Shengxia Rd., 122 Yindong Rd., China (Shanghai) Pilot Free Trade Zone, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Peaktek Company Ltd., Room 803, Chevalier Building, 45–51 Chatham Road, South Kowloon, Hong Kong.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Poly Asia Pacific Ltd., (PAPL), a.k.a., the following alias: —Beijing Oriental Vision Petroleum Technology Company Limited (OVTEK–P). Room 1103, Hang Seng Mongkok Building, 677 Nathan Road, Mongkok, Kowloon Hong Kong; *and* Suite 803, Tower A. Olympic City, Fortune Centre, Beiyuan Road, Chaoyan, District Beijing, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	QuantumCTek Co., Ltd., a.k.a., the following four aliases: —HKUST National Shield Quantum Technology Co., Ltd.; —HKUST Guodun Quantum Technology Co., Ltd.; —National Shield Quantum; *and* —Anhui Quantum Communication Technology Co., Ltd. Floor 1, 3, 4, 5, 6, 7 of Building D3, 800 Wangjiang West Road, Hightech Zone, Hefei, Anhui, 230088, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Shaanxi Zhi En Electromechanical Technology Co., Ltd., Room 11905, Floor 19, Building 1, Daminggong, Wanda Plaza, Taihua North Road, Weiyang District, Xian City, Shaanxi Province, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	**
	Shanghai QuantumCTek Co., Ltd., a.k.a., the following one alias: —Shanghai Guodun Quantum Information Technology Co., Ltd., 3rd Floor, Building 10, 2388 Xiupu Road, Pudong New Area, Shanghai, 201315, China; *and* 99 Xiupu Road, Pudong New Area, Shanghai 201206, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Shenzhen Cobber Information Technology Co., Ltd., a.k.a., the following six aliases: —X-Face; —XFaceTech; —Shenzhen Kehao Information Technology Co., Ltd.; —Shenzhen Kepa Information Technology; —Kezhen; *and* —Cobber. 6th Floor, Block B, Shenzhen Production and Research Base, Huazhong University of Science and Technology, No. 9 Yuexing 3rd Road, Nanshan District, Shenzhen, Shenzhen, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Case-by-case review for ECCNs 1A004.c, 1A004.d, 1A995, 1A999.a, 1D003, 2A983, 2D983, and 2E983, and for EAR99 items described in the Note to ECCN 1A995; case-by-case review for items necessary to detect, identify and treat infectious disease; and presumption of denial for all other items subject to the EAR.	86 FR 36499, 7/12/21. 86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Xi'an Aerospace Huaxun Technology, a.k.a., the following one alias: —Aerospace Huaxun.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.

Country	Entity	License requirement	License review policy	**Federal Register** citation
	10th Floor, Block C, Xi'an National Digital Publishing Base, No. 996 Tiangu 7th Road, Yuhua Street Office, High-Tech Zone, Xi'an, China; *and* 3F, Huihao International, No. 58, Keji 2rd Road, High-Tech Zone, Xi'an City, Shaanxi, Province 710075, China; *and* No. 1061–1, Section 1, East Second Ring, Hehuayuan St., Furong District, Changsha City, Hunan Province, China.			
	* *	*	* *	*
	Yunchip Microelectronics, a.k.a., the following one alias: —Suzhou Yunxin Microelectronics Technology. Kunshan Huaqiao town double International Business Center, Building 40 Room 7–8, chamber 41, chamber 42, China; *and* 6th Floor, Building 7, Shuanglian International Business Center, 1255 Shangyin Road, Huaqiao, Kunshan City, Jiangsu Province, China.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
*	* * *	*	* *	*
JAPAN	Corad Technology Japan K.K., 1–1 Tsunaskimakamicho, Kohoku-Ku, Yokohama 223–0055 Japan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
*	* * *	*	* *	*
PAKISTAN	* *	*	* *	*
	Al-Qertas, 794 Park Lane, Chaklala Scheme-III, Rawalpindi, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Asay Trade & Supplies, 6, Nafees Market, A–87 Road, Rawalpindi, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Broad Engineering (Pakistan), House 130, Street No. 109, G–11/3, Islamabad, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Global Tech Engineers, Office Number 1, 1st Floor, Al Mairaj Center Street Number 1, Sector G–11/1, Islamabad, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Jade Machinery Pvt. Ltd., 109–A, St # 4 Cavalry Ground, Lahore, Punjab 54000, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Jiuding Refrigeration & Air-conditioning Equipment Co (Pvt) Ltd., 107 Sughra Tower, F–11 Markaz Islamabad, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	K–SOFT Enterprises, Office No. 10, First Floor, Al-Hafeez Tower, MM Alam Road, Gulberg, Lahore, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*

Country	Entity	License requirement	License review policy	Federal Register citation
	Muhammad Ashraf, Office No. 11, 1st., Floor MICCOP Center, 1-Mozang Road, Lahore-54000, Pakistan; *and* 699 Khayaban-e-Suhrwardy, Abpara Market, Islamabad 44000 Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	Muhammad Farrukh, Office No. 11, 1st., Floor MICCOP Center, 1-Mozang Road, Lahore-54000, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Prime Tech, Office No. 11, 1st., Floor MICCOP Center, 1-Mozang Road, Lahore-54000, Pakistan; *and* 699 Khayaban-e-Suhrwardy, Abpara Market, Islamabad 44000 Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Q&N Traders, Office 1, Flat 2, Anjum Plaza, Near TCS Centre, New Mall Chowk, Bahria Enclave Road, Islamabad, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	Seljuk Traders (SMC-Private) Limited, Ch. Zakir House, Main Tamma Road, Next to Jinnah Muslim Law College, P.O. Tarlai Kalan Islamabad, 45550, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
	U.H.L. Company, 8/35 Arkay Square, Sharah-e-Liaquat, New Chali, Karachi, Pakistan.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
*	* *	*	* *	*
SINGAPORE	* *	*	* *	*
	Corad Technology Pte Ltd., 10 UBI Crescent, #04–43 UBI TechPark, Singapore, 408564; *and* 11 Kallang Pl, 03–04, Whampoa, Singapore.	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
*	* *	*	* *	*
TAIWAN	* *	*	* *	*
	Corad Taiwan Representative Office, 1A, No. 30 Jiazheng 9th St., Zhubei City, Hsinchu County 30274; *and* 3F–1, No. 1008, Sec. 4, Johngsing Rd., Jhudong Township, Hsinchu County, 310 Taiwan. (See also addresses under China for this entry, which is listed as Corad Technology Limited).	All items subject to the EAR. (See § 744.11 of the EAR).	Presumption of denial	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
	* *	*	* *	*
*	* *	*	* *	*

* * * * *

■ 3. Supplement No. 7 to part 744 is amended under RUSSIA by adding in alphabetical order an entry for ''Moscow Institute of Physics and Technology'' to read as follows:

Supplement No. 7 to Part 744—''Military End-User'' (MEU) List

* * * * *

Country	Entity	Federal Register citation
*	* * * * *	*
RUSSIA	* * * * *	*

Country	Entity	Federal Register citation
	Moscow Institute of Physics and Technology, a.k.a., the following two aliases: —MIPT; *and* —MFTI Dolgoprudny Campus: 9 Institutskiy per., Dolgoprudny, Moscow Region 141701, Russia; *and*. Zhukovsky Campus: Ulitsa Gagarina 16, Zhukovsky, Moscow Region 140180, Russia; *and*. Moscow Campus 1 Stroyeniye 1, Klimentovsky Pereulok, Moscow Region 115184, Russia.	86 FR [INSERT FR PAGE NUMBER] 11/26/21.
* * * * * * *		

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 2021–25808 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 542

Syrian Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is adopting a final rule amending the Syrian Sanctions Regulations to expand an existing authorization related to certain activities of nongovernmental organizations (NGOs) in Syria.

DATES: This rule is effective November 26, 2021.

FOR FURTHER INFORMATION CONTACT: OFAC: Assistant Director for Licensing, 202–622–2480; Assistant Director for Regulatory Affairs, 202–622–4855; or Assistant Director for Sanctions Compliance & Evaluation, 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

This document and additional information concerning OFAC are available on OFAC's website: *www.treasury.gov/ofac.*

Background

On April 5, 2005, OFAC issued the Syrian Sanctions Regulations, 31 CFR part 542 (70 FR 17201, April 5, 2005) (''the Regulations''), to implement Executive Order (E.O.) 13338 of May 11, 2004, ''Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria'' (69 FR 26751, May 13, 2004). OFAC thereafter amended the Regulations on May 2, 2014 (79 FR 25414, May 2, 2014) to implement six additional Executive orders related to Syria.

OFAC, in consultation with the State Department, is amending the Regulations to expand the existing general license at § 542.516 to authorize NGOs to engage in certain assistance-related investment activities in support of certain not-for-profit activities in Syria, including (i) new investment in Syria that would be prohibited by § 542.206; (ii) additional dealings with a limited subset of the Government of Syria as defined in § 542.305(a) that would be prohibited by § 542.201(a)(1); and (iii) the purchase of refined petroleum products of Syrian origin that would be prohibited by § 542.209. Consistent with the Caesar Syria Civilian Protection Act of 2019 (Pub. L. 116–92, Div. F, Title LXXIV, 133 Stat. 2290, 22 U.S.C. 8791 note) (''the Caesar Act''), Section 7425(b), OFAC is also amending the general license at § 542.516 to reflect that it does not apply to any foreign person that has been designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), or otherwise designated as a terrorist organization by the Secretary of State, in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security. Finally, OFAC is adding the Caesar Act to the authority citation of 31 CFR part 542.

Public Participation

Because the amendment of the Regulations involves a foreign affairs function, the provisions of E.O. 12866 of September 30, 1993, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 542

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Exports, Foreign trade, Investments, Nongovernmental organizations, Penalties, Petroleum, Reporting and recordkeeping requirements, Sanctions, Security, Services, Syria.

For the reasons set forth in the preamble, OFAC amends 31 CFR part 542 as follows:

PART 542—SYRIAN SANCTIONS REGULATIONS

■ 1. The authority citation for part 542 is revised to read as follows:

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2332d; 22 U.S.C. 287c; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note); Pub. L. 116–92, Div. F, Title LXXIV, 133 Stat. 2290 (22 U.S.C. 8791 note); E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR 2008 Comp., p. 181; E.O. 13572, 76 FR 24787, 3 CFR 2011 Comp., p. 236; E.O. 13573, 76 FR 29143, 3 CFR 2011 Comp., p. 241; E.O. 13582, 76 FR 52209, 3 CFR 2011 Comp., p. 264; E.O. 13606, 77 FR 24571, 3 CFR 2012 Comp., p. 243.

■ 2. Amend § 542.516 as follows:

■ a. Remove paragraph (d).
■ b. Redesignate paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively.
■ c. Add new paragraph (a).
■ d. Revise newly redesignated paragraph (b) introductory text.
■ e. In newly redesignated paragraph (c):
■ i. Remove the text '', except as authorized by paragraph (d) of this section,'';
■ ii. Remove the text ''the Government of Syria or any other'' and add in its place ''any''; and
■ iii. Add ''other than persons who meet the definition of the term *Government of Syria,* as defined in § 542.305(a)'' after ''§ 542.201(a)''.
■ f. Revise newly redesignated paragraph (d) and paragraph (e).
■ g. Add paragraph (f).

The additions and revisions read as follows:

§ 542.516 Certain services in support of nongovernmental organizations' activities authorized.

(a) Nongovernmental organizations are authorized to engage in the following transactions and activities in support of the not-for-profit activities described in paragraph (b) of this section:

(1) Transactions with persons who meet the definition of the term *Government of Syria,* as defined in § 542.305(a), that would be prohibited by § 542.201(a)(1);

(2) New investment in Syria that would be prohibited by § 542.206;

(3) The exportation or reexportation of services to Syria that would be prohibited by § 542.207; and

(4) The purchase of refined petroleum products of Syrian origin for use in Syria that would be prohibited by § 542.209.

(b) The not-for-profit activities referenced in paragraph (a) of this section are:

* * * * *

(d) U.S. persons engaging in transactions or processing transfers of funds to or from Syria in support of activities described in paragraph (b)(5) of this section are required to file quarterly reports no later than 30 days following the end of the calendar quarter with OFAC. The reports should include complete information on all activities and transactions undertaken pursuant to paragraphs (a) and (c) of this section in support of the activities described in paragraph (b)(5) of this section that took place during the reporting period, including the parties involved, the value of the transactions, the services provided, and the dates of the transactions. The reports should be submitted via email to *OFACreport@treasury.gov* or via U.S. mail to the Office of Foreign Assets Control, Licensing Division, U.S. Treasury Department, 1500 Pennsylvania Avenue NW, Freedman's Bank Building, Washington, DC 20220.

(e) This section does not authorize:

(1) Any transactions or activities involving any person whose property and interests in property are blocked pursuant to § 542.201(a), other than persons who meet the definition of the term *Government of Syria,* as defined in § 542.305(a);

(2) The importation into the United States of petroleum or petroleum products of Syrian origin prohibited by § 542.208; or

(3) Any transactions or dealings in or related to petroleum or petroleum products of Syrian origin prohibited by § 542.209, except as authorized in paragraph (a) of this section.

(f) Nothing in this section authorizes nongovernmental organizations to undertake any transaction or dealing that involves any foreign person that has been designated as a foreign terrorist organization under section 219 of the Immigration and Nationality Act (8 U.S.C. 1189), or otherwise designated as a terrorist organization, by the Secretary of State, in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security.

* * * * *

Dated: November 22, 2021.

Bradley T. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2021–25802 Filed 11–24–21; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2021–0838]

Special Local Regulation; Marine Events Within the Eleventh Coast Guard District—Mission Bay Parade of Lights

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulation on the waters of Mission Bay, San Diego, California, during the Mission Bay Parade of Lights on December 11, 2021. This special local regulation is necessary to provide for the safety of the participants, crew, sponsor vessels of the boat parade, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulation in 33 CFR 100.1101, Table 1 to § 100.1101, Item No. 6, will be enforced from 5:30 p.m. until 8:30 p.m. on December 11, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulation in 33 CFR 100.1101, Table 1 to § 100.1101, Item No. 6, from 5:30 p.m. through 8:30 p.m. on December 11, 2021, for Mission Bay Parade of Lights in Mission Bay, San Diego, CA. This action is being taken to provide for the safety of life on the navigable waterway during the boat parade. Our regulation for recurring marine events in the San Diego Captain of the Port Zone, § 100.1101, Table 1 to § 100.1101, Item No. 6, specifies the location of the regulated area for the Mission Bay Parade of Lights, which encompasses portions of Mission Bay. Under the provisions of § 100.1101, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners and marine information broadcasts.

Dated: November 19, 2021.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2021–25818 Filed 11–24–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2021–0837]

Special Local Regulations; San Diego Parade of Lights, San Diego, CA

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the San Diego Parade of Lights special local regulations on the waters of San Diego Bay, California, on December 12, 2021, and December 19, 2021. These special local regulations are necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: The regulations in 33 CFR 100.1101 will be enforced from 5:30 p.m. through 9:30 p.m. on December 12, 2021, and December 19, 2021, for Item 5 in Table 1 of § 100.1101.

FOR FURTHER INFORMATION CONTACT: If you have questions about this publication of enforcement, call or email Lieutenant John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7656, email *MarineEventsSD@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1101 for the San Diego Parade of Lights in San Diego Bay, CA, in 33 CFR 100.1101, Table 1, Item 5 of that section from 5:30 p.m. until 9:30 p.m. on December 12, 2021, and December 19, 2021. This enforcement action is being taken to provide for the safety of life on navigable waterways during the event. The Coast Guard's regulation for recurring marine events in the San Diego Captain of the Port Zone identifies the regulated entities and area for this event. During the enforcement periods and under the provisions of 33 CFR 100.1101, persons and vessels are prohibited from anchoring, blocking, loitering, or impeding within this regulated area, unless authorized by the Captain of the Port, or his designated representative. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

In addition to this document in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, marine information broadcasts, and local advertising by the event sponsor.

If the Captain of the Port Sector San Diego or his designated representative determines that the regulated area need not be enforced for the full duration stated on this document, he or she may use a Broadcast Notice to Mariners or other communications coordinated with the event sponsor to grant general permission to enter the regulated area.

Dated: November 19, 2021.

T.J. Barelli,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2021–25817 Filed 11–24–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2021–0851]

Safety Zone; Fireworks Displays Within the Fifth Coast Guard District

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

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce a safety zone for holiday fireworks at The Wharf DC on December 4, 2021, to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District identifies the safety zone for this event in Washington, DC. During the enforcement period, the operator of any vessel in the safety zone must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

DATES: The regulation in 33 CFR 165.506 will be enforced for the location identified in line no. 1 of table 2 to 33 CFR 165.506(h)(2) from 7:30 p.m. until 9 p.m. on December 4, 2021.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call or email MST3 Melissa Kelly, Sector Maryland-NCR, Waterways Management Division, U.S. Coast Guard: telephone 410–576–2596, email *Melissa.C.Kelly@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone regulation for holiday fireworks at The Wharf DC from 7:30 p.m. to 9 p.m. on December 4, 2021. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for Fireworks Displays within the Fifth Coast Guard District, § 165.506, specifies the location of the safety zone for the fireworks show which encompasses portions of the Washington Channel in the Upper Potomac River. During the enforcement period, as reflected in § 165.506(d), if you are the operator of a vessel in the safety zone you must comply with directions from the Patrol Commander or any Official Patrol displaying a Coast Guard ensign.

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

Dated: November 22, 2021.

David E. O'Connell,

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

[FR Doc. 2021–25846 Filed 11–24–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2021–0855]

RIN 1625–AA00

Safety Zone; Lower Mississippi River, Mile Markers 595–597, Waxhaw, MS

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

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Lower Mississippi River (LMR), between Mile Marker 595 and 597. The safety zone is needed to protect persons, property, and the marine environment from the potential safety hazards associated with rock placement operations in the vicinity of Waxhaw, MS. Entry of persons or vessels into this zone is prohibited unless authorized by the Captain of the Port Sector Lower Mississippi River or a designated representative.

DATES: This rule is effective from December 1, 2021, through January 1, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2021–0855 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email MSTC Lindsey Swindle, U.S. Coast Guard; telephone 901–521–4813, email *Lindsey.M.Swindle@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Immediate action is needed to protect persons and property from the potential safety hazards associated with rock placement operations. The NPRM process would delay the establishment of the safety zone until after the date of the event and compromise public safety. We must establish this temporary safety zone immediately and lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the public interest because immediate action is needed to respond to the potential safety hazards associated with rock placement operations in the vicinity of Waxhaw, MS, starting December 1, 2021.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port (COTP) Sector Lower Mississippi River (LMR) has determined that potential hazards associated with rock placement operations between Mile Marker (MM) 595 and 597, scheduled to start on December 1, 2021, will be a safety concern for all persons and vessels on the LMR between MM 595 and MM 597 through January 1, 2022. This rule is needed to protect persons, property, infrastructure, and the marine environment in all waters of the LMR within the safety zone while rock placement operations are being conducted.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from December 1, 2021, through January 1, 2022. The safety zone will cover all navigable waters of the LMR from MM 595 to MM 597. The duration of this safety zone is intended to ensure the safety of waterway users on these navigable waters during rock placement operations.

Entry of persons or vessels into this safety zone is prohibited unless authorized by the COTP or a designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard assigned to units under the operational control of USCG Sector Lower Mississippi River. Persons or vessels seeking to enter the safety zones must request permission from the COTP or a designated representative on VHF–FM channel 16 or by telephone at 314–269–2332. If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative. The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners (BNMs), Local Notices to Mariners (LNMs), and/or Marine Safety Information Bulletins (MSIBs), as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a ''significant regulatory action,'' under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the size, location, and duration of the safety zone. This safety zone will temporarily restrict navigation on the LMR from MM 595 through MM 597, from December 1, 2021, through January 1, 2022. Moreover, The Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the safety zone, and the rule allows vessels to seek permission to enter the zone.

B. Impact on Small Entities

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

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

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

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. It is categorically excluded from further review under paragraph L60 of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A record of environmental consideration is not needed but will be included into the docket if it becomes necessary.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

■ 2. Add § 165.T08–0855 to read as follows:

§ 165.T08–0855 Safety Zone; Lower Mississippi River, Mile Markers 595–597, Waxhaw, MS.

(a) *Location.* The following area is a safety zone: All navigable waters of the Lower Mississippi River from Mile Marker (MM) 595 through MM 597.

(b) *Regulations.* (1) Under the general safety zone regulations in subpart C of this part, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the Captain of the Port Sector Lower Mississippi River (COTP) or the COTP's designated representative. A designated representative is a commissioned, warrant, or petty officer of the U.S. Coast Guard (USCG) assigned to units under the operational control of USCG Sector Lower Mississippi River.

(2) To seek permission to enter, contact the COTP or the COTP's representative via VHF–FM channel 16 or by telephone at 314–269–2332. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(c) *Enforcement period.* This section will be enforced from December 1, 2021, through January 1, 2022.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts, as appropriate.

Dated: November 19, 2021.

R.S. Rhodes,

Captain, U.S. Coast Guard, Captain of the Port Sector Lower Mississippi River.

[FR Doc. 2021–25766 Filed 11–24–21; 8:45 am]

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Copyright Royalty Board

37 CFR Part 386

[Docket No. 21–CRB–0012–SA–COLA (2022)]

Cost of Living Adjustment to Satellite Carrier Compulsory License Royalty Rates

AGENCY: Copyright Royalty Board (CRB), Library of Congress.

ACTION: Final rule; cost of living adjustment.

SUMMARY: The Copyright Royalty Judges announce a cost of living adjustment (COLA) of 6.2% in the royalty rates satellite carriers pay for a compulsory license under the Copyright Act. The COLA is based on the change in the Consumer Price Index from October 2020 to October 2021.

DATES:

Effective date: January 1, 2022.

Applicability dates: These rates are applicable to the period January 1, 2022, through December 31, 2022.

FOR FURTHER INFORMATION CONTACT: Anita Blaine, (202) 707–7658, *crb@loc.gov*.

SUPPLEMENTARY INFORMATION: The satellite carrier compulsory license establishes a statutory copyright licensing scheme for the distant retransmission of television programming by satellite carriers. 17 U.S.C. 119. Congress created the license

in 1988 and reauthorized the license for additional five-year periods until 2019 when it made the license permanent.[1]

On August 31, 2010, the Copyright Royalty Judges (Judges) adopted rates for the section 119 compulsory license for the 2010–2014 term. *See* 75 FR 53198. The rates were proposed by Copyright Owners and Satellite Carriers[2] and were unopposed. *Id.* Section 119(c)(2) of the Copyright Act provides that, effective January 1 of each year, the Judges shall adjust the royalty fee payable under Section 119(b)(1)(B) ''to reflect any changes occurring in the cost of living as determined by the most recent Consumer Price Index (for all consumers and for all items) [CPI–U] published by the Secretary of Labor before December 1 of the preceding year.'' Section 119 also requires that ''[n]otification of the adjusted fees shall be published in the **Federal Register** at least 25 days before January 1.'' 17 U.S.C. 119(c)(2).

The change in the cost of living as determined by the CPI–U during the period from the most recent index published before December 1, 2020, to the most recent index published before December 1, 2021, is 6.2%.[3] Application of the 6.2% COLA to the current rate for the secondary transmission of broadcast stations by satellite carriers for private home viewing—30 cents per subscriber per month—results in a rate of 32 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(1). Application of the 6.2% COLA to the current rate for viewing in commercial establishments—61 cents per subscriber per month—results in a rate of 65 cents per subscriber per month (rounded to the nearest cent). *See* 37 CFR 386.2(b)(2).

List of Subjects in 37 CFR Part 386

Copyright, Satellite, Television.

Final Regulations

In consideration of the foregoing, the Judges amend part 386 of title 37 of the Code of Federal Regulations as follows:

[1] The most recent five-year reauthorization was pursuant to the STELA Reauthorization Act of 2014, Public Law 113–200. The license was made permanent by the Satellite Television Community Protection and Promotion Act of 2019, Public Law 116–94, div. P, title XI, section 1102(a), (c)(1), 133 Stat. 3201, 3203.

[2] Program Suppliers and Joint Sports Claimants comprised the Copyright Owners while DIRECTV, Inc., DISH Network, LLC, and National Programming Service, LLC, comprised the Satellite Carriers.

[3] On November 10, 2021, the Bureau of Labor Statistics announced that the CPI–U increased 6.2% over the last 12 months.

PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

■ 1. The authority citation for part 386 continues to read as follows:

Authority: 17 U.S.C. 119(c), 801(b)(1).

■ 2. Section 386.2 is amended by adding paragraphs (b)(1)(xiii) and (b)(2)(xiii) to read as follows:

§ 386.2 Royalty fee for secondary transmission by satellite carriers.

* * * * *

(b) * * *

(1) * * *

(xiii) 2022: 32 cents per subscriber per month.

(2) * * *

(xiii) 2022: 65 cents per subscriber per month.

Dated: November 19, 2021.

Steve Ruwe,

Copyright Royalty Judge.

[FR Doc. 2021–25719 Filed 11–24–21; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2021–0260; FRL–8644–01–R9]

Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley Serious Area and Section 189(d) Plan for Attainment of the 1997 Annual $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve in part and disapprove in part portions of state implementation plan (SIP) revisions submitted by California to address Clean Air Act (CAA or ''Act'') requirements for the 1997 annual fine particulate matter ($PM_{2.5}$) national ambient air quality standards (NAAQS or ''standards'') in the San Joaquin Valley $PM_{2.5}$ nonattainment area. Specifically, the EPA is approving the 2013 base year emissions inventories in the submitted SIP revision. The EPA is disapproving the attainment demonstration and related elements, including the comprehensive precursor demonstration, five percent annual emissions reductions demonstration, best available control measures (BACM) demonstration, reasonable further progress (RFP) demonstration, quantitative milestones, and contingency measures. The EPA is also disapproving the motor vehicle emissions budgets in the plan as not meeting the requirements of the CAA and EPA regulations.

DATES: This rule is effective on December 27, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0260. 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: Ashley Graham, Air Planning Office (ARD–2), EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3877, or by email at *graham.ashleyr@epa.gov.*

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

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I. Summary of Proposed Rule

On July 22, 2021, the EPA proposed to approve in part and disapprove in part portions of SIP revisions submitted by the California Air Resources Board (CARB) to meet CAA requirements for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley $PM_{2.5}$ nonattainment area.[1] The SIP revisions on which we proposed action are those portions of the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards'' (''2018 $PM_{2.5}$

[1] 86 FR 38652.

Plan'') [2] and the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (''Valley State SIP Strategy'') [3] that pertain to the 1997 annual $PM_{2.5}$ NAAQS. CARB submitted the 2018 $PM_{2.5}$ Plan and Valley State SIP Strategy to the EPA as a revision to the California SIP on May 10, 2019. We refer to the portions of these two SIP submissions that pertain to the 1997 annual $PM_{2.5}$ NAAQS collectively as the ''SJV $PM_{2.5}$ Plan'' or ''Plan.'' The SJV $PM_{2.5}$ Plan addresses the Serious area and CAA section 189(d) attainment plan requirements for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley, including the State's demonstration that the area would attain the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020.

The EPA proposed to approve the 2013 base year emissions inventories in the SJV $PM_{2.5}$ Plan and proposed to disapprove the attainment demonstration and related elements, including the comprehensive precursor demonstration, five percent annual emissions reductions demonstration, BACM demonstration, RFP demonstration, quantitative milestone demonstration, motor vehicle emissions budgets, and contingency measures. The EPA proposed to disapprove these elements because the San Joaquin Valley area did not attain by the State's projected attainment date of December 31, 2020.[4]

The EPA also proposed action on amendments to the local air district's SIP-approved residential wood-burning rule, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') Rule 4901, ''Wood Burning Fireplaces and Wood Burning Heaters'' (''Rule 4901''), submitted by the State to the EPA on July 19, 2019. These amendments include a contingency measure in section 5.7.3 of the amended rule that the State submitted to address contingency measure requirements for the 1997 annual $PM_{2.5}$ NAAQS. The EPA proposed to disapprove, and to remove from the California SIP, the contingency provision of Rule 4901 (*i.e.,* section 5.7.3) because this provision does not satisfy CAA requirements for contingency measures and is severable from the remainder of Rule 4901. Our disapproval of section 5.7.3 of Rule 4901 as a contingency measure for the 1997 annual $PM_{2.5}$ NAAQS, and our removal of this provision from the SIP, has no effect on our prior approval of Rule 4901 for purposes of meeting the BACM and most stringent measures requirements for the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley,[5] which remains in effect for all but section 5.7.3 of Rule 4901.

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period that ended on August 23, 2021. We received four sets of comments, including two comment submissions from private citizens,[6] one comment letter from the SJVUAPCD,[7] and one comment letter from a coalition of environmental and community organizations (collectively referred to herein as ''Earthjustice'').[8] All of the comments are included in the docket for this action. The comment submissions from private citizens generally supported our proposal to disapprove the contingency measures element of the SJV $PM_{2.5}$ Plan. The supportive portions of those comments do not require a response. We respond to the remainder of the comments received on our July 22, 2021 proposed rule in this notice.

A. Comments From SJVUAPCD

Comment A.1: SJVUAPCD states that it supports the EPA's proposal to approve the 2013 base year emissions inventories but is concerned about the proposed disapproval of the attainment demonstration and related elements. The District notes that it adopted the SJV $PM_{2.5}$ Plan on November 15, 2018, and that CARB adopted the plan on January 24, 2019, and states that it is unfortunate that CARB did not submit the plan to the EPA until May 10, 2019. The District also notes that the EPA did not take action to approve or disapprove the Plan by November 10, 2020, as required by statute.

Response A.1: We acknowledge that the EPA did not take action to approve or disapprove the SJV $PM_{2.5}$ Plan by November 10, 2020, as required by the Act. With this final action, we are discharging the EPA's statutory obligation under CAA section 110(k)(2) to act on the SIP submission.

Comment A.2: SJVUAPCD states that ''[i]t is absurd and inequitable to disapprove a plan because monitoring data that was unavailable when the plan was completed now contradicts the modeling in the plan.'' In support of its argument, the commenter quotes from the D.C. Circuit Court of Appeals' decision in *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118 (D.C. Cir. 2015):

> We will not invalidate EPA's predictions solely because there might be discrepancies between those predictions and the real world. That possibility is inherent in the enterprise of prediction. The best model might predict that the Nationals will win the World Series in 2015. If that does not happen, you can't necessarily fault the model. As we have said previously, the fact that a 'model does not fit every application perfectly is no criticism; a model is meant to simplify reality in order to make it tractable. See *EME Homer City Generation, L.P.* v. *EPA,* 795 F.3d 118, 135 (D.C. Cir. 2015), citing *Chemical Manufacturers Association* v. *EPA,* 28 F.3d 1259, 1264 (D.C. Cir. 1994).

Response A.2: We disagree with the commenter's claim that it is absurd and inequitable to disapprove the SJV $PM_{2.5}$

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[2] The San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') adopted the 2018 $PM_{2.5}$ Plan on November 15, 2018 and CARB adopted it on January 24, 2019. The 2018 $PM_{2.5}$ Plan includes a revised version of Appendix H submitted by CARB as a technical correction on February 11, 2020.

[3] CARB adopted the Valley State SIP Strategy on October 25, 2018.

[4] The EPA's proposed action was based on our review of preliminary but complete and quality-assured ambient air monitoring data for 2018–2020. For this final action, the EPA has reviewed the final, certified ambient monitoring data. These final certified data values are the same as the values shown in Table 5 of the EPA's proposal in most instances except for minor differences in 2020 annual means and 2020 design values for the following three sites: Fresno–Pacific (AQS ID: 06–019–5025), Bakersfield–Golden State Highway (AQS ID: 06–029–0010), and Corcoran (AQS ID: 06–031–0004). The final data values support our preliminary conclusion that the San Joaquin Valley area did not attain by the State's projected attainment date of December 31, 2020. Source: EPA, 2020 AQS Design Value Report, AMP480, accessed September 29, 2021.

[5] 85 FR 44206 (July 22, 2020) (final approval of Rule 4901) and 85 FR 44192 (July 22, 2020) (determination that Rule 4901 implements BACM and MSM for residential wood burning).

[6] Comment dated July 30, 2021, from Cherie Yang, to Docket ID No. EPA–R09–OAR–2021–0260, and comment dated August 23, 2021, from Thomas Menz, to Docket ID No. EPA–R09–OAR–2021–0260, with attachment.

[7] Letter dated August 23, 2021, from Samir Sheikh, Executive Director/Air Pollution Control Officer, SJVUAPCD, to Ashley Graham, EPA Region IX, Subject: ''Re: Partial Approval and Partial Disapproval of Air Quality Implementation Plans; California; San Joaquin Valley Serious Area and Section 189(d) Plan for Attainment of the 1997 Annual $PM_{2.5}$ NAAQS (EPA–R09–OAR–2021–0260).''

[8] Letter dated August 23, 2021, from Paul Cort, Earthjustice, et al., to Ashley Graham, EPA Region IX, Subject: ''Re: Proposed Partial Disapproval of San Joaquin Valley Serious Area Plan for Attainment of the 1997 Annual $PM_{2.5}$ NAAQS (Docket ID No. EPA–R09–OAR–2021–0260),'' including attachments A through G. The environmental and community organizations, in order of appearance in the letter, include Central Valley Air Quality Coalition, National Parks Conservation Association, Earthjustice, Climate Policy Coordinator, Leadership Council for Justice and Accountability, The Climate Center, Central California Environmental Justice Network, Little Manila Rising, Madera Coalition for Community Justice, Mi Familia Vota, Fresno Building Healthy Communities, Valley Improvement Projects, Clean Water Action, The San Joaquin Valley Latino Equity Advocacy & Policy Institute, Coalition for Clean Air, and Center for Race, Poverty, and the Environment (collectively ''Earthjustice'').

Plan based on ambient air quality monitoring data that contradicts the modeling in the plan. Section 189(b) of the CAA requires that a state with a Serious $PM_{2.5}$ nonattainment area submit, among other things, a demonstration that the plan ''provides for attainment of the [$PM_{2.5}$ NAAQS] by the applicable attainment date,'' and section 189(d) similarly requires that a state with a Serious $PM_{2.5}$ nonattainment area that fails to attain by the applicable attainment date submit plan revisions that, among other things, ''provide for attainment of the [$PM_{2.5}$ NAAQS].'' Nothing in the CAA or in the EPA's implementing regulations precludes the EPA's consideration of ambient air monitoring data in determining whether a submitted plan satisfies these statutory requirements. The EPA's longstanding guidance on modeled attainment demonstrations highlights the importance of considering recent design values (*i.e.,* ambient air quality data) in selecting a base modeling year and projecting future changes in emissions and ambient concentrations.[9] Consistent with this guidance, the EPA routinely considers ambient air quality data during the model performance evaluation process that it conducts to determine whether a state's air quality model provides reliable predictions of future pollutant concentrations.[10] The commenter provides no statutory or regulatory support for a claim that the EPA cannot consider available ambient air quality data as part of its review of a submitted attainment demonstration to determine whether it ''provides for'' attainment of the NAAQS by the applicable attainment date.

Generally, an attainment demonstration is a predictive tool for assessing air quality at a future time, and as the D.C. Circuit stated in *EME Homer City Generation,* the possibility of discrepancies between predictions and the real world is ''inherent in the enterprise of prediction.'' [11] In this case, however, CARB submitted the attainment demonstration for the 1997 annual $PM_{2.5}$ NAAQS less than 20 months before the State's projected attainment date (*i.e.,* December 31, 2020),[12] and the EPA's action on the SJV $PM_{2.5}$ Plan is occurring at a time when that attainment date is no longer a projected date because the date has passed. Thus, our evaluation of the attainment demonstration is no longer based on ''predictions.'' Complete, quality-assured, and certified ambient air quality data available to the EPA at this time clearly indicate that the SJV $PM_{2.5}$ Plan failed to ''provide for'' attainment of the 1997 annual $PM_{2.5}$ NAAQS by the State's identified attainment date, December 31, 2020. In this context, it is reasonable for the EPA to take these data into account and, on that basis, to disapprove the attainment demonstration and related elements of the SJV $PM_{2.5}$ Plan for failure to ''provide for'' attainment of the 1997 annual $PM_{2.5}$ NAAQS by the identified attainment date.

Comment A.3: The commenter asserts that ''[t]imely review of the Plan by EPA under the timelines required per statute would have negated the complications cited by EPA in their proposed disapproval.'' The commenter acknowledges that, according to the Ninth Circuit Court of Appeals' decision in *Sierra Club* v. *EPA,* 671 F.3d 955 (9th Cir. 2012), the EPA must properly evaluate new information that indicates that a SIP awaiting approval is inaccurate or not current and ''may not simply ignore it without reasoned explanation of its choice.'' [13] However, the commenter claims that ''at issue in this *Sierra Club* case was EPA's 2010 approval of a 2004 plan without consideration of emissions inventory data that became available in 2006'' and that ''[t]hese timeframes significantly surpass the timeframe at issue now with the District's 2018 $PM_{2.5}$ Plan (adopted in late 2018, demonstrating attainment in 2020, and subject to EPA action in 2021).'' The commenter also notes that the Ninth Circuit in *Sierra Club* did not opine on the Petitioners' argument that the EPA improperly approved the plan in 2010 knowing that attainment by the 2010 attainment deadline was impossible.

Response A.3: As discussed in Response A.1, we acknowledge that the EPA did not act on the SJV $PM_{2.5}$ Plan within the statutory timeframe. We note that the EPA's delayed action on the SJV $PM_{2.5}$ Plan was due, in part, to the State's late submission of several overdue attainment plans for multiple $PM_{2.5}$ NAAQS for the San Joaquin Valley [14] in May 2019. Notwithstanding the belated submission of these attainment plans, the EPA has since taken proposed or final action on each required plan.[15] We are now discharging our statutory obligation under CAA section 110(k)(2) to act on the SJV $PM_{2.5}$ Plan.

The commenter suggests that *Sierra Club* does not support the EPA's rationale for disapproval of the SJV $PM_{2.5}$ Plan because the period between the State's submission of, and the EPA's action on, the SJV $PM_{2.5}$ Plan (approximately two and a half years, from May 2019 to November 2021) is shorter than the period between the State's submission of, and the EPA's action on, the ozone plan at issue in *Sierra Club* (over five years, from November 2004 to March 2010).[16] This suggestion, however, reflects a misconstruction of the court's holding in this case. In *Sierra Club,* the Ninth Circuit remanded the EPA's March 2010 approval of an ozone attainment plan for the San Joaquin Valley submitted in 2004, holding that the EPA's failure to consider new emissions data that the State had submitted in 2007 as part of a separate ozone plan rendered the EPA's action arbitrary and capricious under the Administrative Procedure Act.[17] Although the court noted the length of the EPA's delay in acting on the 2004 plan submission after updated emissions data had become available, the decision ultimately rested on the unreasonableness of the EPA's failure to address the new emissions data, not on the specific number of years that had passed since the State submitted the

[9] Memorandum dated November 29, 2018, from Richard A. Wayland, Division Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards, EPA, to Regional Air Division Directors, Regions 1–10, Subject: ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$ and Regional Haze,'' 18.

[10] See, *e.g.,* EPA, Region IX Air Division, ''Technical Support Document, EPA Evaluation of Air Quality Modeling, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020, 18–24.

[11] 795 F.3d at 135 (citing *Chemical Manufacturers Association* v. *EPA,* 28 F.3d 1259, 1264 (D.C. Cir. 1994)).

[12] CARB submitted the SJV $PM_{2.5}$ Plan on May 10, 2019, well after the statutory deadline for this submission, which was December 31, 2016. 81 FR 84481, 84482 (November 23, 2016).

[13] 671 F.3d at 967 (9th Cir. 2012).

[14] 83 FR 62720 (December 6, 2018) (identifying statutory deadlines for submission of complete SIPs for 1997, 2006, and 2012 $PM_{2.5}$ NAAQS in the San Joaquin Valley).

[15] 85 FR 44192 (final action on Serious area plan and extension request for 2006 $PM_{2.5}$ NAAQS), 86 FR 38652 (proposed action on Serious area and section 189(d) plan for 1997 annual $PM_{2.5}$ NAAQS), 86 FR 49100 (September 1, 2021) (proposed action on Moderate area plan for 2012 $PM_{2.5}$ NAAQS), and 86 FR 53150 (September 24, 2021) (proposed action on Serious area and section 189(d) plan for 1997 24-hour $PM_{2.5}$ NAAQS).

[16] 74 FR 33933 (July 14, 2009) (proposed rule) and 75 FR 10420 (March 8, 2010) (final rule).

[17] *Sierra Club* v. *EPA,* 671 F.3d 955 (9th Cir. 2012). The court also noted that the EPA's action was inconsistent with the court's holding in *Ass'n of Irritated Residents (AIR)* v. *EPA,* 632 F.3d 584 (9th Cir. 2011), which ''supports the proposition that if new information indicates to EPA that an existing SIP or SIP awaiting approval is inaccurate or not current, then, viewing air quality and scope of emissions with public interest in mind, EPA should properly evaluate the new information and may not simply ignore it without reasoned explanation of its choice.'' Id. at 967.

plan.[18] The court found the EPA's action arbitrary and capricious because of its ''reliance on old data without meaningful comment on the significance of more current compiled data'' and concluded that ''it was unreasonable for EPA summarily to rely on the point of view taken [in longstanding policy] without advancing an explanation for its action based on 'the facts found and the choice made.' '' [19] Contrary to the commenter's characterization of *Sierra Club,* the EPA interprets that decision to stand for the proposition that it would be inappropriate for the EPA to ignore monitoring data that clearly establish, as a factual matter, that the attainment demonstration failed to provide for attainment.

The EPA has reviewed complete, quality-assured, and certified ambient air quality data for the 2018–2020 period that establish that the San Joaquin Valley did not attain the 1997 annual $PM_{2.5}$ NAAQS by the December 31, 2020 attainment date identified in the SJV $PM_{2.5}$ Plan.[20] In light of these facts, we conclude that the SJV $PM_{2.5}$ Plan failed to provide for attainment of the 1997 annual $PM_{2.5}$ NAAQS as required by CAA sections 189(b) and 189(d).

The commenter fails to explain its statement that ''[n]otably, in deciding the matter based on inventory data, the *Sierra Club* court did not reach Petitioners' argument that EPA improperly approved the 2004 SIP submission in 2010 knowing that attainment by the 2010 deadline was impossible.'' We decline to speculate on the meaning or relevance of the Ninth Circuit's decision not to reach this issue.

Comment A.4: SJVUAPCD's comment letter summarizes the regulatory consequences that would result from final disapproval of the SJV $PM_{2.5}$ Plan and states that these consequences could not have been foreseen or avoided in light of recent wildfires and data handling issues. The commenter asserts that a better path would have been for the EPA to ''approve the plan as valid at the time of adoption by the District'' and concurrently make a finding of failure to attain by the 2020 deadline, triggering a requirement for a revised plan. The commenter claims that this path would be ''more consistent with the cooperative federalism embedded in the Clean Air Act'' and would have avoided sanctions consequences outside of the District's direct control, although sanctions would still apply if the District were to fail to submit a revised plan on time.

Response A.4: We disagree with the commenter's claim that the EPA could have proposed to approve the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS as ''valid at the time of adoption by the District.'' As discussed in our proposed rule and in Response A.2, complete, quality-assured, and certified ambient air monitoring data for the 2018–2020 period establish that the San Joaquin Valley did not attain by the December 31, 2020 attainment date identified by the State in the SJV $PM_{2.5}$ Plan. We are, therefore, disapproving the SJV $PM_{2.5}$ Plan for failure to provide for attainment as required by the CAA.

Comment A.5: SJVUAPCD states that the San Joaquin Valley did not attain by the December 31, 2020 attainment date due to wildfires and data handling issues that were outside of the District's control. The commenter concludes that after accounting for wildfire-related exceptional events, the San Joaquin Valley is attaining the 1997 24-hour $PM_{2.5}$ NAAQS and that all areas except for Bakersfield-Planz are attaining the 1997 annual $PM_{2.5}$ NAAQS. The commenter attributes the failure to attain at the Bakersfield-Planz site to data handling issues at the CARB-operated monitor that were outside of the District's control.

The commenter states that the District and CARB have drafted a SIP revision for the 1997 annual $PM_{2.5}$ NAAQS with a December 31, 2023 attainment date, and notes that the District Governing Board adopted the revision on August 19, 2021, and that CARB intends to approve the revision in September 2021. The commenter states that it hopes the EPA will approve the plan revision quickly to avoid a similar situation as the current one.

Response A.5: We appreciate the commenter's perspective on the San Joaquin Valley's air quality challenges and information about recent steps taken by the State and District to develop a revised plan. Comments regarding the revised plan are, however, outside the scope of this rulemaking.

Comment A.6: SJVUAPCD requests that the EPA clearly articulate in the final action on the SJV $PM_{2.5}$ Plan for 1997 annual $PM_{2.5}$ NAAQS that development, review, and approval of new contingency measures for those NAAQS are governed by a timeline separate from the elements included in the SIP revision that the District Governing Board adopted on August 19, 2021. The commenter states that the District looks forward to working with CARB and the EPA to address the contingency measure requirements.

Response A.6: There is no separate timeline associated with the requirement for the contingency measure element, as the commenter suggests. As discussed in section III of this notice, as a result of this final action, California will be required to develop and submit a revised plan for the San Joaquin Valley that satisfies the CAA's Serious area and section 189(d) requirements, including the requirement for contingency measures, for the 1997 annual $PM_{2.5}$ NAAQS. Section III of this final rule discusses the timeline for application of mandatory offset and highway sanctions as a result of this final disapproval.

Comment A.7: SJVUAPCD asserts that the federal government has not done enough to achieve reductions in emissions from mobile sources and that this has resulted in ''disproportionate pressure on the District and CARB to continue reduc[ing] emissions to make up the shortfall, demonstrate attainment, and satisfy contingency requirements.''

Response A.7: These comments do not identify a specific issue that is relevant to the EPA's action on the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS.

Comment A.8: SJVUAPCD asserts that the SJV $PM_{2.5}$ Plan for the 1997 NAAQS is fully approvable even though the San Joaquin Valley did not attain by the December 31, 2020 attainment date.

Response A.8: We disagree with these comments. See Response A.2.

B. Comments From Earthjustice

Comment B.1: Earthjustice asserts that the EPA's proposed approval of the 2013 base year emissions inventories is arbitrary and capricious. Specifically, Earthjustice argues that because the inventories were developed using a mobile source emissions model (*i.e.,* EMFAC2014) that has since been updated, the 2013 baseline emissions inventories do not reflect the best information available. Earthjustice claims that ''CARB and the District know the emissions assumptions included in the 2013 baseline inventory do not reflect the best information because they have a more current, more accurate EMFAC2017 model that undermines those EMFAC2014 results.'' The commenter states that the EPA has not offered an analysis to support a conclusion that only the modeling was incorrect, and not the baseline emissions inventory inputs used in the modeling. Earthjustice further asserts that the inventories are inextricably tied to the attainment demonstration and

[18] Id. at 965–968.

[19] Id. at 968 (citing *Burlington Truck Lines,* 371 U.S. 156, 168 (1962)).

[20] 86 FR 38652, 38665 (Table 5) and fn. 4, supra (noting that certified data confirm the preliminary conclusions provided in the EPA's proposed rule).

related elements, and that because the area did not attain by the attainment date in the Plan, the EPA must also disapprove the inventories. The commenter asserts that there is no reason for the EPA to approve the emissions inventories if the remainder of the plan is disapproved.

Finally, Earthjustice states that the State must develop a new plan and that the new plan cannot rely on the 2013 base year emissions inventories that the EPA has proposed to approve, but rather the State must develop the new plan using the updated mobile source emissions model EMFAC2017. Earthjustice also claims that the State must use EMFAC2017 in any new regional and hot-spot analyses because the transportation conformity grace periods have expired.

Response B.1: The EPA disagrees with Earthjustice's claim that our approval of the 2013 base year inventories is arbitrary and capricious. We evaluated the emissions inventories in the SJV $PM_{2.5}$ Plan to determine if they satisfy CAA requirements as interpreted in the EPA's regulations at 40 CFR 51.1008 and in the preamble to the EPA's implementation rule for the $PM_{2.5}$ NAAQS (hereafter ''$PM_{2.5}$ SIP Requirements Rule'').[21] As discussed in the proposal, we found that the State and District had used emissions inventory estimation methodologies consistent with the EPA's recommendations, and that the inventories in the SJV $PM_{2.5}$ Plan are comprehensive and based on the most current and accurate information available to the State and District when they were developing the Plan.[22] Based on these evaluations, we proposed to approve the 2013 base year emissions inventories in the SJV $PM_{2.5}$ Plan as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008.

CARB used its mobile source emissions model, EMFAC2014, to generate the on-road mobile source inventories in the SJV $PM_{2.5}$ Plan. The EPA approved EMFAC2014 for use in SIPs and conformity determinations on December 14, 2015.[23] At the time that the State and District were developing the SJV $PM_{2.5}$ Plan, EMFAC2014 was the most current mobile source model available for emissions inventory development purposes. CARB submitted the SJV $PM_{2.5}$ Plan to the EPA on May 10, 2019. On August 15, 2019, the EPA approved EMFAC2017, the latest revision to this mobile source emissions model.[24] We find that it would be unreasonable to require the State and District to revise the SJV $PM_{2.5}$ Plan because of an updated EMFAC model that the EPA approved several months after the State's submission of the Plan. The EPA has stated in longstanding policy that the CAA does not require states that have already submitted SIP submissions or will submit SIP submissions shortly after the release of a new mobile source model to revise these submissions simply because a new motor vehicle emissions model is available, as it would be unreasonable to require a state to revise such a submission after significant work had already occurred.[25]

Nevertheless, the EPA has considered information regarding the differences between the EMFAC2014 and EMFAC2017 emissions estimates that has become available since our proposal. On November 8, 2021, CARB submitted a SIP revision to address the CAA requirements for the 1997 annual $PM_{2.5}$ NAAQS.[26] The submission included CARB's ''Staff Report, Proposed SIP Revision for the 15 $\mu g/m^3$ Annual $PM_{2.5}$ Standard for the San Joaquin Valley'' (''CARB Staff Report''), which includes a comparison of estimated annual NO_X and $PM_{2.5}$ emissions in the San Joaquin Valley in the 2013 base year.[27] CARB determined that $PM_{2.5}$ emissions estimates for 2013 derived using EMFAC2017 are approximately six percent higher than estimates derived using EMFAC2014, and that NO_X emissions estimates for 2013 derived using EMFAC2017 are seven percent lower than the emissions estimates derived using EMFAC2014.[28] CARB also concluded that the differences in 2013 base year emissions derived using EMFAC2014 and EMFAC2017 are not significant enough to affect the modeled attainment demonstration in the revised SIP submission. Thus, CARB's analyses support our conclusion that the 2013 base year emissions inventories in the SJV $PM_{2.5}$ Plan are comprehensive, accurate, and current, consistent with the requirements of CAA section 172(c)(3) and 40 CFR 51.1008.

The EPA also disagrees with the commenter's claim that the base year emissions inventories are ''inextricably tied to the demonstration of attainment'' and related plan elements and that disapproval of the attainment demonstration thus requires disapproval of the emissions inventories. Section 172(c)(3) of the CAA requires that plans for nonattainment areas include ''a comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area, including such periodic revisions as the Administrator may determine necessary to assure that the requirements of [part D of title I of the CAA] are met.'' Nothing in the text of section 172(c)(3) indicates that the EPA cannot evaluate the adequacy of the emissions inventories independent of other requirements such as RFP or attainment.

As the EPA explained in the preamble to the EPA's $PM_{2.5}$ SIP Requirements Rule, the base year emissions inventory requirement in CAA section 172(c)(3) is a requirement independent of the attainment demonstration and related plan elements and, therefore, is not suspended by a determination by the EPA that the area has attained the NAAQS (*i.e.,* a ''clean data determination'').[29] For over 25 years, the EPA has maintained its interpretation in the ''Clean Data Policy,'' now codified at 40 CFR 51.1015 for $PM_{2.5}$ purposes, that only those plan requirements that are linked by their terms to the CAA's requirements for attainment and RFP (*e.g.,* the attainment demonstration, RFP, and contingency measures) are suspended upon a determination by the EPA that the area is attaining the relevant NAAQS.[30]

[21] 81 FR 58010 (August 24, 2016).

[22] 86 FR 38652, 38658.

[23] 80 FR 77337.

[24] 84 FR 41717. The grace period for new regional emissions analyses begins on August 15, 2019, and ends on August 16, 2021, while the grace period for hot-spot analyses begins on August 15, 2019, and ends on August 17, 2020. Id. at 41720.

[25] EPA, Office of Transportation and Air Quality, ''Policy Guidance on the Use of MOVES3 for State Implementation Plan Development, Transportation Conformity, General Conformity, and Other Purposes,'' November 2020, 7, 8; EPA, Office of Air Quality Planning and Standards, Air Quality Assessment Division, ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' May 2017, 27, 28; and memorandum dated January 18, 2002, from John Seitz, Office of Air Quality Planning and Standards and Margo Oge, Office of Transportation and Air Quality, EPA, ''Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity.''

[26] Letter dated November 8, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region 9.

[27] Available at *https://ww2.arb.ca.gov/sites/default/files/2021-08/SJV%2015%20ug%20SIP%20Revision%20Staff%20Report%20FINAL.pdf.*

[28] The CARB Staff Report indicates that 2013 annual emissions derived using EMFAC2014 are 183.09 tpd of NO_X and 6.45 tpd of $PM_{2.5}$, whereas 2013 annual emissions derived using EMFAC 2017 are 170.04 tpd of NO_X and 6.83 tpd of $PM_{2.5}$. CARB Staff Report, Table 2.

[29] 81 FR 58010, 58128.

[30] Memorandum dated May 10, 1995, from John S. Seitz, Director, EPA Office of Air Quality Planning and Standards (OAQPS), to Air Division Directors, EPA Regions I–X, Subject: ''Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment

Continued

Consistent with this longstanding interpretation, 40 CFR 51.1015 excludes the base year emissions inventory from the attainment-related requirements that are suspended upon a clean data determination for the $PM_{2.5}$ NAAQS.[31] The commenter provides no statutory support for a claim that the requirement for emissions inventories in CAA section 172(c)(3) is inextricably tied to the attainment demonstration and related plan elements. Put simply, an emissions inventory may still be adequate, even if other elements (*e.g.,* a failure to evaluate and impose control measures on sources that would result in attainment) of an attainment plan are not.

We also disagree with the commenter's assertion that there is no reason for the EPA to approve the emissions inventories if the remainder of the plan is being disapproved. Under CAA section 110(k)(3), the EPA may approve any portion of a SIP submission that meets the requirements of the Act. For the reasons provided in the proposal, the EPA finds that the 2013 base year emissions inventories in the SJV $PM_{2.5}$ Plan are consistent with the requirements of the CAA, as interpreted in the EPA's regulations and guidance.

Earthjustice's claim that in a new attainment plan for the 1997 annual $PM_{2.5}$ NAAQS for the San Joaquin Valley the State ''cannot rely on the 2013 base year inventory that EPA proposes to approve'' is outside of the scope of this rulemaking. The EPA will review the revised attainment plan submitted by the State on November 8, 2021, for compliance with the requirements of the CAA and the EPA's regulations and will determine, following notice-and-comment rulemaking, whether the submission satisfies all applicable CAA requirements. We encourage Earthjustice to resubmit these comments as appropriate during such a future rulemaking.

Finally, Earthjustice is correct that because the transportation conformity grace periods for use of EMFAC2014 have expired, the State must use EMFAC2017 in any new regional emissions analyses that begin on or after August 16, 2021,[32] unless and until the EPA approves a new version of EMFAC. This means that all new hydrocarbon, NO_X, PM_{10}, $PM_{2.5}$, and CO regional conformity analyses started after the end of the two-year grace period must be based on EMFAC2017, even if the SIP is based on an earlier version of the EMFAC model.

Comment B.2: Earthjustice states that it agrees with the EPA's proposal to disapprove the precursor demonstration in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS but asserts that the EPA's reasoning necessitates certain other findings by the EPA. Earthjustice describes the EPA's reasoning in the proposed rule [33] as tying the precursor demonstration to the attainment demonstration and asserts that if the attainment demonstration has proven to be wrong, then the precursor demonstration must necessarily also be wrong, both for the 1997 annual $PM_{2.5}$ NAAQS and for the 1997 24-hour $PM_{2.5}$ NAAQS. Earthjustice states that the ''defects'' in the precursor demonstration for the 1997 annual $PM_{2.5}$ NAAQS also ''infect the precursor demonstration for the 1997 24-hour standard plan'' and that the EPA should disapprove that demonstration as well ''to make it clear to the District and CARB that a new analysis for both standards will be required.'' Earthjustice also reiterates its concerns with the precursor demonstration that it raised previously in comments on the EPA's approval of the plan for the 2006 24-hour $PM_{2.5}$ NAAQS, such as the failure to properly account for NO_X emissions from soil and the refusal to consider the cost-effectiveness of ammonia controls as compared to NO_X controls. The commenter asserts that should the EPA decide to approve the precursor demonstration despite the failure of the attainment demonstration, the EPA must issue a new proposal that explains the EPA's rationale and offers the public the opportunity to review and comment.

Response B.2: The EPA acknowledges Earthjustice's support for disapproving the precursor demonstration but does not agree with the commenter's characterization of the EPA's rationale for the disapproval. As we explained in the proposed rule, the EPA proposed to disapprove the attainment demonstration and related elements in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS based on ambient monitoring data that show that the Plan was insufficient to achieve attainment of the 1997 annual $PM_{2.5}$ NAAQS by December 31, 2020, the State's projected attainment date.[34] We further explained that ''[g]iven that we are proposing to disapprove the attainment demonstration, and given that the precursor demonstration for the 1997 annual $PM_{2.5}$ NAAQS largely relies on the technical analyses and assumptions that provide the basis for the attainment demonstration, we are also proposing to disapprove the precursor demonstration in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS.'' [35]

The EPA is not taking the position that disapproval of an attainment demonstration necessarily renders the associated precursor demonstration deficient in all cases. Nothing in the CAA, the $PM_{2.5}$ SIP Requirements Rule,[36] or in the EPA's guidance on $PM_{2.5}$ precursor demonstrations (hereafter ''$PM_{2.5}$ Precursor Guidance'') [37] indicates that approval of a precursor demonstration is necessarily contingent upon approval of the associated attainment demonstration. Where the modeled attainment demonstration and the precursor demonstration are based on the same modeling platform, the EPA may find that fundamental flaws in that modeling platform render both demonstrations deficient. But the EPA evaluates each demonstration on its own merits, and in some cases the EPA may find it appropriate to approve a precursor demonstration even if the attainment demonstration with which it is associated is deficient.

In this case, we find that the modeling platform used in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS is adequate to support both the attainment demonstration and the precursor demonstration for the 1997 annual $PM_{2.5}$

Areas Meeting the Ozone National Ambient Air Quality Standard'' and memorandum dated December 14, 2004, from Stephen D. Page, Director, OAQPS, EPA, to Air Division Directors, EPA Regions I–X, Subject: ''Clean Data Policy for the Fine Particle National Ambient Air Quality Standards.''

[31] 40 CFR 51.1015 (stating that ''[u]pon a determination by the EPA that a [ ] $PM_{2.5}$ nonattainment area has attained the $PM_{2.5}$ NAAQS, the requirements for the state to submit an attainment demonstration, reasonable further progress plan, quantitative milestones and quantitative milestone reports, and contingency measures for the area shall be suspended until'' the area is redesignated to attainment, after which such requirements are permanently discharged, or the EPA determines that the area has re-violated the $PM_{2.5}$ NAAQS, at which time the requirements are reinstated. See also 40 CFR 51.918, 51.1118, and 51.1318 (similarly suspending attainment-related planning requirements, but not emissions inventory requirements, upon a clean data determination for the ozone NAAQS).

[32] The grace period for use of EMFAC2014 in conformity determinations for projects ended on August 17, 2020 and the grace period for use of EMFAC2014 in regional plan and TIP conformity determinations ended on August 16, 2021. 84 FR 41717.

[33] 86 FR 38652, 38660.

[34] Id. at 38665–38666.

[35] Id. at 38660.

[36] 81 FR 58010.

[37] Memorandum dated May 30, 2019, from Scott Mathias, Acting Director, Air Quality Policy Division and Richard Wayland, Director, Air Quality Assessment Division, Office of Air Quality Planning and Standards (OAQPS), EPA to Regional Air Division Directors, Regions 1–10, EPA, Subject: ''Fine Particulate Matter ($PM_{2.5}$) Precursor Demonstration Guidance,'' attaching ''$PM_{2.5}$ Precursor Demonstration Guidance,'' EPA–454/R–19–004, May 2019.

NAAQS. Although we are disapproving the attainment demonstration for the 1997 annual $PM_{2.5}$ NAAQS based on ambient air quality monitoring data that show that the area failed to attain these NAAQS by the end of 2020, our disapproval does not rest on a conclusion that the modeling platform is fundamentally flawed. In our discussion about the modeling platform in the proposal, we stated that ''[t]he magnitude and timing of predicted concentrations of total $PM_{2.5}$ [in the San Joaquin Valley] . . . generally match the occurrence of elevated $PM_{2.5}$ levels in the measured observations'' and ''[a] comparison to other recent modeling efforts shows good model performance on bias, error, and correlation with measurements, for total $PM_{2.5}$ and for most of its chemical components.'' [38] The same modeling platform provides the basis for California's Serious area plan for attainment of the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley that the EPA approved on July 22, 2020,[39] the Moderate area plan for the 2012 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley that the EPA proposed to approve on September 1, 2021,[40] and the Serious area and CAA section 189(d) plan for the 1997 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley that the EPA proposed to approve on September 24, 2021.[41]

We acknowledge that the modeling erroneously projected that the San Joaquin Valley would attain the 1997 annual $PM_{2.5}$ NAAQS by the end of 2020. There are a number of factors other than flaws in the modeling itself that may result in model predictions not matching monitored values, including meteorology in the attainment year that differs substantially from meteorology in the modeling platform base year, and actual emissions levels in the attainment year that differ substantially from projected emissions levels. The modeling platform uses 2013 as a base year, with emissions and meteorology from 2013 as inputs, and with performance validated against 2013 monitored concentrations. If the meteorological conditions in 2020 were more conducive to $PM_{2.5}$ formation than those in 2013, then the 2020 design value would be higher than predicted by the modeling with its 2013 base case, even if the model itself is performing well. Natural variability in meteorological conditions can cause model predictions based on one year to overestimate or underestimate concentrations for a different year.[42]

Similarly, unpredictable emissions differences can lead to differences between modeled and observed concentrations. There were high particulate and precursor emissions in the years 2018 and 2020 from unexpected wildfires in the areas surrounding the San Joaquin Valley during the summer and fall months. Wildfires were not included in the State's modeling emissions inventory, but base period wildfire emissions can indirectly affect predicted future concentrations when they are estimated using Relative Response Factors (RRFs), as recommended in the EPA's ''Modeling Guidance for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze'' (''Modeling Guidance'').[43] We note that wildfires were much less prevalent during the 2010–2014 period that was used to estimate the base design value,[44] compared to the number and severity of wildfires in and around the San Joaquin Valley during the 2018–2020 period used to calculate the 2020 monitored design value.[45] While they likely were not the sole factor, the 2018–2020 wildfires may have contributed to the State's underestimated design value projection for 2020, even though the model was not deficient.

Finally, the State's technical findings in the precursor demonstration analysis support the EPA's disapproval of it for purposes of the 1997 annual $PM_{2.5}$ NAAQS. To support the precursor demonstration, the State used the modeling platform discussed above to assess the sensitivity of $PM_{2.5}$ concentrations to reductions in precursor concentrations. The State modeled precursor emissions reductions and compared the resulting changes in $PM_{2.5}$ concentrations to 0.2 micrograms per cubic meter ($\mu g/m^3$), the EPA's recommended contribution threshold for the annual $PM_{2.5}$ NAAQS.[46] The modeled $PM_{2.5}$ responses to a 30 percent ammonia emissions reduction for the 2013 base year ranged from 0.20 to 0.72 $\mu g/m^3$, exceeding the 0.2 $\mu g/m^3$ contribution threshold at 14 of 15 monitoring sites.[47] For the 2020 future year, the modeled $PM_{2.5}$ responses to a 30 percent ammonia emissions reduction ranged from 0.12 to 0.42 $\mu g/m^3$, exceeding the 0.2 $\mu g/m^3$ contribution threshold at 9 of 15 monitoring sites. For the 2024 future year, the response ranged from 0.08 to 0.26 $\mu g/m^3$; exceeding 0.2 $\mu g/m^3$ at two monitoring sites.[48]

For the approval of the precursor demonstration for the 2006 24-hour NAAQS,[49] and for the proposed approvals of the precursor demonstration for the 1997 24-hour NAAQS [50] and the 2012 annual NAAQS,[51] the EPA partly relied on model estimates of ammonia sensitivity from the 2024 future year. There is evidence that NO_X emissions reductions that are projected to occur by 2024 result in the modeling for 2024 being more representative of current ambient conditions, as reflected in monitoring studies of nitrate and ammonia.[52] For 2024, all monitoring sites were projected to have 24-hour $PM_{2.5}$

[38] 86 FR 38652, 38664.

[39] 85 FR 44192. See also EPA, ''Technical Support Document, EPA Evaluation of Air Quality Modeling, San Joaquin Valley $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS,'' February 2020 (''2006 $PM_{2.5}$ NAAQS Modeling TSD''), section J (''Air Quality Model Performance'').

[40] 86 FR 49100.

[41] 86 FR 53150.

[42] The differences in modeled conduciveness to $PM_{2.5}$ formation in 2020 versus 2013 is not the result of the State choosing an unusually favorable base year. As explained in the Plan's modeling protocol, the State chose the 2013 base year as representative of conditions conducive to poor air quality based on meteorology-adjusted trends. 2018 $PM_{2.5}$ Plan, Appendix L, L–12.

[43] ''Modeling Guidance for Demonstrating Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' EPA–454/R–18–009, November 2018, 100. Available at *https://www.epa.gov/scram/state-implementation-plan-sip-attainment-demonstration-guidance.* Modeled RRFs represent the model concentration response to emissions changes between the base year and future year and are multiplied by base design values to estimate future concentrations. The base design values are estimated from several years of monitored concentrations and reflect wildfire emissions present in the base period. Note, however, that the base design value would not reflect wildfire-influenced monitor data excluded via the Exceptional Events Rule process (see 40 CFR 50.1(j), (k), (l); 50.14(a)(1)(i); 51.930) or as otherwise modified to exclude data unrepresentative for modeling purposes. The only data that CARB excluded for the base design value period 2010–2014 was for high wind fugitive dust events on April 11, 2010 and May 5, 2013 at the Bakersfield-Planz site. CARB's ''Staff Report, Review of the San Joaquin Valley 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards,'' release date December 21, 2018, Appendix C1 and C2.

[44] The average number of acres burned in wildfires in California during 2010–2014 was 484,000; 2010 had the highest acreage burned, 913,000, and 2013 had 602,000. By contrast, the 2018–2020 average was 2,062,000; 2020 had the highest acreage burned, 3,950,000. California Department of Forestry and Fire Protection (CAL FIRE), CAL FIRE Stats and Events, *https://www.fire.ca.gov/stats-events/,* accessed October 4, 2021.

[45] Wildfire-influenced monitor data during August 20–24, 2020 were excluded under the Exceptional Events Rule for the 1997 24-hour $PM_{2.5}$ NAAQS, but this exclusion did not affect the design value for the annual 1997 $PM_{2.5}$ NAAQS. Letter dated July 13, 2021 from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Michael Benjamin, Division Chief, Air Quality Planning and Science Division, CARB.

[46] $PM_{2.5}$ Precursor Demonstration Guidance, 17.

[47] 2018 $PM_{2.5}$ Plan, Appendix G, Table 2.

[48] Id. at Table 4 and Table 5.

[49] 85 FR 44192.

[50] 86 FR 53150.

[51] 86 FR 49100.

[52] 2006 $PM_{2.5}$ NAAQS Modeling TSD, 11.

responses below the 1.5 μg/m^3 contribution threshold. In addition, the 24-hour modeled $PM_{2.5}$ responses are below the threshold at all but one site in 2020, and there were no monitored violations of the 1997 24-hour $PM_{2.5}$ NAAQS in 2020. Thus, the EPA concluded that ammonia is not contributing to $PM_{2.5}$ levels above the 1997 24-hour $PM_{2.5}$ NAAQS in the 2020 attainment year.

In contrast, for the 1997 annual $PM_{2.5}$ NAAQS, certified ambient air quality data show that the San Joaquin Valley recorded $PM_{2.5}$ levels exceeding the NAAQS in 2020, so the monitoring data alone do not support a conclusion that ammonia emissions do not contribute significantly to levels exceeding the NAAQS. Also, the modeling results indicate that annual average $PM_{2.5}$ concentrations are more sensitive than 24-hour average $PM_{2.5}$ concentrations to ammonia reductions. The evidence that modeling for 2024 is representative of current ambient conditions supports giving relatively less weight to the 2020 results. However, for the annual NAAQS there are 9 sites out of 15 above the contribution threshold in 2020, too many to discount. Furthermore, even the 2024 results show two sites above the contribution threshold. The combined results for 2020 and 2024 contradict a conclusion that ammonia emissions do not contribute significantly to $PM_{2.5}$ levels that exceed the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley.

With respect to Earthjustice's claim that the ''defects'' in the precursor demonstration for the 1997 annual $PM_{2.5}$ NAAQS also necessitate disapproval of the precursor demonstration for the 1997 24-hour $PM_{2.5}$ NAAQS, we note that these comments are outside the scope of this rulemaking, as our action today pertains only to the Serious area and CAA section 189(d) plan for the 1997 annual $PM_{2.5}$ NAAQS.[53]

With respect to Earthjustice's statement that it previously raised concerns about the precursor demonstration in comments on the EPA's separate approval of the attainment plan for the 2006 24-hour $PM_{2.5}$ NAAQS, *e.g.,* concerning failure to account for NO_X emissions from soil and to consider the cost-effectiveness of ammonia controls as compared to NO_X controls, the EPA responded to those comments in the ''Response to Comments Document for the EPA's Final Action on the San Joaquin Valley Serious Area Plan for the 2006 $PM_{2.5}$ NAAQS,'' dated June 2020, which is available at *https://www.regulations.gov* under Docket ID No. EPA–R09–OAR–2019–0318 (see Response 6.P–1 and Response 6.Q).

Finally, we do not dispute the commenter's assertion that we could not approve the precursor demonstration without issuing a new proposal that explains our rationale and provides an opportunity for public comment.

Comment B.3: Earthjustice supports the EPA's proposal to disapprove the Plan's BACM demonstration. Earthjustice also states that, even if the EPA were to approve the precursor demonstration in the Plan, the EPA could not finalize an approval of the BACM demonstration without a new proposal, and that any action to approve the plan's BACM demonstration must provide an analysis of the issues pertaining to control measures that the commenter identified in prior comments submitted to the EPA and offer commenters the ability to review that analysis.

Response B.3: We are finalizing our proposal to disapprove both the precursor demonstration and the BACM demonstration in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS and, therefore, do not provide specific responses to these comments. When the EPA proposes to take action on a new or revised BACM demonstration submitted by the State to satisfy CAA requirements applicable to the San Joaquin Valley area for these NAAQS, the EPA will provide a full analysis to support its proposal and will provide a minimum 30-day period for public comments on that proposal, consistent with the requirements of the Administrative Procedure Act.[54]

Comment B.4: Earthjustice states that it agrees with the EPA's proposal to disapprove the five percent annual emissions reduction demonstration, asserting that because the SJV $PM_{2.5}$ Plan ''failed to show 5 percent reductions beyond the 2020 attainment date, and the area has still not attained, the 5 percent demonstration is deficient on its face.'' The commenter further claims that the five percent annual reductions demonstration must be disapproved because it relies on a ''flawed emission inventory built with an outdated EMFAC model.'' The commenter requests clarification regarding the EPA's statement that greater than the required five percent annual emissions reductions have been achieved and removal of Table 3 in the proposal because the commenter asserts that the five percent requirement cannot be assessed without a ''valid current and accurate inventory.''

Response B.4: We agree with the commenter that the EPA cannot approve the five percent annual emissions reduction demonstration in the SJV $PM_{2.5}$ Plan given that the Plan demonstrates reductions only through 2020, the area did not attain by 2020, and therefore the Plan does not meet the requirement to demonstrate five percent reductions per year until attainment. We are, therefore, disapproving the five percent emissions reduction demonstration in the Plan. However, we disagree with the commenter's claim that the EPA must also disapprove the five percent demonstration specifically ''because it relies on a flawed emission inventory built with an outdated EMFAC model.'' See Response B.1.

With respect to Earthjustice's assertion that Table 3 in our proposed rule should be removed, we note that this table simply summarizes the State's submission[55] and does not constitute an approval of the submitted five percent annual emissions reduction demonstration, in any respect. Earthjustice also requests that the EPA clarify its statement in the proposed rule that ''NO_X emissions reductions are greater than the required five percent per year.''[56] We explained in the proposed rule that ''[t]he State's methodology for calculating the five percent emission reduction targets for the years 2017, 2018, 2019, and 2020 is consistent with CAA requirements as interpreted in the $PM_{2.5}$ SIP Requirements Rule, and the Plan shows that NO_X emissions reductions from 2017 to 2020 are greater than the required five percent per year.''[57]

We included these statements in the proposed rule to explain how we were evaluating the State's submitted five percent annual emissions reduction demonstration, and to distinguish those portions of the submitted analysis that appear to meet CAA requirements from those portions that do not. The State's identification of 2013 as the starting point for the calculation of the five

[53] The EPA has separately proposed action on the Serious area and CAA section 189(d) plan for the 1997 24-hour $PM_{2.5}$ NAAQS in the San Joaquin Valley. 86 FR 53150.

[54] Section 553 of the Administrative Procedure Act requires that federal agencies provide general notice of proposed rulemaking by publication in the **Federal Register** and to ''give interested persons an opportunity participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.'' 5 U.S.C. 553(b), (c). See also CAA section 307(h) (requiring, consistent with the policy of subchapter II of chapter 5 of Title 5, that the EPA ''ensure a reasonable period for public participation of at least 30 days'' in promulgating any regulation under title I of the Act).

[55] 86 FR 38652, 38663.

[56] Id. at 38662.

[57] Id.

percent reduction required under CAA section 189(d) is appropriate because 2013 is one of the three years for which the EPA evaluated monitored air quality data to determine that the San Joaquin Valley had failed to attain the 1997 $PM_{2.5}$ NAAQS [58] and, thus, may be treated as the ''the most recent inventory'' for this purpose.[59] The State's identification of 2017 as the first year during which the Plan must provide for the required five percent reduction from base year emissions levels is appropriate because the due date for the section 189(d) plan was December 31, 2016.[60] Thus, if the five percent annual reduction calculation is based on an approvable base year emissions inventory and the Plan provides for the calculated level of reduction each year beginning after the due date for the section 189(d) plan, the calculation itself is consistent with the EPA's interpretation of the section 189(d) requirements.

As we explained in the proposed rule, however, the Plan fails to satisfy CAA section 189(d) requirements because the December 31, 2020 attainment date identified in the Plan is not the ''applicable attainment date,'' and the Plan therefore does not provide annual reductions of at least five percent each year from the date of plan submission ''until the applicable attainment date approved by the EPA.'' [61] Because we are disapproving the five percent annual emissions reduction demonstration in the Plan, the State is required to submit a revised plan that satisfies the requirements of section 189(d). The EPA will evaluate any revised plan submitted by the State for compliance with the statutory and regulatory requirements and will provide the public an opportunity to comment on the EPA's proposed action on any such submission, consistent with the requirements of the Administrative Procedure Act.[62]

Comment B.5: Earthjustice states that it agrees that the EPA cannot approve the modeling demonstration in the SJV $PM_{2.5}$ Plan because design values in the San Joaquin Valley in 2020 were above the NAAQS at half of the monitoring sites. The commenter notes that the EPA has not provided a full evaluation of the attainment demonstration and that if the EPA should change course and decide to approve the attainment demonstration, it must repropose the action and provide a full evaluation. Finally, referencing a previous comment letter submitted to the EPA, the commenter asserts that the State and District cannot claim to have met the statutory obligation to demonstrate attainment of the 1997 annual $PM_{2.5}$ NAAQS as expeditiously as practicable because the Plan does not meet the requirements for BACM and MSM.

Response B.5: We are finalizing our proposal to disapprove the attainment demonstration in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS and, therefore, do not provide specific responses to these comments. When the EPA proposes to take action on a new or revised attainment demonstration for the San Joaquin Valley area for these NAAQS, the EPA will provide a full analysis to support its proposal and will provide a minimum 30-day period for public comments on that proposal, consistent with the requirements of the Administrative Procedure Act.[63] We respond to Earthjustice's claim that the Plan fails to include BACM and MSM in Response B.3.

Comment B.6: Earthjustice supports the EPA's proposal to disapprove the RFP and quantitative milestone elements of the SJV $PM_{2.5}$ Plan based on the EPA's proposal to disapprove the attainment demonstration, stating that ''if the plotted trajectories fail as an empirical fact to lead to attainment, they cannot reasonably be approved as meeting the Act's requirements.'' Earthjustice asserts that the EPA must also disapprove the RFP and quantitative milestone demonstrations due to the absence of an approved precursor demonstration and because the base year emissions inventory was developed using models that are ''known to be flawed.''

Response B.6: We agree with the commenter's claim that our disapproval of the attainment demonstration and precursor demonstration in the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS necessitate disapproval of the RFP and quantitative milestone elements of the Plan for these NAAQS as well. In the absence of an approved precursor demonstration, the RFP and quantitative milestone demonstrations, which address only direct $PM_{2.5}$ and NO_X emissions, are not approvable. However, as explained in Response B.1, we disagree with the commenter's claim that the EPA must disapprove the base year emissions inventories in the SJV $PM_{2.5}$ Plan because the State developed them using flawed models. Therefore, we disagree with the commenter's claim we must cite alleged flaws in the 2013 base year emissions inventories as an additional basis for disapproving the RFP and quantitative milestones.

Comment B.7: Earthjustice states that it agrees with the EPA's proposal to disapprove the contingency measure element of the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS but asserts that there are additional fundamental flaws that the EPA did not identify in the proposal. The commenter claims that the contingency measures as submitted would not provide for one year's worth of emissions reductions, that quantification of the reductions needed to meet one year's worth of RFP is not possible in the absence of an approved attainment demonstration and accurate emissions inventory, and that the measures outlined in the plan cannot be implemented within 60 days of an EPA determination that the area failed to meet RFP or to attain by the attainment date. The commenter further asserts that the EPA should not approve a commitment to adopt additional measures or adopt a measure that consists only of enhanced enforcement as sufficient to meet contingency measure requirements. Earthjustice states that in this particular case, a commitment to enhance enforcement is ''particularly egregious as a contingency measure because there is no assurance of actual emission reductions, no concrete means of enforcing th[e] commitment, and no way to suggest these emission reductions are surplus to the reductions provided by control measures already part of the attainment demonstration.''

[58] The EPA determined on November 23, 2016, that the San Joaquin Valley had failed to attain the 1997 annual and 24-hour $PM_{2.5}$ NAAQS. 81 FR 84481.

[59] 81 FR 58010, 58099 (stating that, for purposes of calculating the emission reductions necessary to satisfy the five percent annual reduction criterion of CAA section 189(d), ''the EPA strongly recommends that the inventory year be one of the 3 years from which monitored air quality data were used to determine that the area failed to attain'' the relevant $PM_{2.5}$ NAAQS).

[60] Id. at 58101 (stating that ''[t]he requirement for a 5 percent annual reduction in any one pollutant, calculated based on the emissions levels in the most recent inventory, must then be achieved every year between *the CAA section 189(d) plan submission date* and the new projected attainment date for the area'') (emphasis added) and 83 FR 62720 (identifying December 31, 2016 deadline for submission of 189(d) plan for the 1997 $PM_{2.5}$ NAAQS for the San Joaquin Valley).

[61] 40 CFR 51.1000 (defining ''applicable attainment date'' as the latest statutory date by which an area is required to attain a particular $PM_{2.5}$ NAAQS or the attainment date approved by the EPA as part of an attainment plan for the area). See also 86 FR 38652, 38663 (explaining that the December 31, 2020 attainment date projected by the State is not the ''applicable attainment date'' for purposes of the 1997 annual $PM_{2.5}$ NAAQS in this area because the EPA is proposing to disapprove the attainment demonstration).

[62] 5 U.S.C. 553(b), (c).

[63] 5 U.S.C. 553(b), (c).

Citing its prior comments on the EPA's proposal to approve the State's attainment plan for the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley, Earthjustice argues that the ''hot spot'' approach in Rule 4901 also does not meet the basic control measure requirements of the CAA and that therefore, the State cannot expand the geographic applicability of the rule to achieve additional reductions to meet the contingency measures requirement. The commenter asserts that rather than sever the contingency measure provisions (*i.e.,* section 5.7.3) from the rule, the EPA should partially disapprove Rule 4901 for failing to require controls on all sources.

Lastly, Earthjustice recommends that the EPA clearly state that addressing the identified deficiencies in Rule 4901 would not result in an approvable contingency measure.

Response B.7: As the commenter correctly notes, the EPA's proposal does not assess whether the amount of emissions reductions provided by the contingency measures in the SJV $PM_{2.5}$ Plan is sufficient because, as discussed in the EPA's proposal, it is not possible to determine whether the measures go beyond what is required for RFP or attainment purposes in the first instance, let alone whether the amount of emissions reductions from the measures is sufficient, in the absence of an approved attainment demonstration.[64] The EPA disagrees, however, with the commenter's assertion that quantification of the amount of emissions reductions needed to meet the contingency measures requirement is not possible because the emissions inventories are allegedly inaccurate. For the reasons discussed in our proposal and in Response B.1 of this notice, we have determined that the 2013 base year emissions inventories in the SJV $PM_{2.5}$ Plan are comprehensive, accurate, current inventories of actual emissions consistent with the requirements of CAA section 172(c)(3).

Earthjustice did not explain the basis for its assertion that ''[n]one of the measures outlined in the plan can be fully implemented within 60 days of'' an EPA determination of failure to meet RFP or failure to attain by the attainment date. As we explained in our proposed rule, section 5.7.3 of Rule 4901 identifies a specific triggering mechanism (*i.e.,* the EPA's final determination that the San Joaquin Valley has failed to attain the 1997 $PM_{2.5}$ NAAQS by the applicable attainment date) and specifies a timeframe within which its requirements become effective after a failure-to-attain determination (*i.e.,* 60 days from the effective date of the EPA's final determination), and would take effect with minimal further action by the State or the EPA.[65]

As also discussed in our proposal, however, section 5.7.3 of Rule 4901 fails to satisfy the requirements for contingency measures because, among other deficiencies, it does not address three of the four required triggers for contingency measures in 40 CFR 51.1014(a), *i.e.,* failure to meet a quantitative milestone, failure to submit a quantitative milestone report, and failure to meet an RFP requirement.[66] Because we are disapproving the contingency measure provision in Rule 4901 for the reasons provided in our proposed rule, we provide no further response to this comment.

Additionally, the commenter's statement that the EPA should not approve a commitment to adopt additional measures or enhance enforcement as sufficient to meet contingency measure requirements is outside of the scope of this rulemaking. The EPA did not propose to approve any commitments by the State or District for purposes of meeting the contingency measure requirements for the 1997 annual $PM_{2.5}$ NAAQS. The contingency measure at issue in this rulemaking (*i.e.,* section 5.7.3 of Rule 4901) is not a commitment to adopt an additional measure but rather has already been adopted by the State. We are disapproving this particular measure because of the deficiencies discussed in our proposed rule. Furthermore, because CARB withdrew the ''State Implementation Plan Attainment Contingency Measures for the San Joaquin Valley 15 $\mu g/m^3$ Annual $PM_{2.5}$ NAAQS'' [67] SIP revision that included an enhanced enforcement contingency measure, that measure is no longer before the EPA for consideration and is not at issue in this rulemaking.[68]

We disagree with the commenter's claim that the District's ''hot spot'' approach to regulation under Rule 4901 does not meet the basic control measure requirements of the CAA and that the EPA should partially disapprove Rule 4901 for failing to require available controls on all sources in the nonattainment area, instead of merely ''severing'' section 5.7.3. On July 22, 2020, the EPA approved the District's June 20, 2019 revisions to Rule 4901 into the California SIP based on a determination that the rule meets the requirements of CAA sections 110(a)(2), 110(l) and 193.[69] Also on July 22, 2020, the EPA determined that Rule 4901, as amended June 20, 2019, meets the requirements for BACM/BACT and MSM for the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley.[70] The EPA took these actions after considering and responding to comments pertaining to the District's ''hot spot'' approach to regulation under Rule 4901 that Earthjustice submitted during those prior rulemakings, among other comments.[71] In this action, we are evaluating only the contingency measure provision in Rule 4901, section 5.7.3, for compliance with the requirements for contingency measures in CAA section 172(c)(9) and 40 CFR 51.1014. Comments pertaining to other provisions of Rule 4901 are, therefore, outside the scope of this rulemaking.

Based on the deficiencies we have identified in section 5.7.3 of Rule 4901, we are disapproving the contingency measure element of the SJV $PM_{2.5}$ Plan, including section 5.7.3 of Rule 4901. Because section 5.7.3 of Rule 4901 is severable from the rest of the rule, we are removing it from the SIP.[72]

Comment B.8: Earthjustice states that it agrees that the motor vehicle emissions budgets in the SJV $PM_{2.5}$ Plan must be revised because the San Joaquin Valley area did not attain by the projected attainment date. The commenter argues that the inadequacy of the RFP and five percent annual reduction elements of the Plan also demonstrate the inadequacy of the budgets. Lastly, the commenter asserts that the budgets must be revised because they were developed using the EMFAC2014 model, which is no longer ''current and accurate.''

Response B.8: As discussed in our proposal, we are disapproving the motor vehicle emissions budgets in the SJV $PM_{2.5}$ Plan because they cannot be

[64] 86 FR 38652, 38669.

[65] Id. Specifically, the contingency measure in Rule 4901 provides for the application of lower wood burning curtailment thresholds in certain counties ''on and after sixty days following the effective date of EPA final rulemaking.'' Rule 4901, as amended June 20, 2019, section 5.7.3.

[66] 86 FR 38652, 38669.

[67] Letter dated October 23, 2017, from Richard W. Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region 9.

[68] Letter dated March 19, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region 9, transmitting CARB Executive Order S–21–004.

[69] 85 FR 44206.

[70] 85 FR 44192.

[71] EPA Region IX, ''Response to Comments Document for the EPA's Final Action on the San Joaquin Valley Serious Area Plan for the 2006 p.m.2.5 NAAQS,'' June 2020.

[72] The EPA's prior incorporation of section 5.7.3 of Rule 4901 into the SIP was in error, as this specific provision is severable from the rest of the rule and the EPA did not evaluate it for compliance with the applicable CAA requirements for contingency measures. 85 FR 44206.

consistent with the applicable requirements for RFP and attainment of the 1997 annual $PM_{2.5}$ NAAQS given that we are disapproving the attainment-related elements of the Plan (including the attainment, RFP, and five percent annual reductions demonstrations).[73] Thus, the budgets are inadequate because they do not meet the applicable statutory and regulatory requirements.[74] We did not propose to disapprove the budgets on the basis that they were developed using EMFAC2014 because EMFAC2014 was the most current mobile source model available when the State and District were developing the SJV $PM_{2.5}$ Plan (see Response B.1).[75] The commenter's claim that the budgets must be revised in a new plan raises issues that are outside the scope of this rulemaking. The EPA will evaluate the motor vehicle emissions budgets submitted with the State's revised Serious area and section 189(d) plan for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley[76] and determine, through notice-and-comment rulemaking, whether the submitted budgets satisfy the applicable statutory and regulatory requirements.

Comment B.9: Earthjustice states that CARB has advised San Joaquin Valley residents that the State and District are under no obligation to implement contingency measures because the EPA has not issued a formal notice of failure to attain, and that the EPA ''must direct the State and District to immediately implement additional emission reduction measures pursuant to [CAA] section 172(c)(9).'' According to Earthjustice, nothing in CAA section 172(c)(9) requires a formal notice or otherwise references the finding of failure to attain mandated by section 179(c). Instead, Earthjustice claims, ''the statute is clear that contingency measures must take effect 'if the area fails . . . to attain,' which it has as an indisputable fact, 'without further action by the State or the Administrator.'''

Earthjustice further claims that, while a finding of failure to attain is not required to trigger contingency measures, it is a prerequisite for triggering the other consequences outlined in section 179(d). According to Earthjustice, the EPA had a statutory obligation under CAA section 179(c)(1) to determine whether or not the area attained no later than June 30, 2021, and the EPA's proposed rule satisfies the requirement in CAA section 179(c)(2) to publish notice in the **Federal Register**. Thus, Earthjustice claims, the ''EPA should notify the State and District, and confirm with the public, that the [July 22, 2021] notice published in the **Federal Register** satisfied the statutory obligation in section 179(c)(2), and triggered the clocks outlined in section 179(d).'' Earthjustice asserts that ''[t]o conclude otherwise is to flout the statutory deadlines and the agency's public health protection obligations.''

Response B.9: We disagree with these comments. First, the EPA has provided by rule that contingency measures for the $PM_{2.5}$ NAAQS apply only upon a ''determination'' by the EPA that one of four types of failures has occurred. Specifically, 40 CFR 51.1014(a) states that contingency measures ''shall take effect with minimal further action by the state or the EPA following a determination by the Administrator that the area has failed: (1) To meet any RFP requirement in an attainment plan approved in accordance with § 51.1012; (2) To meet any quantitative milestone in an attainment plan approved in accordance with § 51.1013; (3) To submit a quantitative milestone report required under § 51.1013(b); or, (4) To attain the applicable $PM_{2.5}$ NAAQS by the applicable attainment date.'' In the preamble to the $PM_{2.5}$ SIP Requirements Rule, the EPA noted its intent ''to notify the state of a failure to meet RFP or to attain the NAAQS *by publication of its determination in the* **Federal Register**,'' after which ''[t]he state should ensure that the contingency measures are fully implemented as expeditiously as practicable[.]''[77] Moreover, the EPA's longstanding practice has been to require state and local agencies to implement contingency measures for failure to attain (''attainment contingency measures'') only after the EPA has determined, through notice-and-comment rulemaking, that the area failed to attain the NAAQS by the applicable attainment date. Thus, the EPA disagrees with the commenter's claim that attainment contingency measures must be self-effectuating before the EPA has made a determination concerning attainment under CAA section 179(c).

Second, we disagree with Earthjustice's claim that the EPA had a June 30, 2021 statutory deadline under CAA section 179(c)(1) to determine whether or not the San Joaquin Valley attained the 1997 annual $PM_{2.5}$ NAAQS. Section 179(c)(1) of the CAA requires the EPA to determine, as expeditiously as practicable after the ''applicable attainment date'' for any nonattainment area but no later than six months after such date and based on the area's air quality data as of the attainment date, whether the area attained the NAAQS by that date. The EPA has defined ''applicable attainment date,'' in relevant part, to mean ''the latest statutory date by which an area is required to attain a particular $PM_{2.5}$ NAAQS, unless the EPA has approved an attainment plan for the area to attain such NAAQS, in which case the applicable attainment date is the date approved under such attainment plan.''[78] Because the EPA has not yet approved an attainment plan for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley that satisfies the requirements of CAA section 189(d), the ''applicable attainment date'' is the latest statutory date by which the area is required to attain the 1997 annual $PM_{2.5}$ NAAQS.

As we explained in our October 6, 2016 proposal to find that the area had failed to attain the 1997 annual and 24-hour $PM_{2.5}$ NAAQS, the statutory attainment date for a state subject to the requirement for a CAA section 189(d) plan for the 1997 $PM_{2.5}$ NAAQS is set by CAA section 179(d)(3), which in turn relies upon section 172(a)(2) for the establishment of a new statutory attainment date, but with a different starting point than provided in section 172(a)(2).[79] Under section 179(d)(3), the new attainment date is the date by which the nonattainment area can attain the NAAQS as expeditiously as practicable, but no later than 5 years from the date of the final determination of failure to attain, except that the EPA may extend the attainment date for a period no greater than 10 years from the final determination, considering the severity of nonattainment and the availability and feasibility of pollution control measures.[80] The EPA's determination that the San Joaquin Valley area failed to attain the 1997 annual $PM_{2.5}$ NAAQS published in the **Federal Register** on November 23, 2016.[81] Thus, under CAA section 179(d)(3), the relevant latest statutory attainment date for purposes of the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley is November 23, 2021, except that the EPA may extend the attainment

[73] 86 FR 38652, 38672.

[74] 40 CFR 93.118(e)(4)(iv).

[75] 40 CFR 93.111(a).

[76] CARB submitted this revised plan for the 1997 annual NAAQS on November 8, 2021. Letter dated November 8, 2021, from Richard W. Corey, Executive Officer, CARB, to Deborah Jordan, Acting Regional Administrator, EPA Region 9.

[77] 81 FR 58010, 58066 (contingency measure requirements for Moderate $PM_{2.5}$ nonattainment areas) and 58093 (contingency measure requirements for Serious $PM_{2.5}$ nonattainment areas).

[78] 40 CFR 51.1000 (definitions).

[79] 81 FR 69448, 69453–69454.

[80] Id.

[81] 81 FR 84481.

date to November 23, 2026, considering the severity of nonattainment and the availability and feasibility of pollution control measures. On November 8, 2021, the State submitted a revised attainment plan to correct the deficiencies in the SJV $PM_{2.5}$ Plan identified in this final action. We note that the EPA may elect to approve a new attainment date that is as expeditiously as practicable, but not later than November 23, 2026, if the statutory criteria in section 172(a)(2) are met. In the meantime, the ''applicable attainment date'' for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley is November 23, 2021, and the EPA does not have a mandatory duty under section 179(c)(1) to determine whether the area attained by that date until May 23, 2022.

Third, we disagree with Earthjustice's claim that the EPA's July 22, 2021 proposed rule constitutes a finding of failure to attain under CAA section 179(c)(2) that triggers the consequences outlined in CAA section 179(d). Section 179(d) of the CAA requires a state to submit a revised plan meeting the requirements of section 179(d)(2) ''[w]ithin 1 year after the Administrator publishes the notice under [section 179(c)(2)] (relating to notice of failure to attain). . . .'' The EPA's proposed rule is not a final agency action and does not constitute notice of a determination under CAA section 179(c) as to whether the area attained the NAAQS. Accordingly, the proposed rule alone does not trigger any obligation on the State to submit a revised plan under CAA section 179(d). If and when the EPA takes final action to determine, through notice-and-comment rulemaking, that the San Joaquin Valley has failed to attain the 1997 annual $PM_{2.5}$ NAAQS, that final action will, upon publication in the **Federal Register**, trigger the obligation on the State to submit a revised plan under CAA section 179(d) within one year.

Comment B.10: Earthjustice notes that the EPA outlined the sanctions consequences that would result if the proposed disapproval is finalized but asserts that the EPA did not accurately describe the status of the sanctions related to the December 2018 finding of failure to submit or the consequences if the State were to withdraw the Plan. The commenter asserts that the EPA never made an affirmative completeness finding on the SJV $PM_{2.5}$ Plan, that the area should therefore already be subject to offset and highway sanctions, and that withdrawal of the Plan would require immediate imposition of sanctions.

Additionally, the commenter states that it expects that the ''District and State will quickly adopt a new plan, based on the defective 2013 base year inventory and outdated EMFAC2014 model, that includes no new control measures or contingency measures, and claim that its submittal should turn off sanctions'' but that sanctions cannot be stayed until the EPA has affirmatively found the plan complete. Citing the EPA's SIP Processing Manual, the commenter adds that the EPA cannot make an affirmative completeness determination if the required elements are missing or inadequate on their face.

Response B.10: The commenter's claim that the EPA never made an affirmative completeness finding on the SJV $PM_{2.5}$ Plan and that the area should therefore already be subject to offset and highway sanctions is incorrect. As we explained in our proposed rule, following the EPA's December 2018 finding that the State had failed to submit a complete section 189(d) attainment plan for the 1997 annual $PM_{2.5}$ NAAQS, among other required SIP submissions, for the San Joaquin Valley, CARB submitted the SJV $PM_{2.5}$ Plan for these NAAQS (among other submissions) on May 10, 2019, and ''[o]n June 24, 2020, the EPA issued a letter finding the [SJV $PM_{2.5}$ Plan] complete and terminating the sanctions clocks under CAA section 179(a).'' [82] Thus, mandatory sanctions currently do not apply for purposes of the $PM_{2.5}$ NAAQS in the San Joaquin Valley area.

We agree, however, with Earthjustice that if the State were to withdraw the SJV $PM_{2.5}$ Plan, mandatory sanctions would apply immediately in the San Joaquin Valley, given that withdrawal of the required SIP submission would eliminate the EPA's basis for terminating the sanctions clocks under CAA section 179(a). The EPA's December 2018 findings of failure to submit became effective on January 7, 2019, triggering clocks under CAA section 179(a) for the application of emissions offset sanctions 18 months after the finding and highway funding sanctions 6 month thereafter, unless the EPA affirmatively determines that the State has submitted a complete SIP addressing the identified deficiencies.[83] Because these clocks have now expired, withdrawal by the State of the SIP submission that provided the basis for the EPA's termination of the sanctions clocks would result in immediate application of mandatory sanctions under 40 CFR 52.31(d).

We do not respond to Earthjustice's additional comments regarding a new plan and related sanctions consequences as these comments are outside the scope of this rulemaking.

Comment B.11: Earthjustice states that the EPA has known since December 2018 that it had two years to promulgate a federal implementation plan (FIP), and that it was clear from available air quality data that the SJV $PM_{2.5}$ Plan would fail to bring the San Joaquin Valley into attainment of the 1997 $PM_{2.5}$ NAAQS by the end of 2020. And yet, according to Earthjustice, the EPA has instead focused on justifying and defending the repeated failures of the State and District. Earthjustice states that California is the only state in the nation that continues to violate ozone and particulate matter standards adopted over 20 years ago. Earthjustice notes that the EPA is already subject to a statutory deadline to promulgate a FIP, that ''[i]t is beyond time for EPA to intercede and outline the elements of a FIP or SIP that would be adequate to attain the national standards,'' and that ''Valley Residents would be more than willing to assist in that exercise.'' According to Earthjustice, ''[a]t a minimum, such a plan would close loopholes for oil and gas operations, require real emission reductions at mobile source magnet facilities, impose meaningful controls at industrial agricultural facilities (including controls on ammonia emissions), address emissions from gas-fired appliances, and require feasible controls on wood burning across the Valley.'' Earthjustice urges the EPA to ''use this disapproval to finally change course and direct its resources to solving, instead of excusing, the Valley's air quality problems.''

Response B.11: As we explained in the proposed rule, as a result of the EPA's December 6, 2018 determination, effective January 7, 2019, that California had failed to submit the required attainment plan for the 1997 annual $PM_{2.5}$ NAAQS, among other required SIP submissions for the San Joaquin Valley, the EPA is already subject to a statutory deadline to promulgate a FIP for this purpose no later than two years after the effective date of that determination—*i.e.,* by January 7, 2021.[84] We intend to work with the State, the District, and stakeholders in

[82] 86 FR 38652, 38653–38654 (citing letter dated June 24, 2020, from Elizabeth J. Adams, Director, Air and Radiation Division, EPA Region IX, to Richard W. Corey, Executive Officer, CARB, Subject: ''RE: Completeness Finding for State Implementation Plan (SIP) Submissions for San Joaquin Valley for the 1997, 2006, and 2012 Fine Particulate Matter ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS) and Termination of Clean Air Act (CAA) Sanctions Clocks''). The letter is available at *https://www.regulations.gov* under Docket ID No. EPA–R09–OAR–2021–0260.

[83] Id. at 38653.

[84] 83 FR 62720.

the San Joaquin Valley in the near term to either correct the deficiencies in the submitted Serious area and section 189(d) plan for the 1997 annual $PM_{2.5}$ NAAQS or promulgate a FIP or FIPs, as appropriate and necessary to correct such deficiencies.

C. Comments From a Private Citizen

Comment C.1: The private citizen commenter [85] states that they support the EPA's disapproval of the contingency measure element of the SJV $PM_{2.5}$ Plan, adding that the ''contingencies . . . ought to be triggered should the hot-spot counties of Madera, Fresno and/or Kern fail to attain any of the several National Ambient Air Quality Standards the plan seeks to address.'' The commenter claims that the EPA has determined that Kern County failed to attain the 1997 annual $PM_{2.5}$ NAAQS and that there are no adopted contingency measures in place to be triggered by the failure to attain to reduce emissions in Kern County. The commenter further asserts that the EPA does not offer a timetable for adoption of revised contingency measures. The commenter notes that the SJVUAPCD Governing Board has adopted a revised attainment plan for the 1997 annual $PM_{2.5}$ NAAQS with a 2023 attainment date, that the EPA has proposed to extend the attainment date for the area, and that this revised plan does not contain any new control measures. The commenter recommends that the EPA specify a timeline for the State to submit new contingency measures, recommending that new measures are adopted before the next wood burning season. Lastly, the commenter summarizes recommendations that the EPA provided previously for the District's residential wood burning rule, and further recommends that SJVUAPCD apply the three-minute emissions opacity limit under Rule 4101 to residential wood burning.

Response C.1: The EPA appreciates these comments regarding the contingency measures in the SJV $PM_{2.5}$ Plan. However, as explained in Response B.9, the EPA has not yet made a determination as to whether the San Joaquin Valley attained the 1997 annual $PM_{2.5}$ NAAQS. Under CAA section 179(d)(3), the latest statutory attainment date for purposes of the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley is November 23, 2021, except that the EPA may extend the attainment date to November 23, 2026, considering the severity of nonattainment and the availability and feasibility of pollution control measures. On November 8, 2021, the State submitted a revised attainment plan to correct the deficiencies in the SJV $PM_{2.5}$ Plan identified in this final action. We note that the EPA may approve a new attainment date extending to November 23, 2026, at the latest, if the statutory criteria in section 172(a)(2) are met. In the meantime, the ''applicable attainment date'' for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley is November 23, 2021, and the EPA does not have a mandatory duty under section 179(c)(1) to determine whether the area attained by that date until May 23, 2022.

The commenter's claim that the EPA has proposed to extend the attainment date for the 1997 annual $PM_{2.5}$ NAAQS in the San Joaquin Valley is incorrect, and comments about provisions other than section 5.7.3 in Rule 4901 are outside the scope of this rulemaking.[86]

With respect to the commenter's assertion that the EPA's proposed action does not provide a timetable for the submission of new contingency measures, our proposed rule discussed the requirement for the State to make a new SIP submission to address the identified deficiencies with respect to the attainment plan for the 1997 annual $PM_{2.5}$ NAAQS, as well as the consequences of a final disapproval and associated timelines.[87] Upon the effective date of a final disapproval of the contingency measures, offset and highway sanctions clocks will start and sanctions will be imposed as outlined in section III of this notice, unless the State submits, and we approve, SIP revisions meeting the applicable requirements prior to implementation of the sanctions.

III. Final Action

For the reasons discussed in our proposed action and herein, the EPA is taking final action to approve in part and disapprove in part the SJV $PM_{2.5}$ Plan for the 1997 annual $PM_{2.5}$ NAAQS. We are approving the 2013 base year emissions inventories as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008. We are disapproving the precursor demonstration, five percent annual emissions reductions demonstration, BACM demonstration, attainment demonstration, RFP demonstration, quantitative milestones, motor vehicle emissions budgets, and contingency measures for failure to meet applicable CAA requirements. We are also removing from the California SIP the contingency provision of Rule 4901 (section 5.7.3) because this provision does not satisfy CAA requirements for contingency measures and is severable from the remainder of the rule.

As a result of these final disapprovals, the offset sanction in CAA section 179(b)(2) will apply in the San Joaquin Valley area 18 months after the effective date of this final action. For new or modified major stationary sources in the area, the ratio of emissions reductions to increased emissions shall be two to one. The highway funding sanctions in CAA section 179(b)(1) will apply in the area six months after the offset sanction is imposed. These sanctions will not apply if California submits, and we approve, a SIP submission or submissions meeting the applicable CAA requirements prior to the implementation of sanctions.[88]

In addition to the sanctions, CAA section 110(c)(1) provides that the EPA must promulgate a FIP addressing any disapproved elements of the attainment plan two years after the effective date of the final disapproval, unless the State submits, and the EPA approves, a SIP submission or submissions to cure the identified deficiencies. As a result of the EPA's December 6, 2018 determination, effective January 7, 2019, that California had failed to submit the required attainment plan for the 1997 annual $PM_{2.5}$ NAAQS, among other required SIP submissions for the San Joaquin Valley,[89] the EPA is already subject to a statutory deadline to promulgate a FIP for purposes of these NAAQS no later than two years after the effective date of that determination.[90]

Furthermore, upon the effective date of this final action, a conformity freeze will take effect in the San Joaquin Valley nonattainment area. A conformity freeze means that only projects in the first four years of the most recent regional transportation plan (RTP) and transportation improvement program (TIP) can proceed. During a

[85] Comment dated August 23, 2021, from Thomas Menz, to Docket ID No. EPA–R09–OAR–2021–0260, with attachment.

[86] As we explained in Response B.7, the EPA previously approved Rule 4901, as amended June 20, 2019, as meeting the requirements for BACM/BACT and most stringent measures for the 2006 $PM_{2.5}$ NAAQS (85 FR 44192) and the requirements of CAA sections 110(a)(2), 110(l) and 193 (85 FR 44206). In this action, we are evaluating only the contingency measure provision in Rule 4901, section 5.7.3, for compliance with the requirements for contingency measures in CAA section 172(c)(9) and 40 CFR 51.1014. Comments pertaining to other provisions of Rule 4901 are, therefore, outside the scope of this rulemaking.

[87] 86 FR 38652, 38672–38673.

[88] See 40 CFR 52.31, which sets forth in detail the sanctions consequences of a final disapproval.

[89] 83 FR 62720.

[90] Id.

freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform.[91]

Finally, as a result of this final action, California is required to develop and submit a revised attainment plan for the San Joaquin Valley area that addresses the applicable CAA requirements, including the Serious area plan requirements and the requirements of CAA section 189(d) for the 1997 annual $PM_{2.5}$ NAAQS. In accordance with sections 179(d)(3) and 172(a)(2) of the CAA, the revised plan must demonstrate attainment of these NAAQS as expeditiously as practicable and no later than 5 years from the date of the EPA's prior determination that the area failed to attain (*i.e.,* by November 23, 2021), except that the EPA may extend the attainment date to a date no later than 10 years from the date of this determination (*i.e.,* to November 23, 2026), considering the severity of nonattainment and the availability and feasibility of pollution control measures.[92] We note that on November 8, 2021, California submitted a SIP revision to address the CAA requirements for the 1997 annual $PM_{2.5}$ NAAQS. The EPA intends to evaluate and act on the revised SIP submission through subsequent rulemakings, as appropriate.

IV. Incorporation by Reference

In this document, the EPA is amending regulatory text that includes incorporation by reference. As explained in section III of this document, the EPA is removing section 5.7.3 of SJVUAPCD Rule 4901 as amended on June 20, 2019 from the California State Implementation Plan, which is incorporated by reference in accordance with the requirements of 1 CFR part 51. The EPA has made, and will continue to make, these documents available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this SIP disapproval does not in-and-of-itself create any new information collection burdens but simply disapproves certain state requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This SIP disapproval does not in-and-of itself create any new requirements but simply disapproves certain state requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action disapproves pre-existing requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is disapproving would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

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

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because this SIP disapproval does not in-and-of itself create any new regulations but simply disapproves certain state requirements for inclusion in the SIP.

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

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

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

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

K. Congressional Review Act (CRA)

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

L. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of

[91] 40 CFR 93.120(a).

[92] 81 FR 84481, 84482 (final EPA action determining that the San Joaquin Valley had failed to attain the 1997 $PM_{2.5}$ NAAQS by the December 31, 2015 Serious area attainment date).

such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see CAA section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

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

Dated: November 17, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons stated in the preamble, the EPA amends Chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by revising paragraph (c)(535)(i)(A)(*1*) and adding paragraph (c)(537)(ii)(B)(*5*) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(535) * * *

(i) * * *

(A) * * *

(*1*) Rule 4901, ''Wood Burning Fireplaces and Wood Burning Heaters,'' except section 5.7.3, amended on June 20, 2019.

* * * * *

(537) * * *

(ii) * * *

(B) * * *

(*5*) 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards (''2018 $PM_{2.5}$ Plan''), adopted November 15, 2018, portions of Appendix B (''Emissions Inventory'') pertaining to the 2013 base year emissions inventories as they relate to the 1997 annual $PM_{2.5}$ NAAQS only.

* * * * *

■ 4. Section 52.237 is amended by adding paragraph (a)(11) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(11) The following portions of the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards'' as they pertain to the 1997 annual $PM_{2.5}$ standards in the San Joaquin Valley are disapproved because they do not meet the requirements of Part D of the Clean Air Act: Comprehensive precursor demonstration, five percent annual emissions reductions, best available control measures/best available control technology demonstration, attainment demonstration, reasonable further progress demonstration, quantitative milestones, motor vehicle emissions budgets, and contingency measures.

* * * * *

[FR Doc. 2021–25617 Filed 11–24–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2021–0543; FRL–8846–02–R9]

Clean Air Plans; California; San Joaquin Valley Moderate Area Plan and Reclassification as Serious Nonattainment for the 2012 $PM_{2.5}$ NAAQS; Contingency Measures for the 2006 $PM_{2.5}$ NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on all or portions of four state implementation plan (SIP) revisions submitted by California (''State'') to address Clean Air Act (CAA or ''Act'') requirements for the 2012 fine particulate matter (''$PM_{2.5}$'') national ambient air quality standards (NAAQS or ''standards'') and for the 2006 $PM_{2.5}$ NAAQS in the San Joaquin Valley (SJV) $PM_{2.5}$ nonattainment area. Specifically, the EPA is approving all but the contingency measure element of the submitted ''Moderate'' area plan for the 2012 $PM_{2.5}$ NAAQS, as updated by the submitted ''Serious'' area plan and related supplement to the State strategy, as meeting all applicable Moderate area plan requirements for the 2012 $PM_{2.5}$ NAAQS. In addition, the EPA is approving 2022 motor vehicle emissions budgets for use in transportation conformity analyses for the 2012 $PM_{2.5}$ NAAQS. The EPA is disapproving the contingency measure element with respect to the Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS. The EPA is also reclassifying the SJV $PM_{2.5}$ nonattainment area, including 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, as a Serious nonattainment area for the 2012 $PM_{2.5}$ NAAQS based on the EPA's determination that the area cannot practicably attain the standard by the applicable Moderate area attainment date of December 31, 2021. As a consequence of this reclassification, California is required to submit a Serious area plan for the area that includes a demonstration of attainment by the applicable Serious area attainment date, which is no later than December 31, 2025, or by the most expeditious alternative date practicable. However, we note that California has already submitted such Serious area plan, which the EPA will address in a separate rulemaking. Lastly, the EPA is disapproving the contingency measure element in the Serious area plan for the 2006 $PM_{2.5}$ NAAQS.

DATES: This rule is effective on December 27, 2021.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R09–OAR–2021–0543. 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: 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.khoi@epa.gov.*

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

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I. Background

Epidemiological studies have shown statistically significant correlations between elevated levels of $PM_{2.5}$ (particulate matter with a diameter of 2.5 microns or less) and premature mortality. Other important health effects associated with $PM_{2.5}$ exposure include aggravation of respiratory and cardiovascular disease, changes in lung function, and increased respiratory symptoms. Individuals particularly sensitive to $PM_{2.5}$ exposure include older adults, people with heart and lung disease, and children.[1] $PM_{2.5}$ can be emitted directly into the atmosphere as a solid or liquid particle (''primary $PM_{2.5}$'' or ''direct $PM_{2.5}$'') or can be formed in the atmosphere as a result of various chemical reactions among precursor pollutants such as nitrogen oxides (NO_X), sulfur oxides, volatile organic compounds, and ammonia (''secondary $PM_{2.5}$'').[2]

The EPA first established annual and 24-hour NAAQS for $PM_{2.5}$ on July 18, 1997.[3] The annual standard was set at 15.0 micrograms per cubic meter (μg/m^3) based on a 3-year average of annual mean $PM_{2.5}$ concentrations, and the 24-hour (daily) standard was set at 65 μg/m^3 based on the 3-year average of the annual 98th percentile values of 24-hour $PM_{2.5}$ concentrations at each monitor within an area. We refer to these standards as the ''1997 $PM_{2.5}$ NAAQS.'' On October 17, 2006, the EPA revised the level of the 24-hour $PM_{2.5}$ NAAQS to 35 μg/m^3 based on a 3-year average of the annual 98th percentile values of 24-hour concentrations.[4] We refer to this standard as the ''2006 $PM_{2.5}$ NAAQS.'' On January 15, 2013, the EPA revised the annual standard to 12.0 μg/m^3 based on a 3-year average of annual mean $PM_{2.5}$ concentrations.[5] We refer to this standard as the ''2012 $PM_{2.5}$ NAAQS.''

Following promulgation of a new or revised NAAQS, the EPA is required by CAA section 107(d) to designate areas throughout the nation as attaining or not attaining the NAAQS. On January 15, 2015, the EPA designated and classified the SJV as Moderate nonattainment for the 2012 $PM_{2.5}$ NAAQS.[6] With respect to the 1997 $PM_{2.5}$ NAAQS and the 2006 $PM_{2.5}$ NAAQS, the SJV is designated nonattainment and is classified as Serious.[7] The SJV $PM_{2.5}$ nonattainment area encompasses over 23,000 square miles and includes all or part of eight counties: San Joaquin, Stanislaus, Merced, Madera, Fresno, Tulare, Kings, and the valley portion of Kern.[8] The area is home to four million people and is the nation's leading agricultural region. Stretching over 250 miles from north to south and averaging 80 miles wide, it is partially enclosed by the Coast Mountain range to the west, the Tehachapi Mountains to the south, and the Sierra Nevada range to the east.

Under State law, the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or ''District'') has primary responsibility for developing plans to provide for attainment of the NAAQS in this area. The District works cooperatively with the California Air Resources Board (CARB) in preparing these plans. Authority for regulating sources under State jurisdiction in the SJV is split between the District, which has responsibility for regulating stationary and most area sources, and CARB, which has responsibility for regulating most mobile sources and some categories of consumer products. CARB is also responsible for adoption and submittal to the EPA of the California SIP, which includes, among other things, regional air quality plans. Under CAA section 110(k), the EPA is obligated to approve or disapprove SIPs and SIP revisions as meeting or failing to meet CAA requirements.

On September 1, 2021, we proposed to approve or disapprove all or portions of SIP revisions submitted by CARB to address CAA requirements for the $PM_{2.5}$ NAAQS in the SJV nonattainment area.[9] Herein, we refer to our proposed rule published on September 1, 2021, as the ''proposed rule,'' ''proposal'' or ''proposed action.'' On May 10, 2019, CARB made two SIP submissions intended to address the attainment plan requirements for areas designated as nonattainment for the 2012 $PM_{2.5}$ NAAQS.[10] First, the ''2016 Moderate Area Plan for the 2012 $PM_{2.5}$ Standard'' (''2016 $PM_{2.5}$ Plan'') addresses the Moderate area attainment plan requirements and includes a demonstration of impracticability of attaining the 2012 $PM_{2.5}$ NAAQS in the SJV by the latest permissible Moderate area attainment date of December 31, 2021. In our proposal, the EPA proposed action on all portions of the 2016 $PM_{2.5}$ Plan. Second, the ''2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards'' (''2018 $PM_{2.5}$ Plan'') addresses the Serious area attainment plan requirements for the 2012 $PM_{2.5}$ NAAQS, in anticipation of the reclassification of SJV from Moderate to Serious for that $PM_{2.5}$ NAAQS. The 2018 $PM_{2.5}$ Plan updates several elements in the 2016 $PM_{2.5}$ Plan, including the base year emissions inventory, plan precursor demonstration, controls analysis, reasonable further progress (RFP) and quantitative milestones, and motor vehicle emission budgets (MVEBs or ''budgets'').

Additionally, the 2018 $PM_{2.5}$ Plan incorporates by reference the ''San Joaquin Valley Supplement to the 2016 State Strategy for the State Implementation Plan'' (''Valley State SIP Strategy''), a related plan adopted by CARB on October 25, 2018, and submitted to the EPA on May 10, 2019, with the 2018 $PM_{2.5}$ Plan. For the purposes of this action, the relevant portion of the Valley State SIP Strategy includes the control measure commitments associated with the quantitative milestones for 2019 and 2022. Lastly, with respect to applicable requirements for contingency measures for the 2012 $PM_{2.5}$ NAAQS and 2006 $PM_{2.5}$ NAAQS, we evaluated the contingency measure elements of the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan as supplemented by the July 19, 2019 submittal of a SIP revision that includes a contingency provision (section 5.7.3) in the SJVUAPCD's rule (Rule 4901) limiting emissions from wood burning fireplaces, wood burning heaters, and outdoor wood burning devices.

In this document, the EPA is finalizing action on the 2016 $PM_{2.5}$ Plan and those portions of the 2018 $PM_{2.5}$ Plan that apply to the Moderate area plan requirements for the 2012 $PM_{2.5}$ NAAQS. However, the EPA is not, at this time, acting on those portions of the 2018 $PM_{2.5}$ Plan that are not relevant to our evaluation of compliance with Moderate area plan requirements for

[1] 78 FR 3086, 3088 (January 15, 2013).

[2] EPA, Air Quality Criteria for Particulate Matter, No. EPA/600/P–99/002aF and EPA/600/P–99/002bF, October 2004.

[3] 62 FR 38652 (codified at 40 CFR 50.7).

[4] 71 FR 61144 (codified at 40 CFR 50.13).

[5] 78 FR 3086 (codified at 40 CFR 50.18).

[6] 80 FR 2206 (codified at 40 CFR 81.305).

[7] See the tables of area designations for the 1997 and 2006 $PM_{2.5}$ NAAQS in 40 CFR 81.305.

[8] For a precise description of the geographic boundaries of the SJV $PM_{2.5}$ nonattainment area, see 40 CFR 81.305.

[9] 86 FR 49100.

[10] CARB submitted the two plans electronically on May 10, 2019, as an attachment to a letter dated May 9, 2019, from Richard W. Corey, Executive Officer, CARB, to Mike Stoker, Regional Administrator, EPA Region IX.

2012 $PM_{2.5}$ NAAQS, such as the best available control measures (BACM) demonstration, control strategy commitments, attainment demonstration, RFP demonstration and quantitative milestones for later years, and MVEBs for later years. In our proposal, we also proposed action on the portion of the 2018 $PM_{2.5}$ Plan that addresses the contingency measure requirement for the 2006 $PM_{2.5}$ NAAQS, and we are taking final action on the contingency measure element for the 2006 $PM_{2.5}$ NAAQS in this document. For more information about these submittals, please see our proposed rule.

As part of our proposed action, we proposed to approve the following elements of the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan as meeting the statutory and regulatory Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS in the SJV nonattainment area: The 2013 base year emissions inventories in the 2016 $PM_{2.5}$ Plan, as revised in the 2018 $PM_{2.5}$ Plan; the reasonably available control measures (RACM)/reasonably available control technology demonstration and additional reasonable measures for all sources of direct $PM_{2.5}$ and NO_X in the 2016 $PM_{2.5}$ Plan, as supplemented in the 2018 $PM_{2.5}$ Plan; the demonstration in the 2016 $PM_{2.5}$ Plan that attainment by the Moderate area attainment date of December 31, 2021, is impracticable; the RFP demonstration in the 2016 $PM_{2.5}$ Plan, as revised in 2018 $PM_{2.5}$ Plan; the quantitative milestones in the 2016 $PM_{2.5}$ Plan, as revised in the 2018 $PM_{2.5}$ Plan and the Valley State SIP Strategy; and the motor vehicle emissions budgets for 2022 in the 2018 $PM_{2.5}$ Plan.[11]

In support of our proposed approval of the above SIP elements, we proposed to approve the demonstrations in the 2016 $PM_{2.5}$ Plan and the 2018 $PM_{2.5}$ Plan that emissions of ammonia, sulfur oxides, and volatile organic compounds do not contribute significantly to ambient $PM_{2.5}$ levels that exceed the 2012 $PM_{2.5}$ NAAQS in the SJV. We also found that the photochemical modeling in the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan is adequate for the purposes of supporting the RFP demonstration and the demonstration of impracticability in the 2016 $PM_{2.5}$ Plan.

The EPA also proposed to disapprove contingency measure elements because, among other reasons, the elements include no specific measures to be undertaken if the State fails to submit a quantitative milestone report for the area, or if the area fails to meet RFP or a quantitative milestone. Specifically, the proposed disapprovals apply to the 2016 $PM_{2.5}$ Plan for the 2012 $PM_{2.5}$ NAAQS, as revised in the 2018 $PM_{2.5}$ Plan and supplemented by section 5.7.3 of District Rule 4901 (''Wood Burning Fireplaces and Wood Burning Heaters''),[12] and the contingency measure element of the 2018 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS, as supplemented by section 5.7.3 of District Rule 4901. In addition, with respect to the contingency measure element in the 2018 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS, as supplemented by section 5.7.3 of District Rule 4901, the element includes a specific measure that may not result in any emissions reductions following a failure to attain the 2006 $PM_{2.5}$ NAAQS by the applicable attainment date under certain circumstances.

Because the EPA previously approved the Serious area plan RFP and attainment demonstrations and the MVEBs for the 2006 $PM_{2.5}$ NAAQS,[13] and because we proposed to approve the Moderate area plan RACM, additional reasonable measures, and RFP demonstrations, and MVEBs for the 2012 $PM_{2.5}$ NAAQS, we also proposed to issue a protective finding under 40 CFR 93.120(a)(3) to the disapproval of the contingency measures elements. As explained in our proposed rule, without a protective finding, the final disapprovals would result in a conformity freeze, under which only projects in the first four years of the most recent conforming Regional Transportation Plan (RTP) and Transportation Improvement Programs (TIP) can proceed. Generally, during a freeze, no new RTPs, TIPs, or RTP/TIP amendments can be found to conform until another control strategy implementation plan revision fulfilling the same CAA requirements is submitted, the EPA finds its motor vehicle emissions budget(s) adequate pursuant to section 93.118 or approves the submission, and conformity to the implementation plan revision is determined.[14] Under a protective finding, the final disapproval of the contingency measures elements will not result in a transportation conformity freeze in the SJV $PM_{2.5}$ nonattainment area and the metropolitan planning organizations (MPOs) may continue to make transportation conformity determinations.

Lastly, we proposed to reclassify the SJV $PM_{2.5}$ nonattainment area, including reservation areas of Indian country and any other area where the EPA or a tribe has demonstrated that a tribe has jurisdiction within the SJV, as Serious nonattainment for the 2012 $PM_{2.5}$ standard based on the agency's determination that the SJV cannot practicably attain the standard by the Moderate area attainment date of December 31, 2021.

With respect to reclassification, in the proposed rule, we explained that under section 188(c)(2) of the Act, the attainment date for a Serious area ''shall be as expeditiously as practicable but no later than the end of the tenth calendar year beginning after the area's designation as nonattainment. . . .'' The EPA designated the SJV as nonattainment for the 2012 $PM_{2.5}$ standard effective April 15, 2015.[15] Therefore, as a result of our reclassification of the SJV as a Serious nonattainment area, the attainment date under section 188(c)(2) of the Act for the 2012 $PM_{2.5}$ NAAQS in this area is as expeditiously as practicable but no later than December 31, 2025.

Our proposed rule also identified the Serious area attainment plan elements that California would, upon reclassification, have to submit to satisfy the statutory requirements that apply to Serious areas, including the requirements of subpart 4 of part D, title I of the Act. The EPA explained that under section 189(b)(2) of the Act, the state must submit the required provisions to implement BACM, including best available control technology (BACT),[16] no later than 18

[11] With respect to the budgets, we proposed to limit the duration of the approval of the budgets to last only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. We proposed to do so at CARB's request and in light of the benefits of using EMFAC2017-derived budgets prior to our taking final action on the future SIP revision that includes the updated budgets. EMFAC2017 is a version of CARB's EMFAC (short for EMission FACtor) model for use in SIP development and transportation conformity.

[12] As explained in our proposed rule, the EPA has taken final action to approve District Rule 4901 (including section 5.7.3), but in that approval, we noted that we were not evaluating the contingency measure in section 5.7.3 of revised Rule 4901 for compliance with all requirements of the CAA and the EPA's implementing regulations that apply to such measures. See 86 FR 49132–49134. In this action, we have completed our evaluation and are disapproving section 5.7.3 of Rule 4901 with respect to applicable contingency measure requirements for the 2006 and 2012 $PM_{2.5}$ NAAQS.

[13] 85 FR 44192.

[14] 40 CFR 93.120(a)(2).

[15] 80 FR 2206 (codified at 40 CFR 81.305).

[16] The EPA defines BACM as, among other things, the maximum degree of emissions reduction achievable for a source or source category, which is determined on a case-by-case basis considering energy, environmental, and economic impacts. 59 FR 41998, 42010 and 42014 (August 16, 1994). BACM must be implemented for all categories of sources in a Serious $PM_{2.5}$ nonattainment area unless the state adequately demonstrates that a particular source category does not contribute

Continued

months after reclassification. Because an up-to-date emissions inventory serves as the foundation for a state's BACM and BACT determinations, the EPA proposed to also require the State to submit the emissions inventory required under CAA section 172(c)(3) within 18 months after the effective date of final reclassification. Similarly, because an effective evaluation of BACM and BACT requires evaluation of the precursor pollutants that must be controlled to provide for expeditious attainment in the area, the EPA proposed to require the State to submit any optional precursor insignificance demonstrations by this same date. The EPA also proposed an 18-month deadline for submittal of any nonattainment new source review (NNSR) SIP revisions required to satisfy the requirements of CAA sections 189(b)(3) and 189(e).

The EPA proposed to require the State to submit the attainment demonstration required under section 189(b)(1)(A) and all other attainment-related plan elements for the SJV nonattainment area no later the end of the eighth calendar year after designation—*i.e.,* by December 31, 2023. We noted that although section 189(b)(2) generally provides for up to four years after a discretionary reclassification for the state to submit the required attainment demonstration, given the timing of the reclassification action less than two years before the Moderate area attainment date, it is appropriate in this case for the EPA to establish an earlier SIP submission deadline to assure timely implementation of the statutory requirements.

The EPA also noted in our proposed rule that the 2018 $PM_{2.5}$ Plan, submitted concurrently with the 2016 $PM_{2.5}$ Plan on May 10, 2019, includes a Serious area attainment demonstration, emissions inventory, attainment-related plan elements, and BACM and BACT provisions. CARB also submitted a SIP submission for the Serious area NNSR requirements on November 20, 2019. The EPA intends to evaluate and act on the Serious area plan and NNSR SIP submissions for the 2012 $PM_{2.5}$ NAAQS in the SJV through separate rulemakings, as appropriate.[17]

Please see our September 1, 2021 proposed rule for additional background and a more detailed explanation of the rationale for our proposed actions.

II. Public Comments and EPA Responses

The EPA's proposed rule provided a 30-day public comment period that ended on October 1, 2021. During this period, the EPA did not receive any comments.

III. Final Action

A. Approval of the Moderate Area Planning Requirements for the 2012 PM2.5 NAAQS (Except the Contingency Measure Element)

For the reasons discussed in detail in the proposed rule and summarized herein, under CAA section 110(k)(3), the EPA is taking final action to approve the following elements of the 2016 $PM_{2.5}$ Plan and 2018 $PM_{2.5}$ Plan as meeting the Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS:

- The 2013 base year emissions inventories in the 2016 $PM_{2.5}$ Plan, as revised in the 2018 $PM_{2.5}$ Plan, as meeting the requirements of CAA section 172(c)(3) and 40 CFR 51.1008(a);
- the reasonably available control measures/reasonably available control technology demonstration and additional reasonable measures for all sources of direct $PM_{2.5}$ and NO_X in the 2016 $PM_{2.5}$ Plan, as supplemented in the 2018 $PM_{2.5}$ Plan, as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(C) and 40 CFR 51.1009;
- the demonstration in the 2016 $PM_{2.5}$ Plan that attainment by the Moderate area attainment date of December 31, 2021, is impracticable as meeting the requirements of CAA section 189(a)(1)(B)(ii) and 40 CFR 51.1011(a);
- the reasonable further progress demonstration in the 2016 $PM_{2.5}$ Plan, as revised in 2018 $PM_{2.5}$ Plan, as meeting the requirements of CAA section 172(c)(2) and 40 CFR 51.1012(a);
- the quantitative milestones in the 2016 $PM_{2.5}$ Plan, as revised in the 2018 $PM_{2.5}$ Plan and the Valley State SIP Strategy, as meeting the requirements of CAA section 189(c) and 40 CFR 51.1013(a)(1); and
- the following motor vehicle emissions budgets for 2022 in the 2018 $PM_{2.5}$ Plan as meeting the requirements of CAA section 176(c) and 40 CFR part 93, subpart A:[18]

2022 San Joaquin Valley MVEBs for the 2012 $PM_{2.5}$ NAAQS

[Annual average, tpd]

County	2022 (post-attainment year)	
	$PM_{2.5}$	NO_X
Fresno	0.9	21.2
Kern (San Joaquin Valley portion)	0.8	19.4
Kings	0.2	4.1
Madera	0.2	3.5
Merced	0.3	7.6
San Joaquin	0.6	10.0
Stanislaus	0.4	8.1
Tulare	0.4	6.9

Source: 2018 $PM_{2.5}$ Plan, App. D, Table 3–3. Budgets are rounded up to the nearest tenth.

With respect to the budgets, we are limiting the duration of our approval of the budgets to last only until the effective date of the EPA's adequacy finding for any subsequently submitted budgets. Also, we are approving the 6.5:1 NO_X for $PM_{2.5}$ trading mechanism as an enforceable component of the transportation conformity program for the SJV for the 2012 $PM_{2.5}$ NAAQS. Furthermore, we are determining that the submitted 2022 budgets included in the 2018 $PM_{2.5}$ Plan for the 2012 $PM_{2.5}$ NAAQS are adequate for transportation conformity purposes.[19]

B. Disapproval of the Contingency Measure Elements for the 2006 and 2012 $PM_{2.5}$ NAAQS

Pursuant to CAA section 110(k)(3), the EPA is finalizing disapproval of the contingency measure elements for failure to meet the requirements of CAA section 172(c)(9) and 40 CFR 51.1014. The disapproved elements are for the 2016 $PM_{2.5}$ Plan for the 2012 $PM_{2.5}$ NAAQS, as revised in the 2018 $PM_{2.5}$ Plan and supplemented by section 5.7.3 of District Rule 4901, and the contingency measure element of the 2018 $PM_{2.5}$ Plan for the 2006 $PM_{2.5}$ NAAQS, as supplemented by section 5.7.3 of District Rule 4901.

As a consequence of our disapproval, the offset sanction in CAA section 179(b)(2) will apply in the SJV 18 months after the effective date of our action, and the highway funding sanctions in CAA section 179(b)(1) will apply in the area six months after the offset sanction is imposed.[20] Neither sanction will be imposed under the CAA if the State submits and we approve, prior to the implementation of the sanctions, a SIP revision that corrects the deficiencies that we identify

significantly to nonattainment of the $PM_{2.5}$ standard. Id. at 42011–42012.

[17] We are establishing deadlines for submittal of SIP revisions that have already been submitted to timely address any elements that may be withdrawn in the future.

[18] The budgets that the EPA is approving relate to the 2012 $PM_{2.5}$ NAAQS only, and our approval does not affect the status of the previously-approved MVEBs for the 1997 annual and 24-hour $PM_{2.5}$ NAAQS and 2006 $PM_{2.5}$ NAAQS and related trading mechanisms that remain in effect for those $PM_{2.5}$ NAAQS.

[19] Pursuant to 40 CFR 93.118(f)(2)(iii), the EPA's adequacy determination is effective upon publication of this final rule in the **Federal Register**.

[20] 40 CFR 52.31.

in our final action. The EPA intends to work with CARB and the SJVUAPCD to correct the deficiencies in a timely manner. As noted in our proposed rule, the EPA is already subject to a statutory deadline to promulgate a federal implementation plan to address the contingency measure requirements for San Joaquin Valley for the 2006 $PM_{2.5}$ NAAQS and 2012 $PM_{2.5}$ NAAQS due to the prior finding that California had failed to submit SIP revisions to address those requirements within the prescribed periods.[21]

The EPA is also finalizing our issuance of a protective finding under 40 CFR 93.120(a)(3) to the disapproval of the contingency measure elements. Under a protective finding, the final disapproval of the contingency measures elements will not result in a transportation conformity freeze in the SJV $PM_{2.5}$ nonattainment area and the MPOs may continue to make transportation conformity determinations.

C. Reclassification as Serious Nonattainment and Applicable Attainment Date for the 2012 $PM_{2.5}$ NAAQS

In accordance with section 188(b)(1) of the Act, the EPA is taking final action to reclassify the SJV $PM_{2.5}$ nonattainment area from Moderate to Serious nonattainment for the 2012 $PM_{2.5}$ standard, based on the agency's determination that the SJV cannot practicably attain the standard by the Moderate area attainment date of December 31, 2021. Pursuant to section 188(c)(2) of the Act, the applicable attainment date for SJV as a Serious nonattainment area for the 2012 $PM_{2.5}$ NAAQS is as expeditiously as practicable but no later than December 31, 2025, or by the most expeditious alternative date practicable and no later than December 31, 2030, in accordance with the requirements of CAA sections 189(b) and 188(e).

D. Reclassification of Reservation Areas of Indian Country for the 2012 $PM_{2.5}$ NAAQS

When the SJV nonattainment area was designated nonattainment for the 2012 $PM_{2.5}$ NAAQS, eight Indian tribes were located within the boundaries of the nonattainment area. These tribes include Big Sandy Rancheria of Western Mono Indians of California, Cold Springs Rancheria of Mono Indians of California, Northfork Rancheria of Mono Indians of California, Picayune Rancheria of Chukchansi Indians of California, Santa Rosa Indian Community of the Santa Rosa Rancheria, California, Table Mountain Rancheria, Tejon Indian Tribe, and Tule River Indian Tribe of the Tule River Reservation, California.

We have considered the relevance of our final action to reclassify the SJV nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ standard for each tribe located within the SJV nonattainment area. As discussed in more detail in our proposed rule, we believe that the same facts and circumstances that support the reclassification for the non-Indian country lands also support reclassification for reservation areas of Indian country[22] and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction located within the SJV nonattainment area.[23] In this final action, the EPA is therefore exercising its authority under CAA section 188(b)(1) to reclassify reservation areas of Indian country and any other areas of Indian country where the EPA or a tribe has demonstrated that the tribe has jurisdiction geographically located in the SJV nonattainment area to Serious for the 2012 $PM_{2.5}$ NAAQS. The EPA contacted tribal officials early in the process of developing this action to provide time for tribal officials to have meaningful and timely input into its development.[24] We notified tribal officials when the proposed action published in the **Federal Register** and continue to invite Indian tribes in the SJV nonattainment area to contact the EPA with any questions about the effects of this reclassification on tribal interests and air quality. We note that although eligible tribes may seek the EPA's approval of relevant tribal programs under the CAA, none of the affected tribes will be required to submit an implementation plan as a result of this reclassification.

E. $PM_{2.5}$ Serious Area SIP Requirements for the 2012 $PM_{2.5}$ NAAQS

As a consequence of our reclassification of the SJV nonattainment area as a Serious nonattainment area for the 2012 $PM_{2.5}$ NAAQS, California is required to submit, within 18 months after the effective date of the reclassification, an emissions inventory, provisions to assure that BACM shall be implemented no later than four years after the date of reclassification, and any NNSR SIP revisions required to satisfy the requirements of CAA sections 189(b)(3) and 189(e). California will also be required to submit, by December 31, 2023, a Serious area plan that satisfies the requirements of part D of title I of the Act. This plan must include a demonstration that the SJV will attain the 2012 $PM_{2.5}$ standard as expeditiously as practicable but no later than December 31, 2025, or by the most expeditious alternative date practicable and no later than December 31, 2030, in accordance with the requirements of CAA sections 189(b) and 188(e). The Serious area must also include plan provisions that require RFP; quantitative milestones that are to be achieved every three years until the area is redesignated attainment and that demonstrate RFP toward attainment by the applicable date; provisions to assure that control requirements applicable to major stationary sources of $PM_{2.5}$ also apply to major stationary sources of $PM_{2.5}$ precursors, except where the state demonstrates to the EPA's satisfaction that such sources do not contribute significantly to $PM_{2.5}$ levels that exceed the standard in the area; and contingency measures to be implemented if the area fails to meet RFP or to attain by the applicable attainment date.

We note that the 2018 $PM_{2.5}$ Plan, submitted concurrently with the 2016 $PM_{2.5}$ Plan on May 10, 2019, includes a Serious area attainment demonstration, emissions inventory, attainment-related plan elements, and BACM/BACT provisions for the 2012 $PM_{2.5}$ NAAQS. CARB also submitted a SIP submission for the Serious area NNSR requirements on November 20, 2019. The EPA intends to evaluate and act on the Serious area plan and NNSR SIP submissions for the 2012 $PM_{2.5}$ NAAQS in the SJV through separate rulemakings, as appropriate.

[21] 83 FR 62720 (December 6, 2018) (Finding of failure to submit certain $PM_{2.5}$ SIP revisions for San Joaquin Valley). Also, see the proposed rule at 49135.

[22] ''Indian country'' as defined at 18 U.S.C. 1151 refers to ''(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.''

[23] 85 FR 40026, 40055–40056.

[24] As discussed in more detail in our proposed rule, the EPA sent letters dated March 3, 2021, to tribal officials inviting government-to-government consultation. These letters can be found in the docket. See also a summary of the EPA's outreach to tribes in the San Joaquin Valley; memorandum dated August 3, 2021, from Rory Mays, Air Planning Office, Air and Radiation Division, EPA Region IX, to Docket No. EPA–R09–OAR–2021–0543. We did not receive any request for consultation.

IV. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA because this action does not impose additional requirements beyond those imposed by State law.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This action would approve or disapprove State plans as meeting federal requirements and would not impose additional requirements beyond those imposed by State law. Additionally, this action reclassifies the SJV nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ NAAQS and does not itself regulate small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action does not impose additional requirements beyond those imposed by State law. Additionally, this action reclassifies the SJV nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ NAAQS and would not itself impose any federal intergovernmental mandate. This action does not require any tribe to submit implementation plans.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (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'' is defined in 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.''

Eight Indian tribes are located within the boundaries of the SJV nonattainment area for the 2012 $PM_{2.5}$ NAAQS: The Big Sandy Rancheria of Western Mono Indians of California, the Cold Springs Rancheria of Mono Indians of California, the Northfork Rancheria of Mono Indians of California, the Picayune Rancheria of Chukchansi Indians of California, the Santa Rosa Indian Community of the Santa Rosa Rancheria, California, the Table Mountain Rancheria, the Tejon Indian Tribe, and the Tule River Indian Tribe of the Tule River Reservation, California.

The EPA's actions on the SIP elements submitted by California to address the Moderate area requirements for the 2012 $PM_{2.5}$ NAAQS and the contingency measure requirement for the 2006 $PM_{2.5}$ NAAQS do not have tribal implications because the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the actions on the SIP submittals do not have tribal implications and do not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175.

The EPA has concluded that the reclassification might have tribal implications for the purposes of Executive Order 13175 but does not impose substantial direct costs upon the tribes, nor would it preempt tribal law. The reclassification from Moderate to Serious for a $PM_{2.5}$ NAAQS would typically affect the EPA's implementation of the new source review program because of the lower ''major source'' threshold triggered by reclassification (70 tons per year for direct $PM_{2.5}$ and precursors to $PM_{2.5}$). However, because the SJV nonattainment area is already classified as Serious for the 1997 and 2006 $PM_{2.5}$ NAAQS, the lower thresholds already apply within the nonattainment area, and the reclassification from Moderate to Serious for the 2012 $PM_{2.5}$ NAAQS has no additional effect. The same is true for any tribal projects 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 would typically become more difficult to obtain because of the lower de minimis thresholds triggered by reclassification but, in this case, the lower de minimis thresholds already apply within the SJV.

Given the potential implications, the EPA contacted tribal officials during the process of developing the September 1, 2021 proposed rule to provide an opportunity to have meaningful and timely input into its development. On March 3, 2021, we sent letters to leaders of the eight tribes with areas of Indian country in the SJV nonattainment area inviting government-to-government consultation on the rulemaking effort. We requested that the tribal leaders, or their designated consultation representatives, notify us of their interest in government-to-government consultation by April 5, 2021. We did not receive any request for consultation, and we did not receive any public comments on our proposed 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 approves or disapproves State plans implementing a federal standard and reclassifies the SJV nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ NAAQS, triggering Serious area planning requirements under the CAA. This action does not establish an environmental standard intended to mitigate health or safety risks.

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

This action is not subject to Executive Order 13211, because it is not a

significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

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 has determined that this action will not have potential disproportionately high and adverse human health or environmental effects on minority or low-income populations because they do not affect the level of protection provided to human health or the environment. This action approves or disapproves State plans implementing a federal standard and reclassifies the SJV nonattainment area as Serious nonattainment for the 2012 $PM_{2.5}$ NAAQS, triggering additional Serious area planning requirements under the CAA.

K. Congressional Review Act (CRA)

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).

L. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 25, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, Particulate matter.

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

Dated: November 17, 2021.

Deborah Jordan,

Acting Regional Administrator, Region IX.

For the reasons started in the preamble, the EPA amends Chapter I, title 40 of the Code of Federal Regulations as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(537)(ii)(A)(*7*) and (c)(537)(ii)(B)(*3*) and (*4*) to read as follows:

§ 52.220 Identification of plan—in part.

* * * * *

(c) * * *

(537) * * *.

(ii) * * *

(A) * * *

(*7*) ''Appendix H, RFP, Quantitative Milestones, and Contingency, 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards, Appendix H Revised February 11, 2020'' (portions pertaining to the 2012 $PM_{2.5}$ NAAQS as a Moderate area, only, and excluding section H.3 (''Contingency Measures'')).

(B) * * *

(*3*) 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards (''2018 $PM_{2.5}$ Plan''), adopted November 15, 2018 (portions pertaining to the 2012 $PM_{2.5}$ NAAQS as a Moderate area, only, and excluding Chapter 5 (''Demonstration of Federal Requirements for 1997 $PM_{2.5}$ Standards''), Chapter 6 (''Demonstration of Federal Requirements for 2006 $PM_{2.5}$ Standards'') and Appendix H, section H.3 (''Contingency Measures'')).

(*4*) 2016 Moderate Area Plan for the 2012 $PM_{2.5}$ Standard (''2016 $PM_{2.5}$ Plan''), adopted September 15, 2016, excluding section 3.7 (''Contingency Measures'').

* * * * *

■ 3. Section 52.237 is amended by adding paragraphs (a)(9) and (10) to read as follows:

§ 52.237 Part D disapproval.

(a) * * *

(9) The contingency measure portion of the 2016 Moderate Area Plan for the 2012 $PM_{2.5}$ Standard (''2016 $PM_{2.5}$ Plan''), adopted September 15, 2016, as modified by the 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards (''2018 $PM_{2.5}$ Plan''), adopted November 15, 2018, for San Joaquin Valley as a Moderate nonattainment area with respect to the 2012 $PM_{2.5}$ NAAQS.

(10) The contingency measure portion of the 2018 Plan for the 1997, 2006, and 2012 $PM_{2.5}$ Standards (''2018 $PM_{2.5}$ Plan''), adopted November 15, 2018, for San Joaquin Valley with respect to the 2006 $PM_{2.5}$ NAAQS.

* * * * *

■ 4. Section 52.244 is amended by revising paragraph (f) introductory text and adding paragraph (f)(2) to read as follows:

§ 52.244 Motor vehicle emissions budgets.

* * * * *

(f) Approval of the motor vehicle emissions budgets for the following $PM_{2.5}$ reasonable further progress or attainment SIPs will apply for transportation conformity purposes only until new budgets based on updated planning data and models have been submitted and EPA has found the budgets to be adequate for conformity purposes.

* * * * *

(2) San Joaquin Valley, for the 2012 $PM_{2.5}$ NAAQS only (Year 2022 budgets only), approved December 27, 2021.

■ 5. Section 52.245 is amended by adding paragraph (f) to read as follows:

§ 52.245 New Source Review rules.

* * * * *

(f) Within 18 months after the effective date of the reclassification of the San Joaquin Valley nonattainment area from Moderate to Serious for the 2012 $PM_{2.5}$ NAAQS, the New Source Review rules for $PM_{2.5}$ for the San Joaquin Valley Unified Air Pollution Control District must be revised and submitted as a SIP revision. The rules must satisfy the requirements of sections 189(b)(3) and 189(e) and all other applicable requirements of the Clean Air Act for implementation of the 2012 $PM_{2.5}$ NAAQS in nonattainment areas classified as Serious.

■ 6. Section 52.247 is amended by removing and reserving paragraph (f) and by adding paragraph (o).

The addition reads as follows:

§ 52.247 Control Strategy and regulations: Fine Particle Matter.

* * * * *

(o) Within 18 months after the effective date of the reclassification of the reclassification of the San Joaquin Valley nonattainment area from Moderate to Serious for the 2012 $PM_{2.5}$ NAAQS, California must adopt and submit an emissions inventory and provisions to assure that BACM shall be implemented no later than four years after the date of reclassification. Also, by December 31, 2023, California must adopt and submit a Serious area plan that includes an attainment demonstration, a reasonable further progress plan, quantitative milestones, contingency measures, and such other measures as may be necessary or appropriate to provide for attainment of the 2012 $PM_{2.5}$ NAAQS by the applicable attainment date, in accordance with the requirements of subparts 1 and 4 of part D, title I of the Clean Air Act.

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 7. 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

■ 8. Section 81.305 is amended in the table under ''California—2012 Annual $PM_{2.5}$ NAAQS [Primary],'' by revising the entry for ''San Joaquin Valley, CA'' to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—2012 ANNUAL $PM_{2.5}$ NAAQS
[Primary]

Designated Area [1]	Designation		Classification	
	Date [2]	Type	Date [2]	Type
* * * *	*	*	*	
San Joaquin Valley, CA:				
Fresno County		Nonattainment	12/27/2021	Serious.
Kern County (part)		Nonattainment	12/27/2021	Serious.
That portion of Kern County which lies west and north of a line described as follows: Beginning at the Kern-Los Angeles County boundary and running north and east along the northwest boundary of the Rancho La Libre Land Grant to the point of intersection with the range line common to Range 16 West and Range 17 West, San Bernardino Base and Meridian; north along the range line to the point of intersection with the Rancho El Tejon Land Grant boundary; then southeast, northeast, and northwest along the boundary of the Rancho El Tejon Land Grant to the northwest corner of Section 3, Township 11 North, Range 17 West; then west 1.2 miles; then north to the Rancho El Tejon Land Grant boundary; then northwest along the Rancho El Tejon Land Grant boundary line to the southeast corner of Section 34, Township 32 South, Range 30 East, Mount Diablo Base and Meridian; then north to the northwest corner of Section 35, Township 31 South, Range 30 East; then northeast along the boundary of the Rancho El Tejon Land Grant to the southwest corner of Section 18, Township 31 South, Range 31 East; then east to the southeast corner of Section 13, Township 31 South, Range 31 East; then north along the range line common to Range 31 East and Range 32 East, Mount Diablo Base and Meridian, to the northwest corner of Section 6, Township 29 South, Range 32 East; then east to the southwest corner of Section 31, Township 28 South, Range 32 East; then north along the range line common to Range 31 East and Range 32 East to the northwest corner of Section 6, Township 28 South, Range 32 East, then west to the southeast corner of Section 36, Township 27 South, Range 31 East, then north along the range line common to Range 31 East and Range 32 East to the Kern-Tulare County boundary.				
Kings County		Nonattainment	12/27/2021	Serious.
Madera County		Nonattainment	12/27/2021	Serious.
Merced County		Nonattainment	12/27/2021	Serious.
San Joaquin County		Nonattainment	12/27/2021	Serious.
Stanislaus County		Nonattainment	12/27/2021	Serious.
Tulare County		Nonattainment	12/27/2021	Serious.
* * * *	*	*	*	

[1] Includes areas of Indian country located in each county or area, except as otherwise specified.
[2] This date is April 15, 2015, unless otherwise noted.

* * * * *

[FR Doc. 2021–25616 Filed 11–24–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 75

RIN 0991–AC16

Grants Regulation; Removal of Non-Discrimination Provisions and Repromulgation of Administrative Provisions Under the Uniform Grant Regulation

AGENCY: Assistant Secretary for Financial Resources (ASFR), Health and Human Services (HHS or the Department).

ACTION: Notification; postponement of effectiveness.

SUMMARY: The U.S. District Court for the District of Columbia in *Facing Foster Care et al.* v. *HHS,* 21–cv–00308 (D.D.C. Feb. 2, 2021), has postponed the effectiveness of portions of the final rule making amendments to the Uniform Administrative Requirements, promulgated on January 12, 2021. Those provisions are now effective January 17, 2022.

DATES: November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Johanna Nestor at *Johanna.Nestor@hhs.gov* or 202–205–5904.

SUPPLEMENTARY INFORMATION: On January 12, 2021, the Department issued amendments to and repromulgated portions of the Uniform Administrative Requirements, 45 CFR part 75. 86 FR 2257. That rule repromulgated provisions of part 75 that were originally published late in 2016. It also made amendments to 45 CFR 75.300(c) and (d).

Specifically, the rule amended paragraph (c), which previously provided that it is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services based on non-merit factors such as age, disability, sex, race, color, national origin, religion, gender identity, or sexual orientation. Recipients must comply with the public policy requirement in the administration of programs supported by HHS awards. The rule amended paragraph (c) to provide that it is a public policy requirement of HHS that no person otherwise eligible will be excluded from participation in, denied the benefits of, or subjected to discrimination in the administration of HHS programs and services, to the extent doing so is prohibited by Federal statute.

Additionally, the rule amended paragraph (d), which previously provided that in accordance with the Supreme Court decisions in *United States* v. *Windsor* and in *Obergefell* v. *Hodges,* all recipients must treat as valid the marriages of same-sex couples. The paragraph provided that it did not apply to registered domestic partnerships, civil unions, or similar formal relationships recognized under state law as something other than a marriage. The rule amended paragraph (d) to provide that HHS will follow all applicable Supreme Court decisions in administering its award programs.

On February 2, the portions of rulemaking amendments to § 75.300 (and a conforming amendment at § 75.101(f)) were challenged in the U.S. District Court for the District of Columbia. *Facing Foster Care et al.* v. *HHS,* 21–cv–00308 (D.D.C. filed Feb. 2, 2021). On February 9, the court postponed, pursuant to 5 U.S.C. 705, the effective date of the challenged portions of the rule by 180 days, until August 11, 2021.[1] On August 5, the court again postponed the effective date of the rule until November 9, 2021.[2] On November 3, the court further postponed the effective date of the rule until January 17, 2022.[3] The Department is issuing this notification to apprise the public of the court's order.

Xavier Becerra,

Secretary.

[FR Doc. 2021–25792 Filed 11–24–21; 8:45 am]

BILLING CODE 4151–19–P

[1] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Feb. 2, 2021) (order postponing effective date), ECF No. 18.

[2] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Aug. 5, 2021) (order postponing effective date), ECF No. 23.

[3] *See* Order, *Facing Foster Care et al.* v. *HHS,* No. 21–cv–00308 (D.D.C. Nov. 3, 2021) (order postponing effective date).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 53

[FAC 2022–01; FAR Case 2018–018; Item I; Docket No. FAR–2018–0018, Sequence No. 1]

RIN 9000–AN76

Federal Acquisition Regulation: Revision of Definition of ''Commercial Item''; Correction

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule; correction.

SUMMARY: DoD, GSA, and NASA published a final rule amending the Federal Acquisition Regulation (FAR) to implement a section of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to change the definition of ''commercial item.'' This document corrects an erroneous instruction in that rule.

DATES: Effective December 6, 2021.

FOR FURTHER INFORMATION CONTACT: Ms. Zenaida Delgado, Procurement Analyst, at 202–969–7207 or by email at *zenaida.delgado@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAC 2022–01, FAR Case 2018–018.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA are correcting an amendatory instruction under part 53, section 53.213.

In FR Doc. 2021–22144 appearing on pages 61017–61038 in the issue of November 4, 2021, make the following correction:

53.213 [Corrected]

■ 1. On page 61037, in the third column, Instruction 239, paragraph b.i. for section 53.213, is corrected to read:

''i. Removing the first instance of the term ''(*Rev. 2/2012*)'' and adding ''(*Rev. NOV 2021*)'' in its place; and''.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2021–25842 Filed 11–24–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2021–0044; FXES11130200000–212–FF02ENEH00]

RIN 1018–BE47

Endangered and Threatened Wildlife and Plants; Technical Corrections for 18 Southwestern United States Species Found in Arizona, New Mexico, and Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Direct final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the revised taxonomy of nine wildlife and nine plant species under the Endangered Species Act of 1973, as amended (ESA). We are revising the List of Endangered and Threatened Wildlife and the List of Endangered and Threatened Plants (''the Lists'') to reflect the current scientifically accepted taxonomy and nomenclature for these species that occur in the southwestern United States. We are also correcting errors in the Lists made in previous publications. The taxonomic revisions and correction of publication errors are editorial in nature and involve no substantive changes to the Lists or any applicable regulations.

DATES: This rule is effective February 24, 2022 without further action, unless significant adverse comment is received by December 27, 2021. If significant adverse comment is received, we will publish a timely withdrawal of the relevant portions of the rule in the **Federal Register**.

ADDRESSES: You may submit comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the instructions for submitting comments to FWS–R2–ES–2021–0044, which is the docket number for this rulemaking.
- *By hard copy:* Submit comments by U.S. mail to: Public Comments Processing, Attn: FWS–R2–ES–2021–0044, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

See Public Comments, below, for more information about submitting comments.

FOR FURTHER INFORMATION CONTACT:

Common name	Contact person
golden-cheeked warbler	Adam Zerrenner, 512–490–0057 (phone), or *Adam_Zerrenner@fws.gov* (email).
Government Canyon Bat Cave spider.	
Texas blind salamander.	
Tooth Cave spider.	
Nellie's cory cactus.	
Lloyd's Mariposa cactus.	
white bladderpod.	
Zapata bladderpod.	
Texas snowbells.	
Gulf Coast jaguarundi	Chuck Ardizzone, 281–286–8282 (phone), or *Chuck_Ardizzone@fws.gov* (email).
Yuma clapper rail (=Yuma Ridgway's rail)	Jeff Humphrey, 602–242–0210 (phone) or *Jeff_Humphrey@fws.gov* (email).
Arizona hedgehog cactus.	
Fickeisen plains cactus.	
Peebles Navajo cactus.	
Sinaloan jaguarundi	Julie McIntyre, 520–670–6150 (phone), or *Julie_McIntyre@fws.gov* (email).
Sonoran tiger salamander.	
Mount Graham red squirrel.	
San Francisco Peaks ragwort	Shaula Hedwall, 928–556–2118 (phone), or *Shaula_Hedwall@fws.gov* (email).

Individuals who are hearing impaired or speech impaired may call the Federal Relay Service at 800–877–8337 for TTY (telephone typewriter or teletypewriter) assistance 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Public Comments

You may submit your comments and materials regarding the taxonomic revisions, identified below in Table 1, by one of the methods listed in **ADDRESSES**. Please include sufficient information with your comments that will allow us to verify any scientific or commercial information you include. We will not consider comments sent by email or fax, or to an address not listed in **ADDRESSES**.

We will post all comments on *https://www.regulations.gov.* Before including your address, phone number, email address, or other personal 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.

Comments and materials we receive, as well as supporting documentation we used in preparing this direct final rule, will be available for public inspection on the internet at *https://www.regulations.gov.* Please note that comments posted to *https://www.regulations.gov* are not immediately viewable. When you submit a comment, the system receives it immediately. However, the comment will not be publicly viewable until we post it, which might not occur until several days after submission. Information regarding this rule is available in alternative formats upon request (see **FOR FURTHER INFORMATION CONTACT**).

Background

The List of Endangered and Threatened Wildlife and the List of Endangered and Threatened Plants (''the Lists''), set forth in title 50 of the Code of Federal Regulations (CFR) at §§ 17.11 and 17.12, respectively, contain the names of endangered species and threatened species federally listed pursuant to the ESA (16 U.S.C. 1531 *et seq.*).

The regulations at 50 CFR 17.11(c) and 17.12(b) direct us to use the most recently accepted scientific name of any wildlife or plant species, respectively, that we have determined to be an endangered or threatened species.

Purpose of Direct Final Rule and Final Action

The purpose of this direct final rule is to notify the public that we are

revising the Lists at 50 CFR 17.11(h) and 17.12(h) to reflect the scientifically accepted taxonomy and nomenclature of nine wildlife species and nine plant species listed under section 4 of the ESA. These revisions reflect the most recently accepted scientific nomenclature in accordance with 50 CFR 17.11(c) and 17.12(b).

We are publishing this rule without a prior proposal because this is a noncontroversial action that is in the best interest of the public and should be undertaken in as timely a manner as possible. For the taxonomic revisions provided below in Table 1, this rule will be effective, as published in this document, on the effective date specified in **DATES**, unless we receive significant adverse comments on or before the comment due date specified in **DATES**. Significant adverse comments are comments that provide strong justification as to why this rule should not be adopted or why it should be changed.

If we receive significant adverse comments regarding the taxonomic changes for any of the species included in Table 1, below, we will publish a document in the **Federal Register** withdrawing this rule for the appropriate species before the effective date, and we will publish a proposed rule to initiate promulgation of those changes to 50 CFR 17.11(h) and/or 17.12(h).

In addition, we are notifying the public that we have identified editorial errors in the Lists, and they will be corrected on the effective date of this rule (see **DATES**, above). The identified errors are provided below in Table 2. While you may submit comments by one of the methods listed in **ADDRESSES** on the corrections provided below in Table 2, we consider these corrections purely administrative, and we intend to make these editorial corrections on the effective date of this rule.

None of these changes are regulatory in nature; they are for accuracy and clarity. These revisions do not alter species' protections or status in any way. Any actions altering a species' protection or status would require a separate rulemaking action following the procedures of 50 CFR part 424.

Summary Tables of Taxonomic Changes and Editorial Corrections

Table 1 provides taxonomic changes we are making to reflect the scientifically accepted taxonomy and nomenclature of nine wildlife and nine plant species listed under section 4 of the ESA. These changes reflect the most recently accepted scientific nomenclature in accordance with 50 CFR 17.11(c) and 17.12(b).

TABLE 1—TAXONOMIC REVISIONS TO THE LISTS REFLECTING THE CURRENT SCIENTIFICALLY ACCEPTED TAXONOMY AND NOMENCLATURE FOR THESE SPECIES

Species name as currently listed	Corrected species name
Common name (*scientific name*)	Common name (*scientific name*)
§ 17.11 Endangered and threatened wildlife	
MAMMALS	
Gulf Coast jaguarundi (*Herpailurus (=Felis) yagouaroundi cacomitli*)	Gulf Coast jaguarundi (*Puma yagouaroundi cacomitli*).
Sinaloan jaguarundi (*Herpailurus (=Felis) yagouaroundi tolteca*)	Sinaloan jaguarundi (*Puma yagouaroundi tolteca*).
Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*)	Mount Graham red squirrel (*Tamiasciurus fremonti grahamensis*).
BIRDS	
golden-cheeked warbler (*Dendroica chrysoparia*)	golden-cheeked warbler (*Setophaga chrysoparia*).
Yuma clapper rail (*Rallus longirostris yumanensis*)	Yuma Ridgway's rail (*Rallus obsoletus yumanensis*).
AMPHIBIANS	
Sonoran tiger salamander (*Ambystoma tigrinum stebbinsi*)	Sonoran tiger salamander (*Ambystoma mavortium stebbinsi*).
Texas blind salamander (*Typhlomolge rathbuni*)	Texas blind salamander (*Eurycea rathbuni*).
ARACHNIDS	
Government Canyon Bat Cave spider (*Neoleptoneta microps*)	Government Canyon Bat Cave spider (*Tayshaneta microps*).
Tooth Cave spider (*Neoleptoneta myopica*)	Tooth Cave spider (*Tayshaneta myopica*).
Scientific name (common name)	*Scientific name* (common name)
§ 17.12 Endangered and threatened plants	
FLOWERING PLANTS	
Coryphantha minima (Nellie's cory cactus)	*Escobaria minima* (Nellie's cory cactus).
Echinomastus mariposensis (Lloyd's Mariposa cactus)	*Sclerocactus mariposensis* (Lloyd's Mariposa cactus).
Echinocereus triglochidiatus var. *arizonicus* (Arizona hedgehog cactus)	*Echinocereus arizonicus* ssp. *arizonicus* (Arizona hedgehog cactus).
Lesquerella pallida (white bladderpod)	*Physaria pallida* (white bladderpod).
Lesquerella thamnophila (Zapata bladderpod)	*Physaria thamnophila* (Zapata bladderpod).
Pediocactus peeblesianus var. *fickeiseniae* (Fickeisen plains cactus)	*Pediocactus peeblesianus* ssp. *fickeiseniae* (Fickeisen plains cactus).
Pediocactus peeblesianus var. *peeblesianus* (Peebles Navajo cactus)	*Pediocactus peeblesianus* ssp. *peeblesianus* (Peebles Navajo cactus).
Senecio franciscanus (San Francisco Peaks ragwort)	*Packera franciscana* (San Francisco Peaks ragwort).
Styrax texanus (Texas snowbells)	*Styrax platanifolius* ssp. *texanus* (Texas snowbells).

Table 2 identifies the editorial corrections we are making in this rule. Where Table 2 (and text) refers to the ''2016 Reformatting'' that means an August 24, 2016, final rule (81 FR 51550) that the Service published to update the format of the Lists. The purpose of the 2016 Reformatting was to make the Lists easier to understand by changing the format to reflect current practices and standards, to correct identified errors in entries such as footnotes and spelling, and to update common names, among other changes. Following publication of the 2016 Reformatting we identified editorial errors in the updated Lists. Where Table 2 refers to ''68 FR 17156'' that is the citation for the final rule designating critical habitat for seven Bexar County, Texas, invertebrates (68 FR 17156; April 8, 2003), which contained a spelling error and listing citation error.

TABLE 2—EDITORIAL CORRECTIONS TO THE LISTS

Current listed name	Error: Action	Correction
Wildlife:		
Beetle, (no common name) [*Rhadine exilis*]	Error in 2016 Reformatting: Correct listing citation	65 FR 81419, 12/26/2000; 50 CFR 17.95(i).[CH]
Beetle, (no common name) [*Rhadine infernalis*]	Error in 2016 Reformatting: Correct listing citation	65 FR 81419, 12/26/2000; 50 CFR 17.95(i).[CH]
Helotes mold beetle (*Batrisodes venyivi*)	Error in 2016 Reformatting: Correct listing citation	65 FR 81419, 12/26/2000; 50 CFR 17.95(i).[CH]
Braken Bat Cave meshweaver (*Circurina venii*)	Error in 68 FR 17156: Correct spelling error; error in 2016 Reformatting: Correct listing citation.	*Cicurina venii* 65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Cokendolpher cave harvestman (*Texella cokendolpheri*).	Error in 2016 Reformatting: Correct listing citation	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Government Canyon Bat Cave meshweaver (*Circurina vespera*).	Error in 2016 Reformatting: Correct spelling error and listing citation.	*Cicurina vespera* 65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Government Canyon Bat Cave spider (*Neoleptoneta microps*).	Error in 2016 Reformatting: Correct listing citation	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Koster's springsnail (*Juturnia kosteria*)	Error in 2016 Reformatting: Correct spelling error	*Juturnia kosteri.*
Loach minnow (*Rhinichthys cobitis*)	Error in 2016 Reformatting: Reflect correct taxonomic name.	*Tiaroga cobitis.*
Madla Cave meshweaver (*Cicurina madla*)	Error in 2016 Reformatting: Correct listing citation	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Robber Baron Cave meshweaver (*Cicurina baronia*)	Error in 2016 Reformatting: Correct listing citation	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Yuma clapper rail (*Rallus longirostris yumanensis*)	Update common name	Yuma Ridgway's rail.
Plants:		
Fickeisen plains cactus (*Pediocactus peeblesianus* var. *fickeiseniae*).	Error in 2016 Reformatting: Remove duplicate entry	Remove duplicate entry from the List.
Peebles Navajo cactus (*Pediocactus peeblesianus* var. *peeblesianus*).	Error in 2016 Reformatting: Add omitted entry	Restore omitted species entry to the List.

Description of Taxonomic Revisions and Editorial Corrections

Using the best available scientific information, this direct final rule documents taxonomic changes of the scientific names to three entries under ''Mammals,'' two entries under ''Birds,'' two entries under ''Amphibians,'' and two entries under ''Arachnids'' on the current List of Endangered and Threatened Wildlife (50 CFR 17.11(h)) and to nine entries under ''Flowering Plants'' on the current List of Endangered and Threatened Plants (50 CFR 17.12(h)). The basis for these taxonomic changes is supported by published studies in peer-reviewed journals. Accordingly, we revise the scientific names of these species under section 4 of the ESA and in accordance with 50 CFR 17.11(c) and 17.12(b).

Of the species that are the subjects of the taxonomic revisions in this rule, Mount Graham red squirrel, Government Canyon Bat Cave spider, San Francisco Peaks ragwort, Zapata bladderpod, and Fickeisen plains cactus have designated critical habitat. For clarity and consistency, in this direct final rule, we are revising the headings of the critical habitat designations to reflect the corrected scientific names for the following species: Mount Graham red squirrel at 50 CFR 17.95(a), Government Canyon Bat Cave spider at 50 CFR 17.95(g), and for the San Francisco Peaks ragwort, Zapata bladderpod, and Fickeisen plains cactus at 50 CFR 17.96(a).

Additionally, we are correcting errors noted in species' scientific names and **Federal Register** citations, updating common names, and correcting a duplication and an omission (see Table 2, above). These corrections are not regulatory in nature; they are administrative and for the purpose of clarity. The corrections do not alter species' protections or status; an action changing a species' protection or status would require a separate rulemaking following the procedures set forth at 50 CFR part 424.

Taxonomic Classification

Gulf Coast and Sinaloan Jaguarundi

The Gulf Coast jaguarundi (*Herpailurus (=Felis) yagouaroundi cacomitli*) and the Sinaloan jaguarundi (*Herpailurus (=Felis) yagouaroundi tolteca*), subspecies of the jaguarundi, a small cat ranging from Texas to Argentina, were listed as endangered in 1976 (June 14, 1976; 41 FR 24062). The jaguarundi was originally included in the genus *Felis,* and the Gulf Coast jaguarundi and the Sinaloan jaguarundi were originally listed under the ESA as *Felis yagouaroundi cacomitli* and *Felis yagouaroundi tolteca,* respectively (June 14, 1976; 41 FR 24062).

Later, genus classification was changed from *Felis* to *Herpailurus* (Wozencraft 1993, p. 291), and this widely accepted change was subsequently made to the ESA listing (August 4, 2016; 81 FR 51550). Thus, these subspecies are currently listed under the ESA as *Herpailurus (=Felis) yagouaroundi cacomitli* and *Herpailurus (=Felis) yagouaroundi tolteca.*

However, more recent genetic work assigns the jaguarundi to the genus *Puma* (Johnson and O'Brien 1997, pp. S110–S111; Johnson et al. 2006, p. 74), and this has become the generally accepted nomenclature (Wozencraft 2005, p. 545). The Service recognizes the Gulf coast jaguarundi and Sinaloan jaguarundi name changes to *Puma yagouaroundi cacomitli* and *Puma yagouaroundi tolteca.* respectively. This taxonomic change does not affect the range or endangered status of either the Gulf coast jaguarundi or Sinaloan jaguarundi.

Mount Graham Red Squirrel

The Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*) was listed as endangered on June 3, 1987 (52 FR 20994) and was considered a subspecies of the pine squirrel (*Tamiasciurus hudsonicus*; Steele 1998,

p. 1). This subspecies occurs only in the highest elevations of the Pinaleño Mountains in southeastern Arizona.

Hope et al. (2016, p. 173) indicates that regional differences in evolutionary dynamics and continental gradients of complexity are reflected in three species of *Tamiasciurus: T. douglasii, T. hudsonicus*, and *T. fremonti*. Southwestern red squirrels, including the Mount Graham red squirrel, were assigned to a new species of red squirrel, *T. fremonti* (Hope et al. 2016, pp. 173, 179). Beginning in 2016, scientists researching the Mount Graham red squirrel acknowledged this new designation (*e.g.,* Merrick and Koprowski 2016, p. 2) and began referring to the Mount Graham red squirrel as *T. fremonti grahamensis* (*e.g.,* Gwinn and Koprowski 2016, p. 1). *Tamiasciurus fremonti grahamensis* is now the accepted species and subspecies name for the Mount Graham red squirrel by NatureServe (see *https://explorer.natureserve.org/Taxon/ELEMENT_GLOBAL.2.101915/Tamiasciurus_fremonti_grahamensis*), an organization that works with approximately 100 network organizations and over 1,000 conservation scientists to collect, aggregate, and standardize biodiversity statistics. The validity of the recognized *T. fremonti grahamensis* subspecies is not in question (Hope et al. 2016, entire).

Therefore, the Service recognizes the scientific name change for the Mount Graham red squirrel from *Tamiasciurus hudsonicus grahamensis* to *Tamiasciurus fremonti grahamensis.* These changes remain consistent with the latest scientific literature on or referencing the subspecies (*e.g.,* Lynch 2018, p. 2; Goldstein et al. 2018, p. 67; Merrick et al. 2021, p. 2). This taxonomic change does not affect the range of, endangered status of, or critical habitat designation for the Mount Graham red squirrel.

Golden-Cheeked Warbler

The golden-cheeked warbler (*Dendroica chrysoparia*) was emergency listed as endangered, due to habitat destruction, on May 4, 1990 (55 FR 18844), and we published a final rule to list the golden-cheeked warbler as endangered on December 27, 1990 (55 FR 53153).

In 2011, the American Ornithologists' Union (AOU) adopted a new classification of the family Parulidae based on a phylogenetic analysis by Lovette et al. (2010, p. 763) that resulted in all *Dendroica* species being placed into a single clade for which the generic name *Setophaga* has taxonomic priority (Chesser et al. 2011, p. 608). The golden-cheeked warbler is now placed in the family Parulidae (new world warblers; wood-warblers) and the genus *Setophaga* (redstarts). Hereafter, the Service recognizes the golden-cheeked warbler as *Setophaga chrysoparia,* formerly placed in the genus *Dendroica.* This taxonomic change does not affect the range or endangered status of the golden-cheeked warbler.

Yuma Clapper Rail

The Yuma clapper rail (*Rallus longirostris yumanensis*) was listed as endangered on March 11, 1967 (32 FR 4001) and was considered a subspecies of the clapper rail (*Rallus longirostris*). This subspecies occurs in Arizona, California, Nevada, and Mexico.

Maley and Brumfield (2013, p. 318) better distinguished the phylogenetic relationships in the *Rallus longirostris* and *Rallus elegans* complexes using mitochondrial and nuclear gene sequences. Their results indicate that the *Rallus elegans* and *Rallus longirostris* complexes are paraphyletic, and the complex could be split into five morphologically and genetically distinct species, including *Rallus obsoletus, Rallus tenuirostris, Rallus elegans,* and *Rallus crepitans* (Maley and Brumfield 2013, p. 326). In 2014, the AOU accepted this proposed change, reorganizing the clapper rail (*R. longirostris*) and king rail (*R. elegans*) species complex and creating five distinct subspecies (Chesser et al. 2014, p. CSv). Under the new accepted taxonomy, the Yuma clapper rail became the Yuma Ridgway's rail (*R. obsoletus yumanensis*). The validity of the five currently recognized *R. obsoletus* subspecies is not in question (Maley and Brumfield 2013, entire; Chesser et al. 2014, p. CSv).

Therefore, the Service recognizes the scientific (and common name) change from Yuma clapper rail (*Rallus longirostris yumanensis*) to Yuma Ridgway's rail (*R. obsoletus yumanensis*). This taxonomic change does not affect the range or endangered status of this subspecies.

Sonoran Tiger Salamander

The Sonoran tiger salamander (*Ambystoma tigrinum stebbinsi*) was listed as endangered on January 6, 1997 (62 FR 665). This subspecies occurs in southern Arizona in the United States and in northern Sonora, Mexico.

Shaffer and McKnight (1996, Evolution 50: pp. 417–433) provided molecular phylogenetic data indicating that the eastern and western tiger salamanders should be regarded as distinct species and treated the western forms as subspecies of *Ambystoma mavortium.* Hallock (2005, *in* Jones, L.L.C., et al., pp. 30–33) placed northwestern populations in *A. tigrinum.* As a result, in 2008, the Society for the Study of Amphibians and Reptiles (SSAR) adopted a new scientific and common name for the species in *Scientific and Common Names for Amphibians and Reptiles of North America North of México* (SSAR 2008, pp. 1–84). The SSAR list is the most widely recognized standard for nomenclature of North American amphibians and reptiles.

Therefore, the Service recognizes the scientific name change from *Ambystoma tigrinum stebbinsi* to *Ambystoma mavortium stebbinsi.* This change remains consistent with the latest SSAR list of standard names (Crother, B.I. (ed.). 2017) and does not affect the range or endangered status of the Sonoran tiger salamander.

Texas Blind Salamander

The Texas blind salamander (*Typhlomolge rathbuni*) was listed as endangered on March 11, 1967 (32 FR 4001). This species occurs in the Edwards Aquifer near San Marcos, Texas. The taxonomic classification of Texas blind salamander in the genus *Typhlomolge* has been widely discussed and controversial (Mitchell and Reddell 1965, pp. 24–26; Potter and Sweet 1981, entire; Lombard and Wake 1986, entire; Chippindale et al. 2000, entire).

The *Typhlomolge* genus is characterized by extreme cave-associated morphologies (tiny non-functional vestiges of eyes, loss of pigmentation, long slender legs, and broad flattened head). Some researchers support that the Texas blind salamander is best related to species of *Eurycea,* which exhibit extreme troglobitic morphologies (Mitchell and Reddell 1965, pp. 24–26; Petraka 1998, pp. 272–273). Other scientists have suggested that members of *Typhlomolge* are sufficiently distinct from Edwards Plateau *Eurycea* to warrant recognition of the *Typhlomolge* genus (Wake 1966, pp. 51, 73–99; Potter and Sweet 1981, pp. 65–73). However, Chippindale's (1995, entire) more recent molecular phylogenetic evidence supports that the recognition of the genus *Typhlomolge* is not warranted. Further, the results of allozyme and mitochondrial DNA (mtDNA) testing of Texas blind salamander by Chippindale et al. (2000, pp. 20, 23–24) supports the taxonomic revision from the genus *Typhlomolge* to the genus *Eurycea.* Therefore, the Service recognizes the scientific name change from *Typhlomolge rathbuni* to *Eurycea rathbuni.* This taxonomic

change does not affect the range or endangered status of this species.

Government Canyon Bat Cave Spider and Tooth Cave Spider

The Government Canyon Bat Cave spider (*Neoleptoneta microps*) is a small, troglobitic spider that inhabits caves and mesocaverns in Bexar County, Texas, and was listed as endangered on December 26, 2000 (65 FR 81419). In the original listing the Government Canyon Bat Cave spider was listed as the Government Canyon cave spider; although the common name was revised to the Government Canyon Bat Cave spider on April 8, 2003 (68 FR 17156). In addition, critical habitat was designated for the Government Canyon Bat Cave spider and Government Canyon Bat Cave meshweaver on February 14, 2012 (77 FR 8450).

The Tooth Cave spider (*Neoleptoneta myopica*) is a small, troglobitic spider that inhabits caves and mesocaverns in Travis and Williamson Counties, Texas. It was listed as endangered on September 16, 1988 (53 FR 36029). The Tooth Cave spider does not have designated critical habitat.

The Government Canyon Bat Cave spider and Tooth Cave spider were originally described as *Leptoneta microps* and *Leptoneta myopica,* respectively Gertsch (1974, pp. 168–169, 172–173). They were later reassigned to *Neoleptoneta* following Brignoli (1977, p. 216) and Platnick (1986, p. 15).

In a phylogenetic assessment, Ledford et al. (2011, entire) limited the genus *Neoleptoneta* to only include seven species restricted to central Mexico. The remaining species were placed in three new genera: (1) *Chisoneta,* (2) *Ozarkia,* and (3) *Tayshaneta.* The Government Canyon Bat Cave spider and Tooth Cave spider were transferred to *Tayshaneta* (Ledford et al. 2011, pp. 375–385). These taxonomic changes have been recognized by the World Spider Catalog (2019).

Therefore, we recognize the scientific names of the Government Canyon Bat Cave spider and Tooth Cave spider as *Tayshaneta microps* and *Tayshaneta myopica,* respectively. This does not affect the range or endangered status of these species, or the designated critical habitat of the Government Canyon Bat Cave spider.

Arizona Hedgehog Cactus

The Arizona hedgehog cactus (*Echinocereus triglochidiatus* var. *arizonicus*) was listed as endangered on November 26, 1979 (44 FR 61556). At that time, *E. triglochidiatus* included all red-flowered hedgehog cacti in the United States, resulting in a large group of highly morphologically variable species (Benson 1969, 1982; Taylor 1985 pp. 68–73). Since then, cytological (*i.e.,* the study of chromosome numbers for classification) and morphological studies within *E. triglochidiatus* have led to separations of taxa based on ploidy levels (*i.e.,* the number of copies of the complete genetic information; Parfitt and Christy 1992; Cota and Philbrick 1994; Baker 2006). The tetraploids (four homologous copies of each chromosome (4n)) are now recognized as *E. coccineus* Engelmann, and diploids (two homologous copies of each chromosome (2n)) are now recognized as either *E. triglochidiatus* or *E. arizonicus* Rose ex Orcutt (Blum et al. 1998, pp. 357–423; Zimmerman and Parfitt 2003, p. 168). In 1998, the Arizona hedgehog cactus was recognized as *Echinocereus arizonicus* subsp. *arizonicus* (Rose ex. Orcutt), formalizing *E. arizonicus* as an independent species separate from *E. triglochidiatus* and *E. coccineus* based on chromosome numbers, elevational range, and geographic distribution (Blum et al. 1998, p. 367–369; Zimmerman and Parfitt 2003, p. 168). This taxonomic treatment has been adopted by the Flora of North America (Zimmerman and Parfitt 2003, p. 168).

The Service recognizes the scientific name change of the Arizona hedgehog cactus to *Echinocereus arizonicus* ssp. *arizonicus.* This taxonomic change does not affect the range or endangered status of the Arizona hedgehog cactus.

Fickeisen Plains Cactus and Peebles Navajo Cactus

The Peebles Navajo cactus (*Pediocactus peeblesianus* var. *peeblesianus*) and Fickeisen plains cactus (*Pediocactus peeblesianus* var. *fickeiseniae*) are small, mostly solitary, spherical cacti endemic to northern Arizona. Both were classified as ''varieties'' when listed as endangered in 1979 (44 FR 61922; October 26, 1979) and 2013 (78 FR 60608; October 1, 2013), respectively.

In our 2013 listing rule, we acknowledged that the Flora of North America treated the Fickeisen plains cactus as a subspecies of *Pediocactus peeblesianus,* finding that the name ''*Pediocactus peeblesianus* var. *fickeiseniae*'' was not validly published by Lyman D. Benson (Heil and Porter 2003, p. 213). However, at that time, we and taxonomic organizations such as the Integrated Taxonomic Information Systems (ITIS) continued to treat the taxon as a variety, but we recognized the need for future taxonomic review.

More recently, the Flora of North America (Heil and Porter 2001, pp. 10–11; 2003, p. 213), ITIS (2019), and the broader botanical scientific community (Tropicos 2019) accepted subspecies rank for both Peebles Navajo cactus (*Pediocactus peeblesianus* ssp. *peeblesianus*) and Fickeisen plains cactus (*Pediocactus peeblesianus* ssp. *fickeiseniae* [=*Pediocactus peeblesianus* ssp. *fickeiseniorum*]; Lüthy 1999; ITIS 2019).

Because of the agreement throughout the scientific community, we recognize the Peebles Navajo cactus as *Pediocactus peeblesianus* ssp. *peeblesianus* and the Fickeisen plains cactus as *Pediocactus peeblesianus* ssp. *fickeiseniae.* These changes in nomenclature do not affect the range or endangered status of either cactus, or, for the Fickeisen plains cactus, its designated critical habitat.

Lloyd's Mariposa Cactus

On November 6, 1979, we listed Lloyd's mariposa cactus (*Neolloydia mariposensis*) as threatened, without critical habitat (44 FR 64247). Hester (1940) described this small cactus as a new species, *Echinomastus mariposensis,* based on specimens he collected near the Mariposa quicksilver mine, in Brewster County, Texas.

Botanists continue to recognize Lloyd's mariposa cactus as a distinct, valid species, but based on evolving phylogenetic interpretations have disagreed on the genera placement. Benson (1969) assigned species *mariposensis* to the genus *Neolloydia*; Glass and Foster (1975), Anderson (1986, 2001), Zimmerman (1985) and the Flora of North America (Zimmerman and Parfitt 2003) returned it to *Echinomastus.* Additional published classifications include *Echinocactus* (Weniger 1979), *Sclerocactus* (Taylor 1987), and *Pediocactus* (Halda 1998). However, more recently, Porter and Prince (2011) constructed a molecular phylogeny of a narrowly defined *Sclerocactus,* and related taxa, based on chloroplast DNA sequences using data from five independent investigations (Porter *et al.* 2000; Butterworth *et al.* 2002; Crozier 2005; Hernandez *et al.* 2011; Butterworth and Porter (in prep.)).

Although these studies examined different regions of chloroplast DNA, the results were completely congruent. On this basis, Porter and Prince (2011) recognized a monophyletic, though polymorphic, clade, in which *Ancistrocactus, Echinomastus,* and *Toumeya* are included in a broadly defined *Sclerocactus* genus; *Echinomastus,* as defined in the Flora of North America (Zimmerman and Parfitt 2003), is paraphyletic. Lloyd's mariposa cactus was assigned to *Sclerocactus*

mariposensis in Section Andersonianus (Porter and Prince 2011, pp. 36–37, 58–59). We concur with this classification, which has also been accepted by the ITIS (2018) and Tropicos (2018). This revision does not affect the species' range or threatened status.

Nellie's Cory Cactus

On November 7, 1979, we listed Nellie's cory cactus (*Coryphantha minima*) as endangered, without critical habitat (44 FR 64738). Although botanists continue to recognize Nellie's cory cactus as a distinct, valid species, differing phylogenetic interpretations retain it in the genus *Coryphantha,* or place it in another closely related genus, *Escobaria.*

First described by Britton and Rose (1919–1923), *Escobaria* is distinguished from *Coryphantha* by pitted seed coats, fringed perianth parts, areoles that lack nectaries, and flowers that are not yellow (Anderson 2001); since Nellie's cory cactus has these characteristics, it belongs in the *Escobaria* group. Zimmerman (1985) and the Flora of North America (Zimmerman and Parfitt 2003) recognized *Escobaria* as a subgenus of *Coryphantha* that included *C. minima.* Conversely, Anderson (2001), the International Cactaceae Systematics Group (2006), the ITIS (2011), and Natural Resources Conservation Service (2011) recognized *Escobaria* as a full genus.

More recent phylogenetic studies based on DNA sequences (Butterworth 2010; Vázquez-Sánchez et al. 2013) indicate that *Coryphantha sensu lato* is not monophyletic. Although more data are needed to circumscribe *Coryphantha* and *Escobaria,* Nellie's cory cactus is more appropriately classified as *Escobaria minima,* based on the above described morphological characteristics. Thus, we recognize Nellie's cory cactus as *Escobaria minima.* This change does not affect the species' range or endangered status.

San Francisco Peaks Ragwort

San Francisco Peaks ragwort (*Senecio franciscanus*),was listed as threatened on November 22, 1983 (48 FR 52743), and is a dwarf alpine plant in the sunflower family that is found only on the talus slopes in the alpine zone on the San Francisco Peaks, north of Flagstaff. Based on morphological and cytological evidence, plants formerly described as *Senecio* that have pendant heads, branched and nonfleshy roots, and few teeth on the leaves are now described as the genus *Packera,* (Weber, WA and Á. Löve 1981). Weber and Löve (1981) are following the European botanists' generic circumscription of *Senecio* and the segregates.

The scientific name change from ''*Senecio franciscanus*'' to ''*Packera franciscana*'' is widely accepted by professionals and is the accepted name at the Deaver Herbarium at Northern Arizona University (Ayers 2007, pers. comm.). The Service recognizes the San Francisco Peaks ragwort as *Packera franciscana.* This taxonomic change does not affect the range, endangered status, or designated critical habitat of the San Francisco Peaks ragwort.

Texas Snowbells

On October 12, 1984, we listed Texas snowbells (*Styrax texana)* as endangered, without critical habitat(49 FR 40036). V.L. Cory described *Styrax texana* in 1943, which he distinguished from *S. platanifolia* and *S. youngae* based on differences in the trichomes (epidermal structures) of leaves and floral parts.

Gonsoulin (1974) revised the genus *Styrax* in North America, Central America, and the Caribbean. In Texas and Northeast Mexico, this treatment recognized *S. texana, S. youngae,* and *S. platanifolia* with two varieties, *platanifolia* and *stellata.* Fritsch's subsequent revision (Fritsch 1997) of the *Styrax* of West Texas, Mexico, and Mesoamerica recognized 19 species and 24 taxa, including 7 geographically and morphologically distinct subspecies of two species. Morphological, isozyme, and DNA sequence data indicated that five taxa of Texas and Northern Mexico are more closely related to each other than to other *Styrax* taxa and belong to a single species, *S. platanifolius;* following Nicolson and Steyskal (1976), Fritsch adopted the masculine gender for *Styrax.* This revision recognized five subspecies of *S. platanifolius,* distinguished by distinct regional differences in the morphology and abundance of trichomes: *platanifolius, mollis, stellatus, texanus,* and *youngiae.*

This treatment is currently recognized by the Flora of North America (Fritsch 2009), the ITIS (2018), Missouri Botanical Garden (Tropicos 2014), and the U.S. Department of Agriculture's Plants Database (Natural Resources Conservation Service 2014). In consideration of the broad acceptance of this most recent revision of American *Styrax,* we also recognize Texas snowbells as *Styrax platanifolius* ssp. *texanus.* This revision does not affect the species' range or endangered status.

White Bladderpod and Zapata Bladderpod

In 1987, we listed white bladderpod (*Lesquerella pallida*) as endangered (52 FR 7424; March 11, 1987). In 1999, we listed Zapata bladderpod (*Lesquerella thamnophila*) as endangered (64 FR 63745; November 22, 1999). Critical habitat was designated for Zapata bladderpod on December 22, 2000 (65 FR 81182); no critical habitat was designated for white bladderpod.

In 2002, Al-Shehbaz and O'Kane transferred 91 taxa of *Lesquerella* to the genus *Physaria,* including the species *pallida* and *thamnophila,* based on molecular, morphological, cytological, biogeographic, and ecological data. Genetic analyses, based on DNA sequences of the internal transcribed spacer of nuclear ribosomal DNA and length variation of inter-simple sequence repeat regions, revealed that *Physaria,* as previously recognized, was nested within and evolved more than once from *Lesquerella.* The former genus was polyphyletic, and the latter was paraphyletic. These authors united the two into a single monophyletic genus, conserving the earlier-published name of *Physaria.*

These taxonomic revisions are supported by the Flora of North America (O'Kane 2010), the ITIS (2015), and the Tropicos database (Tropicos 2015). Thus, the Service recognizes the white bladderpod and Zapata bladderpod as *Physaria pallida* and *Physaria thamnophila,* respectively. These changes do not affect the range or endangered status of white bladderpod or Zapata bladderpod, or, for Zapata bladderpod, its designated critical habitat.

Required Determinations

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), need not be prepared in connection with regulations issued pursuant to section 4(a) of the ESA. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (43 FR 49244). Even if NEPA were to apply, this amendment of the regulations is purely administrative in nature, and therefore is categorically excluded under the Department of the Interior's NEPA procedures in 43 CFR 46.210(i); no exceptional circumstances apply.

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain

language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To help us to revise this rule, your comments should be as specific as possible.

References Cited

A list of the references cited in this direct final rule is provided in Docket No. FWS–R2–ES–2021–0044 at *https://www.regulations.gov* or upon request from the appropriate contact person (see **FOR FURTHER INFORMATION CONTACT**).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

For the reasons given in the preamble, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. Amend § 17.11(h), the List of Endangered and Threatened Wildlife:

■ a. Under Mammals, by revising the entries for ''Jaguarundi, Gulf Coast'', ''Jaguarundi, Sinaloan'', and ''Squirrel, Mount Graham red'';

■ b. Under Birds, by:

■ i. Removing the entry for ''Rail, Yuma Clapper'' and adding in its place an entry for ''Rail, Yuma Ridgway's''; and

■ ii. Revising the entry for ''Warbler (wood), golden-cheeked'';

■ c. Under Amphibians, by revising the entries for ''Salamander, Sonoran tiger'' and ''Salamander, Texas blind'';

■ d. Under Fishes, by revising the entry for ''Minnow, loach'';

■ e. Under Snails, by revising the entry for ''Springsnail, Koster's'';

■ f. Under Insects, by revising the entries for ''Beetle, Helotes mold'', ''Beetle, (no common name) [*Rhadine exilis*]'', and ''Beetle, (no common name) [*Rhadine infernalis*]''; and

■ g. Under Arachnids, by revising the entry for ''Harvestman, Cokendolpher cave'', ''Meshweaver, Braken Bat Cave'', ''Meshweaver, Government Canyon Bat Cave'', ''Meshweaver, Madla Cave'', ''Meshweaver, Robber Baron Cave'', ''Spider, Government Canyon Bat Cave'', and ''Spider, Tooth Cave''.

The revisions and addition read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
MAMMALS				
*	*	*	*	*
Jaguarundi, Gulf Coast	*Puma yagouaroundi cacomitli*	Wherever found	E	41 FR 24062, 6/14/1976.
*	*	*	*	*
Jaguarundi, Sinaloan	*Puma yagouaroundi tolteca*	Wherever found	E	41 FR 24062, 6/14/1976.
*	*	*	*	*
Squirrel, Mount Graham red	*Tamiasciurus fremonti grahamensis*	Wherever found	E	52 FR 20994, 6/3/1987; 50 CFR 17.95(a).[CH]
*	*	*	*	*
BIRDS				
*	*	*	*	*
Rail, Yuma Ridgway's	*Rallus obsoletus yumanensis*	U.S.A. only	E	32 FR 4001, 3/11/1967.
*	*	*	*	*
Warbler (wood), golden-cheeked	*Setophaga chrysoparia*	Wherever found	E	55 FR 18844, 5/4/1990; 55 FR 53153, 12/27/1990.
*	*	*	*	*
AMPHIBIANS				
*	*	*	*	*
Salamander, Sonoran tiger	*Ambystoma mavortium stebbinsi*	Wherever found	E	62 FR 665, 1/6/1977.
Salamander, Texas blind	*Eurycea rathbuni*	Wherever found	E	32 FR 4001, 3/11/1967.
*	*	*	*	*
FISHES				
*	*	*	*	*
Minnow, loach	*Tiaroga cobitis*	Wherever found	E	51 FR 39468, 10/28/1986; 77 FR 10810, 2/23/2012; 50 CFR 17.95(e).[CH]
*	*	*	*	*
SNAILS				
*	*	*	*	*
Springsnail, Koster's	*Juturnia kosteri*	Wherever found	E	76 FR 33036, 6/7/2011; 50 CFR 17.95(f).[CH]

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
INSECTS				
*	*	*	*	*
Beetle, Helotes mold	*Batrisodes venyivi*	Wherever found	E	65 FR 81419, 12/26/2000; 50 CFR 17.95(i).[CH]
*	*	*	*	*
Beetle, (no common name)	*Rhadine exilis*	Wherever found	E	65 FR 81419, 12/26/2000; 50 CFR 17.95(i).[CH]
Beetle, (no common name)	*Rhadine infernalis*	Wherever found	E	65 FR 81419, 12/26/2000; 50 CFR 17.95(i).[CH]
*	*	*	*	*
ARACHNIDS				
*	*	*	*	*
Harvestman, Cokendolpher cave	*Texella cokendolpheri*	Wherever found	E	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Meshweaver, Braken Bat Cave	*Cicurina venii*	Wherever found	E	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Meshweaver, Government Canyon Bat Cave.	*Cicurina vespera*	Wherever found	E	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Meshweaver, Madla Cave	*Cicurina madla*	Wherever found	E	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
Meshweaver, Robber Baron Cave	*Cicurina baronia*	Wherever found	E	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
*	*	*	*	*
Spider, Government Canyon Bat Cave.	*Tayshaneta microps*	Wherever found	E	65 FR 81419, 12/26/2000; 50 CFR 17.95(g).[CH]
*	*	*	*	*
Spider, Tooth Cave	*Tayshaneta myopica*	Wherever found	E	53 FR 36029, 9/16/1988.
*	*	*	*	*

■ 3. Amend § 17.12(h), the List of Endangered and Threatened Plants, under Flowering Plants, by:

■ a. Removing the entry for ''*Coryphantha minima*'';

■ b. Adding, in alphabetical order, an entry for ''*Echinocereus arizonicus* ssp. *arizonicus*'';

■ c. Removing the entries for ''*Echinocereus triglochidiatus* var. *arizonicus*'' and ''*Echinomastus mariposensis*'';

■ d. Adding, in alphabetical order, an entry for ''*Escobaria minima*'';

■ e. Removing the entries for ''*Lesquerella pallida*'' and ''*Lesquerella thamnophila*'';

■ f. Adding, in alphabetical order, an entry for ''*Packera franciscana*'';

■ g. Removing the first entry for ''*Pediocactus peeblesianus* var. *fickeiseniae*'';

■ h. Removing the remaining entry for ''*Pediocactus peeblesianus* var. *fickeiseniae*'' and adding the entry ''*Pediocactus peeblesianus* ssp. *fickeiseniae*'' in its place;

■ i. Adding, in alphabetical order, entries for ''*Pediocactus peeblesianus* ssp. *peeblesianus*'', ''*Physaria pallida*'', ''*Physaria thamnophila*'', and ''*Sclerocactus mariposensis*'';

■ j. Removing the entry for ''*Senecio franciscanus*'';

■ k. Adding, in alphabetical order, an entry for ''*Styrax platanifolius* ssp. *texanus*'';

■ l. Removing the entry for ''*Styrax texanus*''.

The additions read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
FLOWERING PLANTS				
*	*	*	*	*
Echinocereus arizonicus ssp. *arizonicus*.	Arizona hedgehog cactus	Wherever found	E	44 FR 61556, 10/25/1979.
*	*	*	*	*
Escobaria minima	Nellie's cory cactus	Wherever found	E	44 FR 64738, 11/7/1979.
*	*	*	*	*
Packera franciscana	San Francisco Peaks ragwort	Wherever found	T	48 FR 52743, 11/22/1983; 50 CFR 17.96(a).[CH]
*	*	*	*	*
Pediocactus peeblesianus ssp. *fickeiseniae*.	Fickeisen plains cactus	Wherever found	E	78 FR 60607, 10/1/2013; 50 CFR 17.96(a).[CH]
Pediocactus peeblesianus ssp. *peeblesianus*.	Peebles Navajo cactus	Wherever found	E	44 FR 61922, 10/26/1979.

Scientific name	Common name	Where listed	Status	Listing citations and applicable rules
*	*	*	*	*
Physaria pallida	White bladderpod	Wherever found	E	52 FR 7424, 3/11/1987.
Physaria thamnophila	Zapata bladderpod	Wherever found	E	64 FR 63745, 11/22/1999; 50 CFR 17.96(a).[CH]
*	*	*	*	*
Sclerocactus mariposensis	Lloyd's mariposa cactus	Wherever found	T	44 FR 64247, 11/6/1979.
*	*	*	*	*
Styrax platanifolius ssp. *texanus*	Texas snowbells	Wherever found	E	49 FR 40035, 10/12/1984.
*	*	*	*	*

§ 17.95 [Amended]

■ 4. Amend § 17.95 by:
■ a. In paragraph (a), removing the heading ''Mount Graham Red Squirrel (*Tamiasciurus hudsonicus grahamensis*)'' and adding ''Mount Graham red squirrel (*Tamiasciurus fremonti grahamensis*)'' in its place; and
■ b. In paragraph (g), removing the heading ''Government Canyon Bat Cave Spider (*Neoleptoneta microps*)'' and adding ''Government Canyon Bat Cave Spider (*Tayshaneta microps*)'' in its place.

■ 5. Amend § 17.96, paragraph (a), by:
■ a. Removing the heading ''Family Asteraceae: *Senecio franciscanus* (San Francisco Peaks groundsel)'' and adding in its place the heading ''Family Asteraceae: *Packera franciscana* (San Francisco Peaks ragwort)'';
■ b. In the entry ''Family Asteraceae: *Packera franciscana* (San Francisco Peaks ragwort)'', revising the note;
■ c. Removing the heading ''Family Brassicaceae: *Lesquerella thamnophila* (Zapata bladderpod)'' and adding in its place the heading ''Family Brassicaceae: *Physaria thamnophila* (Zapata bladderpod)''; and
■ d. Removing the heading ''Family Cactaceae: *Pediocactus peeblesianus* var. *fickeiseniae* (Fickeisen plains cactus)'' and adding in its place the heading ''Family Cactaceae: *Pediocactus peeblesianus* ssp. *fickeiseniae* (Fickeisen plains cactus)''.

The revision reads as follows:

§ 17.96 Critical habitat—plants.

(a) * * *

Family Asteraceae: *Packera franciscana* (San Francisco Peaks ragwort)

* * * * *

Note: The reference to ''groundsel'' on the map is equivalent to ''ragwort.'' Map follows:

* * * * *

Martha Williams,

Principal Deputy Director, Exercising the Delegated Authority of the Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–25549 Filed 11–24–21; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[RTID 0648–XB608]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfers From VA to CT and NC to RI

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

ACTION: Notification of quota transfer.

SUMMARY: NMFS announces that the Commonwealth of Virginia and the State of North Carolina are transferring a portion of their 2021 commercial summer flounder quota to the states of Connecticut and Rhode Island, respectively. This adjustment to the 2021 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan quota transfer provisions. This announcement informs the public of the revised 2021 commercial quotas for Virginia, North Carolina, Connecticut, and Rhode Island.

DATES: Effective November 22, 2021 through December 31, 2021.

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.110. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2021 allocations were published on December 21, 2020 (85 FR 82946).

The final rule implementing Amendment 5 to the Summer Flounder Fishery Management Plan (FMP), as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: The transfer or combinations would not preclude the overall annual quota from being fully harvested; the transfer addresses an unforeseen variation or contingency in the fishery; and the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act. The Regional Administrator has determined these three criteria have been met for the transfers approved in this notification.

Virginia is transferring 30,000 lb (13,608 kg) of summer flounder to Connecticut through mutual agreement of the states. This transfer was requested so that Connecticut would not exceed its 2021 commercial quota. North Carolina is transferring 22,158 lb (10,051 kg) to Rhode Island to repay landings made by a North Carolina-permitted vessel under a safe harbor agreement. The revised summer flounder quotas for 2021 are: Virginia, 2,359,776 lb (1,070,376 kg); Connecticut, 629,376 lb (285,480 kg); North Carolina, 2,952,765 lb (1,339,352 kg); and Rhode Island, 1,883,708 lb (854,436 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.162(e)(1)(i) through (iii), which was issued pursuant to section 304(b), and is

exempted from review under Executive Order 12866.

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

Dated: November 22, 2021.

Ngagne Jafnar Gueye,

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

[FR Doc. 2021–25839 Filed 11–22–21; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 86, No. 225
Friday, November 26, 2021

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1014; Project Identifier MCAI–2021–00428–T]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Bombardier, Inc., Model BD–100–1A10 airplanes. This proposed AD was prompted by a report that the design of the spoiler control system causes certain engine indication and crew alerting system (EICAS) messages to be posted intermittently and repetitively during flight and on the ground, and flightcrews must action the appropriate checklist each time these messages appear. This proposed AD would require revising the Non-Normal Procedures section of the existing airplane flight manual (AFM) associated with the spoiler electronic control unit (SECU) EICAS messages. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 10, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this NPRM, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1014; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–1014; Project Identifier MCAI–2021–00428–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend the proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2021–14, dated April 7, 2021 (also referred to after this as the Mandatory Continuing Airworthiness Information, or the MCAI), to correct an unsafe condition for all Bombardier, Inc., Model BD–100–1A10 airplanes. You may examine the MCAI in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1014.

This proposed AD was prompted by a report that the design of the spoiler control system causes certain EICAS messages to be posted intermittently and repetitively during flight and on the ground, and flightcrews must action the appropriate checklist each time these messages appear. The FAA is proposing this AD to address intermittent and

repetitive messaging, which increases overall workload and introduces a risk that flightcrews could become desensitized over time to the messages. This could result in the required checklist not being carried out or completed, and could adversely affect the airplane's continued safe flight and landing. See the MCAI for additional background information.

Related Service Information Under 1 CFR Part 51

Bombardier has issued the following AFM procedures, which include a Caution and a Note to the SPOILERS FAULT (C) Non-Normal Procedures, to reinforce the importance of completing the procedure in its entirety each time the message appears.

- Section 05–23, Flight Controls, of Chapter 05, Non-Normal Procedures, of the Bombardier Challenger 300 (Imperial Version) Airplane Flight Manual, Publication No. CSP 100–1, Revision 61, dated September 25, 2020. (For obtaining this section of the Bombardier Challenger 300 (Imperial Version) Airplane Flight Manual, Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.)
- Section 05–23, Flight Controls, of Chapter 05, Non-Normal Procedures, of the Bombardier Challenger 350 Airplane Flight Manual, Publication No. CH 350 AFM, Revision 27, dated September 25, 2020.

These documents are distinct since they apply to different airplane configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

FAA's Determination

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the MCAI and service information referenced above. The FAA is proposing this AD because the FAA evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require revising the AFMs already described.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 654 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$0	$85	$55,590

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2021–1014; Project Identifier MCAI–2021–00428–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 10, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Bombardier, Inc., Model BD–100–1A10 airplanes.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report that the design of the spoiler control system causes certain engine indication and crew alerting system (EICAS) messages to be posted intermittently and repetitively during flight and on the ground, and flightcrews must action the appropriate checklist each time these messages appear. The FAA is issuing this AD to address intermittent and repetitive messaging, which increases overall workload and introduces a risk that flightcrews could become desensitized over time to the messages. This could result in the required checklist not being carried out or completed, and could adversely affect the airplane's continued safe flight and landing.

(f) Compliance

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

(g) Revision of the Airplane Flight Manual (AFM)

Within 60 days after the effective date of this AD: Revise the existing AFM to incorporate the information specified in Section 05–23, Flight Controls, of Chapter 05, Non-Normal Procedures, of the AFM revisions specified in paragraphs (g)(1) and (2) of this AD, as applicable.

(1) Bombardier Challenger 300 (Imperial Version) Airplane Flight Manual, Publication No. CSP 100–1, Revision 61, dated September 25, 2020.

Note 1 to paragraph (g)(1): For obtaining this section of the Bombardier Challenger 300 (Imperial Version) Airplane Flight Manual, Publication No. CSP 100–1, use Document Identification No. CH 300 AFM–I.

(2) Bombardier Challenger 350 Airplane Flight Manual, Publication No. CH 350 AFM, Revision 27, dated September 25, 2020.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

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

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

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2021–14, dated April 7, 2021, for related information. This MCAI may be found in the AD docket on the internet at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1014.

(2) For more information about this AD, contact Thomas Niczky, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7347; fax 516–794–5531; email *9-avs-nyaco-cos@faa.gov.*

(3) For service information identified in this AD, contact Bombardier, Inc., 200 Côte-Vertu Road West, Dorval, Québec H4S 2A3, Canada; North America toll-free telephone 1–866–538–1247 or direct-dial telephone 1–514–855–2999; email *ac.yul@aero.bombardier.com;* internet *https://www.bombardier.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on November 18, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25618 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2021–1007; Project Identifier MCAI–2021–00324–R]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters Deutschland GmbH Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus Helicopters Deutschland GmbH Model MBB–BK 117 C–2 and MBB–BK 117 D–2 helicopters. This proposed AD was prompted by report that a collective bellcrank-K was found incorrectly installed on a helicopter. This proposed AD would require inspecting the collective bellcrank-K to determine if it is correctly installed and has a correct position marking and, depending on the findings, applicable corrective actions, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). This proposed AD would also allow installation of an affected collective bellcrank-K, provided certain instructions are followed. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by January 10, 2022.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For EASA material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1007.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1007; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the EASA AD, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2021–1007; Project Identifier MCAI–2021–00324–R'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0074, dated March 15, 2021 (EASA AD 2021–0074), to correct an unsafe condition for all Airbus Helicopters Deutschland GmbH (formerly Eurocopter Deutschland GmbH; and Airbus Helicopters Inc., formerly American Eurocopter LLC) Model MBB–BK117 C–2 and MBB–BK117 D–2 helicopters.

This proposed AD was prompted by a report that a collective bellcrank-K (affected part) was found incorrectly installed on a helicopter. Subsequent investigations revealed that the affected part was an in-service replacement, and that the position marking on that part was incorrect. The FAA is proposing this AD to address incorrect installation of a collective bellcrank-K, which could lead to unwanted collective input, resulting in reduced control of the helicopter. See EASA AD 2021–0074 for additional background information.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0074 requires a one-time inspection of an affected part for correct installation by measuring the distance between the front edge of the bearing block and the front edge of the affected part, and for correct application of position markings, and, depending on the findings, accomplishment of applicable corrective actions. If an affected part is incorrectly installed, the corrective actions include inspecting for signs of chafing on the bearing block, the control lever, the forked lever, the sliding sleeve, and the bearing ring, replacing any parts that have signs of chafing, and installing a serviceable bellcrank-K with an applied position marking. If an affected part is correctly installed but the position marking is not correct, the corrective actions include re-working the affected part or replacing the affected part with a serviceable part that has an applied position marking. EASA AD 2021–0074 also allows installation of an affected part, provided certain instructions are followed.

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

FAA's Determination

These helicopters have been approved by EASA and are approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the European Union, EASA has notified the FAA about the unsafe condition described in its AD. The FAA is proposing this AD after evaluating all known relevant information and determining that the unsafe condition described previously is likely to exist or develop on other helicopters of these same type designs.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2021–0074, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the FAA proposes to incorporate EASA AD 2021–0074 by reference in the FAA final rule. This proposed AD would, therefore, require compliance with EASA AD 2021–0074 in its entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this proposed AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0074 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0074. Service information required by EASA AD 2021–0074 for compliance will be available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1007 after the FAA final rule is published.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 140 helicopters of U.S. Registry. The FAA estimates the following costs to comply with this proposed AD.

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for correct installation and position marking.	0.50 work-hour × $85 per hour = $42.50	$0	$42.50	$5,950

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace collective bellcrank-K	8 work-hours × $85 per hour = $680	$4,018	$4,698
Rework collective bellcrank-K	2 work-hours × $85 per hour = $170	0	170

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus Helicopters Deutschland GmbH: Docket No. FAA–2021–1007; Project Identifier MCAI–2021–00324–R.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by January 10, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Deutschland GmbH Model MBB–BK 117 C–2 and MBB–BK 117 D–2 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 6230, Main Rotor Mast/Swashplate.

(e) Unsafe Condition

This AD was prompted a report that a collective bellcrank-K (affected part) was found incorrectly installed on a helicopter. Subsequent investigations found that the affected part was an in-service replacement, and that the position marking on that part was incorrect. The FAA is issuing this AD to incorrect installation of a collective bellcrank-K, which could lead to unwanted collective input, resulting in reduced control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0074, dated March 15, 2021 (EASA AD 2021–0074).

(h) Exceptions to EASA AD 2021–0074

(1) Where EASA AD 2021–0074 requires compliance in terms of flight hours, this AD requires using hours time-in-service.

(2) Where EASA AD 2021–0074 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where the service information referenced in EASA AD 2021–0074 specifies discarding a part, this AD requires removing that part from service.

(4) Where the service information referenced in EASA AD 2021–0074 specifies contacting Airbus Helicopters for instructions to rework a bellcrank-K, the rework must be accomplished using a method approved by the Manager, General Aviation & Rotorcraft Section, International Validation Branch, FAA; or EASA; or Airbus Helicopters' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(5) Where the service information referenced in EASA AD 2021–0074 specifies to ''forecast the compliance time of Part IV and schedule the accomplishment accordingly,'' for clarification, this AD requires doing the correction of the position marking of the bellcrank-K at the time specified in paragraph (3) of EASA AD 2021–0074.

(6) Where the service information referenced in EASA AD 2021–0074 specifies contacting Airbus Helicopters if there is mechanical damage or corrosion on the bushings of the bellcrank assembly, this AD does not require that action.

(7) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2021–0074.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2021–0074 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the International Validation Branch, send it to the attention of the person identified in paragraph (k)(2) of this AD.

Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(k) Related Information

(1) For EASA AD 2021–0074, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2021–1007.

(2) For more information about this AD, contact Hal Jensen, Aerospace Engineer, Operational Safety Branch, FAA, 950 L'Enfant Plaza SW, Washington, DC 20024; telephone (202) 267–9167; email *hal.jensen@faa.gov.*

Issued on November 12, 2021.

Lance T. Gant,

Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2021–25206 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0913; Airspace Docket No. 21–ASO–11]

RIN 2120–AA66

Proposed Amendment of Area Navigation (RNAV) Routes; Southeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to amend five high altitude area navigation (RNAV) routes (Q-routes), and establish a new Q- route in the southeastern United States in support of the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) Program. This proposal would improve the efficiency of the National Airspace System (NAS) by expanding the availability of RNAV routing and reducing the dependency on ground-based navigational systems.

DATES: Comments must be received on or before January 10, 2022.

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: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0913; Airspace Docket No. 21–ASO–11 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: 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 would expand the availability of RNAV routes in the NAS, increase airspace capacity, and reduce complexity in high air traffic volume areas.

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–2021–0913; Airspace Docket No. 21–ASO–11) 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.*

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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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points,

issued August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

This action proposes amendments to 14 CFR part 71 to amend five RNAV Q-routes, and establish one Q- route in the southeastern United States to support the VOR MON initiative and the strategic transition from ground navigational aids to a satellite-based Performance Based Network system throughout the NAS.

The proposed Q-route amendments are as follows:

Q–65: Q–65 currently extends between the MGNTY, FL, waypoint (WP) and the Rosewood, OH, (ROD) VOR and Tactical Air Navigational System (VORTAC). The FAA is proposing to remove the Rosewood VORTAC and replace it with the RINTE, OH, WP, which is located 50 feet east of the VORTAC. Additionally, the FAA is proposing to amend and shift the route slightly east from the ENEME, GA, WP, to the DAREE, GA, WP, by removing the JEFOI, GA, WP; the TRASY, GA, WP; and the CESKI, GA, WP while adding the KERLY, GA, WP. As proposed Q–65 would extend from the MGNTY, FL, WP to the RINTE, OH, WP.

Q–77: Q–77 currently extends between the OCTAL, FL, WP and the WIGVO, GA, WP. The FAA is proposing to extend the current route northerly from the WIGVO, GA, WP to the HRTWL, SC, WP. As proposed, Q–77 would extend from the OCTAL, FL, WP to the HRTWL, SC, WP.

Q–93: Q–93 currently extends between the MCLAW, FL, WP and the QUIWE, SC, WP. The FAA is proposing to extend the current route to the northwest from the QUIWE, SC, WP to the HEVAN, IN, WP by adding several WPs in between: JEPEX, SC, WP; BENBY, NC, WP; DOOGE, VA, WP; HAPKI, KY, WP; TONIO, KY, Fix; and OCASE, KY, WP. As proposed, Q–93 would extend between the MCLAW, FL, WP and the HEVAN, IN, WP.

Q–103: Q–103 currently extends between the CYNTA, GA, WP and the AIRRA, PA, WP. The FAA is proposing to remove the Pulaski, VA, (PSK) VORTAC and replace it with the DANCO, VA, WP, which is located 1.38 feet east of the PSK VORTAC. As proposed, Q–103 would extend between the CYNTA, GA, WP and the AIRRA, PA, WP.

Q–116: Q–116 currently extends between the Vulcan, AL, (VUZ) VORTAC, and the OCTAL, FL, WP. The FAA is proposing to remove the Vulcan, AL, (VUZ) VORTAC and replace it with the VLKNN, AL, WP, which is located 49 feet east of the VUZ VORTAC. The FAA is also proposing to extend the route northwest to the Springfield, MO, (SGF) VORTAC and adding the following points after the VLKNN, AL, WP: LOBBS, AL, Fix; GOOGY, AL, WP; MEMFS, TN, WP; LUKKY, AR, WP; and ZAVEL, AR, WP. As proposed, Q–116 would extend between the Springfield, MO, (SGF) VORTAC and the OCTAL, FL, WP.

The proposed new Q-route is as follows:

Q–139: Q–139 would provide area navigation from the MGMRY, AL, WP, to the RINTE, OH, WP, reducing the need for ground based navigational aids. The proposed route in between is as follows: MGRMY, AL, WP; VLKNN, AL, WP; SALMS, TN, Fix; HITMN, TN, WP; Louisville, KY, (IIU) VORTAC; GBEES, KY, WP; HICKI, IN, Fix; and CREEP, OH, Fix.

RNAV routes are published in paragraph 2006 of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * * * *

Q–65 MGNTY, FL to RINTE, OH [Amended]

MGNTY, FL	WP	(Lat. 28°01′32.99″ N, long. 082°53′19.71″ W)
DOFFY, FL	WP	(Lat. 29°15′22.73″ N, long. 082°31′38.10″ W)
FETAL, FL	WP	(Lat. 30°11′03.69″ N, long. 082°30′24.76″ W)
ENEME, GA	WP	(Lat. 30°42′12.09″ N, long. 082°26′09.31″ W)
KERLY, GA	WP	(Lat. 32°04′46.68″ N, long. 082°22′04.90″ W)
DAREE, GA	WP	(Lat. 34°37′35.72″ N, long. 083°51′35.03″ W)
LORNN, TN	WP	(Lat. 35°21′16.33″ N, long. 084°14′19.35″ W)
SOGEE, TN	WP	(Lat. 36°31′50.64″ N, long. 084°11′35.39″ W)

ENGRA, KY	WP	(Lat. 37°29′02.34″ N, long. 084°15′02.15″ W)
OCASE, KY	WP	(Lat. 38°23′59.05″ N, long. 084°11′05.32″ W)
RINTE, OH	WP	(Lat. 40°17′16.11″ N, long. 084°02′34.51″ W)

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Q–77 OCTAL, FL to HRTWL, SC [Amended]

OCTAL, FL	WP	(Lat. 26°09′01.92″ N, long. 080°12′11.60″ W)
MATLK, FL	WP	(Lat. 27°49′36.54″ N, long. 080°57′04.27″ W)
STYMY, FL	WP	(Lat. 28°02′12.25″ N, long. 081°09′05.47″ W)
WAKKO, FL	WP	(Lat. 28°20′31.57″ N, long. 081°18′32.14″ W)
MJAMS, FL	WP	(Lat. 28°55′37.59″ N, long. 081°36′33.30″ W)
ETORE, FL	WP	(Lat. 29°41′49.00″ N, long. 081°40′47.75″ W)
SHRKS, FL	WP	(Lat. 30°37′23.23″ N, long. 081°45′59.13″ W)
TEUFL, GA	WP	(Lat. 31°52′00.46″ N, long. 082°01′04.56″ W)
WIGVO, GA	WP	(Lat. 32°27′24.00″ N, long. 082°02′18.00″ W)
MELKR, SC	WP	(Lat. 33°37′09.61″ N, long. 082°06′46.45″ W)
HRTWL, SC	WP	(Lat. 34°15′05.33″ N, long. 082°09′15.55″ W)

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Q–93 MCLAW, FL to HEVAN, IN [Amended]

MCLAW, FL	WP	(Lat. 24°33′49.00″ N, long. 081°01′00.00″ W)
VAULT, FL	WP	(Lat. 24°45′54.75″ N, long. 081°00′33.72″ W)
LINEY, FL	WP	(Lat. 25°16′44.02″ N, long. 080°53′15.43″ W)
FOBIN, FL	WP	(Lat. 25°47′02.00″ N, long. 080°46′00.89″ W)
EBAYY, FL	WP	(Lat. 27°43′40.20″ N, long. 080°30′03.59″ W)
MALET, FL	Fix	(Lat. 28°41′29.90″ N, long. 080°52′04.30″ W)
DEBRL, FL	WP	(Lat. 29°17′48.73″ N, long. 081°08′02.88″ W)
KENLL, FL	WP	(Lat. 29°34′28.35″ N, long. 081°07′25.26″ W)
PRMUS, FL	WP	(Lat. 29°49′05.67″ N, long. 081°07′20.74″ W)
WOPNR, OA	WP	(Lat. 30°37′36.03″ N, long. 081°04′26.44″ W)
GIPPL, GA	WP	(Lat. 31°22′53.96″ N, long. 081°09′53.70″ W)
SUSYQ, GA	WP	(Lat. 31°40′54.28″ N, long. 081°12′07.99″ W)
ISUZO, GA	WP	(Lat. 31°57′47.85″ N, long. 081°14′14.79″ W)
GURGE, SC	WP	(Lat. 32°29′02.26″ N, long. 081°12′41.48″ W)
FISHO, SC	WP	(Lat. 33°16′46.25″ N, long. 081°24′43.52″ W)
QUIWE, SC	WP	(Lat. 33°57′05.56″ N, long. 081°30′07.93″ W)
JEPEX, SC	WP	(Lat. 34°58′29.40″ N, long. 081°44′15.11″ W)
BENBY, NC	WP	(Lat. 35°44′54.69″ N, long. 081°55′16.68″ W)
DOOGE, VA	WP	(Lat. 36°48′38.93″ N, long. 082°35′14.37″ W)
HAPKI, KY	WP	(Lat. 37°04′55.73″ N, long. 082°51′02.62″ W)
TONIO, KY	Fix	(Lat. 37°15′15.20″ N, long. 083°01′47.53″ W)
OCASE, KY	WP	(Lat. 38°23′59.05″ N, long. 084°11′05.32″ W)
HEVAN, IN	WP	(Lat. 39°21′08.86″ N, long. 085°07′46.70″ W)

* * * * * * *

Q–103 CYNTA, GA to AIRRA, PA [Amended]

CYNTA, GA	WP	(Lat. 30°36′27.06″ N, long. 082°05′35.45″ W)
PUPYY, GA	WP	(Lat. 31°24′35.58″ N, long. 081°49′06.19″ W)
RIELE, SC	WP	(Lat. 32°37′27.14″ N, long. 081°23′34.97″ W)
EMCET, SC	WP	(Lat. 34°09′41.99″ N, long. 080°50′12.51″ W)
SLOJO, SC	WP	(Lat. 34°38′46.31″ N, long. 080°39′25.63″ W)
DANCO, VA	WP	(Lat. 37°05′15.75″ N, long. 080°42′46.45″ W)
ASBUR, WV	Fix	(Lat. 37°49′24.41″ N, long. 080°27′51.44″ W)
OAKLE, WV	Fix	(Lat. 38°07′13.80″ N, long. 080°21′44.84″ W)
PERRI, WV	Fix	(Lat. 38°17′50.49″ N, long. 080°18′05.11″ W)
PERKS, WV	Fix	(Lat. 38°39′40.84″ N, long. 080°10′29.36″ W)
RICCS, WV	WP	(Lat. 38°55′14.65″ N, long. 080°05′01.68″ W)
EMNEM, WV	WP	(Lat. 39°31′27.12″ N, long. 080°04′28.21″ W)
AIRRA, PA	WP	(Lat. 41°06′16.48″ N, long. 080°03′48.73″ W)

* * * * * * *

Q–116 Springfield, MO (SGF) to OCTAL, FL [Amended]

Springfield, MO (SGF)	VORTAC	(Lat. 37°21′21.41″ N, long. 093°20′02.55″ W)
ZAVEL, AR	WP	(Lat. 36°15′28.92″ N, long. 091°43′13.51″ W)
LUKKY, AR	WP	(Lat. 36°07′51.19″ N, long. 091°32′20.04″ W)
MEMFS, TN	WP	(Lat. 35°00′54.62″ N, long. 089°58′58.87″ W)
GOOGY, AL	WP	(Lat. 34°01′38.41″ N, long. 087°41′31.45″ W)
LOBBS, AL	Fix	(Lat. 33°54′31.88″ N, long. 087°25′38.09″ W)
VLKNN, AL	WP	(Lat. 33°40′12.47″ N, long. 086°53′58.83″ W)
DEEDA, GA	WP	(Lat. 31°34′13.55″ N, long. 085°00′31.10″ W)
JAWJA, FL	WP	(Lat. 30°10′25.55″ N, long. 083°48′58.94″ W)
MICES, FL	WP	(Lat. 29°51′37.65″ N, long. 083°33′18.30″ W)
DEANR, FL	WP	(Lat. 29°15′30.40″ N, long. 083°03′30.24″ W)
PATOY, FL	WP	(Lat. 29°03′52.49″ N, long. 082°54′00.09″ W)
SMELZ, FL	WP	(Lat. 28°04′59.00″ N, long. 082°06′34.00″ W)
SHEEK, FL	WP	(Lat. 27°35′15.40″ N, long. 081°46′27.82″ W)
JAYMC, FL	WP	(Lat. 26°58′51.00″ N, long. 081°22′08.00″ W)
OCTAL, FL	WP	(Lat. 26°09′01.92″ N, long. 080°12′11.60″ W)

* * * * * * *

Q–139 MGMRY, AL to RINTE, OH [New]

MGMRY, AL	WP	(Lat. 32°13′20.78″ N, long. 086°19′11.24″ W)
VLKNN, AL	WP	(Lat. 33°40′12.47″ N, long. 086°53′58.83″ W)
SALMS, TN	Fix	(Lat. 35°00′03.25″ N, long. 086°47′07.79″ W)

HITMN, TN	WP	(Lat. 36°08′12.47″ N, long. 086°41′05.25″ W)
Louisville, KY (IIU)	VORTAC	(Lat. 38°06′12.47″ N, long. 085°34′38.77″ W)
GBEES, KY	Fix	(Lat. 38°41′54.72″ N, long. 085°10′13.03″ W)
HICKI, IN	Fix	(Lat. 39°01′06.95″ N, long. 084°56′52.83″ W)
CREEP, OH	Fix	(Lat. 39°55′15.28″ N, long. 084°18′31.41″ W)
RINTE, OH	WP	(Lat. 40°17′16.11″ N, long. 084°02′34.51″ W)

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Issued in Washington, DC, on November 17, 2021.

Michael R. Beckles,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–25550 Filed 11–24–21; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0912; Airspace Docket No. 21–ASO–6]

RIN 2120–AA66

Proposed Establishment and Amendment of Area Navigation (RNAV) Routes, Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to modify six existing high altitude area navigation (RNAV) routes (Q-routes), and establish one new Q-route, in support of the FAA's VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) Program. This proposal would improve the efficiency of the National Airspace System (NAS) by expanding the availability of RNAV routing and reducing the dependency on ground-based navigational systems.

DATES: Comments must be received on or before January 10, 2022.

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: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0912; Airspace Docket No. 21–ASO–6 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov*.

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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 would expand the availability of RNAV routes in the NAS, increase airspace capacity, and reduce complexity in high air traffic volume areas.

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–2021–0912; Airspace Docket No. 21–ASO–6) 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–2021–0912; Airspace Docket No. 21–ASO–6.'' 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's

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov*. Recently published rulemaking documents can also 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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend six existing Q-routes, and establish one new Q-route, in the eastern United States to support the VOR MON program.

The proposed Q-route amendments are as follows:

Q–19: Q–19 currently extends between the Nashville, TN, (BNA) VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) navigation aid (NAVAID), and the Aberdeen, SD, (ABR) VOR/Distance Measuring Equipment (DME) NAVAID. Because the Nashville VORTAC is planned for decommissioning, this proposal would remove the Nashville VORTAC from Q–19 and replace it with the HITMN, TN, waypoint (WP). The HITMN WP would be located about 60 feet southeast of the Nashville VORTAC location. Additionally, the FAA proposes to extend Q–19 from the HITMN WP southeastward to the BULZI, FL, WP, (located east to the Tallahassee International Airport (TLH), FL). As amended, Q–19 would extend between BULZI, FL, and Aberdeen, SD.

Q–30: Q–30 currently extends between the Sidon, MS, (SQS) VORTAC and the Vulcan, AL, (VUZ) VORTAC. New WPs would replace the Sidon and Vulcan VORTACs. The IZAAC, MS, WP would replace the Sidon VORTAC, and the VLKNN, AL, WP, would replace the Vulcan, AL, (VUZ) VORTAC. IZAAC would be located 60 feet east of the Sidon position, and VLKNN would be located 49 feet east of the Vulcan position. In addition, Q–30 would be slightly realigned to the south of its current track to extend from the IZAAC WP to a new SKNRR, MS, WP (which would replace the Bigbee, MS, (IGB) VORTAC), then proceed to the VLKNN, AL, WP. The realignment of Q–30 would overlay the segment of jet route J–52 between the Sidon and Vulcan VORTACs. As amended, Q–30 would extend from IZAAC, MS, to SKNRR, MS, to VLKNN, AL.

Q–79: Q–79 currently extends between the MCLAW, FL, WP and the Atlanta, GA, (ATL) VORTAC. This action would amend Q–79 by replacing the Atlanta VORTAC with the THRSR, GA, WP, which is located 60 feet north of the Atlanta VORTAC position. The YUESS, GA, WP would be removed from the route and replaced by the ZPLEN, GA, WP. Q–79 would also be extended north from the THRSR WP to the Louisville, KY, (IIU) VORTAC. As amended, Q–79 would extend between the MCLAW, FL, WP, and the Louisville, KY, VORTAC.

Q–81: Q–81 currently extends between the LTUNSL, FL, WP, and the HONID, GA, WP. The only proposed change to this route would be a small move of the IPOKE, FL, WP, south of its current position. IPOKE is used in transitioning aircraft between Jacksonville and Atlanta Air Route Traffic Control Centers (ARTCC). This move would assist with air traffic flow and avoid excessive coordination between ARTCCs. The coordinates of IPOKE would change from lat. 30°51′48.89″N, long. 084°11′52.43″W, to lat. 30°50′38.05″N, long. 084°11′34.84″W. Additionally, in the Q–81 route description, the location of the FIPES and BITNY WPs are listed as ''OG'' instead of a state abbreviation. ''OG'' means that the WPs are located offshore over the Gulf of Mexico.

Q–89: Q–89 currently extends between the MANLE, FL, WP, and the Atlanta, GA, (ATL) VORTAC. The FAA proposes to remove the segment between the YANTI, GA, WP, and the Atlanta VORTAC. Instead, the route would extend from YANTI to a new HESPI, GA, WP, (located 30 nautical miles (NM) southeast of the Atlanta VORTAC). From that point Q–89 would extend northward to a new CULTO, GA, WP, (approximately 20 NM northeast of the Atlanta VORTAC), and then northward to the SMTTH, TN, WP, (located west of the Volunteer, TN, VORTAC). As proposed, Q–89 would extend between the MANLE, FL, WP, and the SMTTH, TN, WP.

Q–118: Q–118 currently extends between the Marion, IN, (MZZ) VOR/DME and the PEAKY, FL, WP. This action would remove the Marion VOR/DME and the Atlanta VORTAC from the route description and replace them with WPs. The Marion VOR/DME would be replaced by the BONNT, IN, WP (located 121 feet north of the Marion VOR/DME). The Atlanta VORTAC would be replaced by the THRSR, GA, WP, (located 60 feet north of the Atlanta VORTAC). As amended, Q–118 would extend between the BONNT, IN, WP, and the PEAKY, FL, WP.

The proposed new Q-route is as follows:

Q–184: Q–184 would extend between the Ranger, TX, (FUZ) VORTAC, and the ARNNY, AL, WP (approximately 30 NM west of the Montgomery, AL, (MGM) VORTAC). Q–184 would be an overlay of those portions of jet route J–4 between the Ranger VORTAC and the Meridian, MS, (MEI), VORTAC, at which point Q–184 would proceed east to the ZRNNY, AL, WP. In support of efforts to reduce the dependency on ground-based navigation, new WPs would be used in the Q–184 route description as follows: The MERDN, MS, WP, would replace the Meridian, MS, (MEI) VORTAC; the DOBIS, LA, WP, would replace the Belcher, LA, (EIC) VORTAC; and the SARKK, MS, WP, would replace the Magnolia, MS, (MHZ) VORTAC.

The proposed new and amended routes in this notice would expand the availability of high altitude RNAV routing along the eastern seaboard of the U.S. The project is designed to increase airspace capacity and reduce complexity in high volume areas through the use of optimized routes through congested airspace.

RNAV routes are published in paragraph 2006 of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document would be subsequently published in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–19 BULZI, FL TO ABERDEEN, SD (ABR) [AMENDED]

BULZI, FL	WP	(Lat. 30°22′24.93″N, long. 084°04′34.47″W)
WYATT, GA	Fix	(Lat. 31°19′22.44″N, long. 084°37′30.40″W)
GOONS, GA	Fix	(Lat. 31°52′01.47″N, long. 084°48′21.14″W)
LAYIN, AL	WP	(Lat. 33°35′38.39″N, long. 085°32′50.84″W)
TOJXE, AL	WP	(Lat. 34°39′40.18″N, long. 086°01′49.42″W)
HITMN, TN	WP	(Lat. 36°08′12.47″N, long. 086°41′05.25″W)
PLESS, IL	Fix	(Lat. 37°48′34.48″N, long. 088°57′47.48″W)
St Louis, MO (STL)	VORTAC	(Lat. 38°51′38.48″N, long. 090°28′56.52″W)
Des Moines, IA (DSM)	VORTAC	(Lat. 41°26′15.45″N, long. 093°38′54.81″W)
Sioux Falls, SD (FSD)	VORTAC	(Lat. 43°38′58.14″N, long. 096°46′52.02″W)
Aberdeen, SD (ABR)	VOR/DME	(Lat. 45°25′02.48″N, long. 098°22′07.39″W)

* * * * * *

Q–30 IZAAC, MS TO VLKNN, AL [AMENDED]

IZAAC, MS	WP	(Lat. 33°27′49.87″N, long. 090°16′37.75″W)
SKNRR, MS	WP	(Lat. 33°29′07.75″N, long. 088°30′49.63″W)
VLKNN, AL	WP	(Lat. 33°40′12.47″N, long. 086°53′58.83″W)

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Q–79 MCLAW, FL TO LOUISVILLE, KY (IIU) [AMENDED]

MCLAW, FL	WP	(Lat. 24°33′49.00″N, long. 081°01′00.00″W)
VAULT, FL	WP	(Lat. 24°45′54.75″N, long. 081°00′33.72″W)
FEMID, FL	WP	(Lat. 26°06′29.59″N, long. 081°27′23.07″W)
WULFF, FL	WP	(Lat. 27°04′03.14″N, long. 081°58′44.99″W)
MOLIE, FL	WP	(Lat. 28°01′55.53″N, long. 082°18′25.55″W)
DOFFY, FL	WP	(Lat. 29°15′22.73″N, long. 082°31′38.10″W)
EVANZ, FL	WP	(Lat. 29°54′12.11″N, long. 082°52′03.81″W)
IISLY, GA	WP	(Lat. 30°42′37.70″N, long. 083°17′57.72″W)
ZPLEN, GA	WP	(Lat. 31°41′28.42″N, long. 083°40′21.06″W)
THRSR, GA	WP	(Lat. 33°37′45.26″N, long. 084°26′06.36″W)
KAILL, GA	WP	(Lat. 34°01′47.21″N, long. 084°31′24.18″W)
WUDEE, GA	Fix	(Lat. 34°34′43.52″N, long. 084°39′58.83″W)
RESPE, TN	Fix	(Lat. 35°35′30.56″N, long. 084°55′12.31″W)
SWAPP, TN	Fix	(Lat. 36°36′49.78″N, long. 085°10′56.04″W)
Louisville, KY (IIU)	VORTAC	(Lat. 38°06′12.47″N, long. 085°34′38.77″W)

* * * * * *

Q–81 TUNSL, FL TO HONID, GA [AMENDED]

TUNSL, FL	WP	(Lat. 24°54′02.43″N, long. 081°31′02.80″W)
KARTR, FL	Fix	(Lat. 25°29′45.76″N, long. 081°30′46.24″W)
FIPES, OG	WP	(Lat. 25°41′30.15″N, long. 081°37′13.79″W)
THMPR, FL	WP	(Lat. 26°46′00.21″N, long. 082°20′23.99″W)
LEEHI, FL	WP	(Lat. 27°07′21.91″N, long. 082°34′54.57″W)
FARLU, FL	WP	(Lat. 27°45′32.56″N, long. 082°50′43.77″W)
MGNTY, FL	WP	(Lat. 28°01′32.99″N, long. 082°53′19.71″W)
ENDEW, FL	WP	(Lat. 28°18′01.73″N, long. 082°55′56.70″W)
BITNY, OG	WP	(Lat. 28°46′11.98″N, long. 083°07′53.01″W)
NICKI, FL	WP	(Lat. 29°15′20.19″N, long. 083°20′31.80″W)
SNAPY, FL	WP	(Lat. 29°48′51.17″N, long. 083°42′23.61″W)
BULZI, FL	WP	(Lat. 30°22′24.93″N, long. 084°04′34.47″W)
IPOKE, GA	WP	(Lat. 30°50′38.05″N, long. 084°11′34.84″W)
HONID, GA	WP	(Lat. 31°38′50.31″N, long. 084°23′42.60″W)

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Q–89 MANLE, FL TO SMTTH, TN [AMENDED]

MANLE, FL	WP	(Lat. 28°42′26.16″N, long. 080°24′23.71″W)
WAKUP, FL	WP	(Lat. 28°51′47.62″N, long. 080°40′26.97″W)
PRMUS, FL	WP	(Lat. 29°49′05.67″N, long. 081°07′20.74″W)
OVENP, FL	WP	(Lat. 30°08′04.41″N, long. 081°22′26.25″W)
SHRKS, FL	WP	(Lat. 30°37′23.23″N, long. 081°45′59.13″W)
YANTI, GA	WP	(Lat. 31°47′22.38″N, long. 082°51′32.65″W)

HESPI, GA	WP	(Lat. 33°14′21.16″N, long. 084°05′38.77″W)
CULTO, GA	WP	(Lat. 33°59′10.52″N, long. 084°17′39.60″W)
SMTTH, TN	WP	(Lat. 35°54′41.57″N, long. 084°00′19.74″W)

* * * * * *

Q–118 BONNT, IN TO PEAKY, FL [AMENDED]

BONNT, IN	WP	(Lat. 40°29′37.14″N, long. 085°40′45.75″W)
HEVAN, IN	WP	(Lat. 39°21′08.86″N, long. 085°07′46.70″W)
ROYYZ, IN	WP	(Lat. 38°56′28.93″N, long. 084°56′10.19″W)
VOSTK, KY	WP	(Lat. 38°28′15.86″N, long. 084°43′03.58″W)
HELUB, KY	WP	(Lat. 37°42′54.84″N, long. 084°44′28.31″W)
JEDER, KY	WP	(Lat. 37°19′30.54″N, long. 084°45′14.17″W)
GLAZR, TN	WP	(Lat. 36°25′20.78″N, long. 084°46′49.29″W)
KAILL, GA	WP	(Lat. 34°01′47.21″N, long. 084°31′24.18″W)
THRSR, GA	WP	(Lat. 33°37′45.26″N, long. 084°26′06.36″W)
JOHNN, GA	WP	(Lat. 31°31′22.94″N, long. 083°57′26.55″W)
JAMIZ, FL	WP	(Lat. 30°13′46.91″N, long. 083°19′27.78″W)
BRUTS, FL	WP	(Lat. 29°30′58.00″N, long. 082°58′57.00″W)
JINOS, FL	WP	(Lat. 28°28′46.00″N, long. 082°08′52.00″W)
KPASA, FL	WP	(Lat. 28°10′34.00″N, long. 081°54′27.00″W)
SHEEK, FL	WP	(Lat. 27°35′15.40″N, long. 081°46′27.82″W)
CHRRI, FL	WP	(Lat. 27°03′00.70″N, long. 081°39′14.81″W)
FEMID, FL	WP	(Lat. 26°06′29.59″N, long. 081°27′23.07″W)
PEAKY, FL	WP	(Lat. 24°35′23.72″N, long. 081°08′53.91″W)

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Q–184 RANGER, TX (FUZ) TO ARNNY, AL [NEW]

Ranger, TX (FUZ)	VORTAC	(Lat. 32°53′22.02″N, long. 097°10′45.93″W)
DOBIS, TX	WP	(Lat. 32°46′16.86″N, long. 093°48′35.05″W)
BERKE, LA	Fix	(Lat. 32°45′18.20″N, long. 093°35′50.03″W)
MIXIE, LA	Fix	(Lat. 32°43′19.40″N, long. 093°10′51.57″W)
STAGE, LA	Fix	(Lat. 32°42′42.76″N, long. 093°03′21.82″W)
KAMEN, LA	Fix	(Lat. 32°40′10.15″N, long. 092°33′07.47″W)
SARKK, MS	WP	(Lat. 32°26′02.24″N, long. 090°05′58.67″W)
MERDN, MS	WP	(Lat. 32°22′42.36″N, long. 088°48′14.66″W)
KWANE, MS	WP	(Lat. 32°22′00.47″N, long. 088°27′29.43″W)
ARNNY, AL	WP	(Lat. 32°20′40.60″N, long. 086°59′28.57″W)

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Issued in Washington, DC, on November 17, 2021.

Michael R. Beckles,

Acting Manager, Rules and Regulations Group.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2021–0991; Airspace Docket No. 21–ASO–7]

Proposed Amendment and Establishment of Area Navigation (RNAV) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend three low altitude United States Area Navigation (RNAV) routes, designated T–224, T–258, T–323, and establish ten new low altitude RNAV routes, designated T–404, T–406, T–408, T–410, T–412, T–414, T–423, T–425, T–427, and T–429, in the eastern United States. The proposed routes would enhance the efficiency of the National Airspace System (NAS) by expanding the availability of RNAV routing and supporting the transition of the NAS from ground-based to satellite-based navigation, under the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) program.

DATES: Comments must be received on or before January 10, 2022.

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: 1 (800) 647–5527 or (202) 366–9826. You must identify FAA Docket No. FAA–2021–0991; Airspace Docket No. 21–ASO–7 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

FOR FURTHER INFORMATION CONTACT: 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 would expand the availability of RNAV in the eastern United States to improve the

efficiency of the NAS by lessening the dependency on ground-based navigation systems.

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–2021–0991; Airspace Docket No. 21–ASO–7 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–2021–0991; Airspace Docket No. 21–ASO–7.'' 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. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

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 Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this proposed rule. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend three low altitude RNAV routes, designated T–224, T–258, T–323, and establish ten new RNAV routes, designated T–404, T–406, T–408, T–410, T–412, T–414, T–423, T–425, T–427, and T–429, in the eastern United States. The purpose of the routes is to expand the availability of RNAV and improve the efficiency of the NAS by supporting the transition of the NAS from ground-based to satellite-based navigation, under the VOR MON program. The following is a general description of the proposed routes.

T–224: T–224 currently extends between the Palacios, TX, (PSX) VOR and Tactical Air Navigational System (VORTAC), and the Lake Charles, LA, (LCH) VORTAC. The proposed amendment would extend T–224 to the northeast to a new end point at the existing COLIN, VA, Fix. The amended route would generally overlie VOR Federal airway V–20 between the Lake Charles VORTAC and the COLIN, VA, Fix. The SHWNN, TX, waypoint (WP) would replace the Beaumont, TX (BPT) VOR/Distance Measuring Equipment (DME). The Lake Charles VORTAC would be replaced by the KNZLY, LA, WP. The DAFLY, LA, WP would replace the Lafayette, LA, (LFT) VORTAC. The KJAAY, LA, WP would replace the Reserve, LA, (RQR) VOR/DME. The WTERS, MS, WP would replace the Gulfport, MS, (GPT) VORTAC. The LYNRD, AL, WP would replace the SEMMES, AL, (SJI) VORTAC. The WIILL, AL, WP would replace the Monroeville, AL, (MCV) VORTAC. The MGMRY, AL, WP would replace the Montgomery, AL, (MGM) VORTAC. The RSVLT, GA, WP would replace the Columbus, GA, (CGS) VORTAC. The UGAAA, GA, WP would replace the Athens, GA, (AHN) VOR/DME. The ECITY, SC, WP would replace the Electric City, SC, (ELW) VORTAC. The STYLZ, NC, WP would replace the Sugarloaf Mountain, NC, (SUG) VORTAC. The BONZE, NC, WP would replace the Barretts Mountain, NC, (BZM) VOR/DME. The MCDON, VA, WP would replace the South Boston, VA, (SBV) VORTAC. As amended, T–224 would extend between the Palacios, TX, (PSX) VORTAC, and the COLIN, VA, Fix.

T–258: T–258 currently extends between the MINIM, AL, Fix, and the CANER, GA, Fix. The proposed amendment would extend T–258 easterly to the GMINI, NC, Fix. T–258 would overlie VOR Federal Airway V–66 between the CANER, GA, Fix, and the GMINI, NC, WP. In support of the transition from ground-based to satellite-based navigation, WPs would be used to replace VORTACs in the T–258 route description as follows. The DAYVS, AL, WP would replace the Brookwood, AL, (OKW) VORTAC. The BRAVS, GA, WP would replace the La Grange, GA, (LGC) VORTAC. The UGAAA, GA, WP would replace the Athens, GA, (AHN) VORTAC. The HRTWL, SC, WP would replace the Greenwood, SC, (GRD) VORTAC. The GMINI, NC, WP would replace the Sandhills, NC, (SDZ) VORTAC. As amended, T–258 would extend between the MINIM, AL, Fix, and the GMINI, NC, WP.

T–323: T–323 currently extends between the CROCS, GA, WP, and the Hazard, KY, (AZQ) DME. The proposed amendment would extend T–323 southward from the CROCS, GA, WP to the MARQO, FL, WP (located adjacent to the Taylor, FL, (TAY) VORTAC). The DACEL, KY, WP would replace the Hazard DME as the route end point. The following WPs and one Fix would be added to the route: HELNN, NC; OCOEE, NC; CRECY, TN; and the KNITS, TN, Fix. The ZPPLN, NC; HIGGI, NC; KIDBE, TN; ZADOT, TN; WELLA, KY; BOBBR, GA; and BIGNN, GA, WPs would be removed from the route. As amended, T–323 would extend between the MARQO, FL, WP, and the DACEL, KY, WP.

T–404: T–404 is a new route that would extend between the TYGRR, AL, WP, (60 feet northeast of the Eufaula, AL, (EUF) VORTAC), eastward to the CAYCE, SC, WP (60 feet west of the Columbia, SC, (CAE) VORTAC). T–404 would overlie VOR Federal airway V–323 between the Eufaula VORTAC, and the Macon, GA, (MCN) VORTAC and VOR Federal airway V–56 from the Macon, GA, (MCN) VORTAC to the Columbia, SC, (CAE) VORTAC. In T–404 description, the TYGRR WP would replace the Eufaula VORTAC. The NOKIE, GA, WP would replace the Macon VORTAC. The WANSA, SC, WP

would replace the Colliers, SC, (IRQ) VORTAC. The CAYCE, SC, WP would replace the Columbia, SC, (CAE) VORTAC. As proposed, T–404 would extend between the TYGRR, AL, WP, and the CAYCE, SC, WP.

T–406: T–406 is a new route that would extend between the KNZLY, LA, WP (replacing the Lake Charles, LA, (LCH) VORTAC), eastward to the DURBE, SC, WP (replacing the Allendale, SC, (ALD) VOR). The route would essentially overlie VOR Federal airway V–70.

T–408: T–408 is a new route that would extend between the NOKIE, GA, WP (replacing the Macon, GA, (MCN) VORTAC), eastward to the TBERT, GA, WP (replacing the Savannah, GA, (SAV) VORTAC). T–408 would overlie VOR Federal airway V–154 between the Macon VORTAC, and the Savannah VORTAC.

T–410: T–410 is a new route that would extend from the existing SINCA, GA, Fix (located 23 nautical miles (NM) north of the Macon, GA, (MCN) VORTAC), eastward to the WANSA, SC, WP (replacing the Colliers, SC, (IRQ) VORTAC), then continuing to the existing WIDER, SC, Fix (located 21 NM northwest of the Columbia, SC, (CAE) VORTAC. T–410 would overlie those segments of VOR Federal airway V–155 between the SINCA Fix and the WIDER Fix.

T–412: T–412 is a new route that would extend between the KNZLY, LA, WP, (replacing the Lake Charles, LA, (LCH) VORTAC), eastward to the TIROE, GA, Fix (60 feet southwest of the Colliers, SC, (IRQ) VORTAC). The route would overlie those segments of VOR Federal airway V–222 that extend between the Lake Charles VORTAC and the TIROE Fix.

T–414: T–414 is a new route that would extend between the existing LOGEN, GA, Fix (located 29 NM northeast of the Atlanta, GA, (ATL) VORTAC), and the BOJAR, VA, Fix (.55 NM northwest of the Lynchburg, VA, (LYH) VORTAC). The route would overlie those segments of VOR Federal airway V–222 that extend between the LOGEN Fix and the BOJAR Fix.

T–423: T–423 is a new route that would extend between the STYLZ, NC, WP, (replacing the Sugarloaf Mountain, NC, (SUG) VORTAC), and the Charleston, WV, (HVQ) VOR/DME. The route would overlie those segments of VOR Federal airway V–35 that extend between the Sugarloaf Mountain VORTAC, and the Charleston VORTAC.

T–425: T–425 is a new route that would extend between the SIROC, GA, WP, (replacing the Brunswick, GA, (SSI) VORTAC), and the HUSKY, GA, Fix. The route would overlie VOR Federal airway V–362 between the Brunswick VORTAC and the HABLE, GA, Fix. It would overlie airway V–179 between the RIPPI, GA, Fix and the HUSKY, GA, Fix. T–425 would also parallel V–179 between the CROCS, GA, WP and the RIPPI Fix. Additionally, it would parallel VOR Federal airway V–267 between the HABLE, GA, Fix and the CROCS, GA, WP.

T–427: T–427 is a new route that would extend from the CAYCE, SC, WP (replaces the Columbia, SC, (CAE) VORTAC), westward to the UGAAA, GA, WP (replaces the Athens, GA, (AHN) VORTAC), to the WOMAC, GA, Fix, and terminating at LOGEN, GA, Fix. The route would overlie VOR Federal airway V–325.

T–429: T–429 is a new route that would extend from the HOKES, AL, Fix (5 NM southeast of the Gadsden, AL, (GAD) VOR/DME) westward to the HAGIE, AL, WP (replaces the Muscle Shoals, AL, (MSL) VORTAC). T–429 would overlie those segments of VOR Federal airway V–325 that extend between the Gadsden VOR/DME and the Muscle Shoals VORTAC.

The full route descriptions are listed in ''The Proposed Amendment'' section, below.

United States Area Navigation routes are published in paragraph 6011 of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in the document would be subsequently published in FAA Order JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6011 United States Area Navigation Routes.

* * * * *

T–224 Palacios, TX to COLIN, VA [Amended]

Palacios, TX (PSX)	VORTAC	(Lat. 28°45′51.93″ N, long. 096°18′22.25″ W)
MOLLR, TX	WP	(Lat. 29°39′20.23″ N, long. 095°16′35.83″ W)
SHWNN, TX	WP	(Lat. 29°56′45.94″ N, long. 094°00′57.73″ W)
WASPY, LA	Fix	(Lat. 30°01′33.88″ N, long. 093°38′50.45″ W)
KNZLY, LA	WP	(Lat. 30°08′29.48″ N, long. 093°06′19.37″ W)
DAFLY, LA	WP	(Lat. 30°11′37.70″ N, long. 091°59′33.94″ W)
KJAAY, LA	WP	(Lat. 30°05′15.06″ N, long. 090°35′19.73″ W)
SLIDD, LA	Fix	(Lat. 30°09′46.08″ N, long. 089°44′02.18″ W)

WTERS, MS	WP	(Lat. 30°24′24.36″ N, long. 089°04′37.04″ W)
LYNRD, AL	WP	(Lat. 30°43′33.26″ N, long. 088°21′34.07″ W)
AXEJA, AL	Fix	(Lat. 31°02′32.36″ N, long. 087°57′01.58″ W)
WIILL, AL	WP	(Lat. 31°27′33.96″ N, long. 087°21′08.62″ W)
MGMRY, AL	WP	(Lat. 32°13′20.78″ N, long. 086°19′11.24″ W)
GONDR, AL	WP	(Lat. 32°22′01.98″ N, long. 085°45′57.08″ W)
RSVLT, GA	WP	(Lat. 32°36′55.43″ N, long. 085°01′03.81″ W)
SINCA, GA	Fix	(Lat. 33°04′52.28″ N, long. 083°36′17.52″ W)
UGAAA, GA	WP	(Lat. 33°56′51.32″ N, long. 083°19′28.42″ W)
ECITY, SC	WP	(Lat. 34°25′09.62″ N, long. 082°47′04.58″ W)
STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)
BONZE, NC	WP	(Lat. 35°52′09.16″ N, long. 081°14′24.10″ W)
MCDON, VA	WP	(Lat. 36°40′29.56″ N, long. 079°00′52.03″ W)
NUTTS, VA	Fix	(Lat. 37°04′34.16″ N, long. 078°12′13.69″ W)
WAVES, VA	WP	(Lat. 37°35′13.54″ N, long. 077°26′52.03″ W)
TAPPA, VA	Fix	(Lat. 37°58′12.66″ N, long. 076°50′40.62″ W)
COLIN, VA	Fix	(Lat. 38°05′59.23″ N, long. 076°39′50.85″ W)

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T–258 MINIM, AL to GMINI, NC [Amended]

MINIM, AL	Fix	(Lat. 33°32′31.14″ N, long. 088°02′23.62″ W)
CAYAP, AL	Fix	(Lat. 33°19′27.01″ N, long. 087°39′08.35″ W)
CRMSN, AL	WP	(Lat. 33°15′31.80″ N, long. 087°32′12.70″ W)
ZIVMU, AL	Fix	(Lat. 33°14′58.61″ N, long. 087°23′53.53″ W)
DAYVS, AL	WP	(Lat. 33°14′03.93″ N, long. 087°12′07.88″ W)
HEENA, AL	Fix	(Lat. 33°12′24.62″ N, long. 086°52′15.28″ W)
KYLEE, AL	Fix	(Lat. 33°09′41.04″ N, long. 086°21′57.72″ W)
CAMPP, AL	Fix	(Lat. 33°06′10.39″ N, long. 085°44′51.08″ W)
BRAVS, GA	WP	(Lat. 33°02′56.44″ N, long. 085°12′22.93″ W)
LANGA, GA	Fix	(Lat. 32°55′34.17″ N, long. 084°56′59.00″ W)
CANER, GA	Fix	(Lat. 32°45′21.48″ N, long. 084°35′51.42″ W)
SINCA, GA	Fix	(Lat. 33°04′52.28″ N, long. 083°36′17.52″ W)
UGAAA, GA	WP	(Lat. 33°56′51.32″ N, long. 083°19′28.42″ W)
HRTWL, SC	WP	(Lat. 34°15′05.33″ N, long. 082°09′15.55″ W)
NATCH, NC	Fix	(Lat. 35°01′34.52″ N, long. 080°06′29.28″ W)
GMINI, NC	WP	(Lat. 35°12′23.01″ N, long. 079°34′01.98″ W)

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T–323 MARQO, FL to DACEL, KY [Amended]

MARQO, FL	WP	(Lat. 30°30′53.57″ N, long. 082°32′45.62″ W)
LRSEY, GA	WP	(Lat. 31°16′09.34″ N, long. 082°33′23.20″ W)
CROCS, GA	WP	(Lat. 32°27′17.69″ N, long. 082°46′29.06″ W)
HELNN, NC	WP	(Lat. 35°00′55.11″ N, long. 083°52′09.85″ W)
OCOEE, NC	WP	(Lat. 35°07′49.74″ N, long. 083°53′45.10″ W)
KNITS, TN	Fix	(Lat. 35°41′01.18″ N, long. 083°53′58.56″ W)
CRECY, TN	WP	(Lat. 35°58′52.61″ N, long. 083°38′24.36″ W)
DACEL, KY	WP	(Lat. 37°23′10.68″ N, long. 083°14′52.13″ W)

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T–404 TYGRR, AL to CAYCE, SC [New]

TYGRR, AL	WP	(Lat. 31°57′01.21″ N, long. 085°07′49.13″ W)
NOKIE, GA	WP	(Lat. 32°41′28.86″ N, long. 083°38′49.88″ W)
WANSA, SC	WP	(Lat. 33°42′26.10″ N, long. 082°09′43.99″ W)
CAYCE, SC	WP	(Lat. 33°51′26.13″ N, long. 081°03′14.76″ W)

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T–406 KNZLY, LA to DURBE, SC [New]

KNZLY, LA	WP	(Lat. 30°08′29.48″ N, long. 093°06′19.37″ W)
DAFLY, LA	WP	(Lat. 30°11′37.70″ N, long. 091°59′33.94″ W)
RCOLA, LA	WP	(Lat. 30°29′06.52″ N, long. 091°17′37.96″ W)
PELLO, MS	WP	(Lat. 30°33′40.17″ N, long. 089°43′50.44″ W)
GARTS, MS	WP	(Lat. 31°05′52.39″ N, long. 088°29′10.68″ W)
WIILL, AL	WP	(Lat. 31°27′33.96″ N, long. 087°21′08.62″ W)
RUTEL, AL	Fix	(Lat. 31°42′57.69″ N, long. 086°21′36.33″ W)
TYGRR, AL	WP	(Lat. 31°57′01.21″ N, long. 085°07′49.13″ W)
DOOLY, GA	WP	(Lat. 32°12′48.02″ N, long. 083°29′50.66″ W)
DURBE, SC	WP	(Lat. 33°00′44.75″ N, long. 081°17′32.69″ W)

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T–408 NOKIE, GA to TBERT, GA [New]

NOKIE, GA	WP	(Lat. 32°41′28.86″ N, long. 083°38′49.88″ W)
GUMPY, GA	WP	(Lat. 32°33′48.15″ N, long. 082°49′48.76″ W)
LOTTS, GA	Fix	(Lat. 32°20′11.64″ N, long. 081°51′18.42″ W)
TBERT, GA	WP	(Lat. 32°08′46.76″ N, long. 081°11′57.44″ W)

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T–410 SINCA, GA to WIDER, SC [New]

SINCA, GA	Fix	(Lat. 33°04′52.28″ N, long. 083°36′17.52″ W)
WANSA, SC	WP	(Lat. 33°42′26.10″ N, long. 082°09′43.99″ W)
WIDER, SC	Fix	(Lat. 34°09′27.05″ N, long. 081°16′26.39″ W)

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T–412 KNZLY, LA to TIROE, GA [New]

KNZLY, LA	WP	(Lat. 30°08′29.48″ N, long. 093°06′19.37″ W)

ICEKI, MS	WP	(Lat. 31°18′16.12″ N, long. 090°15′28.85″ W)
SSLAW, MS	WP	(Lat. 31°25′07.18″ N, long. 089°20′16.05″ W)
WIILL, AL	WP	(Lat. 31°27′33.96″ N, long. 087°21′08.62″ W)
MGMRY, AL	WP	(Lat. 32°13′20.78″ N, long. 086°19′11.24″ W)
HHRVY, AL	WP	(Lat. 32°57′47.52″ N, long. 085°19′35.23″ W)
BRAVS, GA	WP	(Lat. 33°02′56.44″ N, long. 085°12′22.93″ W)
TIROE, GA	Fix	(Lat. 33°18′23.23″ N, long. 084°51′57.71″ W)

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T–414 LOGEN, GA to BOJAR, VA [New]

LOGEN, GA	Fix	(Lat. 33°59′16.98″ N, long. 084°03′24.43″ W)
MILBY, SC	WP	(Lat. 34°41′02.23″ N, long. 083°18′42.53″ W)
STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)
BONZE, NC	WP	(Lat. 35°52′09.16″ N, long. 081°14′24.10″ W)
AYARA, VA	Fix	(Lat. 37°03′40.36″ N, long. 079°31′24.92″ W)
BOJAR, VA	Fix	(Lat. 37°15′43.97″ N, long. 079°14′33.36″ W)

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T–423 STYLZ, NC to CHARLESTON, WV (HVQ) [New]

STYLZ, NC	WP	(Lat. 35°24′22.83″ N, long. 082°16′07.01″ W)
HORAL, TN	WP	(Lat. 36°26′13.99″ N, long. 082°07′46.48″ W)
GAUZY, VA	WP	(Lat. 36°49′29.79″ N, long. 082°04′44.40″ W)
Charleston, WV (HVQ)	VOR/DME	(Lat. 38°20′58.83″ N, long. 081°46′11.69″ W)

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T–425 SIROC, GA to HUSKY, GA [New]

SIROC, GA	WP	(Lat. 31°03′02.32″ N, long. 081°26′45.89″ W)
HABLE, GA	Fix	(Lat. 31°21′09.68″ N, long. 082°06′09.96″ W)
CROCS, GA	WP	(Lat. 32°27′17.69″ N, long. 082°46′29.06″ W)
RIPPI, GA	Fix	(Lat. 32°54′20.25″ N, long. 083°20′19.52″ W)
WEMOB, GA	Fix	(Lat. 33°16′06.20″ N, long. 083°53′01.92″ W)
HUSKY, GA	Fix	(Lat. 33°19′49.65″ N, long. 083°58′48.75″ W)

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T–427 CAYCE, SC to LOGEN, GA [New]

CAYCE, SC	WP	(Lat. 33°51′26.13″ N, long. 081°03′14.76″ W)
UGAAA, GA	WP	(Lat. 33°56′51.32″ N, long. 083°19′28.42″ W)
WOMAC, GA	Fix	(Lat. 34°07′48.86″ N, long. 083°54′20.77″ W)
LOGEN, GA	Fix	(Lat. 33°59′16.98″ N, long. 084°03′24.43″ W)

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T–429 HOKES, SC to HAGIE, AL [New]

HOKES, AL	Fix	(Lat. 33°55′30.08″ N, long. 085°59′33.20″ W)
HAGIE, AL	WP	(Lat. 34°42′25.87″ N, long. 087°29′29.76″ W)

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Issued in Washington, DC, on November 17, 2021.

Michael R. Beckles,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–25497 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR 71

[Docket No. FAA–2021–0994; Airspace Docket No. 21–AGL–14]

RIN 2120–AA66

Proposed Amendment of VOR Federal Airways V–7, V–341, and V–493; in the vicinity of Menominee, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to amend VHF Omnidirectional Range (VOR) Federal airways V–7, V–341, and V–493, in the vicinity of Menominee, MI. The airway amendments are necessary due to the planned decommissioning of the VOR portion of the Menominee, MI, VOR/Distance Measuring Equipment (DME) which these airways utilize for navigation guidance. The Menominee VOR is being decommissioned as part of the FAA's VOR Minimum Operational Network (VOR MON) program.

DATES: Comments must be received on or before January 10, 2022.

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–2021–0994; Airspace Docket No. 21–AGL–14 at the beginning of your comments. You may also submit comments through the internet at *https://www.regulations.gov.*

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *https://www.faa.gov/air_traffic/publications/.* For further information, you can contact the Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. FAA Order JO 7400.11F is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11F at NARA, email: *fr.inspection@nara.gov* or go to *https://www.archives.gov/federal-register/cfr/ibr-locations.html.*

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

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the

authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the airway structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

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–2021–0994; Airspace Docket No. 21–AGL–14) 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–2021–0994; Airspace Docket No. 21–AGL–14.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified comment closing date will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the comment closing date. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

An electronic copy of this document may be downloaded through the internet at *https://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *https://www.faa.gov/air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received and any final disposition in person in the Dockets Office (see **ADDRESSES** section for address and phone number) between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the office of the Operations Support Group, Central Service Center, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177.

Availability and Summary of Documents for Incorporation by Reference

This document proposes to amend FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021 and effective September 15, 2021. FAA Order JO 7400.11F is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11F lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

Background

The FAA is planning decommissioning activities for the VOR portion of the Menominee VOR/DME with a proposed effected date of September 8, 2022. The Menominee VOR was one of the candidate VORs identified for discontinuance by the FAA's VOR MON program and listed in the Final policy statement notice, ''Provision of Navigation Services for the NextGen Transition to Performance-Based Navigation (PBN) (Plan for Establishing a VOR MON),'' published in the **Federal Register** of July 26, 2016 (81 FR 48694), Docket No. FAA–2011–1082. Although the VOR portion of the Menominee VOR/DME is planned for decommissioning, the co-located Distance Measuring Equipment (DME) of the navigational aid is being retained.

The airways affected by the Menominee VOR are V–7, V–341, and V–493. With the planned decommissioning of the Menominee VOR, the remaining ground-based navigational aid coverage in the area is insufficient to enable the continuity of these affected airways. As such, the proposal would result in airway segments being removed for V–7 and V–493, and the creation of an airway gap in V–341. To overcome the removed airway segments and the gap in the airway, instrument flight rules (IFR) traffic may use adjacent VOR Federal airways V–78, V–133, V–217, and V–271, or receive air traffic control radar vectors to navigate through or around the affected area. Additionally, IFR pilots equipped with Area Navigation capabilities may also file point to point through the affected area using fixes that will remain in place. Visual flight rules pilots, who elect to navigate through the affected area, may utilize the ATC services listed previously.

The Proposal

The FAA is proposing an amendment to 14 CFR part 71 to amend three VOR Federal airways. The proposed airway amendments are described below.

V–7: V–7 extends between the Dolphin, FL, VOR/Tactical Air Navigation (VORTAC) and the Muscle Shoals, AL, VORTAC; between the Pocket City, IN, VORTAC and the intersection of the Chicago Heights, IL, VORTAC 358° radial and the Badger, WI, VOR/DME 117° radial; and between the Green Bay, WI, VORTAC and the Sawyer, MI, VOR/DME. The airspace below 2,000 feet MSL outside the United States is excluded and the portion outside the United States has no upper limit. The FAA proposes to remove the segment of the airway that extends between the Green Bay, WI, VORTAC and Sawyer, MI, VOR/DME. Additionally, upon review of the V–7 airway, the FAA has determined that the airway lies wholly within the United States; therefore, the FAA also proposes to remove the below 2,000 MSL exclusionary language and no upper limit language for the portion outside the United States. The unaffected portions of the existing airway would remain as charted.

V–341: V–341 extends between the Cedar Rapids, IA, VOR/DME and the Houghton, MI, VOR/DME. The FAA proposes to remove the segment of the airway between the Green Bay, WI, VORTAC and the Iron Mountain, MI, VOR/DME. The resulting airway would extend between the Cedar Rapids, IA, VOR/DME and the Green Bay, WI, VORTAC; and between the Iron Mountain, MI, VOR/DME and the Houghton, MI, VOR/DME.

V–493: V–493 extends between the Livingston, TN, VOR/DME and the Appleton, OH, VORTAC; and between the Menominee, MI, VOR/DME and the Rhinelander, WI, VOR/DME. The FAA proposes to remove the segment of the airway from the Menominee, MI, VOR/DME and the Rhinelander, WI, VOR/DME. The resulting airway would extend between the Livingston, TN,

VOR/DME and the Appleton, OH, VORTAC.

All of the navigational aid radials in the airway descriptions below are stated in True degrees.

Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order JO 7400.11F, dated August 10, 2021, and effective September 15, 2021, which are incorporated by reference in 14 CFR 71.1. The VOR Federal airways listed in this document would be published subsequently in FAA JO 7400.11.

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

Regulatory Notices and Analyses

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

Environmental Review

This proposal will be subject to an environmental analysis in accordance with FAA Order 1050.1F, ''Environmental Impacts: Policies and Procedures'' prior to any FAA final regulatory action.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

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

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order JO 7400.11F, Airspace Designations and Reporting Points, dated August 10, 2021, and effective September 15, 2021, is amended as follows:

Paragraph 6010(a), Domestic VOR Federal airways.

* * * * *

V–7 [Amended]

From Dolphin, FL; INT Dolphin 299° and Lee County, FL, 120° radials; Lee County; Lakeland, FL; Cross City, FL; Seminole, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; Vulcan, AL; to Muscle Shoals, AL. From Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; to INT Chicago Heights 358° and Badger, WI, 117° radials.

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V–341 [Amended]

From Cedar Rapids, IA; Dubuque, IA; Madison, WI; Oshkosh, WI; to Green Bay, WI. From Iron Mountain, MI; Sawyer, MI; to Houghton, MI.

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V–493 [Amended]

From Livingston, TN; Lexington, KY; York, KY; INT York 030° and Appleton, OH, 183° radials; to Appleton.

* * * * *

Issued in Washington, DC.

Michael R. Beckles,

Acting Manager, Rules and Regulations Group.

[FR Doc. 2021–25608 Filed 11–24–21; 8:45 am]

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DEPARTMENT OF COMMERCE

15 CFR Part 7

[Docket No. 211115–0230]

RIN 0605–AA62

Securing the Information and Communications Technology and Services Supply Chain; Connected Software Applications

AGENCY: U.S. Department of Commerce.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: To implement provisions of Executive Order 14034, ''Protecting Americans' Sensitive Data from Foreign Adversaries'' (E.O. 14034), the Department of Commerce is proposing to amend its Interim Final Rule on Securing the Information and Communications Technology and Services Supply Chain (Supply Chain Rule), which was published on January 19, 2021, 86 FR 4909. Specifically, this proposed rule would amend the Supply Chain Rule to provide for additional criteria that the Secretary of Commerce (the Secretary) may consider specifically when determining whether ICTS Transactions (as defined in the Supply Chain Rule) that involve connected software applications present an undue or unacceptable risk. The rule also makes conforming changes by revising the definition of ICTS to expressly include ''connected software applications'' and adding a definition of ''connected software application'' that is consistent with that used in E.O. 14034. The Department is interested in the public's views on the additional criteria for connected software applications, including whether they should be applied to all ICTS Transaction reviews, whether there are other criteria that should be applied, and how the Secretary should apply the criteria to ICTS Transactions involving connected software applications.

DATES: Comments to this proposed rule must be received on or before December 27, 2021.

ADDRESSES: All comments must be submitted by one of the following methods:

- *By the Federal eRulemaking Portal: http://www.regulations.gov* at docket number DOC–2021–0005.
- *By email directly to: ICTsupplychain@doc.gov.* Include ''RIN 0605–AA62'' in the subject line.
- *Instructions:* 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. For those seeking to submit confidential business information (CBI), please clearly mark such submissions as CBI and submit by email, as instructed above. Each CBI submission must also contain a summary of the CBI, clearly marked as public, in sufficient detail to permit a reasonable understanding of the substance of the information for public consumption. Such summary information will be posted on *regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Joseph Bartels, U.S. Department of Commerce, telephone: (202) 482–0224. For media inquiries: Brittany Caplin, Deputy Director of Public Affairs and Press Secretary, U.S. Department of Commerce, telephone: (202) 482–4883, email: *PublicAffairs@doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2021, the Department published an interim final rule in the **Federal Register** on ''Securing the Information and Communications Technology and Services Supply Chain.'' 86 FR 4909. The Supply Chain Rule implemented Executive Order 13873, ''Securing the Information and Communications Technology and Services Supply Chain'' (84 FR 22689), including by setting out procedures by which the Secretary of Commerce, in consultation with the appropriate heads of other administrative agencies, would review ICTS Transactions for whether they present an undue or unacceptable risk due to a foreign adversary's involvement. The Supply Chain Rule defines ''ICTS'' as ''any hardware, software, or other product or service, including cloud-computing services, primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means (including electromagnetic, magnetic, and photonic), including through transmission, storage, or display.'' The Supply Chain Rule further provides that an ''ICTS Transaction'' is, ''any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service, including ongoing activities, such as managed services, data transmission, software updates, repairs, or the platforming or data hosting of applications for consumer download. An ICTS Transaction includes any other transaction, the structure of which is designed or intended to evade or circumvent the application of E.O. 13873. The term ICTS Transaction includes a class of ICTS Transactions.''

On June 9, 2021, the President issued E.O. 14034 to ''elaborate upon measures to address the national emergency with respect to the information and communications technology and services supply chain that was declared in Executive Order 13873 of May 15, 2019, 'Securing the Information and Communications Technology and Services Supply Chain.' '' E.O. 14034 sets out the finding ''that the increased use in the United States of certain connected software applications designed, developed, manufactured, or supplied by persons owned or controlled by, or subject to the jurisdiction or direction of, a foreign adversary, which the Secretary of Commerce acting pursuant to E.O. 13873 has defined to include the People's Republic of China, among others, continues to threaten the national security, foreign policy, and economy of the United States.'' This rule would implement E.O. 14034 by specifically adding the term ''connected software applications'' and the accompanying criteria, which do not appear in E.O. 13873, to the Supply Chain Rule to ensure the rule clearly and consistently identifies the ICTS that is threatened.

E.O. 14034 orders the Secretary to ''evaluate on a continuing basis transactions involving connected software applications that may pose an undue risk of sabotage or subversion of the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of information and communications technology or services in the United States; pose an undue risk of catastrophic effects on the security or resiliency of the critical infrastructure or digital economy of the United States; or otherwise pose an unacceptable risk to the national security of the United States or the security and safety of United States persons.''

E.O. 14034 further sets out certain factors, consistent with the criteria established in E.O. 13873 and in addition to those set forth in the Supply Chain Rule, that should be considered in evaluating the risks of a transaction involving connected software applications. Specifically, E.O. 14034 lists the following as potential indicators of risk related to connected software applications: ''ownership, control, or management by persons that support a foreign adversary's military, intelligence, or proliferation activities; use of the connected software application to conduct surveillance that enables espionage, including through a foreign adversary's access to sensitive or confidential government or business information, or sensitive personal data; ownership, control, or management of connected software applications by persons subject to coercion or cooption by a foreign adversary; ownership, control, or management of connected software applications by persons involved in malicious cyber activities; a lack of thorough and reliable third-party auditing of connected software applications; the scope and sensitivity of the data collected; the number and sensitivity of the users of the connected software application; and the extent to which identified risks have been or can be addressed by independently verifiable measures.''

This proposed rule incorporates these potential indicators of risk as criteria to be considered by the Secretary when assessing whether an ICTS Transaction involving connected software applications poses an undue or unacceptable risk. The Department seeks public comments on these criteria, including how the Secretary should apply these to ICTS Transactions involving connected software applications, and whether there are additional criteria that should be considered by the Secretary with respect to connected software applications. The Department is also interested in the public's views as to whether these criteria should be applied to all ICTS Transaction reviews or just those that involve connected software applications. In addition, the Department seeks comment on any other considerations the Secretary should take into account when determining whether an ICTS Transaction involving connected software applications should, consistent with the authority and procedures of E.O. 13873 and the Supply Chain Rule, be allowed, mitigated, or prohibited.

Additionally, consistent with E.O. 14034's recognition of the ongoing threat, identified in E.O. 13873, by foreign adversaries to steal or otherwise obtain data through connected software applications, the Department notes that the term ''information and communications technology and services'' encompasses ''connected software applications'' and is proposing to revise the definition of ICTS accordingly to expressly so specify. This rule would also make a conforming revision to the term ''ICTS Transaction,'' and would define ''connected software applications'' as ''software, a software program, or a group of software programs, that is designed to be used on an end-point computing device and includes as an integral functionality, the ability to collect, process, or transmit data via the internet.''

Section 7.1 Scope

The Department proposes to add the phrase ''connected software applications'' to section 7.1 of Title 15 of the Code of Federal Regulations (CFR).

Section 7.2 Definitions

As noted above, consistent with E.O. 14034's recognition of the ongoing threat by foreign adversaries to steal, otherwise obtain, or disrupt data through connected software applications, this rule would expressly specify that the term ''information and communications technology and services or ICTS'' encompasses ''connected software applications.'' The proposed definition of ''connected software applications'' is taken from E.O. 14034: ''software, a software

program, or a group of software programs, that is designed to be used on an end-point computing device and includes as an integral functionality, the ability to collect, process, or transmit data via the internet.''

The Department welcomes comment on whether this definition is sufficient to identify fully this category of ICTS, or whether further clarification or elaboration is needed. For instance, are there technical aspects to the definition that are used in industry or engineering that should be incorporated into the definition? Should the Department include other devices, such as those that communicate through short message service (SMS) messages, or low-power radio protocols? Should the definition be extended from ''end-point'' devices to ''end-to-end'' technology, and is ''end-to-end'' a term of art that we should employ? Are there other means of communication or transmission that are not encompassed by this definition but should be included?

Section 7.3 Scope of Covered Transactions

Further, the Department proposes to add new § 7.3(a)(4)(v)(E) regarding the types of software ''designed primarily for connecting with and communicating via the internet that is used by greater than one million U.S. persons'' involved in ICTS Transactions that are subject to the Secretary's review.

Section 7.103 Initial Review of ICTS Transactions

To incorporate the new criteria for determining whether a transaction involving connected software applications poses an undue or unacceptable risk, as defined in the Supply Chain Rule, this rule would amend § 7.103 to add the criteria from E.O. 14034 in a new paragraph. Notably, these criteria complement, and are in addition to, the criteria already in 7.103(c) for determining whether an ICTS Transaction poses an undue or unacceptable risk. In making this determination for connected software applications, the Secretary would evaluate both the criteria in 7.103(c) and in the new paragraph. Specifically, the Department would redesignate current paragraph 7.103(d) as 7.103(e) and add new paragraph 7.103(d) to include the following criteria:

- Ownership, control, or management by persons that support a foreign adversary's military, intelligence, or proliferation activities;
- use of the connected software application to conduct surveillance that enables espionage, including through a foreign adversary's access to sensitive or confidential government or business information, or sensitive personal data;
- ownership, control, or management of connected software applications by persons subject to coercion or cooption by a foreign adversary;
- ownership, control, or management of connected software applications by persons involved in malicious cyber activities;
- a lack of thorough and reliable third-party auditing of connected software applications;
- the scope and sensitivity of the data collected;
- the number and sensitivity of the users of the connected software application; and
- the extent to which identified risks have been or can be addressed by independently verifiable measures.

As noted above, while the proposed regulatory text below adds these criteria in a new sub-paragraph applicable only to ICTS Transactions involving connected software applications, the Department is also inviting comments on whether these criteria are sufficient or whether others should be added. For example, should the Department add a criterion such as whether the software has any embedded out-going network calls or web server references, regardless of the ownership, control, or management of the software? The Department also seeks comments on whether the criteria should be more generally applicable to ICTS Transactions.

With regard to the phrase ''ownership, control or management,'' should it be understood to include both continuous control/management and sporadic control/management (*e.g.,* when a third-party must be temporally granted access to apply updates/upgrades/patches/etc.), or should this phrase be further clarified?

Additionally, the Department seeks comment on whether and how the Department should specifically define the terms ''reliable third-party'' and ''independently verifiable measures,'' and, if so, whether there are generally accepted definitions or terms of art that the Department should consider adopting. The Department is also interested in whether the reference to ''third-party auditing of connected software applications'' is sufficiently clear or whether it needs further definition. For example, would it be understood to apply to audits by a third party of only the connected software applications, or to audits of the organizations implementing the software applications as well? Also, should the requirement to audit applications be revised to make clear that auditing is a continuous process through the development and deployment life cycle of the application? And would the requirement to audit applications be understood to refer only to source-code examination and verification, or would it also include monitoring of logs or other data that the application collects?

Classification

A. Executive Order 12866 (Regulatory Policies and Procedures)

Pursuant to the procedures established to implement Executive Order 12866, the Office of Management and Budget has determined that this rule is significant but not economically significant.

C. Regulatory Flexibility Analysis

The Chief Counsel for Regulation of the Department of Commerce certifies to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. The factual determination for this determination is as follows.

This proposed rule would update the regulations at 15 CFR part 7 that implement E.O. 13873 to revise the term ICTS to specifically include ''connected software applications,'' as well as to affirm that a transaction involving connected software applications is an ICTS Transaction. It would add criteria the Secretary and the appropriate agency heads may use in making determinations about the risks potentially posed by ICTS Transactions involving connected software applications. The rule would also make conforming changes.

Accordingly, this proposed rule does not increase the scope of applicability of the existing regulations, the economic effects of which were evaluated in the regulatory impact analysis (RIA) associated with the Supply Chain Rule, at 86 FR 4909. (The RIA can be found online at *reginfo.gov,* and at *regulations.gov,* with a search for RIN 0605–AA51.) This proposed rule, once implemented, will not add any costs or burdens to any entity, small or large, because it does not expand the application scope of the Supply Chain Rule. Because this proposed rule neither increases the number of entities to which the Supply Chain Rule applies, nor increases the cost and burdens on those entities, it would not have a significant economic impact on a substantial number of small businesses.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) provides that an agency generally cannot conduct or sponsor a collection of information, and no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, unless that collection has obtained Office of Management and Budget (OMB) approval and displays a currently valid OMB Control Number. This proposed rule does not contain a collection of information requirement subject to review and approval by OMB under the PRA.

E. Unfunded Mandates Reform Act of 1995

This proposed rule would not create a Federal mandate (under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector.

F. Executive Order 13132 (Federalism)

This proposed rule does not contain policies having federalism implications requiring preparations of a Federalism Summary Impact Statement.

G. Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)

This rule does not contain policies that have unconstitutional takings implications.

H. Executive Order 13175 (Consultation and Coordination With Indian Tribes)

The Department has analyzed this proposed rule under Executive Order 13175 and has determined that the action would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law.

I. National Environmental Policy Act

The Department has reviewed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321 et. seq). It has determined that this proposed rule would not have a significant impact on the quality of the human environment.

List of Subjects in 15 CFR Part 7

Administrative practice and procedure, Business and industry, Communications, Computer technology, Critical infrastructure, Executive orders, Foreign persons, Investigations, National security, Penalties, Technology, Telecommunications.

Dated: November 16, 2021.

Trisha Anderson,

Deputy Assistant Secretary for Intelligence and Security, U.S. Department of Commerce.

PART 7—SECURING THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AND SERVICES SUPPLY CHAIN

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

Authority: 50 U.S.C. 1701 *et seq.*; 50 U.S.C. 1601 *et seq.*; E.O. 13873, 84 FR 22689.

■ 2. Revise § 7.1 to read as follows:

Subpart A—General

§ 7.1 Purpose.

(a) These regulations set forth the procedures by which the Secretary may:

(1) Determine whether any acquisition, importation, transfer, installation, dealing in, or use of any information and communications technology or service (ICTS Transaction), including connected software applications, that has been designed, developed, manufactured, or supplied by persons owned by, controlled by, or subject to the jurisdiction or direction of foreign adversaries poses certain undue or unacceptable risks as identified in the Executive Order;

(2) Issue a determination to prohibit an ICTS Transaction;

(3) Direct the timing and manner of the cessation of the ICTS Transaction; and

(4) Consider factors that may mitigate the risks posed by the ICTS Transaction.

(b) The Secretary will evaluate ICTS Transactions under this rule, which include classes of transactions, on a case-by-case basis. The Secretary, in consultation with appropriate agency heads specified in Executive Order 13873 and other relevant governmental bodies, as appropriate, shall make an initial determination as to whether to prohibit a given ICTS Transaction or propose mitigation measures, by which the ICTS Transaction may be permitted. Parties may submit information in response to the initial determination, including a response to the initial determination and any supporting materials and/or proposed measures to remediate or mitigate the risks identified in the initial determination as posed by the ICTS Transaction at issue. Upon consideration of the parties' submissions, the Secretary will issue a final determination prohibiting the transaction, not prohibiting the transaction, or permitting the transaction subject to the adoption of measures determined by the Secretary to sufficiently mitigate the risks associated with the ICTS Transaction. The Secretary shall also engage in coordination and information sharing, as appropriate, with international partners on the application of these regulations.

■ 3. Amend § 7.2 by adding, in alphabetical order, the definition for ''Connected software application'' and revising the definition of ''Information and communications technology or services or ICTS'' to read as follows:

§ 7.2 Definitions.

* * * * *

Connected software application means software, a software program, or a group of software programs, that is designed to be used on an end-point computing device and includes as an integral functionality, the ability to collect, process, or transmit data via the internet.

* * * * *

Information and communications technology or services or ICTS means any hardware, software, including connected software applications, or other product or service, including cloud-computing services, primarily intended to fulfill or enable the function of information or data processing, storage, retrieval, or communication by electronic means (including electromagnetic, magnetic, and photonic), including through transmission, storage, or display.

* * * * *

■ 4. Amend § 7.3 by adding paragraph (a)(4)(v)(E) to read as follows:

§ 7.3 Scope of Covered ICTS Transactions.

(a) * * *

(4) * * *

(v) * * *

(E) Connected software applications; or

* * * * *

■ 5. In § 7.103, redesignate paragraph (d) as paragraph (e) and add new paragraph (d) to read as follows:

§ 7.103 Initial review of ICTS Transactions.

* * * * *

(d) For ICTS Transactions involving connected software applications that are accepted for review, the Secretary's assessment of whether the ICTS Transaction poses an undue or unacceptable risk may be determined by evaluating the criteria in paragraph (c) of this section as well as the following additional criteria:

(1) Ownership, control, or management by persons that support a foreign adversary's military, intelligence, or proliferation activities;

(2) Use of the connected software application to conduct surveillance that enables espionage, including through a foreign adversary's access to sensitive or confidential government or business information, or sensitive personal data;

(3) Ownership, control, or management of connected software applications by persons subject to coercion or cooption by a foreign adversary;

(4) Ownership, control, or management of connected software applications by persons involved in malicious cyber activities;

(5) A lack of thorough and reliable third-party auditing of connected software applications;

(6) The scope and sensitivity of the data collected;

(7) The number and sensitivity of the users of the connected software application; and

(8) The extent to which identified risks have been or can be addressed by independently verifiable measures.

* * * * *

[FR Doc. 2021–25329 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–DT–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–93595; File No. S7–17–21]

RIN 3235–AM92

Proxy Voting Advice

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is proposing amendments to the Federal proxy rules governing proxy voting advice. The Commission is proposing these amendments in light of feedback from market participants on those rules and certain developments in the market for proxy voting advice. The proposed amendments would remove a condition to the availability of certain exemptions from the information and filing requirements of the Federal proxy rules for proxy voting advice businesses. In addition, the proposed amendments would remove a note that provides examples of situations in which the failure to disclose certain information in proxy voting advice may be considered misleading within the meaning of the Federal proxy rules' prohibition on material misstatements or omissions. Finally, the release includes a discussion regarding the application of that prohibition to proxy voting advice, in particular with respect to statements of opinion.

DATES: Comments should be received by December 27, 2021.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*https://www.sec.gov/rules/submitcomments.htm*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–17–21 on the subject line.

Paper Comments

- Send paper comments to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number S7–17–21. To help the Commission process and review your comments more efficiently, please use only one method of submission. The Commission will post all submitted comments on its website (*http://www.sec.gov/rules/proposed.shtml*). Typically, comments also are available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Operating conditions may limit access to the Commission's public reference room. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information. You should submit only information that you wish to make publicly available.

Studies, memoranda or other substantive items may be added by the Commission or staff to the comment file during this rulemaking. A notification of the inclusion in the comment file of any such materials will be made available on the Commission's website. To ensure direct electronic receipt of such notifications, sign up through the ''Stay Connected'' option at *www.sec.gov* to receive notifications by email.

FOR FURTHER INFORMATION CONTACT: Valian Afshar, Special Counsel, Office of Mergers and Acquisitions, Division of Corporation Finance, at (202) 551–3440, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: We are proposing amendments to 17 CFR 240.14a–2 (''Rule 14a–2'') and 17 CFR 240.14a–9 (''Rule 14a–9'') under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (''Exchange Act'').[1]

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I. Introduction

The Commission recently adopted final rules regarding proxy voting advice (the ''2020 Final Rules'') provided by proxy advisory firms, or proxy voting

[1] Unless otherwise noted, when we refer to the Exchange Act, or any paragraph of the Exchange Act, we are referring to 15 U.S.C. 78a of the United States Code, at which the Exchange Act is codified, and when we refer to rules under the Exchange Act, or any paragraph of these rules, we are referring to title 17, part 240 of the Code of Federal Regulations [17 CFR part 240], in which these rules are published.

advice businesses (''PVABs'').[2] The 2020 Final Rules, among other things, did the following:

- Amended 17 CFR 240.14a–1(l) (''Rule 14a–1(l)'') to codify the Commission's interpretation that proxy voting advice generally constitutes a ''solicitation'' subject to the proxy rules.
- Adopted 17 CFR 240.14a–2(b)(9) (''Rule 14a–2(b)(9)'') to add new conditions to two exemptions (set forth in 17 CFR 240.14a–2(b)(1) and (3) (''Rules 14a–2(b)(1) and (3)'')) that PVABs generally rely on to avoid the proxy rules' information and filing requirements. Those conditions include:
  - New conflicts of interest disclosure requirements in 17 CFR 240.14a–2(b)(9)(i) (''Rule 14a–2(b)(9)(i)''); and
  - A requirement in 17 CFR 240.14a–2(b)(9)(ii) (''Rule 14a–2(b)(9)(ii)'') that a PVAB adopt and publicly disclose written policies and procedures reasonably designed to ensure that (A) registrants that are the subject of proxy voting advice have such advice made available to them at or prior to the time such advice is disseminated to the PVAB's clients and (B) the PVAB provides its clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding its proxy voting advice by registrants that are the subject of such advice, in a timely manner before the security holder meeting (the ''Rule 14a–2(b)(9)(ii) conditions'').
- Amended the Note to Rule 14a–9, which prohibits false or misleading statements, to include specific examples of material misstatements or omissions related to proxy voting advice.

The amendments to Rules 14a–1(l) and 14a–9 became effective on November 2, 2020. The conditions set forth in new Rule 14a–2(b)(9) are set to become effective on December 1, 2021.[3]

The 2020 Final Rules were intended to help ensure that investors who use proxy voting advice receive more transparent, accurate and complete information on which to make their voting decisions.[4] The Commission recognized the ''important and prominent role'' that PVABs play in the proxy voting process[5] and adopted the 2020 Final Rules, in part, to address certain concerns that ''registrants, investors, and others have expressed . . . about the role of [PVABs].''[6] At the same time, the Commission endeavored to tailor the 2020 Final Rules to avoid imposing undue costs or delays that could adversely affect the timely provision of proxy voting advice.[7]

Since the Commission adopted the 2020 Final Rules, however, institutional investors and other clients of PVABs have continued to express strong concerns about the rules' impact on their ability to receive independent proxy voting advice in a timely manner. Furthermore, PVABs have continued to develop industry-wide best practices and improve their own business practices to address the concerns that were the impetus for the 2020 Final Rules. Accordingly, we believe it is appropriate to reassess the 2020 Final Rules, solicit further public comment and, where appropriate, recalibrate the rules to preserve the independence of proxy voting advice and ensure that PVABs can deliver advice in a timely manner without ultimately passing on higher costs to their clients. As described in more detail below, we are proposing the following changes:

- Amend Rule 14a–2(b)(9) to remove the Rule 14a–2(b)(9)(ii) conditions; and
- Amend Rule 14a–9 to remove Note (e) to that rule, which sets forth specific examples of material misstatements or omissions related to proxy voting advice.

These proposed amendments would not affect the other aspects of the 2020 Final Rules, which would remain in place and effective as to PVABs and their advice. As such, under the proposed amendments, proxy voting advice would remain a solicitation subject to the proxy rules. Additionally, in order to rely on the exemptions from the proxy rules' information and filing requirements set forth in Rules 14a–2(b)(1) and (3), PVABs would continue to be subject to Rule 14a–2(b)(9)'s conflicts of interest disclosure requirements. Finally, although the proposed amendments would remove Note (e) to Rule 14a–9—which was added in the 2020 Final Rules—material misstatements or omissions of fact in proxy voting advice would remain subject to liability under that rule. In this release, however, we discuss the application of Rule 14a–9 to proxy voting advice, specifically with respect to a PVAB's statements of opinion.[8]

The proposed amendments do not represent a wholesale reversal of the 2020 Final Rules. Rather, they are intended to be tailored adjustments in response to concerns and developments related to particular aspects of the 2020 Final Rules. The goal of the proposed amendments is to avoid burdens on PVABs that may impede and impair the timeliness and independence of their proxy voting advice and subject them to undue litigation risks and compliance costs, while simultaneously preserving investors' confidence in the integrity of such advice. We believe that the proposed amendments, in tandem with the unaffected portions of the 2020 Final Rules and other existing mechanisms in the proxy system, including certain policies and procedures that PVABs have adopted, strike a more appropriate balance.

We welcome feedback and encourage interested parties to submit comments on any or all aspects of the proposed amendments. When commenting, it would be most helpful if you include the reasoning behind your position or recommendation.

II. Discussion of Proposed Amendments

A. Proposed Amendments to Rule 14a–2(b)(9)

1. Background

The 2020 Final Rules amended Rule 14a–2(b) by adding paragraph (9),[9] which sets forth two conditions that a PVAB must satisfy in order to rely on the exemptions in Rules 14a–2(b)(1) and (b)(3) from the proxy rules' information

[2] *See Exemptions from the Proxy Rules for Proxy Voting Advice,* Release No. 34–89372 (Jul. 22, 2020) [85 FR 55082 (Sept. 3, 2020)] (''2020 Adopting Release''). For purposes of this release, we refer to persons who furnish proxy voting advice covered by 17 CFR 240.14a–1(l)(1)(iii)(A) (''Rule 14a–1(l)(1)(iii)(A)'') as ''proxy voting advice businesses,'' which we abbreviate as ''PVABs.'' *See* 17 CFR 240.14a–1(l)(1)(iii)(A). Rule 14a–1(l)(1)(iii)(A) provides that the terms ''solicit'' and ''solicitation'' include any proxy voting advice that makes a recommendation to a security holder as to its vote, consent, or authorization on a specific matter for which security holder approval is solicited, and that is furnished by a person that markets its expertise as a provider of such proxy voting advice, separately from other forms of investment advice, and sells such proxy voting advice for a fee. *Id.*

[3] *Id.* at 55122. Institutional Shareholder Services, Inc. has filed a lawsuit challenging the 2020 Final Rules. *See Institutional Shareholder Services, Inc.* v. *SEC,* No. 1:19–cv–3275–APM (D.D.C.). That case is currently being held in abeyance until the earlier of December 31, 2021 or the promulgation of final rule amendments addressing proxy voting advice. In addition, on October 13, 2021, the National Association of Manufacturers and Natural Gas Services Group, Inc. filed a lawsuit arising out of a statement issued by the Division of Corporation Finance on June 1, 2021 regarding the 2020 Final Rules. *See* National Association of Manufacturers et al. v. *SEC, No. 7:21–cv–183* (W.D. Tex.); *see also infra note 120 (discussing the Division of Corporation Finance's June 1, 2021 statement).*

[4] 2020 Adopting Release at 55082.

[5] *Id.* at 55083 (noting that institutional investors and investment advisers generally retain PVABs to assist with voting determinations on behalf of their clients as well as ''other aspects of the voting process, which for certain investment advisers has become increasingly complex and demanding over time'').

[6] *Id.* at 55085.

[7] *Id.* at 55082.

[8] *See infra* Section II.B.2.

[9] 17 CFR 240.14a–2(b)(9).

and filing requirements.[10] Rule 14a–2(b)(9)(i) requires PVABs to provide their clients with certain conflicts of interest disclosures in connection with their proxy voting advice.[11] The Rule 14a–2(b)(9)(ii) conditions require that PVABs adopt and publicly disclose written policies and procedures reasonably designed to ensure that (A) registrants that are the subject of their proxy voting advice have such advice made available to them at or prior to the time when such advice is disseminated to the PVABs' clients and (B) the PVABs provide their clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding their proxy voting advice by registrants who are the subject of such advice, in a timely manner before the relevant shareholder meeting (or, if no meeting, before the votes, consents or authorizations may be used to effect the proposed action).[12]

In addition to those two conditions, Rule 14a–2(b)(9) also sets forth two non-exclusive safe harbor provisions in paragraphs (iii) and (iv) that, if met, are intended to give assurance to PVABs that they have satisfied the conditions of Rules 14a–2(b)(9)(ii)(A) and (B), respectively.[13] Further, Rules 14a–2(b)(9)(v) and (vi) contain exclusions from the Rule 14a–2(b)(9)(ii) conditions.[14] Those rules provide that PVABs need not comply with Rule 14a–2(b)(9)(ii) to the extent that their proxy voting advice is based on a client's custom voting policy or if they provide proxy voting advice as to non-exempt solicitations regarding certain mergers and acquisitions or contested matters.[15]

The Commission adopted Rule 14a–2(b)(9)(ii)(A) to facilitate effective engagement between PVABs and registrants, help ensure that registrants are timely informed of proxy voting advice that bears on the solicitation of their shareholders and further the goal of ensuring that PVABs' clients have more complete, accurate and transparent information to consider when making their voting decisions.[16] Ultimately, the Commission intended that this condition would benefit the shareholders on whose behalf PVABs' clients may be voting.[17] Similarly, the Commission adopted Rule 14a–2(b)(9)(ii)(B) as a means of providing PVABs' clients with additional information that would assist them in assessing and contextualizing proxy voting advice.[18] The Commission intended that this condition would supplement existing mechanisms—including registrants' ability to file supplemental proxy materials to respond to proxy voting advice that they may know about and to alert investors to any disagreements with such advice—so as to permit clients, including investment advisers voting shares on behalf of other shareholders, to consider registrants' views along with the proxy voting advice and before making their voting determinations.[19] This condition reflected the Commission's views that PVABs' clients would benefit from more information when considering how to vote their proxies and that shareholders should have ready access to information to make informed voting decisions.[20]

We continue to believe that these goals are important, but we also believe it is appropriate to reassess our policy judgment to adopt the Rule 14a–2(b)(9)(ii) conditions. We adopted those conditions, in part, in response to investors who expressed concerns regarding the advance review and feedback conditions in the 2019 Proposed Rules.[21] Accordingly, we made adjustments to remove the 2019 Proposed Rules' advance review condition and replace it with Rule 14a–2(b)(9)(ii)'s requirement that PVABs make their advice available to registrants at or prior to the time it is disseminated to their clients.[22] Investors, however, have continued to express strong concerns about the Rule 14a–2(b)(9)(ii) conditions even as modified in the 2020 Final Rules.[23] Notwithstanding our efforts to adopt somewhat more limited and principles-based requirements in the 2020 Final Rules, investors have asserted that the Rule 14a–2(b)(9)(ii) conditions nevertheless will impose increased compliance costs on PVABs and impair the independence and timeliness of their proxy voting advice and that such effects are not justified or balanced by corresponding investor protection benefits.[24] This investor opposition is

[10] PVABs have typically relied upon the exemptions in Rules 14a–2(b)(1) and (b)(3) to provide advice without complying with the proxy rules' information and filing requirements. *Amendments to Exemptions from the Proxy Rules for Proxy Voting Advice,* Release No. 34–87457 (Nov. 5, 2019) [84 FR 66518 (Dec. 4, 2019)] (''2019 Proposing Release'') at 66525 and n.68. Unless otherwise indicated, all comments cited and referenced in this release are to public comments on the rules proposed in the 2019 Proposing Release (the ''2019 Proposed Rules''). Comments on the 2019 Proposed Rules are available at *https://www.sec.gov/comments/s7-22-19/s72219.htm*.

[11] 17 CFR 240.14a–2(b)(9)(i).

[12] 17 CFR 240.14a–2(b)(9)(ii). The Commission adopted the Rule 14a–2(b)(9)(ii) conditions, in part, in response to the concerns expressed by commenters about the ''advance review and feedback'' conditions that the Commission originally proposed. Under the advance review and feedback conditions in the 2019 Proposed Rules, a PVAB would have had to, as a condition to relying on the exemptions in Rules 14a–2(b)(1) and (3), provide registrants and certain other soliciting persons covered by its proxy voting advice a limited amount of time to review and provide feedback on the advice before it is disseminated to the PVAB's clients, with the length of time provided depending on how far in advance of the shareholder meeting the registrant or other soliciting person has filed its definitive proxy statement. *See* 2019 Proposing Release at 66530–35. These conditions were among the most contentious features of the 2019 Proposed Rules and drew a significant number of opposing public comments. 2020 Adopting Release at 55103–07. In response, the Commission reconsidered its approach and, in the 2020 Final Rules, adopted the Rule 14a–2(b)(9)(ii) conditions in place of the advance review and feedback conditions. *Id.* at 55107–08.

[13] 17 CFR 240.14a–2(b)(9)(iii) and (iv).

[14] 17 CFR 240.14a–2(b)(9)(v) and (vi).

[15] *Id.*

[16] 2020 Adopting Release at 55109.

[17] *Id.*

[18] *Id.* at 55112–13.

[19] *Id.*

[20] *Id.* at 55113.

[21] Specifically, investors expressed concerns that the 2019 Proposed Rules' advance review and feedback conditions would adversely affect the independence, cost and timeliness of that advice. *See supra* note 12.

[22] Although the 2020 Final Rules did not include an advance review requirement, we encouraged PVABs that already were providing registrants with this opportunity to continue to do so. 2020 Adopting Release at n.339.

[23] *See, e.g.,* Peter Rasmussen, *Divided SEC Passes Controversial Proxy Advisor Rule,* Bloomberg Law (Jul. 29, 2020), *available at https://news.bloomberglaw.com/bloomberg-law-analysis/analysis-divided-sec-passes-controversial-proxy-advisor-rule* (noting criticism of the 2020 Final Rules by Nell Minow, Vice Chair of ValueEdge Advisors, that the 2020 Final Rules will make proxy voting advice ''more expensive and less independent''); Council of Institutional Investors, *Leading Investor Group Dismayed by SEC Proxy Advice Rules* (Jul. 22, 2020), *available at https://www.cii.org/july22_sec_proxy_advice_rules* (''[T]he new rules . . . seem to effectively require investment advisors who vote proxies on behalf of investor clients to consider and evaluate any response from companies to proxy advice before submitting votes. That could cause significant delays in the already constricted proxy voting process. It also could jeopardize the independence of proxy advice as proxy advisory firms may feel pressure to tilt voting recommendations in favor of management more often, to avoid critical comments from companies that could draw out the voting process and expose the firms to costly threats of litigation.''); US SIF, *US SIF Releases Statement On SEC Vote To Regulate Proxy Advisory Firms* (Jul. 22, 2020), *available at https://www.ussif.org/blog_home.asp?display=146* (''Today's vote is a blow to the independence of research provided by proxy advisors to investors. . . . The rule will make it more difficult, expensive and time-consuming for proxy advisors to produce their research.'').

[24] *See supra* note 23. In addition, on June 11, 2021, Chair Gensler and members of the Commission staff met with representatives from the following organizations: AFL–CIO; AFR; AssuranceMark; CalPERS; CalSTRS; CFA Institute; Consumer Federation of America; Council of Institutional Investors; CtW Investment Group; Interfaith Center on Corporate Responsibility; LACERA; Legal & General; New York City Comptroller New York State Common; Segal Marco; Shareholder Rights Group; Sinclair Capital; Sustainable Investments Institute; T. Rowe Price; The Shareholder Commons; Trillium Asset Management; US SIF; and ValueEdge Advisors.

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evidenced by, among other things, the fact that many clients of PVABs, predominantly investors, continue to oppose the 2020 Final Rules. Others, including PVABs themselves, have expressed similar concerns.[25]

In addition, we are aware that the largest PVABs have current practices that could address some of the concerns underlying the Rule 14a–2(b)(9)(ii) conditions. On July 1, 2021, the Independent Oversight Committee (the ''Oversight Committee'') of the Best Practice Principles Group (the ''BPPG'') published its first annual report (the ''2021 Annual Report'').[26] The BPPG is an industry group comprised of six PVABs, including Glass, Lewis & Co. (''Glass Lewis'') and Institutional Shareholder Services, Inc. (''ISS''),[27] the two largest PVABs in the United States.[28] Shortly after its formation, the BPPG published the Best Practice Principles for Providers of Shareholder Voting Research and Analysis, which consist of three main principles and accompanying guidance that recommends how the principles should be applied.[29] The three principles are (1) service quality, (2) conflicts-of-interest avoidance or management and (3) communications policy.[30]

The Oversight Committee—which is comprised of non-PVAB stakeholders in proxy voting advice, including representatives from the institutional investor, registrant and academic communities—is responsible for reviewing the BPPG member-PVABs' compliance with the principles.[31] In the 2021 Annual Report, after reviewing each member-PVABs' compliance report, the Oversight Committee found all six firms met the standards established in the three best practices principles.[32] Notably:

- Glass Lewis provides the subjects of its proxy voting advice with its Issuer Data Report (''IDR''), which details the key facts underlying Glass Lewis' advice, before that advice is finalized and sent to its clients.[33] Glass Lewis offers the IDR service to certain registrants, giving them 48 hours to review the IDR and provide suggested updates, which are then reviewed by Glass Lewis' research analysts who in turn make relevant updates and then provide high-level feedback regarding amendments made.[34]
- In addition to the IDR's advance review opportunity, Glass Lewis provides registrants with an opportunity to review and respond to its proxy voting advice after it has been disseminated to its clients pursuant to its Report Feedback Service (the ''RFS''). Specifically, the RFS allows registrants to submit feedback about Glass Lewis' proxy voting advice and have that feedback delivered directly to Glass Lewis' clients.[35] Registrants can access Glass Lewis' proxy voting advice at the same time it is disseminated to its clients and then, pursuant to the RFS, submit to Glass Lewis a statement that responds to and expresses disagreements with, or other opinions regarding, such advice.[36] If a registrant submits such a statement, Glass Lewis will republish its proxy voting advice with that statement attached and linked on the first page of Glass Lewis' report. Glass Lewis' clients will receive a notification as soon as the registrant's statement is available, and clients that have already downloaded an earlier version of the proxy voting advice will be sent an updated version that includes the registrant's statement.
- In addition, Glass Lewis has a separate process for registrants to report errors or omissions in its proxy voting advice and indicates that it reviews any such reported errors or omissions ''immediately.'' [37] Glass Lewis states that if its proxy voting advice is updated to reflect new disclosure or the correction of an error, it notifies all clients that have accessed that advice, or have ballots in the system for the meeting tied to that advice, whether or not the updates or revisions affected Glass Lewis' voting recommendations, as well as the exact nature of those updates and revisions.[38]
- ISS also detailed in its compliance statement the relevant processes it has in place.[39] Significantly, ISS allows any registrant to request a copy of its proxy voting advice free of charge after such advice has been disseminated to ISS'

During that meeting, the representatives from those organizations expressed general opposition to the 2020 Final Rules, including with respect to the Rule 14a–2(b)(9)(ii) conditions. Those representatives expressed concerns about the costs associated with the 2020 Final Rules, including the Rule 14a–2(b)(9)(ii) conditions, and the general lack of corresponding investor protection-based benefits.

[25] *See, e.g.,* John C. Coffee, Jr., *Biden and the SEC: Some Possible Agendas,* The CLS Blue Sky Blog (Dec. 2, 2020), *available at https://clsbluesky.law.columbia.edu/2020/12/02/biden-and-the-sec-some-possible-agendas/* (describing the 2020 Final Rules as ''burdensome'' and predicting that they would ''stretch out the proxy solicitation process and possibly chill advisers' ability to recommend policies disliked by managements''); Kurt Schacht & Karina Karakulova, *SEC Proxy Rules Pose Threat To Markets, Shareholders,* Law 360 (Aug. 26, 2020), *available at https://www.law360.com/articles/1302091/sec-proxy-rules-pose-threat-to-markets-shareholders* (''We can only imagine the number of legal challenges, delays and inefficiency [that the 2020 Final Rules] introduces to a well-functioning proxy voting process.''); Institutional Shareholder Services *FAQs on July 22, 2020, SEC Rules & Supplemental Guidance* (Aug. 6, 2020), *available at http://images.info.issgovernance.com/Web/ISSGovernance/%7B56ad0ea3-5d24-461e-b9c7-4ba8c6327435%7D_20200914_FAQs_SEC_July-22-2020_Rules_Supplemental_Guidance_FINAL.pdf/* (''[I]f the Rules are upheld, the current lack of clarity around the timing of any potential responses from the issuers may impact the timing of any 'Alerts' that might be warranted in response to issuers' written statements. . . . ISS is currently assessing the changes we need to make to our systems, processes, and staffing in order to accommodate the new Rules. ISS will be certain to provide advance notice of any fees we may need to charge to support the changes required by these regulatory actions.''); Institutional Shareholder Services, *Statement from ISS President & CEO, Gary Retelny, on Today's SEC Actions* (Jul. 22, 2020), *available at https://insights.issgovernance.com/posts/statement-from-iss-president-ceo-gary-retelny-on-todays-sec-actions/* (''Despite seemingly reducing the previously contemplated burden on proxy advisers, the new rules . . . will hinder investors' ability to vote in a timely, cost-effective, and objective manner.''); Minerva Analytics, *SEC ignores investor objections to implement new proxy rules* (Jul. 24, 2020), *available at https://www.manifest.co.uk/sec-ignores-investor-objections-to-implement-new-proxy-rules/* (''Additional layers of scrutiny and back-and-forth between proxy advisers, companies and investment managers would slow down the system and ultimately increase the cost to those paying for the service.'').

[26] *See* Best Practice Principles Oversight Committee, Annual Report 2021 (Jul. 1, 2021), *available at https://bppgrp.info/wp-content/uploads/2021/07/2021-AR-Independent-Oversight-Committee-for-The-BPP-Group-1.pdf* (''2021 Annual Report''). The BPPG was formed in 2014 after the European Securities and Markets Authority requested that PVABs engage in a coordinated effort to develop an industry-wide code of conduct focusing on enhancing transparency and disclosure. *Id.* at 7.

[27] *Id.* The BPPG's six member-PVABs are Glass Lewis, ISS, Minerva, PIRC, Proxinvest and EOS at Federated Hermes. *Id.*

[28] 2020 Adopting Release at 55127.

[29] 2021 Annual Report at 8.

[30] *Id.* at 33–34.

[31] *Id.* at 7.

[32] Stephen Davis, *First Independent Report on Proxy Voting Advisory Firm Best Practices* (Jul. 14, 2021), *available at https://corpgov.law.harvard.edu/2021/07/14/first-independent-report-on-proxy-voting-advisory-firm-best-practices/.*

[33] Glass Lewis, *Glass Lewis Statement of Compliance for the Period 1 January 2019 through 31 December 2019* (May 2020), *available at https://bppgrp.info/wp-content/uploads/2021/03/Glass-Lewis-BPP-Statement.pdf* (''Glass Lewis Statement of Compliance'') at 7–8.

[34] Glass Lewis, *Issuer Data Report, available at https://www.glasslewis.com/issuer-data–report/.* In the United States, the IDR service is available for ''companies listed on the NASDAQ and NYSE exchanges'' that register for the service with Glass Lewis and ''disclose their meeting documents at least 30 days in advance of their meeting date.'' *Id.*

[35] Glass Lewis Statement of Compliance at 24.

[36] Glass Lewis, *Report Feedback Statement, available at https://www.glasslewis.com/report-feedback-statement/.*

[37] Glass Lewis, *Report an Error or Omission, available at https://www.glasslewis.com/report-error/.*

[38] *Id.*

[39] ISS, *ISS Compliance Statement* (Jan. 11, 2021), *available at https://bppgrp.info/wp-content/uploads/2021/03/best-practices-principles-iss-compliance-statement-jan-2021-update.pdf* (''ISS Statement of Compliance'').

clients.[40] Registrants can pre-register to receive proxy voting advice, and ISS will send those registrants a notification when such advice is available for them to access.[41]

• If a registrant believes that ISS' proxy voting advice contains an error, it can notify ISS either via email or through its ''Help Center'' interface.[42] ISS states that if it determines that there is a material error, it will promptly issue an ''Alert'' to update previously issued proxy voting advice.[43]

• ISS also stated that it instituted a Feedback Review Board (''FRB'') to provide a mechanism to all stakeholders to communicate with ISS regarding its proxy voting advice.[44] The FRB considers comments from market constituents regarding the accuracy of ISS' research and data, policy application and the general fairness of its policies, research and recommendations.[45] The FRB focuses on higher-level feedback and does not address registrant-specific or time-sensitive feedback.[46]

• Instead, ISS has other processes in place for registrants and other market participants to provide feedback on specific proxy voting advice (including via the above-described error reporting processes). For example, ISS noted that it provides draft reports to registrants in certain markets prior to publication.[47] Notably, ISS does not provide draft proxy voting advice to any United States registrants.[48] ISS can, however, choose to engage with registrants during the process of formulating its proxy voting advice.[49] Some of that engagement is initiated by ISS, but registrants themselves can also request engagement with ISS' proxy research teams.[50]

Finally, although Egan-Jones, the third major PVAB in the United States,[51] is not a member of the BPPG, it too appears to have adopted some policies and procedures that approximate at least a portion of the Rule 14a–2(b)(9)(ii) conditions. According to Egan-Jones, it provides a number of ways in which registrants can gain access to its reports and the models used to create them.[52] Specifically, Egan-Jones allows registrants to obtain and review a copy of its proxy voting advice before such advice is disseminated to its clients.[53] Registrants can then notify Egan-Jones of any material errors that they detect in the proxy voting advice so as to allow Egan-Jones to correct that advice.[54]

2. Proposed Amendments

We are proposing to amend Rule 14a–2(b)(9) by deleting paragraph (ii) and rescinding the Rule 14a–2(b)(9)(ii) conditions. The proposed amendments would also delete paragraphs (iii), (iv), (v) and (vi) of Rule 14a–2(b)(9), which contain safe harbors and exclusions from the Rule 14a–2(b)(9)(ii) conditions.[55] As discussed above, the Rule 14a–2(b)(9)(ii) conditions were intended to benefit shareholders by improving the overall mix of available information so as to allow them to make more informed voting decisions. While the goal of facilitating more informed voting decisions remains unchanged, we believe that the continued concerns expressed by the investors who rely on proxy voting advice to make their voting decisions warrants a reassessment of the appropriate means to achieve that goal.

As part of that reassessment, we have further considered PVABs' efforts to develop industry-wide practices, as well as improve their own business practices, that could address the concerns underlying the Rule 14a–2(b)(9)(ii) conditions. Although these practices differ from the Rule 14a–2(b)(9)(ii) conditions, the leading PVABs have adopted policies and procedures that provide their clients and registrants with some of the opportunities and access to information that would have been required pursuant to the Rule 14a–2(b)(9)(ii) conditions. Moreover, because PVABs developed these measures themselves, we believe they are less likely to adversely affect the independence, cost and timeliness of proxy voting advice. And, although they are not the primary basis for these proposed amendments, we do find these industry-wide practices persuasive in these specific circumstances. This persuasiveness is due, in part, to the relative salience of a review of such industry-wide practices given the small number of PVABs in the U.S.

For example, Glass Lewis' IDR service goes beyond what the Rule 14a–2(b)(9)(ii) conditions would have required and allows registrants the opportunity to review the research and data on which Glass Lewis bases its voting recommendations before Glass Lewis disseminates its proxy voting advice to its clients. The RFS also operates in a similar manner to what the Rule 14a–2(b)(9)(ii) conditions would have required. As with the condition in Rule 14a–2(b)(9)(ii)(A), Glass Lewis makes its proxy voting advice available to registrants, for a fee, at the time such advice is disseminated to its clients. And, similar to the condition in Rule 14a–2(b)(9)(ii)(B), Glass Lewis will update its proxy voting advice to include a registrant's response to its advice and notify its clients of such response.

ISS also has mechanisms in place that approximate at least a portion of the Rule 14a–2(b)(9)(ii) conditions. Specifically, ISS makes its proxy voting advice available to registrants at the time such advice is disseminated to its clients. Although ISS does not update its proxy voting advice to incorporate any response a registrant may have to such advice, it does offer its advice to registrants for free. This presumably makes it easier for registrants to access ISS' proxy voting advice and respond to such advice by publishing and filing additional soliciting materials in a more timely manner. Further, ISS provides its

[40] *Id.* at 23.

[41] ISS, *FAQs regarding ISS Proxy Research, available at https://www.issgovernance.com/contact/faqs-engagement-on-proxy-research/#1574276867038-b204d1c3-a920.*

[42] *Id.*

[43] *Id.*

[44] ISS Statement of Compliance at 21.

[45] *Id.*

[46] ISS, *Feedback Review Board, available at https://www.issgovernance.com/contact/feedback-review-board/* (noting that the FRB is ''[a]n ISS body that considers comments from stakeholders regarding the general fairness of ISS policies and methodologies as well those related to how we operate as a provider of research, voting recommendations, corporate ratings, and other solutions and services to financial market participants'' and that ''[c]omments should not be company specific nor should they be time-sensitive'').

[47] ISS Statement of Compliance at 23.

[48] ISS, *FAQs regarding ISS Proxy Research, available at https://www.issgovernance.com/contact/faqs-engagement-on-proxy-research/#1574276867038-b204d1c3-a920* (''In the US, as from January 2021, drafts are no longer provided to U.S. companies including those in the S&P500 index.'').

[49] ISS Statement of Compliance at 21–23.

[50] ISS, *FAQs regarding ISS Proxy Research, available at https://www.issgovernance.com/contact/faqs-engagement-on-proxy-research/#1574276867038-b204d1c3-a920* (''ISS' proxy research teams interact regularly with company representatives, institutional shareholders, dissident shareholders, sponsors of shareholder proposals, and other parties in order to gain deeper insight into many issues and to check material facts relevant to our research. . . . Sometimes such dialogue is initiated by ISS, while other times it is initiated by the issuer or other stakeholders (including shareholders who may or may not be ISS clients).'').

[51] 2020 Adopting Release at 55126.

[52] Egan-Jones, *Egan-Jones Proxy Services Issuer Engagement, available at https://www.ejproxy.com/issuers/.*

[53] *Id.* (''Issuers may obtain a 'draft,' or pre-publication copy, of their report in order to review it by submitting a fully completed copy of our Draft Request Form to *issuer@ejproxy.com.*'').

[54] *Id.* (''If an issuer believes there is a material error in an EJPS report, they should send a detailed email documenting what they believe the error to be to *issuer@ejproxy.com.*'').

[55] Given that the other paragraphs of Rule 14a–2(b)(9) would all be deleted, the proposed amendments would redesignate the conflicts of interest disclosure condition set forth in Rule 14a–2(b)(9)(i) as Rule 14a–2(b)(9). The substance of that condition, however, would otherwise remain unchanged.

clients with access to a registrant's EDGAR filings through the electronic platform that it uses to deliver its proxy voting advice. Because any response by a registrant to proxy voting advice is required to be filed with the Commission as additional soliciting materials,[56] we believe that the access that ISS provides to its clients to a registrant's response via its electronic platform addresses many of the policy concerns underlying the Rule 14a–2(b)(9)(ii) conditions.[57]

We recognize that the mechanisms that these PVABs have in place may not perfectly replicate the requirements of the Rule 14a–2(b)(9)(ii) conditions or result in the same investor-oriented benefits that those conditions were intended to produce. These mechanisms are, in some ways, broader than the requirements of the Rule 14a–2(b)(9)(ii) conditions.[58] They also are, in other ways, more limited.[59] Furthermore, although some of the above-described mechanisms were developed after the Commission adopted the 2020 Final Rules,[60] we acknowledge that others were in place and considered by the Commission at the time it adopted the 2020 Final Rules.[61] Finally, we recognize that although the three major United States-based PVABs have some promising mechanisms in place, those mechanisms differ across the three PVABs, and, absent the Rule 14a–2(b)(9)(ii) conditions, there is no assurance that a new entrant to the PVAB market will adopt similar mechanisms or that existing PVABs will maintain them.

We have nevertheless decided to reconsider the Rule 14a–2(b)(9)(ii) conditions because we share the concerns that PVABs' clients and others continue to express about the conditions' potential adverse effects on the independence, cost and timeliness of proxy voting advice.[62] We have also taken notice of the efforts by PVABs to develop industry-wide standards, including the Oversight Committee's assessment of its members' compliance with the BPPG principles in the 2021 Annual Report. Notwithstanding our prior policy judgment, we believe there are market-based incentives for PVABs to adopt and maintain policies and procedures that provide some of the same benefits as those of the Rule 14a–2(b)(9)(ii) conditions without raising the concerns investors have expressed about those conditions. We believe that rescinding the Rule 14a–2(b)(9)(ii) conditions would give PVABs, investors and registrants the flexibility to select mechanisms that best serve the needs of investors and other stakeholders and adapt to evolving market practices. Furthermore, our continued observance of these mechanisms in practice, including during the 2021 proxy season, has given us additional confidence in their efficacy. Thus, although these mechanisms are not the primary basis for the proposed amendments, we do consider them to be relevant.

Because our proposed amendments to Rule 14a–2(b)(9) are based, in part, on our evaluation of the current state of the PVAB market, we will continue to monitor that market to help ensure that investors are adequately protected and have ready access to information that allows them to make informed voting decisions. To the extent that there are changes in the quality of PVABs' policies and procedures or new entrants to the PVAB market that do not adopt policies and procedures consistent with best practices, we will reevaluate the state of the PVAB market and consider whether further action should be taken.

Request for Comment

1. Should we amend Rule 14a–2(b)(9) as proposed to rescind the Rule 14a–2(b)(9)(ii) conditions? Would such a rescission help facilitate the provision of timely and independent proxy voting advice? Alternatively, rather than rescinding the Rule 14a–2(b)(9)(ii) conditions as proposed, should we commit to a retrospective review of the Rule 14a–2(b)(9)(ii) conditions after they have become effective? If so, what is the appropriate period of time after which we should conduct such review? What would be the potential drawbacks of conducting such a retrospective review?

2. Are the existing mechanisms in the proxy system, including the role played by the BPPG and the Oversight Committee and the policies and procedures that PVABs have in place, sufficient to obviate the need for the Rule 14a–2(b)(9)(ii) conditions? Are there other relevant existing mechanisms in the proxy system that the Commission should consider?

3. How might we address the risk that PVABs will change their policies and procedures to the detriment of investors if we rescind the Rule 14a–2(b)(9)(ii) conditions? How might we address the risk that, absent the Rule 14a–2(b)(9)(ii) conditions, new entrants to the PVAB market will not be properly incentivized to adopt policies and procedures that approximate those conditions?

4. Are there ways that we can mitigate the potential adverse effects on proxy voting advice associated with the Rule 14a–2(b)(9)(ii) conditions other than by rescinding those conditions?

5. Have registrants or others relied on the Commission's adoption of the Rule 14a–2(b)(9)(ii) conditions? How, and to what extent, should any such reliance interests factor into the Commission's determination of whether to rescind those conditions?

6. Should we also reconsider the Supplement to Commission Guidance Regarding Proxy Voting Responsibilities of Investment Advisers that the Commission issued in connection with the 2020 Final Rules? Because that supplemental guidance was prompted, in part, by the Rule 14a–2(b)(9)(ii) conditions, will the guidance be useful if the Rule 14a–2(b)(9)(ii) conditions are rescinded? Should the guidance be rescinded concurrently with the Rule 14a–2(b)(9)(ii) conditions? Should it instead be revised, and, if so, how? Notwithstanding the proposed rescission of the Rule 14a–2(b)(9)(ii) conditions, are there aspects of the

[56] *See* 17 CFR 240.14a–6(b).

[57] This belief is based on our understanding that ISS gives its clients the option of receiving push notifications via email from its electronic platform that will notify the clients of any additional soliciting materials filed by a registrant as to which those clients have received proxy voting advice.

[58] For example, both Glass Lewis, through the IDR service, and Egan-Jones allow registrants opportunities to review at least a portion of their proxy voting advice before it is disseminated to their clients. In addition, although the Rule 14a–2(b)(9)(ii) conditions would have applied only to registrants, Glass Lewis makes the RFS available to both registrants and shareholder proponents. Glass Lewis, *Report Feedback Statement, available at https://www.glasslewis.com/report-feedback-statement/* (''Any company or shareholder proponent that purchases a Glass Lewis report will now automatically have the right to submit an RFS at no extra cost.'').

[59] For example, ISS and Egan-Jones' public descriptions of their relevant services do not indicate whether they will notify their clients of any response to their proxy voting advice by a registrant. In addition, although ISS provides a copy of its proxy voting advice to registrants for free, it does not allow registrants to share that advice with any external parties, including its attorneys, proxy solicitors and compensation consultants. ISS, *FAQs regarding ISS Proxy Research, available at https://www.issgovernance.com/contact/faqs-engagement-on-proxy-research/#1574276867038-b204d1c3-a920* (''Our final, published proxy research reports are provided to companies free of charge as a courtesy, subject to the following conditions: (i) the reports are only for the subject company's internal use by employees of the company, and (ii) the company is expressly prohibited from making the report, or any part of it, public, or sharing the reports, profiles or login credentials with any external parties (including but not limited to any external advisors retained by the company such as a law firm, proxy solicitor or compensation consultant).''). These restrictions may inhibit a registrant's ability to adequately respond to ISS' proxy voting advice in a manner that would benefit its shareholders.

[60] Notably, the Oversight Committee convened for the first time on July 30, 2020 and issued its 2021 Annual Report on July 1, 2021. *See* 2021 Annual Report at 10.

[61] *See* 2020 Adopting Release at 55128–29 (describing Glass Lewis' IDR service and the RFS and Egan-Jones' advance review service).

[62] *See supra* notes 23–25 and accompanying text.

supplemental guidance that should be clarified?

B. Proposed Amendment to Rule 14a–9

1. Background

Before adopting the 2020 Final Rules, the Commission, in August 2019, issued an interpretation and guidance that clarified the application of the Federal proxy rules to the provision of proxy voting advice (the ''Interpretive Release'').[63] In the Interpretive Release, the Commission explained that the determination of whether a communication is a solicitation for purposes of Section 14(a) of the Exchange Act depends upon the specific nature, content and timing of the communication and the circumstances under which the communication is transmitted.[64] The Commission stated that PVABs' proxy voting advice generally would constitute a solicitation subject to the proxy rules.[65] As a solicitation, proxy voting advice is subject to Rule 14a–9. Rule 14a–9 ''prohibits any solicitation from containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact.'' [66] The rule also requires that solicitations ''must not omit to state any material fact necessary in order to make the statements therein not false or misleading.'' [67] The Commission noted that although PVABs may rely on exemptions from the proxy rules' information and filing requirements, even these exempt solicitations remain subject to Rule 14a–9.[68]

In the adopting release for the 2020 Final Rules, the Commission codified the guidance set forth in the Interpretive Release that proxy voting advice is generally subject to Rule 14a–9.[69] The 2020 Final Rules amended Rule 14a–9 by adding paragraph (e) to the Note to that rule. Paragraph (e) sets forth examples of what may, depending on the particular facts and circumstances, be misleading within the meaning of Rule 14a–9 with respect to proxy voting advice. Specifically, Note (e) to Rule 14a–9 provides that the failure to disclose material information regarding proxy voting advice, ''such as the [PVAB's] methodology, sources of information, or conflicts of interest'' could, depending upon particular facts and circumstances, be misleading within the meaning of the rule. In adopting these amendments, the Commission noted that ''[t]he ability of a client of a [PVAB] to make voting decisions is affected by the adequacy of the information it uses to formulate such decisions'' and stated that the amendments ''are designed to further clarify the potential implications of Rule 14a–9 for proxy voting advice specifically, and to help ensure that [PVABs'] clients are provided with the material information they need to make fully informed decisions.'' [70]

Although commenters on the 2019 Proposed Rules expressed concern that the changes to Rule 14a–9 could heighten the litigation risk for PVABs, the Commission stated that the 2020 Final Rules were not intended to change the application or scope of Rule 14a–9 or create a new cause of action against PVABs.[71] The Commission also stated that the amendments do ''not make 'mere differences of opinion' actionable under Rule 14a–9.'' [72] Instead, the amendments were intended to clarify ''what has long been true about the application of Rule 14a–9 to proxy voting advice and, more generally, proxy solicitations as a whole: No solicitation may contain any statement which, at the time and in light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not false or misleading.'' [73]

Despite these Commission statements regarding the intent of the 2020 Final Rules' amendments to Rule 14a–9, PVABs, their clients and other investors continue to express concerns and uncertainty regarding the extent of PVABs' liability under Rule 14a–9.[74] PVABs continue to assert that the amendments may increase their litigation risks, thereby increasing their costs, which, ultimately, may be passed along to their clients.[75] These parties indicate that those litigation risks could also impair the independence and quality of PVABs' proxy voting advice if, for example, registrants use the threat of litigation to pressure PVABs to make their proxy voting advice more favorable to such registrants. Further, PVABs and their clients remain concerned that Rule 14a–9 claims may be available for registrants who disagree with their proxy voting advice. Such disagreements could pertain not only to PVABs' voting recommendations, but also to the specific methodology, analysis and information that PVABs use to formulate their recommendations.

2. Proposed Amendment

As explained in the release adopting the 2020 Final Rules, the Commission's position is that proxy voting advice is a ''solicitation'' and, as such, is subject to Rule 14a–9's prohibition against material misstatements and omissions.[76] We recognize, however, that PVABs, their clients and other investors continue to express concerns that the 2020 Final Rules' amendments to Rule 14a–9 may extend liability to mere differences of opinion regarding the proxy voting advice.[77] These differences of opinion could include disagreements regarding the substance of a PVAB's voting recommendations (*e.g.,* a registrant's disagreement with a PVAB's recommendation that shareholders vote against a director nominee recommended by the board) or the appropriate analysis, methodology or information that the PVAB should use to formulate its voting recommendations (*e.g.,* a disagreement between a registrant and a PVAB regarding the appropriate peer companies for a particular analysis). These parties have also expressed concerns that a PVAB could be liable under Rule 14a–9 solely because it declined to accept a registrant's suggested revisions or corrections to its proxy voting advice.[78] In their view, these uncertainties unnecessarily increase the litigation risk to PVABs and impair the independence

[63] *Commission Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice,* Release No. 34–86721 (Aug. 21, 2019) [84 FR 47416 (Sept. 10, 2019)] (''Interpretive Release'').

[64] *Id.* at 47417–19.

[65] *Id.*

[66] *Id.* at 47419.

[67] *Id.*

[68] *Id.*

[69] 2020 Adopting Release at 55121.

[70] *Id.*

[71] *Id.*

[72] *Id.* The Commission also stated that ''differences of opinion are not actionable under the final amendment to Rule 14a–9.'' *Id.* at n.443.

[73] *Id.*

[74] *See supra* notes 23–25 (citing to concerns that investors and others have expressed regarding the 2020 Final Rules, including the amendment to Rule 14a–9). In addition, because of the large similarities between the proposed amendment to Rule 14a–9 in the 2019 Proposed Rules and the amendment to Rule 14a–9 adopted in the 2020 Final Rules, we also consider some of the comment letters that expressed concerns regarding the proposed amendment to be relevant for purposes of evaluating the ongoing concerns regarding Note (e) to Rule 14a–9, as adopted. *See* comment letters from Carl C. Icahn (Feb. 7, 2020), Marcie Frost, Chief Executive Officer, CalPERS (Feb. 3, 2020), Rob Collins, Council for Investor Rights and Corporate Accountability (Feb. 3, 2020), Richard B. Zabel, General Counsel and Chief Legal Officer, Elliott Management Corporation (Jan. 31, 2020), Kevin Cameron, Executive Chair, Glass Lewis (Feb. 3, 2020), and Gary Retelny, CEO, ISS (Jan. 31, 2020).

[75] *Id.*

[76] 2020 Adopting Release at 55093–94.

[77] *See supra* notes 23–25.

[78] *Id.; see also* comment letter from Gary Retelny, CEO, ISS (Jan. 31, 2020).

of the proxy voting advice that investors use to make their voting decisions.

In light of these concerns, we are proposing to delete Note (e) to Rule 14a–9. As discussed above, Note (e) sets forth examples of what may, depending on the particular facts and circumstances, be misleading within the meaning of Rule 14a–9 with respect to proxy voting advice. Although Note (e) was intended to clarify the potential implications of Rule 14a–9 for proxy voting advice under existing law, it appears instead to have unintentionally created a misperception that the addition of Note (e) to Rule 14a–9 purported to determine or alter the law governing Rule 14a–9's application and scope, including its application to statements of opinion.[79] The proposed deletion of Note (e) is intended to address that misperception and thereby reduce any resulting uncertainty that could lead to increased litigation risks or the threat of litigation and impaired independence of proxy voting advice.

At the same time, we believe it may be helpful to briefly clarify our understanding of the limited circumstances in which a PVAB's statement of opinion may subject it to liability under Rule 14a–9. A PVAB, like any other person engaged in solicitation, may, depending on the facts and circumstances, be subject to liability under Rule 14a–9 for a materially misleading statement or omission of fact, including with regard to its methodology, sources of information or conflicts of interest. That conclusion would not be altered by virtue of our proposed deletion of Note (e). We recognize, however, that the formulation of proxy voting advice often requires subjective determinations and exercise of professional judgment. We do not interpret Rule 14a–9 to subject PVABs to liability for such determinations simply because a registrant holds a differing view.

Our conclusion that Rule 14a–9 liability cannot rest on mere differences of opinion is supported by the Supreme Court's decisions in *Omnicare, Inc.* v. *Laborers District Council Construction Industry Pension Fund*[80] and *Virginia Bankshares, Inc.* v. *Sandberg.*[81] As noted above, Rule 14a–9 prohibits misstatements or omissions of ''material fact.'' In *Omnicare,* the Court explained that ''a sincere statement of pure opinion is not an 'untrue statement of material fact'' even if the belief is wrong.[82] Thus, to state a claim under Rule 14a–9, it would not be enough to allege that a PVAB's opinions—regarding, for example, its determination to select a particular analysis or methodology to formulate its voting recommendations or the ultimate voting recommendations themselves—were wrong.[83]

As the Court explained in *Omnicare,* there are three ways in which a statement of opinion may be actionable as a misstatement or omission of material fact. First, every statement of opinion ''explicitly affirms one fact: That the speaker actually holds the stated belief.'' [84] Thus, a PVAB may be subject to liability under Rule 14a–9 for a statement of opinion that ''falsely describe[s]'' its view as to the voting decision that it believes the client should make.[85] Second, a statement of opinion may contain ''embedded statements of fact'' which, if untrue, may be a source of liability under Rule 14a–9.[86] And third, ''a reasonable investor may, depending on the circumstances, understand an opinion statement to convey facts about how the speaker has formed the opinion—or, otherwise put, about the speaker's basis for holding that view.'' [87] A PVAB's statement of opinion may thus give rise to liability if it ''omits material facts about the [PVAB's] inquiry into or knowledge concerning [the] statement'' and ''those facts conflict with what a reasonable investor would take from the statement itself.'' [88]

Omnicare and *Virginia Bankshares* support our view that neither mere disagreement with a PVAB's analysis, methodology or opinions, nor a bare assertion that a PVAB failed to reveal the basis for its conclusions, would suffice to state a claim under Rule 14a–9. Rather, a litigant ''must identify particular (and material) facts'' indicating a misstatement or omission of a material fact that renders a PVAB's statements misleading in one of the three senses above—which, the Supreme Court noted, is ''no small task.'' [89] As such, a PVAB would not face liability under Rule 14a–9 for exercising its discretion to rely on a particular analysis, methodology or set of information—while relying less heavily on or not adopting alternative analyses, methodologies or sets of information, including those advanced by a registrant or other party—when formulating its voting recommendations. Similarly, a PVAB would not face liability under Rule 14a–9, for example, simply because it did not accept a registrant's suggested revisions to its proxy voting advice concerning such discretionary matters. Instead, a PVAB's potential liability under Rule 14a–9 turns on whether its proxy voting advice contains a material misstatement or omission of fact.[90]

Request for Comment

7. Should we amend Rule 14a–9 as proposed to remove Note (e)? Should we modify the Note instead of deleting it? If so, how should the Note be modified? Rather than rescinding or amending Note (e), should we instead commit to conducting a retrospective review of Note (e) after a given period of time? If so, what is the appropriate amount of time after which we should conduct such review? What would be the potential drawbacks of conducting such a retrospective review?

8. Has the addition of Note (e) to Rule 14a–9 improved the quality or integrity of proxy voting advice? Is there a risk

[79] *See supra* note 74 and accompanying text.

[80] 575 U.S. 175 (2015).

[81] 501 U.S. 1083 (1991). While *Omnicare* involved claims brought under Section 11 of the Securities Act of 1933, we believe its discussion of the circumstances in which a statement of opinion may be actionable under that provision applies to Rule 14a–9. *See Omnicare,* 575 U.S. at 185 n.2 (noting that Rule 14a–9 ''bars conduct similar to that described in § 11''); *see also, e.g., Golub* v. *Gigamon, Inc.,* 994 F.3d 1102 (9th Cir. 2021) (holding that the *Omnicare* standards apply to claims under Rule 14a–9); *Paradise Wire & Cable Defined Benefit Pension Plan* v. *Weil,* 918 F.3d 312, 322–23 (4th Cir. 2019) (applying the *Omnicare* standards to claims under Rule 14a–9).

[82] 575 U.S. at 186.

[83] *Id.* at 194.

[84] *Id.* at 184.

[85] *Id.; see also Virginia Bankshares,* 501 U.S. at 1092, 1095. For example, if a speaker states the belief that a company has the highest market share, while knowing that the company in fact has the second highest market share, that statement of belief would be an ''untrue statement of fact'' about the speaker's own belief.

[86] *Omnicare,* 575 U.S. at 185–86; *see also Virginia Bankshares,* 501 U.S. at 1092, 1095. For example, in stating its opinion that shareholders should vote for a particular director-candidate, a PVAB may support that opinion by reference to that candidate's prior professional experience. Those descriptions of the candidate's professional experience would be statements of fact potentially subject to liability under Rule 14a–9, notwithstanding the context in which they were made (*i.e.,* as support for a statement of opinion).

[87] *Omnicare,* 575 U.S. at 188.

[88] *Id.* at 189. In *Omnicare,* the court offered the example of ''an unadorned statement of opinion about legal compliance: 'We believe our conduct is lawful.'" *Id.* at 188. The court noted that ''[i]f the issuer makes that statement without having consulted a lawyer, it could be misleadingly incomplete.'' *Id.* This example can also be applied to a PVAB's proxy voting advice if, for example, it makes a statement of opinion regarding the legality of a registrant's proposal or corporate action without having consulted a lawyer.

[89] *Id.* at 194. We further note that both *Omnicare* and *Virginia Bankshares* were cases against registrants; we are not aware of any enforcement actions or private lawsuits against a PVAB based on statements of opinion in connection with proxy voting matters.

[90] This release does not address any duties or liabilities that a PVAB may have under the Investment Advisers Act of 1940, as applicable.

that PVABs will change their policies and procedures to the detriment of investors if the Commission adopts the proposed amendments to Rule 14a–9? Are there any other adverse consequences associated with the removal of Note (e) to Rule 14a–9?

9. Has the addition of Note (e) to Rule 14a–9 resulted in increased litigation for PVABs? Have PVABs experienced an increase in litigation costs or credible threats of litigation since the adoption of the 2020 Final Rules? Have there been any other adverse consequences associated with the addition of Note (e) to Rule 14a–9?

10. We have set forth our understanding of the scope of Rule 14a–9 liability in the context of proxy voting advice. Are there other ways we could address concerns about potential increased litigation risks to PVABs and impairment of the independence of proxy voting advice? For example, should we amend Rule 14a–9 to codify this understanding? Alternatively, should we exempt all or parts of proxy voting advice from Rule 14a–9 liability entirely? For example, should we amend Rule 14a–9 to expressly state that a PVAB would not be subject to liability under that rule for its voting recommendations and any subjective determinations it makes in formulating such recommendations, including its decision to use a specific analysis, methodology or information or its decision as to how to respond to any disagreement a registrant may have with its proxy voting advice?

III. Economic Analysis

We are proposing amendments to Exchange Act Rule 14a–2(b)(9) to rescind the Rule 14a–2(b)(9)(ii) conditions. The purpose of these proposed amendments is to address concerns about the potential adverse effects of the 2020 Final Rules on the independence, cost and timeliness of proxy voting advice, while still achieving many of the intended benefits of the 2020 Final Rules with respect to the quality of the advice provided to PVABs' clients. We also are proposing an amendment to Exchange Act Rule 14a–9 to remove paragraph (e) of the Note to that rule. The purpose of this proposed amendment is to avoid any misperception that the addition of Note (e) to Rule 14a–9 purported to determine or alter the law governing that rule's application and scope, including its application to statements of opinion.

The discussion below addresses the economic effects of the proposed amendments, including their anticipated costs and benefits, as well as the likely effects of the amendments on efficiency, competition and capital formation.[91] We also analyze the potential costs and benefits of reasonable alternatives to the proposed amendments. Where practicable, we have attempted to quantify the economic effects of the proposed amendments; however, in most cases, we are unable to do so because either the necessary data is unavailable or certain effects are not quantifiable. Below, we request comment on our analysis of these effects as well as data that could help us quantify these effects.

A. Economic Baseline

The baseline against which the costs, benefits and the impact on efficiency, competition and capital formation of the proposed amendments are measured consists of the current regulatory requirements applicable to registrants, PVABs, investment advisers and other clients of PVABs, as well as current industry practices used by these entities in connection with the preparation, distribution and use of proxy voting advice.

The adopting release for the 2020 Final Rules provided an overview of the role of PVABs in the proxy process, including a discussion of existing economic research on PVABs and the quality of proxy voting advice they provide.[92]

1. Affected Parties and Current Market Practices

a. Proxy Voting Advice Businesses

As of November 2021, to our knowledge, the proxy voting advice industry in the United States consists of three major firms: ISS, Glass Lewis and Egan-Jones.

- ISS, founded in 1985, is a privately held company that provides research and analysis of proxy issues, custom policy implementation, vote recommendations, vote execution, governance data and related products and services.[93] ISS also provides advisory/consulting services, analytical tools and other products and services to corporate registrants through ISS Corporate Solutions, Inc. (a wholly owned subsidiary).[94] As of April 2020, ISS had nearly 2,000 employees in 30 locations, and covered approximately 44,000 shareholder meetings in 115 countries, annually.[95] ISS states that it executes about 10.2 million ballots annually on behalf of those clients representing 4.2 trillion shares.[96] ISS is registered with the Commission as an investment adviser and identifies its work as pension consultant as the basis for registering as an adviser.[97]
- Glass Lewis, established in 2003, is a privately held company that provides research and analysis of proxy issues, custom policy implementation, vote recommendations, vote execution and reporting and regulatory disclosure services to institutional investors.[98] As of April 2020, Glass Lewis had more than 380 employees worldwide that provide services to more than 1,300 clients that collectively manage more than $35 trillion in assets.[99] Glass Lewis states that it covers more than 20,000 shareholder meetings across approximately 100 global markets annually.[100] Glass Lewis is not registered with the Commission in any capacity.
- Egan-Jones was established in 2002 as a division of Egan-Jones Ratings Company.[101] Egan-Jones is a privately held company that provides proxy services, such as notification of meetings, research and recommendations on selected matters to be voted on, voting guidelines, execution of votes and regulatory disclosure.[102] As of September 2016, Egan-Jones' proxy research or voting clients mostly consisted of mid- to large-sized mutual funds,[103] and the firm

[91] Section 3(f) of the Exchange Act [17 U.S.C. 78c(f)] directs the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act [17 U.S.C. 78w(a)(2)] requires the Commission when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

[92] *See* 2020 Adopting Release.

[93] *See* U.S. Gov't Accountability Office, GAO–17–47, Report to the Chairman, Subcommittee on Economic Policy, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, Corporate Shareholder Meetings: Proxy Advisory Firms' Role in Voting and Corporate Governance Practices, 6 (2016), *available at https://www.gao.gov/assets/690/681050.pdf* (''2016 GAO Report'').

[94] *Id.*

[95] *See* About ISS, *available at https://www.issgovernance.com/about/about-iss.*

[96] *See* About ISS, *https://www.issgovernance.com/about/about-iss.*

[97] *See* Form ADV filing for ISS, *available at: https://adviserinfo.sec.gov/IAPD/content/ViewForm/crd_iapd_stream_pdf.aspx?ORG_PK=111940 (last accessed April 23, 2020)* (''ISS Form ADV filing''). *See also* 2016 GAO Report at 9.

[98] *Id.* at 7.

[99] *See* Glass Lewis Company Overview, *available at https://www.glasslewis.com/company-overview/.*

[100] *Id.*

[101] *See* 2016 GAO Report at 7.

[102] *Id.*

[103] *Id.*

covered approximately 40,000 companies.[104] Egan-Jones Ratings Company (Egan-Jones' parent company) is registered with the Commission as a Nationally Recognized Statistical Ratings Organization.[105]

Of the three PVABs identified, ISS and Glass Lewis are the largest and most often used for proxy voting advice.[106] We do not have access to general financial information for ISS, Glass Lewis and Egan-Jones such as annual revenues, earnings before interest, taxes, depreciation and amortization and net income. We also do not have access to client-specific financial information or more general or aggregate information regarding the economics of the PVABs.

As part of our consideration of the baseline for the proposed amendments, we focus on the industry practice that is particularly relevant for the proposed amendments to Rule 14a–2(b)(9): The PVABs' procedures for engagement with registrants. As mentioned above, all three major PVABs have certain policies, procedures and disclosures in place intended to assure clients that the proxy voting advice they receive will be based on accurate, transparent and complete information.[107] In some cases, PVABs seek input from registrants to further these objectives. Glass Lewis and Egan-Jones offer registrants some form of pre-release review of at least some of their proxy voting advice reports, or the data used in their reports. ISS does not provide draft proxy voting advice to any United States registrants, but it engages with registrants during the process of formulating its proxy voting advice. Also, all three PVABs offer registrants access to proxy voting advice after it is distributed to clients, in some cases for a fee, and offer mechanisms by which registrants can provide feedback on such advice. In the 2021 Annual Report, after reviewing each member-PVAB's compliance report, the Oversight Committee found that ISS and Glass Lewis met the standards established in the three best practices principles, which include communication with and feedback from registrants.[108]

Additionally, it is our understanding that some PVABs currently provide their clients with notifications of and links to filings by registrants that are the subject of proxy voting advice in their online platforms.[109] These notifications and links provide a means by which clients may access additional definitive proxy materials that registrants may file in response to proxy voting advice.

b. Clients of Proxy Voting Advice Businesses as Well as Underlying Investors

Clients that use PVABs for proxy voting advice will be affected by the proposed amendments. In turn, investors and other groups on whose behalf these clients make voting determinations will be affected. One of the three major PVABs—ISS—is registered with the Commission as an investment adviser and, as such, provides annually updated disclosure with respect to its types of clients on Form ADV. Table 1 below reports client types as disclosed by ISS.[110]

TABLE 1—NUMBER OF CLIENTS BY CLIENT TYPE

[As of March 28, 2020]

Type of client [a]	Number of clients [b]
Banking or thrift institutions	195
Pooled investment vehicles	300
Pension and profit sharing plans	170
Charitable organizations	110
State or municipal government entities	10
Other investment advisers	960
Insurance companies	40
Sovereign wealth funds and foreign official institutions	10
Corporations or other businesses not listed above	70
Other	225
Total	2,095

[a] The table excludes client types for which ISS indicated either zero clients or fewer than five clients.

[b] Form ADV filers indicate the approximate number of clients attributable to each type of client. If the filer has fewer than five clients in a particular category (other than investment companies, business development companies, and pooled investment vehicles), it may indicate that it has fewer than five clients rather than reporting the number of clients.

Table 1 illustrates the types of clients that utilize the services of one of the largest PVABs. For example, while investment advisers (''Other investment advisers'' in Table 1) constitute a 46 percent plurality of clients for ISS, other types of clients include pooled investment vehicles (14 percent) and pension and profit sharing plans (eight percent). Other users of the services offered by ISS include corporations, charitable organizations and insurance companies.[111] Certain of these users of PVABs' services make voting determinations that affect the interests of a wide array of individual investors, beneficiaries and other constituents.

c. Registrants

Registrants also will be affected by the proposed amendments. Registrants that have a class of equity securities registered under Section 12 of the Exchange Act as well as non-registrant parties that conduct proxy solicitations with respect to those registrants are subject to the Federal proxy rules.[112] In addition, there are certain other companies that do not have a class of equity securities registered under Section 12 of the Exchange Act that file proxy materials with the Commission. Finally, Rule 20a–1 under the Investment Company Act subjects all registered management investment companies to the Federal proxy rules.[113]

We note that because registrants are owned by investors, effects on registrants as a result of the proposed amendments will accrue to investors. Among the investors in a given registrant, there may be individual investors or groups of investors that may want to influence the direction that the registrant should pursue. Those individual investors or groups of investors could be clients of PVABs. Separately, because of the principal-agent relationship between investors

[104] *Id.* While ISS and Glass Lewis have published updated coverage statistics on their websites, the most recent data available for Egan-Jones was compiled in the 2016 GAO Report.

[105] *See* Order Granting Registration of Egan-Jones Rating Company as a Nationally Recognized Statistical Rating Organization, Exchange Act Release No. 34–57031 (Dec. 21, 2007), *available at https://www.sec.gov/ocr/ocr-current-nrsros.html#egan-jones.*

[106] *See* 2016 GAO Report at 8, 41 (''In some instances, we focused our review on Institutional Shareholder Services (ISS) and Glass Lewis and Co. (Glass Lewis), because they have the largest number of clients in the proxy advisory firm market in the United States.''). *See also* letters in response to the SEC Staff Roundtable on the Proxy Process from Center on Executive Compensation (Mar. 7, 2019) (noting that there are ''two firms controlling roughly 97% of the market share for such services''); Society for Corporate Governance (Nov. 9, 2018) (''While there are five primary proxy advisory firms in the U.S., today the market is essentially a duopoly consisting of Institutional Shareholder Services . . . and Glass Lewis & Co. . . . . .'').

[107] *See supra* Section II.A.1.

[108] *See supra* Section II.A.1.

[109] *See supra* note 57.

[110] *See* ISS Form ADV filing (describing clients classified as ''Other'' as ''Academic, vendor, other companies not able to identify as above'').

[111] *Id.*

[112] Foreign private registrants are exempt from the Federal proxy rules under Rule 3a12–3(b) of the Exchange Act. *See* 17 CFR 240.3a12–3. Furthermore, we are not aware of any asset-backed registrants that have a class of equity securities registered under Section 12 of the Exchange Act. Most asset-backed registrants are registered under Section 15(d) of the Exchange Act and thus are not subject to the Federal proxy rules. Nine asset-backed registrants obtained a class of debt securities registered under Section 12 of the Exchange Act as of December 2018. As a result, these asset-backed registrants are not subject to the Federal proxy rules.

[113] Under Rule 20a–1 of the Investment Company Act, registered management investment companies must comply with regulations adopted pursuant to Section 14(a) of the Exchange Act that would be applicable to a proxy solicitation if it were made with respect to a security registered pursuant to Section 12 of the Exchange Act. *See* 17 CFR 270.20a–1. Additionally, ''registered management investment company'' means any investment company other than a face-amount certificate company or a unit investment trust. *See* 15 U.S.C. 80a–4.

and management in a corporation, there may exist conflicts between management of the registrant and investors. It is possible that some investors may use PVABs' advice as part of their decision-making process on a particular matter presented for shareholder approval for which management's interests may not be aligned with those of investors in general.

As of December 31, 2020, we estimate that approximately 5,400 registrants had a class of securities registered under Section 12 of the Exchange Act.[114] As of the same date, there were approximately 86 companies that did not have a class of securities registered under Section 12 of the Exchange Act that filed proxy materials.[115] As of September 30, 2021, there were 14,062 registered management investment companies that were subject to the proxy rules: (i) 13,347 open-end funds, out of which 2,497 were Exchange Traded Funds (''ETFs'') registered as open-end funds or open-end funds that had an ETF share class; (ii) 701 closed-end funds; and (iii) 14 variable annuity separate accounts registered as management investment companies.[116] As of June 2021, we identified 99 Business Development Companies (''BDCs'') that could be subject to the proposed amendments.[117] The summation of these estimates yields 19,647 companies that may be affected by the proposed amendments.[118]

The above estimates are an upper bound of the number of potentially affected companies because not all of these registrants may file proxy materials related to a meeting for which a PVAB issues proxy voting advice in a given year. Out of the 19,647 potentially affected registrants mentioned above, approximately 5,350 filed proxy materials with the Commission during calendar year 2020.[119] Out of the 5,350 registrants, 4,500 (84 percent) were Section 12 or Section 15(d) registrants and the remaining 850 (16 percent) were registered management investment companies.

2. Current Regulatory Framework

On July 22, 2020, the Commission adopted the 2020 Final Rules. The 2020 Final Rules:

- Amended Rule 14a–1(l) to codify the Commission's interpretation that proxy voting advice generally constitutes a ''solicitation'' subject to the proxy rules.
- Adopted Rule 14a–2(b)(9) to add new conditions to two exemptions (set forth in Rules 14a–2(b)(1) and (3)) that PVABs generally rely on to avoid the proxy rules' information and filing requirements. Those conditions include:
  - New conflicts of interest disclosure requirements; and
  - The Rule 14a–2(b)(9)(ii) conditions.
- Amended the Note to Rule 14a–9, which prohibits false or misleading statements, to include specific examples of material misstatements or omissions related to proxy voting advice. Specifically, Note (e) provides that the failure to disclose material information regarding proxy voting advice, ''such as the [PVAB's] methodology, sources of information, or conflicts of interest'' could, depending upon particular facts and circumstances, be misleading within the meaning of the rule.

The changes to the definition of ''solicitation'' and to Rule 14a–9 became effective on November 2, 2020. The conditions set forth in Rule 14a–2(b)(9) will become effective on December 1, 2021.

B. Benefits and Costs

In the following sections, we discuss the specific benefits and costs of the proposed amendments.

1. Benefits

The main benefit for PVABs from our proposed rescission of the Rule 14a–2(b)(9)(ii) conditions would be the reduction of the initial or ongoing[120] direct costs associated with modifying their current systems and methods, or developing and maintaining new systems and methods, to satisfy the requirement of Rule 14a–2(b)(9)(ii)(A) that PVABs adopt and publicly disclose written policies and procedures reasonably designed to ensure that registrants that are the subject of proxy voting advice have such advice made available to them at or prior to the time such advice is disseminated to PVABs' clients. Additionally, the proposed amendments would reduce the direct costs of satisfying the requirement of Rule 14a–2(b)(9)(ii)(B) that PVABs adopt and publicly disclose written policies and procedures reasonably designed to ensure that PVABs provide clients with a mechanism by which they can reasonably be expected to become aware of a registrant's written statements about the proxy voting advice in a timely manner before the shareholder meeting.

[114] We are able to estimate the number of registrants with a class of securities registered under Section 12 of the Exchange Act by reviewing all Forms 10–K and 10–K amendments filed during calendar year 2018 with the Commission. After reviewing all forms, we then count the number of unique registrants that identify themselves as having a class of securities registered under Section 12(b) or Section 12(g) of the Exchange Act. Foreign private registrants that filed both Forms 20–F and 40–F, as well as asset-backed registrants that filed Forms 10–D and 10–D/A during calendar year 2018 with the Commission are excluded from this estimate. This estimate excludes BDCs that filed Form 10–K or an amendment in 2020.

[115] We identify these issuers as those that: (1) Are subject to the reporting obligations of Exchange Act Section 15(d), but do not have a class of equity securities registered under Exchange Act Section 12(b) or 12(g); and (2) have filed any proxy materials during calendar year 2020 with the Commission. Additionally, we are considering the following proxy materials in our analysis: DEF14A; DEF14C; DEFA14A; DEFC14A; DEFM14A; DEFM14C; DEFR14A; DEFR14C; DFAN14A; N–14; PRE 14A; PRE 14C; PREC14A; PREM14A; PREM14C; PRER14A; PRER14C. Form N–14 can be a registration statement and/or proxy statement. We also manually review all Forms N–14 filed during calendar year 2020 with the Commission, excluding any Forms N–14 that are exclusively registration statements from our estimates. To identify registrants reporting pursuant to Section 15(d), but not registered under Section 12(b) or Section 12(g), we review all Forms 10–K filed in calendar year 2020 with the Commission. We then count the number of unique registrants that identify themselves as subject to Section 15(d) reporting obligations with no class of equity securities registered under Section 12(b) or Section 12(g).

[116] We estimate the number of unique registered management investment companies based on Forms N–CEN filed between December 2020 and September 2021 with the Commission. Open-end funds are registered on Form N–1A, while closed-end funds are registered on Form N–2. Variable annuity separate accounts registered as management investment companies are trusts registered on Form N–3.

[117] BDCs are entities that have been issued an 814-reporting number. Our estimate includes 82 BDCs that filed Form 10–K in 2020, as well as 17 BDCs that were not traded.

[118] The 19,647 potentially affected registrants is the sum of: (a) 5,400 registrants with a class of securities registered under Section 12 of the Exchange Act; (b) 86 registrants without a class of securities registered under Section 12 of the Exchange Act that filed proxy materials; (c) 14,062 registered management investment companies; and (d) 99 BDCs.

[119] *See* 2020 Adopting Release at n.544 (setting forth details on the estimation of companies that filed proxy materials with the Commission during calendar year 2018).

[120] The compliance date for the Rule 14a–2(b)(9)(ii) conditions is December 1, 2021. On June 1, 2021, the Division of Corporation Finance issued a statement that it would not recommend enforcement action based on the Interpretive Release or the 2020 Final Rules during the period in which the Commission is considering further regulatory action in this area. Division of Corporation Finance, *Statement on Compliance with the Commission's 2019 Interpretation and Guidance Regarding the Applicability of the Proxy Rules to Proxy Voting Advice and Amended Rules 14a–1(1), 14a–2(b), 14a–9,* U.S. Securities and Exchange Commission, *available at https://www.sec.gov/news/public-statement/corp-fin-proxy-rules-2021-06-01.* This staff statement does not alter the December 1, 2021 compliance date for the Rule 14a–2(b)(9)(ii) conditions, and thus we recognize that PVABs may have already incurred certain costs to modify their systems or otherwise ensure that the conditions of the exemption are met. Even so, the elimination of these conditions would eliminate any ongoing costs or other costs of the conditions that have not yet been incurred. To the extent a PVAB has not yet incurred any direct costs from the Rule 14a–2(b)(9)(ii) conditions, the proposed amendments would eliminate or avoid potential future costs.

As set forth in the 2020 Final Rules, to be eligible for the safe harbor in Rule 14a–2(b)(9)(iv), a PVAB could provide: (i) Notice on its electronic client platform that the registrant has filed, or has informed the PVAB that it intends to file, additional soliciting materials (and include an active hyperlink to those materials on EDGAR when available); or (ii) notice through email or other electronic means that the registrant has filed, or has informed the PVAB that it intends to file, additional soliciting materials (and include an active hyperlink to those materials on EDGAR when available). Both mechanisms for informing clients could involve initial set-up costs as well as ongoing costs.

To the extent PVABs already have similar systems in place to meet the requirements of Rules 14a–2(b)(9)(ii)(A) and (B), any benefits from the proposed amendments may be limited.[121] For purposes of the Paperwork Reduction Act of 1995 (''PRA''),[122] in the adopting release for the 2020 Final Rules, we estimated that each PVAB would incur 2,845 burden hours to satisfy Rule 14a–2(b)(9)(ii)(A) and 2,845 burden hours to satisfy Rule 14a–2(b)(9)(ii)(B).[123] Also for purposes of our PRA analysis, we estimated that each PVAB would incur a burden of between 50 and 5,690 hours per year associated with securing an acknowledgment or other assurance that the proxy voting advice will not be disclosed.[124] We believe that the proposed amendments would eliminate these PRA burdens.

Additionally, while all three major PVABs currently offer registrants access to their proxy voting advice, in some circumstances they may charge a fee to registrants for such access.[125] Once the Rule 14a–2(b)(9)(ii) conditions become effective, the requirement to share full reports with registrants under Rule 14a–2(b)(9)(ii) may result in a PVAB providing access to proxy voting reports at no charge to registrants to the extent that the PVAB relies on the safe harbor provided in Rule 14a–2(b)(9)(iii) to satisfy the condition in Rule 14a–2(b)(9)(ii)(A).[126] This would cause such a PVAB to lose fees it otherwise would have earned from selling proxy voting advice to registrants. By eliminating the Rule 14a–2(b)(9)(ii) conditions (and, therefore, the need to rely on the Rule 14a–2(b)(9)(iii) safe harbor), the proposed amendments could allow PVABs to charge registrants for access to the proxy voting reports, thus increasing their revenues.

The proposed amendments may also benefit other parties. PVABs may pass through a portion of the costs of modifying, developing or maintaining systems to meet the Rule 14a–2(b)(9)(ii) conditions to their clients through higher fees for proxy voting advice. Eliminating such costs could therefore be beneficial to clients of PVABs.

Some commenters on the 2019 Proposed Rules suggested that the proposal could negatively affect PVABs' independence: Because of the ability of registrants to review and provide feedback on proxy voting advice in advance of its dissemination to PVABs' clients (and potentially lobby PVABs for changes to recommendations), the 2019 Proposed Rules could have diminished PVABs' willingness to recommend votes against management, thus substantially diminishing the independent information available to investors and impeding investors' ability to monitor company management.[127] The 2020 Final Rules did not include a registrant advance review and feedback process, and instead implemented a principles-based approach, in an effort to address such concerns. However, notwithstanding these changes, clients of PVABs have continued to express strong concerns about the adverse effects of the amendments on the independence of proxy voting advice. To the extent that the proposed amendments eliminate the possibility of such alleged adverse effects, they would benefit PVABs, their clients and investors in general.

Lastly, we do not expect the proposed deletion of paragraph (e) to the Note to Rule 14a–9 to generate any significant benefits other than avoiding any misperception that the 2020 Final Rules' addition of that paragraph purported to determine or alter the law governing Rule 14a–9's application and scope, including its application to statements of opinion. Notwithstanding this proposed deletion, a PVAB may still be subject to liability under Rule 14a–9, depending on the facts and circumstances, for a materially misleading statement or omission of fact, including with regard to its methodology, sources of information or conflicts of interest. Thus, we expect that this proposed amendment would not have any significant economic effect.

2. Costs

The proposed amendments may impose costs on the clients of PVABs—and thereby ultimately the investors they serve—by potentially reducing the overall mix of information available to those clients as they assess proxy voting advice and make determinations about how to cast votes. Requiring timely notice to registrants of proxy voting advice could allow registrants to more effectively determine whether they wish to respond to the recommendation by publishing additional soliciting materials and to do so in a timely manner before shareholders cast their votes. Registrants may wish to do so for a variety of reasons, including, for example, because they have identified what they perceive to be factual errors or methodological weaknesses in a PVAB's analysis or because they have a different or additional perspective with respect to the advice. In either case, clients of PVABs, and registrants' investors in general, may benefit from the availability of additional information upon which to base their voting decisions. Clients of PVABs often must make voting decisions in a compressed time period. Timely access to registrant responses to proxy voting advice could facilitate a client's evaluation of the advice by highlighting disagreements regarding facts and data, differences of opinion or additional perspectives before the client casts its votes. To the extent that the proposed amendments reduce this type of information and it is valuable to investors, the proposed amendments may make it more costly for investors to obtain such information and to make timely voting decisions. Additionally, to the extent that a PVAB relies on the safe harbor Rule 14a–2(b)(9)(iii), which requires PVABs to provide registrants with their proxy voting advice for free, the proposed amendments may cause some registrants to incur costs in the form of fees or the purchase of additional PVAB services in order to obtain and respond to proxy voting advice. Such costs will ultimately be borne by investors.

We note, however, that some PVABs currently have internal policies and procedures aimed at enabling feedback from certain registrants before they issue voting advice.[128] Additionally, the above-described efforts by PVABs to develop industry-wide standards, such

[121] *See supra* Section II.A.1.

[122] 44 U.S.C. 3501 *et seq.*

[123] *See* 2020 Adopting Release at Section V.B.1.

[124] *See* 2020 Adopting Release at Section V.B.1.

[125] *See* 2020 Adopting Release at Section IV.B.1.a.ii.

[126] To rely on the safe harbor in Rule 14a–2(b)(9)(iii), a PVAB must provide registrants with a copy of the proxy voting advice at no charge.

[127] *See* comment letters from Fiona Reynolds, Chief Executive Officer, Principles for Responsible Investment (Feb. 3, 2020) and ISS.

[128] *See, e.g.,* comment letters from Kevin Cameron, Executive Chair, Glass Lewis (Feb. 3, 2020) and ISS.

as the BPPG's principles and the Oversight Committee's role in assessing compliance with such standards, could address some of the concerns underlying the Rule 14a–2(b)(9)(ii) conditions. Thus, if PVABs already provide accurate and complete proxy voting advice to their clients, this potential cost associated with the proposed amendments may not be significant. Moreover, because PVABs developed these internal policies and measures themselves, we believe they are less likely to adversely affect the independence, cost and timeliness of proxy voting advice than measures they would adopt to satisfy the Rule 14a–2(b)(9)(ii) conditions.

Lastly, we do not expect the proposed deletion of Note (e) to Rule 14a–9 to create any significant costs for PVABs. Given that this proposed amendment would not alter a PVAB's liability under Rule 14a–9, we would expect that its economic impact would be minimal.

C. Effects on Efficiency, Competition, and Capital Formation

As discussed in Section III.A above, PVABs perform a variety of functions for their clients, including analyzing and making voting recommendations on matters presented for shareholder votes and included in registrants' proxy statements. As an alternative to utilizing these services, clients of PVABs could instead conduct their own analyses and execute votes using internal resources.[129] Given the costs of analyzing and voting proxies, the services offered by PVABs may offer economies of scale relative to their clients performing those functions themselves. For example, a GAO study found that among 31 institutions, including mutual funds, pension funds and asset managers, large institutions rely less than small institutions on the research and recommendations offered by PVABs.[130] Small institutional investors surveyed in the study indicated they had limited resources to conduct their own research.[131]

To the extent the 2020 Final Rules increase compliance costs and litigation-risk costs for PVABs which could be passed on to clients, the proposed amendments could reverse those increases along with any decrease in demand for PVABs' advice they may have caused. To the extent PVABs offer economies of scale relative to their clients performing certain functions themselves, increased demand for, and reliance upon, PVABs' services could lead to greater efficiencies in the proxy voting process.

To the extent that the Rule 14a–2(b)(9)(ii) conditions impair the independence of PVABs or reduce the diversity of thought in the market for proxy voting advice (*e.g.,* by PVABs erring on the side of caution in complex or contentious matters), the proposed elimination of those conditions could reverse those effects, thus leading to advice from PVABs that is more accurate, useful and valuable to their clients. If clients perceive the proposed amendments as positively affecting PVABs' objectivity and independence, this could lead to an increase in demand for proxy voting advice and potentially greater efficiencies in the proxy voting process.[132]

If the proposed amendments reduce costs for PVABs, this could increase competition for proxy voting advice compared to the current baseline, which includes the effect of the 2020 Final Rules. In particular, if costs associated with the 2020 Final Rules are passed on to clients, the reduction of these costs because of the proposed amendments could encourage some investors to retain the services of PVABs, which could reduce the use of internal resources for voting. Also, if the proposed amendments improve the independence of PVABs and thus increase the quality of proxy voting advice, this could cause PVABs to compete more on this dimension. Lastly, reduction in compliance costs and litigation-risk costs, if large enough, may encourage entry into the market for proxy voting advice, increasing the competition among PVABs.[133] However, given the fact that prior to the adoption of the 2020 Final Rules there were only three major PVABs in the United States, we do not expect that the proposed amendments would significantly increase the likelihood of new entry into this market.

If the proposed amendments facilitate the ability of clients of PVABs to make informed voting determinations, this could ultimately lead to improved investment outcomes for investors. This, in turn, could lead to a greater allocation of resources to investment. To the extent that the proposed amendments lead to more investment, we could expect greater demand for securities, which could, in turn, promote capital formation. Overall, given the many factors that can influence the rate of capital formation, any effect of the proposed amendments on capital formation is expected to be small.

Lastly, we do not expect the proposed deletion of Note (e) to Rule 14a–9 to have any significant economic effect on efficiency, competition and capital formation.

D. Reasonable Alternatives

1. Interpretive Guidance or No-Action Relief on Whether Systems and Processes Satisfy the 2020 Final Rules

Alternatives to rescinding the Rule 14a–2(b)(9)(ii) conditions that could reduce compliance costs and independence concerns for PVABs include the Commission issuing interpretive guidance or the staff providing no-action relief regarding whether the systems and processes that PVABs have in place satisfy the 2020 Final Rules. The benefit of either of these approaches is that they could reduce PVABs' initial or ongoing costs of complying with the 2020 Final Rules if the Commission were to determine that their current systems and processes already satisfy the conditions in Rule 14a–2(b)(9), at least to the extent PVABs

[129] Clients of PVABs may also rely on some combination of internal and external analysis.

[130] *See* U.S. Gov't Accountability Office, GAO–07–765, Report to Congressional Requesters, Corporate Shareholder Meetings: Issues Relating to the Firms that Advise Institutional Investors on Proxy Voting, 2 (2007), *available at https://www.gao.gov/new.items/d07765.pdf* (''2007 GAO Report''). *See generally* comment letter from Business Roundtable (Feb. 3, 2020) (stating that because many institutional investors face voting on a large number of corporate matters every year but lack personnel and resources for managing such activities, they outsource tasks to proxy advisors). *See also* letters in response to the SEC Staff Roundtable on the Proxy Process from BlackRock (Nov. 16, 2018) (stating that ''BlackRock's Investment Stewardship team has more than 40 professionals responsible for developing independent views on how we should vote proxies on behalf of our clients''); NYC Comptroller (Jan. 2, 2019) (stating that we ''have five full-time staff dedicated to proxy voting during peak season, and our least-tenured investment analyst has 12 years' experience applying the NYC Funds' domestic proxy voting guidelines'').

[131] *See* 2007 GAO Report at 2. *See also* letters in response to the SEC Staff Roundtable on the Proxy Process from Ohio Public Retirement (Dec. 13, 2018) (''OPERS also depends heavily on the research reports we receive from our proxy advisory firm. These reports are critical to the internal analyses we perform before any vote is submitted. Without access to the timely and independent research provided by our proxy advisory firm, it would be virtually impossible to meet our obligations to our members.''); Transcript of Roundtable on the Proxy Process at 194 (comments of Mr. Scot Draeger, stating that: ''If you've ever actually reviewed the benchmarks, whether it's ISS or anybody else, they're very extensive and much more detailed than small firm[s] like ours could ever develop with our own independent research.'').

[132] As noted above, we do not have financial data about PVABs, including financial data by services provided or by client type. This makes these assessments on a quantitative basis difficult.

[133] *See* comment letter from Sarah Wilson, CEO, Minerva Analytics (Feb. 22, 2020). In its comment letter, Minerva, a PVAB in the U.S. market prior to 2010, stated that the threat of litigation for ''errors'' is a factor influencing its views on whether to reenter the U.S. market. *Id.*

have not already made modifications to their existing business models. To the extent PVABs' existing systems and processes satisfy the Rule 14a–2(b)(9)(ii) conditions, these approaches could also mitigate concerns that the independence of the advice could become impaired by making clear that modifications are not required. The potential cost of these alternatives is that, to the extent that PVABs' current systems and processes do not satisfy the 2020 Final Rules, they may not eliminate potential costs or concerns associated with the requirements of Rule 14a–2(b)(9).

2. Exempting Certain Parts of PVABs' Proxy Voting Advice From Rule 14a–9 Liability

Rather than, or in addition to, deleting Note (e) to Rule 14a–9, the Commission could amend Rule 14a–9 to exempt certain portions of proxy voting advice from Rule 14a–9 liability. For example, the Commission could amend Rule 14a–9 to expressly state that a PVAB would not be subject to liability under that rule for any subjective determinations it makes in formulating its recommendations, including its decision to use a specific analysis, methodology or information. The benefit of this alternative would be that it may give PVABs additional comfort that they will not be subject to liability under Rule 14a–9 on the basis of mere disagreement over their analysis, methodology or sources of information. The main cost of this alternative is that it may lower the overall quality of the advice that PVABs provide, and thus negatively affect the voting decisions of institutional investors and investment advisers, and ultimately the other investors they serve. In addition, creating such an exemption from Rule 14a–9 liability that differs from existing law may generate additional uncertainty and litigation.

Request for Comment

11. Have we correctly characterized the benefits and costs for PVABs from the proposed amendments? Are there any other benefits and costs that should be considered? Please provide supportive data to the extent available.

12. Have we correctly characterized the benefits and costs for institutional investors, their clients and registrants from the proposed amendments? Are there any other related benefits and costs that should be considered? Please provide supportive data to the extent available.

13. We assume that the proposed amendments would strengthen the independence of PVABs. Are we correct in that characterization? Please provide supportive data to the extent available.

14. Have we correctly characterized the effects on efficiency, competition and capital formation from the proposed amendments? Are there any effects that should be considered? Please provide supportive data to the extent available.

IV. Paperwork Reduction Act

A. Summary of the Collections of Information

Certain provisions of our rules, schedules and forms that would be affected by the proposed amendments contain ''collection of information'' requirements within the meaning of the PRA. We are submitting the proposed amendments to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[134] The hours and costs associated with maintaining, disclosing or providing the information required by the proposed amendments constitute paperwork burdens imposed by such collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. The title for the affected collection of information is: ''Regulation 14A (Commission Rules 14a–1 through 14a–21 and Schedule 14A)'' (OMB Control No. 3235–0059).

We adopted existing Regulation 14A [135] pursuant to the Exchange Act. Regulation 14A and its related schedules set forth the disclosure and other requirements for proxy statements, as well as the exemptions therefrom, filed by registrants and other soliciting persons to help investors make informed voting decisions.[136] A detailed description of the proposed amendments, including the need for the information and its proposed use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the expected economic effects of the proposed amendments can be found in Section III above.

[134] 44 U.S.C. 3507(d); 5 CFR 1320.11.

[135] 17 CFR 240.14a–1 *et seq.*

[136] To the extent that a person or entity incurs a burden imposed by Regulation 14A, it is encompassed within the collection of information estimates for Regulation 14A. This includes registrants and other soliciting persons preparing, filing, processing and circulating their definitive proxy and information statements and additional soliciting materials, as well as the efforts of third parties such as PVABs whose proxy voting advice falls within the ambit of the Federal rules and regulations that govern proxy solicitations.

B. Incremental and Aggregate Burden and Cost Estimates for the Proposed Amendments

Below we estimate the incremental and aggregate effect on paperwork burden as a result of the proposed amendments. Most, if not all, of the effect on paperwork burden as a result of the proposed amendments would come from the rescission of Rule 14a–2(b)(9)(ii) and would be expected to reduce the burden from Rule 14a–2(b)(9). However, because Rule 14a–2(b)(9) has not yet become effective, that rule has not yet resulted in any paperwork burden, and there is nothing yet to reduce. Our proposed amendments to Rule 14a–2(b)(9), therefore, would not have any effect on the current paperwork burden as of the date of this release. Nonetheless, as Rule 14a–2(b)(9) is scheduled to become effective on December 1, 2021, to fully analyze the impact of the proposed amendments, for purposes of this PRA analysis, we instead set forth the estimated amount of paperwork burden that the parties affected by Rule 14a–2(b)(9) would avoid as a result of our proposed amendments to Rule 14a–2(b)(9), including our proposed rescission of the Rule 14a–2(b)(9)(ii) conditions.

1. Impact on Affected Parties

As discussed above in Section III.A.1, there are a variety of parties that may be affected, directly or indirectly, by the proposed amendments. These include PVABs; the clients to whom PVABs provide proxy voting advice; investors and other groups on whose behalf the clients of PVABs make voting determinations; registrants who are conducting solicitations and are the subject of proxy voting advice; and the registrants' shareholders, who ultimately bear the costs and benefits to the registrant associated with the outcome of voting matters covered by proxy voting advice.

Of these parties, we expect that PVABs would avoid some additional paperwork burden as a result of the proposed amendments.[137] As discussed

[137] The PRA requires that we estimate ''the total annual reporting and recordkeeping burden that will result from the collection of information.'' [5 CFR 1320.5(a)(1)(iv)(B)(5)] A ''collection of information'' includes any requirement or request for persons to obtain, maintain, retain, report or publicly disclose information [5 CFR 1320.3(c)]. OMB's current inventory for Regulation 14A, therefore, is an assessment of the paperwork burden associated with such requirements and requests under the regulation, and this PRA is an assessment of changes to such inventory expected to result from these proposed amendments. While other parties, such as the clients of PVABs, may have benefits and costs associated with the proposed

further below, we believe that any avoidance of an incremental increase in burdens would be attributable primarily to the rescission of Rule 14a–2(b)(9)(ii). With respect to the proposed amendment to Rule 14a–9, we do not expect the economic impact of this amendment will be significant because it would not change existing law and, therefore, would not change respondents' legal obligations.[138] Moreover, any impact arising from this proposed amendment is not expected to materially change the average PRA burden hour estimates associated with Regulation 14A. Thus, we have not made any adjustments to our PRA burden estimates in respect of the proposed amendment to Rule 14a–9.

a. Proxy Voting Advice Businesses

We expect that PVABs would avoid increased paperwork burden as a result of our proposed amendments to Rule 14a–2(b)(9), which, when effective,[139] will apply to anyone relying on the exemptions in Rules 14a–2(b)(1) or (b)(3) who furnishes proxy voting advice covered by Rule 14a–1(l)(1)(iii)(A). The amount of burdens that PVABs would avoid depends on a number of factors that are firm-specific and highly variable, which makes it difficult to provide reliable quantitative estimates.[140]

There are two components of the proposed amendments to Rule 14a–2(b)(9) that we expect to result in an avoidance of increased burdens. First, under Rule 14a–2(b)(9)(ii)(A), PVABs are required to adopt and publicly disclose written policies and procedures reasonably designed to ensure that registrants that are the subject of the proxy voting advice have such advice made available to them at or prior to the time such advice is disseminated to the PVABs' clients. Second, under Rule 14a–2(b)(9)(ii)(B), PVABs are required to adopt and publicly disclose written policies and procedures reasonably designed to ensure that PVABs provide their clients with a mechanism by which they can reasonably be expected to become aware of a registrant's written statements about the proxy voting advice in a timely manner before the shareholder meeting. The proposed amendments would rescind both of these rules, thereby relieving PVABs of the obligation to comply with these requirements. The proposed amendments would also rescind the non-exclusive safe harbors (set forth in Rules 14a–2(b)(9)(iii) and (iv)) that PVABs may use to satisfy the principle-based requirements in Rule 14a–2(b)(9)(ii). We address each of these components in turn.

In the release adopting the 2020 Final Rules, we estimated that PVABs would incur an annual incremental paperwork burden to comply with Rules 14a–2(b)(9)(ii), (iii) and (iv) as follows:

New requirement	PVAB estimated incremental annual compliance burden
Rule 14a–2(b)(9)(ii)(A)—Notice to Registrants and Rule 14a 2(b)(9)(iii) Safe Harbor.	Increase in paperwork burden corresponding to:
The PVAB has adopted and publicly disclosed written policies and procedures reasonably designed to ensure that registrants who are the subject of proxy voting advice have such advice made available to them at or prior to the time the advice is disseminated to clients of the PVAB. Safe Harbor—The PVAB has written policies and procedures that are reasonably designed to provide a registrant with a copy of the PVAB's proxy voting advice, at no charge, no later than the time it is disseminated to the PVAB's clients. Such policies and procedures may include conditions requiring that: (A) The registrant has filed its definitive proxy statement at least 40 calendar days before the security holder meeting date (or if no meeting is held, at least 40 calendar days before the date the votes, consents, or authorizations may be used to effect the proposed action); and (B) The registrant has acknowledged that it will only use the copy of the proxy voting advice for its internal purposes and/or in connection with the solicitation and it will not be published or otherwise shared except with the registrant's employees or advisers.	To the extent that the PVAB's current practices and procedures are not already sufficient: ○ Developing new or modifying existing systems, policies and methods, or developing and maintaining new systems, policies and methods to ensure that it has the capability to timely provide each registrant with information about its proxy voting advice necessary to satisfy the requirement in Rule 14a–2(b)(9)(ii)(A) and/or the safe harbor in Rule 14a–2(b)(9)(iii). ○ If applicable, obtaining acknowledgments or agreements with respect to use of any information shared with the registrant; and ○ Delivering copies of proxy voting advice to registrants We estimate the increase in paperwork burden to be 8,535 hours per PVAB, consisting of 2,845 hours for system updates and 5,690 hours for acknowledgments regarding sharing information.
Rule 14a–2(b)(9)(ii)(B)—Notice to Clients of Proxy Voting Advice Businesses and Rule 14a–2(b)(9)(iv) Safe Harbor.	Increase in paperwork burden corresponding to:

amendments (*see supra* Section III.B.), only PVABs and registrants will avoid any additional paperwork burden as a result of the proposed amendments.

[138] The proposed amendment to Rule 14a–9 may relieve PVABs of direct costs to the extent Note (e) to that rule prompted some PVABs to provide additional disclosure about the bases for their proxy voting advice. However, we expect any such costs would be minimal because the adoption of that Note did not represent a change to existing law, nor did it broaden the concept of materiality or create a new cause of action. *See* 2020 Adopting Release at n.685. Similarly, we expect that any avoidance of incremental burdens associated with our proposed amendment to Rule 14a–9 would be minimal because our proposed rescission of Note (e) to Rule 14a–9 is not intended to alter that rule's application to proxy voting advice. *See supra* Section II.B.2.

[139] *See supra* note 3 and accompanying text.

[140] *See generally* the discussion in Section III.B.1 *supra* concerning the difficulty in providing quantitative estimates of the benefits to PVABs associated with the proposed amendments.

New requirement	PVAB estimated incremental annual compliance burden
The PVAB has adopted and publicly disclosed written policies and procedures reasonably designed to ensure that the PVAB provides clients with a mechanism by which they can reasonably be expected to become aware of any written statements regarding proxy voting advice by registrants who are the subject of such advice, in a timely manner before the shareholder meeting. Safe harbor—The PVAB has written policies and procedures that are reasonably designed to inform clients who receive the proxy voting advice when a registrant that is the subject of such voting advice notifies the proxy voting advice business that it intends to file or has filed additional soliciting materials with the Commission setting forth the registrant's statement regarding the voting advice, by: (A) Providing notice to its clients on its electronic client platform that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available; or (B) The PVAB providing notice to its clients through email or other electronic means that the registrant intends to file or has filed such additional soliciting materials and including an active hyperlink to those materials on EDGAR when available.	To the extent that the PVAB's current practices and procedures are not already sufficient: Developing new or modifying existing systems, policies and methods, or developing and maintaining new systems, policies and methods capable of: ○ Tracking whether the registrant has filed additional soliciting materials; ○ Ensuring that PVABs provide clients with a means to learn of a registrant's written statements about proxy voting advice in a timely manner that satisfies the requirement in Rule 14a–2(b)(9)(ii)(B) and/or the safe harbor in Rule 14a–2(b)(9)(iv). If relying on the safe harbor in Rule 14a–2(b)(9)(iv)(A) or (B), the associated paperwork burden would include the time and effort required of the PVAB to: ○ Provide notice to its clients through the PVAB's electronic client platform or email or other electronic medium, as appropriate, that the registrant intends to file or has filed additional soliciting materials setting forth its views about the proxy voting advice; and ○ include a hyperlink to the registrant's statement on EDGAR. We estimate the increase in paperwork burden to be 2,845 hours per PVAB.
Total	11,380 hours per PVAB.

Altogether, we estimated an annual total increase of 34,140 hours [141] in compliance burden to be incurred by PVABs that would be subject to Rules 14a–2(b)(9)(ii), (iii) and (iv). Accordingly, we expect that our proposed amendments would allow PVABs to avoid these burdens that they would otherwise be subject to, absent the proposed amendments, once Rule 14a–2(b)(9) becomes effective.

b. Registrants

In addition to PVABs, we anticipate that registrants would avoid increased paperwork burden as a result of our proposed amendment to Rule 14a–2(b)(9). In the adopting release for the 2020 Final Rules, we noted that registrants could, as a result of the adoption of Rule 14a–2(b)(9), experience increased burdens associated with coordinating with PVABs to receive the proxy voting advice, reviewing the proxy voting advice and preparing and filing supplementary proxy materials in response to the proxy voting advice, if they choose to do so. Because Rule 14a–2(b)(9) does not require registrants to engage with PVABs or take any action in response to proxy voting advice, we stated that we expected a registrant would bear additional paperwork burden only if it anticipated the benefits of engaging with the PVABs would exceed the costs of participation. We noted that these costs would vary depending upon the particular facts and circumstances of the proxy voting advice and any issues identified therein, as well as the resources of the registrant, which made it difficult to provide a reliable quantifiable estimate of these costs.

Notwithstanding those difficulties, we estimated an average increase of 50 hours per registrant in connection with the amendments for a total annual increase of 284,500 hours, assuming that a registrant's annual meeting of shareholders is covered by at least two of the three major PVABs in the United States, and the registrant has opted to review both sets of proxy voting advice and file additional soliciting materials in response.[142] Accordingly, we expect that by eliminating the Rule 14a–2(b)(9)(ii) conditions, our proposed amendments would result in a corresponding reduction of potential paperwork burdens that those registrants would have otherwise been expected to incur once Rule 14a–2(b)(9) becomes effective.

2. Aggregate Burden Avoided as a Result of the Proposed Amendments

Table 1 summarizes the calculations and assumptions used in the adopting release for the 2020 Final Rules to derive our estimates of the aggregate increase in burden for all affected parties corresponding to the Rule 14a–2(b)(9)(ii) conditions.

[141] This represented the annual total burden increase expected to be incurred by PVABs (as an average of the yearly burden predicted over the three-year period following adoption of the 2020 Final Rules) and was intended to be inclusive of all burdens reasonably anticipated to be associated with compliance with the Rule 14a–2(b)(9)(ii) conditions. The Commission is aware of three PVABs in the U.S. (*i.e.,* Glass Lewis, ISS and Egan-Jones) whose activities fall within the scope of proxy voting advice constituting a solicitation under amended Rule 14a–1(l)(1)(iii)(A). We estimated that each of these would have a burden of 11,380 hours per year associated with Rules 14a–2(b)(9)(ii), (iii) and (iv). *See* 2020 Adopting Release at n.700. We recognized that there could be other PVABs, including both smaller firms and firms operating outside the U.S., which may also be subject to those rules. However, we expected such a number to be small. Accordingly, rather than increasing our estimate of the number of affected PVABs beyond the three discussed above, we increased our annual total burden estimate by 500 hours to account for those businesses. However, that 500 hour increase also accounted for the burden imposed by Rule 14a–2(b)(9)(i), which is not affected by the proposed amendments. Because we did not indicate, in the adopting release for the 2020 Final Rules, what portion of that 500 hour increase would be attributable to the various conditions in Rule 14a–2(b)(9), we do not include that 500 hour increase in this PRA analysis in order to avoid overestimating the amount of burden that PVABs would be relieved of as a result of the proposed amendments.

[142] We also noted that such burden increase would be offset against any corresponding reduction in burden resulting from the registrant forgoing other methods of responding to the proxy voting advice (such as investor outreach) that the registrant determines are no longer necessary or are less preferable in light of Rule 14a–2(b)(9).

PRA TABLE 1—CALCULATION OF AGGREGATE INCREASE IN BURDEN HOURS RESULTING FROM THE RULE 14a–2(b)(9)(ii) CONDITIONS

	Affected parties	
	Proxy voting advice businesses	Registrants
	(A)	(B)
Burden Hour Increase	34,140	284,500
Aggregate Increase in Burden Hours	[Column Total (A)] + [Column Total (B)] = [318,640]	

Accordingly, we expect that our proposed amendments would allow the affected parties to avoid these estimated burden hours that they would otherwise be subject to, absent the proposed amendments, once Rule 14a–2(b)(9) becomes effective.

3. Increase in Annual Responses Avoided as a Result of the Proposed Amendments

We believe that the proposed amendments would avoid an increase in the number of annual responses [143] to the existing collection of information for Regulation 14A. In the adopting release for the 2020 Final Rules, we stated that we do not expect registrants to file any different number of proxy statements as a result of those rules. We did state, however, that we anticipated that the number of additional soliciting materials filed under 17 CFR 240.14a–6 may increase in proportion to the number of times that registrants choose to provide a statement in response to a PVAB's proxy voting advice as contemplated by Rule 14a–2(b)(9)(ii)(B) or the safe harbor under Rule 14a–2(b)(9)(iv). For purposes of the PRA analysis in that release, we estimated that there would be an additional 783 annual responses to the collection of information as a result of the 2020 Final Rules.[144] Accordingly, we expect that our proposed amendments would result in an avoidance of such an increase in the number of additional annual responses to the collection of information for Regulation 14A.

4. Incremental Change in Compliance Burden for Collection of Information

PRA Table 2 below illustrates our estimated incremental change to the total annual compliance burden for the Regulation 14A collection of information in hours and in costs [145] as a result of the Rule 14a–2(b)(9)(ii) conditions, as calculated in the PRA analysis for the 2020 Final Rules. The table sets forth the percentage estimates we typically use for the burden allocation for each response.

PRA TABLE 2—INCREASE IN BURDEN HOURS RESULTING FROM THE RULE 14a–2(b)(9)(ii) CONDITIONS AS REFLECTED IN THE 2020 FINAL RULES

Number of estimated responses	Total increase in burden hours	Increase in burden hours per response	Increase in internal hours	Increase in professional hours	Increase in professional costs
(A) †	(B) ††	(C) = (B)/(A)	(D) = (B) × 0.75	(E) = (B) × 0.25	(F) = (E) × $400
6,369	318,640	††† 50	238,980	79,660	$31,864,000

† This number reflects an estimated increase of 783 annual responses to the existing Regulation 14A collection of information as a result of the Rule 14a–2(b)(9)(ii) conditions. *See supra* text accompanying note 144. The adopting release for the 2020 Final Rules indicated that 5,586 responses are filed annually. 2020 Adopting Release at 55151.

†† Calculated as the sum of annual burden increases estimated for PVABs (34,140 hours) and registrants (284,500 hours). *See supra* PRA Table 1.

††† The estimated increases in Columns (C), (D), and (E) are rounded to the nearest whole number.

Accordingly, we expect that our proposed amendments would allow the affected parties to avoid these estimated burden hours and costs that they would otherwise be subject to, absent the proposed amendments, once Rule 14a–2(b)(9) becomes effective.

5. Program Change and Revised Burden Estimates

PRA Table 3 summarizes the estimated change to the total annual compliance burden of the Regulation 14A collection of information, in hours and in costs, as a result of the Rule 14a–2(b)(9)(ii) conditions, as calculated in the PRA analysis for the 2020 Final Rules.

[143] For purposes of the Regulation 14A collection of information, the number of annual responses corresponds to the estimated number of new filings that will be made each year under Regulation 14A, which includes filings such as DEF 14A; DEFA14A; DEFM14A; and DEFC14A. When calculating PRA burden for any particular collection of information, the total number of annual burden hours estimated is divided by the total number of annual responses estimated, which provides the average estimated annual burden per response. The current inventory of approved collections of information is maintained by the Office of Information and Regulatory Affairs (''OIRA''), a division of OMB. The total annual burden hours and number of responses associated with Regulation 14A, as updated from time to time, can be found at *https://www.reginfo.gov/public/do/PRAMain.*

[144] 2020 Adopting Release at n.707.

[145] Our estimates in the adopting release for the 2020 Final Rules assumed that 75% of the burden would be borne by the company and 25% would be borne by outside counsel at $400 per hour. We recognized that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes of the PRA analysis, we estimated that such costs would be an average of $400 per hour. This estimate was based on consultations with several registrants, law firms and other persons who regularly assist registrants in preparing and filing reports with the Commission. *See* 2020 Adopting Release at n.708.

PRA TABLE 3—PAPERWORK BURDEN UNDER THE RULE 14a–2(b)(9)(ii) CONDITIONS AS REFLECTED IN THE 2020 FINAL RULES—REG. 14A

Current burden			Program change			Revised burden		
Current annual responses	Current burden hours	Current cost burden	Increase in responses	Increase in internal hours	Increase in professional costs	Annual responses	Burden hours	Cost burden
(A)	(B)	(C)	(D) ±	(E) ‡‡	(F) ‡‡‡		(H) = (B) + (E)	(I) = (C) + (F)
5,586	551,101	$73,480,012	783	238,980	$31,864,000	6,369	790,081	$105,344,012

± *See* Column (A) in PRA Table 2 noting an estimated increase of 783 annual responses to the Regulation 14A collection of information as a result of the Rule 14a–2(b)(9)(ii) conditions.
‡‡ *See* Column (D) in PRA Table 2.
‡‡‡ From Column (F) in PRA Table 2.

Accordingly, we expect that our proposed amendments would allow the affected parties to avoid these estimated burden hours and costs that they would otherwise be subject to, absent the proposed amendments, once Rule 14a–2(b)(9) becomes effective.

Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), we request comment in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;
- Evaluate the accuracy and assumptions and estimates of the burden of the proposed collection of information;
- Determine whether there are ways to enhance the quality, utility and clarity of the information to be collected;
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and
- Evaluate whether the proposed amendments would have any effects on any other collection of information not previously identified in this section.

Any member of the public may direct to us any comments concerning the accuracy of these burden estimates and any suggestions for reducing burdens. Persons submitting comments on the collection of information requirements should direct their comments to the Office of Management and Budget, Attention: Desk Officer for the U.S. Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and send a copy to Vanessa A. Countryman, Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090, with reference to File No. S7–17–21. Requests for materials submitted to OMB by the Commission with regard to the collection of information should be in writing, refer to File No. S7–17–21 and be submitted to the U.S. Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this proposed rule. Consequently, a comment to OMB is best assured of having its full effect if the OMB receives it within 30 days of publication.

V. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[146] the Commission must advise OMB as to whether the proposed amendments constitute a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results or is likely to result in:

- An annual effect on the U.S. economy of $100 million or more (either in the form of an increase or a decrease);
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment, or innovation.

We request comment on whether the proposed amendments would be a ''major rule'' for purposes of SBREFA. In particular, we request comment on the potential effect of the proposed amendments on the U.S. economy on an annual basis; any potential increase in costs or prices for consumers or individual industries; and any potential effect on competition, investment or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VI. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'') [147] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act, to consider the impact of those rules on small entities. The Commission has prepared this Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with Section 603 of the RFA.[148] It relates to the proposed amendments to the proxy solicitation exemptions in Rule 14a–2(b) and the prohibition on false or misleading statements in solicitations in Rule 14a–9 of Regulation 14A under the Exchange Act.

A. Reasons for, and Objectives of, the Proposed Action

The purpose of the proposed amendments to Rule 14a–2(b)(9) is to address concerns about the potential adverse effects of the 2020 Final Rules on the independence, cost and timeliness of proxy voting advice, while still achieving many of the intended benefits of the 2020 Final Rules with respect to the quality of the advice provided to clients. In addition, the purpose of the proposed amendment to Rule 14a–9 is to avoid any misperception that the addition of Note (e) to Rule 14a–9 purported to determine or alter the law governing Rule 14a–9's application and scope, including its application to statements of opinion. The reasons for, and objectives of, these proposed amendments are discussed in more detail in Sections I and II above.

B. Legal Basis

We are proposing the rule and form amendments contained in this document under the authority set forth in Sections 3(b), 14, 23(a) and 36 of the Securities Exchange Act of 1934, as amended.

C. Small Entities Subject to the Proposed Amendments

The proposed amendments are likely to affect some small entities; specifically, those small entities that are

146 5 U.S.C. 801 *et seq.*
147 5 U.S.C. 601 *et seq.*
148 5 U.S.C. 603.

either: (i) PVABs; or (ii) registrants conducting solicitations covered by proxy voting advice.

The RFA defines ''small entity'' to mean ''small business,'' ''small organization,'' or ''small governmental jurisdiction.'' [149] For purposes of the RFA, under our rules, an issuer of securities or a person, other than an investment company or an investment adviser, is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year.[150] An investment company, including a business development company,[151] is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[152] An investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[153] We estimate that there are 660 issuers that file with the Commission, other than investment companies and investment advisers, that may be considered small entities.[154] In addition, we estimate that, as of June 2021, there were 70 registered investment companies that would be subject to the proposed amendments that may be considered small entities.[155] Finally, we estimate that, as of June 2021, there were 548 investment advisers that may be considered small entities.[156] As discussed above, one of the three major PVABs in the United States—ISS—is a registered investment advisor.[157]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

If adopted, the proposed amendments would apply to small entities to the same extent as other entities, irrespective of size. Therefore, we expect that the nature of any benefits and costs associated with the proposed amendments would be similar for large and small entities. Accordingly, we refer to the discussion of the proposed amendments' economic effects on all affected parties, including small entities, in Section III above.[158] Consistent with that discussion, we anticipate that the economic benefits and costs likely would vary widely among small entities based on a number of factors, including the nature and conduct of their businesses, which makes it difficult to project the economic impact on small entities with precision.[159] Compliance with the proposed amendments may require the use of professional skills, including legal skills.

As a general matter, however, we recognize that any costs of the proposed amendments borne by the affected entities could have a proportionally greater effect on small entities, as they may be less able to bear such costs relative to larger entities. For example, as discussed in Section III.B.2, the proposed amendments to Rule 14a–2(b)(9) could potentially reduce the overall mix of information available to PVABs' clients as they assess proxy voting advice and make determinations about how to cast votes. Further, as noted in Section III.C, small institutions tend to rely more heavily on PVABs' proxy voting advice than larger institutions because those smaller institutions have more limited resources to conduct their own research. As such, to the extent the proposed amendments to Rule 14a–2(b)(9) reduce the overall mix of information available to PVABs' clients in connection with PVABs' proxy voting advice, the costs associated by such reduction would be borne disproportionately by smaller institutions. That said, as discussed in Section III.B.2, we expect that any such costs imposed on PVABs' clients would be mitigated to the extent that PVABs currently have internal policies and procedures aimed at enabling feedback from certain registrants before they issue proxy voting advice. However, we request comment on the extent to which PVABs' current internal policies and procedures would mitigate any costs imposed on PVABs' clients as a result of the proposed amendments to Rule 14a–2(b)(9).

We do not expect that PVABs or registrants would incur significant costs as a result of the proposed amendments to Rule 14a–2(b)(9). However, we request comment on how PVABs and registrants may be affected by the proposed amendments.

Finally, as discussed in Section III.B.2. above, we do not expect the proposed amendment to Rule 14a–9 would create any significant costs. However, we request comment on how the proposed amendment may affect PVABs, their clients and registrants.

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe that the proposed amendments would not duplicate, overlap or conflict with other Federal rules.

F. Significant Alternatives

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, we considered the following alternatives:

- Establishing different compliance or reporting requirements that take into account the resources available to small entities;
- Exempting small entities from all or part of the requirements;
- Using performance rather than design standards; and
- Clarifying, consolidating, or simplifying compliance and reporting requirements under the rules for small entities.

The purpose of these proposed amendments is to address concerns about the potential adverse effects of the 2020 Final Rules on the independence, cost and timeliness of proxy voting advice, while still achieving many of the intended benefits of the 2020 Final Rules with respect to the quality of the advice provided to PVABs' clients. The proposed amendments do not impose any compliance or reporting

[149] 5 U.S.C. 601(6).

[150] *See* Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

[151] Business development companies are a category of closed-end investment company that are not registered under the Investment Company Act [15 U.S.C. 80a–2(a)(48) and 80a–53–64].

[152] *See* Investment Company Act Rule 0–10(a) [17 CFR 270.0–10(a)].

[153] *See* Advisers Act Rule 0–7(a) [17 CFR 275.0–7(a)].

[154] This estimate is based on staff analysis of issuers potentially subject to the final amendments, excluding co-registrants, with EDGAR filings on Form 10–K, or amendments thereto, filed during the calendar year of January 1, 2020 to December 31, 2020, or filed by September 1, 2021, that, if timely filed by the applicable deadline, would have been filed between January 1 and December 31, 2020. This analysis is based on data from XBRL filings, Compustat, Ives Group Audit Analytics, and manual review of filings submitted to the Commission.

[155] This estimate is derived from an analysis of data obtained from Morningstar Direct as well as data filed with the Commission (Forms N–Q and N–CSR) for the second quarter of 2021.

[156] Based on SEC-registered investment adviser responses to Items 5.F. and 12 of Form ADV.

[157] *See supra* Section III.B.1.

[158] In particular, we discuss the estimated benefits and costs of the proposed amendments on affected parties in Section III.B. *supra.* We also discuss the estimated compliance burden associated with the proposed amendments for purposes of the PRA in Section IV *supra.*

[159] *See supra* Section III.C.

requirements; rather, they would remove certain conditions for PVABs of all sizes, including small entities. Our objectives would not be served by establishing different compliance or reporting requirements for small entities, exempting small entities from all or part of the requirements, or clarifying, consolidating or simplifying compliance and reporting requirements for small entities. Similarly, because the proposed amendments do not set forth any standards, our objectives would not be served by establishing performance rather than design standards.

VII. Statutory Authority

We are proposing the rule amendments contained in this release under the authority set forth in Sections 3(b), 14, 23(a) and 36 of the Securities Exchange Act of 1934, as amended.

List of Subjects in 17 CFR Part 240

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule Amendments

In accordance with the foregoing, the Securities and Exchange Commission proposes to amend title 17, chapter II of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; Pub. L. 111–203, 939A, 124 Stat. 1376 (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 2. Amend § 240.14a–2 by revising paragraph (b)(9) to read as follows:

§ 240.14a–2 Solicitations to which § 240.14a–3 to § 240.14a–15 apply.

* * * * *

(b) * * *

(9) Paragraphs (b)(1) and (3) of this section shall not be available to a person furnishing proxy voting advice covered by § 240.14a–1(l)(1)(iii)(A) (''proxy voting advice business'') unless the proxy voting advice business includes in its proxy voting advice or in an electronic medium used to deliver the proxy voting advice prominent disclosure of:

(i) Any information regarding an interest, transaction, or relationship of the proxy voting advice business (or its affiliates) that is material to assessing the objectivity of the proxy voting advice in light of the circumstances of the particular interest, transaction, or relationship; and

(ii) Any policies and procedures used to identify, as well as the steps taken to address, any such material conflicts of interest arising from such interest, transaction, or relationship.

§ 240.14a–9 [Amended]

■ 3. Amend § 240.14a–9 by removing paragraph e. of the Note.

By the Commission.

Dated: November 17, 2021.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25420 Filed 11–24–21; 8:45 am]

BILLING CODE 8011–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0677; FRL–9276–01–R4]

Air Plan Approval; South Carolina; Catawba Indian Nation Portion of the Charlotte-Gastonia-Rock Hill Area Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of South Carolina, through the Department of Health and Environmental Control (DHEC), via a letter dated July 7, 2020. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Catawba Indian Nation portion (hereinafter referred to as the Catawba Area) of the Charlotte-Gastonia-Rock Hill NC-SC 1997 8-hour ozone maintenance area (hereinafter referred to as the Charlotte NC-SC 1997 8-hour NAAQS Area). The Charlotte NC-SC 1997 8-hour NAAQS Area is comprised of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (*i.e.,* Davidson and Coddle Creek Townships) in North Carolina and a portion of York County, South Carolina which includes the Catawba Area. EPA is proposing to approve the Catawba Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Catawba Area through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area federally enforceable as part of the South Carolina SIP.

DATES: Written comments must be received at the address below on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0677 at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Jane Spann, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9029. Ms. Spann can also be reached via electronic mail at *spann.jane@epa.gov.*

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VII. Statutory and Executive Order Reviews

I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the Catawba Area LMP for the 1997 8-hour ozone NAAQS, adopted by DHEC on July 7, 2020, and submitted by DHEC as a revision to the South Carolina SIP under a letter dated July 7, 2020.[1] In 2004, the Charlotte NC-SC 1997 8-hour NAAQS Area, which includes the Catawba Area, was designated as nonattainment for the 1997 8-hour ozone NAAQS. Subsequently, in 2012, after a clean data determination [2] and EPA's approval of a maintenance plan, the South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area, which includes the Catawba Area, was redesignated to attainment for the 1997 8-hour ozone NAAQS.

The Catawba Area LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Catawba Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A.

As a general matter, the Catawba Area LMP relies on the same control measures and relevant contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by DHEC for the first 10-year period.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NO_X) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and in adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.[3]

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).[4] EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour ozone NAAQS would be more protective of human health, especially children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Charlotte NC-SC 1997 8-hour NAAQS Area which consists of Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union and a portion of Iredell County (*i.e.,* Davidson and Coddle Creek Townships) in North Carolina and a portion of York County, South Carolina, including the Catawba Area, as nonattainment for the 1997 8-hour ozone NAAQS. The designation became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004).

Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS.[5] The Catawba Area was designated unclassifiable/attainment although the surrounding Charlotte—Gastonia-Rock Hill NC-SC Area [6] (hereinafter referred to as the Charlotte NC-SC 2008 NAAQS Area) was designated as nonattainment for the 2008 8-hour ozone NAAQS and classified as a marginal nonattainment area. This designation became effective on July 20, 2012.[7] In summary, the Catawba Area was included in the Charlotte NC-SC 1997 8-hour NAAQS boundary designation in 2004 but was not included in the Charlotte NC-SC 2008 NAAQS boundary designation in 2012.

In addition, on November 16, 2017, areas were designated for the 2015 8-hour ozone NAAQS. The entire states of North Carolina and South Carolina—including the Catawba Indian Nation—were designated attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date on January 16, 2018.[8]

A state may submit a request to redesignate a nonattainment area that is attaining a NAAQS to attainment, and, if the area has met other required criteria described in section 107(d)(3)(E) of the CAA, EPA may approve the redesignation request.[9] One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to

[1] EPA received the SIP submission on July 10, 2020.

[2] *See* 77 FR 13493 (March 7, 2012).

[3] *See* ''Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone,'' January 6, 2010, and 75 FR 2938 (January 19, 2010).

[4] In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

[5] In 2011, EPA established the ''Guidance to Regions for Working with Tribes during the National Ambient Air Quality Standards (NAAQS) Designations Process'' memorandum providing guidance to EPA Regional Offices for working with federally-recognized Indian tribes regarding the CAA section 107(d) NAAQS boundary designations process for Indian country. *See https://www.epa.gov/sites/production/files/2017-02/documents/12-20-11_guidance_to_regions_for_working_with_tribes_naaqs_designations.pdf.* This guidance was then applied to the 2012 designation process for the 2008 ozone NAAQS.

[6] The Charlotte—Gastonia-Rock Hill NC-SC Area for the 2008 8-hour ozone NAAQS consists of portions of Cabarrus, Gaston, Iredell, Lincoln, Rowan and Union Counties and the entirety of Mecklenburg County in North Carolina, and a portion of York County, South Carolina which excludes the Catawba Area.

[7] *See* 77 FR 30088.

[8] *See* 82 FR 54232.

[9] Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (*i.e.,* ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans.[10] The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (*i.e.,* attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value [11] being significantly below the standard and the area having a historically stable design value.[12] EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: An attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,[13] EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.[14]

In this case, EPA is proposing to approve the Catawba Area LMP because the State has made a showing, consistent with EPA's prior LMP guidance, that the Charlotte NC-SC 1997 8-hour NAAQS Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable, and that it has met the other maintenance plan requirements. DHEC submitted this LMP for the Catawba Area to fulfill the second maintenance plan requirement in the Act. EPA's evaluation of the Catawba Area LMP is presented below.

In June of 2011, DHEC submitted to EPA a request to redesignate the York County, South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area (which includes the Catawba Area), to attainment for the 1997 8-hour ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 8-hour ozone NAAQS in the Charlotte NC-SC 1997 8-hour NAAQS Area through 2022 as a revision to the South Carolina SIP. EPA approved South Carolina's Charlotte NC-SC 1997 8-hour NAAQS Area Maintenance Plan and the State's request to redesignate the South Carolina portion of the Charlotte NC-SC 1997 NAAQS Area to attainment for the 1997 8-hour ozone NAAQS effective December 26, 2012.[15]

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (*i.e.,* maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b).[16] On December 11, 2015, EPA redesignated the South Carolina portion of the Charlotte NC-SC 2008 NAAQS Area (which does not include the Catawba Area) as attainment for the 2008 8-hour ozone NAAQS, and the designation became effective on January 11, 2016. *See* 80 FR 76865.

In *South Coast Air Quality Management District* v. *EPA,* the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for ''orphan maintenance areas,'' *i.e.,* areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS (maintenance areas) and were designated attainment for the 2008 ozone NAAQS. *South Coast,* 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these ''orphan maintenance areas'' under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, through a letter dated July 7, 2020, South Carolina submitted a second maintenance plan covering the Catawba Area that provides for attainment of the 1997 8-hour ozone NAAQS through 2032.[17]

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Charlotte NC-SC 1997 8-hour NAAQS Area well below the 1997 8-hour ozone NAAQS, DHEC chose the LMP option for the development of its second 1997 8-hour ozone NAAQS maintenance plan covering the Catawba Area. On July 7, 2020, DHEC adopted this second 10-year 1997 8-hour ozone maintenance plan, and subsequently submitted the Catawba Area LMP to EPA as a revision to the South Carolina SIP.

III. South Carolina's SIP Submittal

As mentioned above, on July 7, 2020, DHEC submitted the Catawba Area LMP

[10] John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards (OAQPS), ''Procedures for Processing Requests to Redesignate Areas to Attainment,'' September 4, 1992 (Calcagni memo).

[11] The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

[12] *See* ''Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas'' from Sally L. Shaver, OAQPS, dated November 16, 1994; ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas'' from Joseph Paisie, OAQPS, dated October 6, 1995; and ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

[13] The prior memos addressed: Unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM_{10} (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment areas for the carbon monoxide (CO) NAAQS.

[14] *See, e.g.,* 79 FR 41900 (July 18, 2014) (Approval of the second ten-year LMP for the Grant County 1971 SO_2 maintenance area).

[15] *See* 77 FR 75862 (December 26, 2012).

[16] *See* 80 FR 12264, 12315 (March 6, 2015).

[17] In an email dated October 18, 2021, DHEC clarified that the end of the maintenance plan submitted on June 7, 2020, is 2032.

to EPA as a revision to the South Carolina SIP. The submittal includes the LMP, air quality data, a summary of the previous emissions inventory and a conclusion regarding future emission levels, and attachments, as well as certification of adoption of the plan by DHEC. Attachments to the plan include documentation of notice, opportunity for hearing and public participation prior to adoption of the plan by DHEC on July 7, 2020, and state legal authority. The LMP notes that South Carolina's LMP submittal for the remainder of the 20-year maintenance period for the Catawba Area is in response to the D.C. Circuit's decision overturning aspects of EPA's Implementation Plan rule. The Catawba Area LMP does not include any additional emissions reduction measures but relies on the same emissions reduction strategy as the first 10-year Maintenance Plan that provides for the maintenance of the 1997 8-hour ozone NAAQS through 2022. Prevention of significant deterioration (PSD) requirements and control measures contained in the SIP will continue to apply, and federal measures (*e.g.,* Federal motor vehicle control program) will continue to be implemented in the Catawba Area.

IV. EPA's Evaluation of South Carolina's SIP Submittal

EPA has reviewed the Catawba Area LMP which is designed to maintain the 1997 8-hour ozone NAAQS within the Catawba Area through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b).

As discussed below, the Catawba Area's impact on the larger Charlotte NC-SC 1997 8-hour NAAQS Area is very limited due to its size, population, and emissions profile. In addition, the monitoring values in the Charlotte NC-SC 1997 8-hour NAAQS Area, including the Catawba Area, are well below the NAAQS. As a result, EPA is proposing to approve the Catawba Area LMP as meeting the 175A requirements. The following is a more detailed summary of EPA's interpretation of the section 175A requirements [18] and EPA's evaluation of how each requirement is met.

A. Area Characteristics

The Catawba Indian Nation tribal lands are comprised of a total of approximately 1,000 acres, in two sections along the Catawba River in the eastern portion of York County, South Carolina.[19] The total Catawba Indian Nation population is 3,370 (2010 Census), however, based on recent census estimates, the population of the Reservation is only 1,288 with 517 housing units within the Reservation.[20] According to the 2019 census estimates, the total York County population is 280,979, and the Reservation is home to 0.46 percent of York County's population.[21] The Reservation is a residential area which contains no industry, no limited access highways or transportation facilities, and only a few miles of secondary roads. There is a boat ramp but there are no airports, helipads, railroad tracks, or associated facilities. The Reservation has no shopping centers or industrial sites. The only community facilities, which are of modest size, are the Tribal offices and the Senior Center.

B. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and NO_X, as these pollutants are precursors to ozone formation.

The 175A maintenance plan approved by EPA included an attainment inventory for the South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area that reflects typical summer day VOC and NO_X emissions in 2010.[22] As previously mentioned, the Catawba Area is included in the South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area.

Because the Catawba Nation Reservation is a small residential area, both geographically and in population, with no industrial sites, no limited access highways, no transportation facilities, and no point sources of ozone precursors, there are no estimates of VOC and NO_X emissions from the Catawba Area. Given the unique nature of the Catawba Area and the air quality analysis in section IV.C, below, EPA does not believe that a detailed accounting of attainment level emissions is necessary in this instance.

C. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied in a LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the NAAQS, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.[23] These criteria are evaluated below with regard to the Catawba Area.

1. Evaluation of Ozone Air Quality Levels

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the NAAQS is attained if the design value is 0.084 ppm or below. At the time of submission, EPA evaluated quality assured and certified 2016–2018 monitoring data and determined that the highest design value for the Charlotte NC-SC 1997 8-hour NAAQS Area was 0.070 ppm, or 83 percent of the level of the 1997 8-hour ozone NAAQS (measured at the University Meadows monitor in Mecklenburg, North Carolina (AQS ID: 37–119–0046)), and the design value for the Catawba Area monitor (AQS ID: 45–091–8801) was 0.064 ppm, or 76 percent of the level of the 1997 8-hour ozone NAAQS. Based on quality assured and certified monitoring data for 2018–2020, the current, highest design value for the Charlotte NC-SC 1997 8-hour NAAQS Area is 0.067 ppm, or 80 percent of the level of the 1997 8-hour ozone NAAQS (measured at the University Meadows monitor and the Garinger High School Monitor in Mecklenburg, NC (AQS ID: 37–119–0041)), and the current design value for the Catawba Area monitor is 0.062 ppm, or 74 percent of the level of the 1997 8-hour ozone NAAQS. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (*e.g.,* below 85 percent of the NAAQS, or in this case below 0.071 ppm), then

[18] *See* Calcagni memo.

[19] As described in the July 7, 2020 Submittal, the Catawba Area consists of two tracts of land along the Catawba River with a total land base of approximately 1,000 acres, which comprises only 0.002 percent of the land area of York County. *See* Technical Support Document for Charlotte-Rock Hill, NC-SC Area Designations for the 2008 Ozone National Ambient Air Quality Standards, available at *https://www.regulations.gov/search?filter=EPA-HQ-OAR-2008-0476-0642.*

[20] *See* Catawba Reservation, U.S. Census Bureau, 2015–2019 American Community Survey 5-Year Estimates, available at *https://www.census.gov/tribal/index.html?aianihh=0525.*

[21] *Id., see also https://www.census.gov/quickfacts/yorkcountysouthcarolina* (showing York County, South Carolina with a 2019 estimated population of 280,979 and a 2020 census population of 282,090).

[22] *See* 77 FR 68087 (November 15, 2012) and 77 FR 75862 (December 26, 2012).

[23] *See* Calcagni memo.

EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of prevention of significant deterioration requirements and any control measures already in the SIP and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 3 presents the design values for each monitor in the Charlotte NC-SC 1997 8-hour NAAQS Area over the 2008–2020 period. As shown in Table 3, all sites have been below the level of the 1997 8-hour ozone NAAQS since the area was redesignated to attainment, and the most current design value is below the level of 85 percent of the NAAQS, consistent with prior LMP guidance.

TABLE 3—1997 8-HOUR OZONE NAAQS DESIGN VALUES (DV) (PPM) AT MONITORING SITES IN THE CHARLOTTE NC-SC 1997 NAAQS AREA FOR THE 2008–2020 TIME PERIOD

Location	County (state)/tribal land	AQS site ID	2008–2010 DV	2009–2011 DV	2010–2012 DV	2011–2013 DV	2012–2014 DV	2013–2015 DV	2014–2016 DV	2015–2017 DV	2016–2018 DV	2017–2019 DV	2018–2020 DV
Catawba Area Monitor	Catawba Indian Nation ...	45–091–8801	(*)	(*)	(*)	(*)	(*)	(*)	(*)	(*)	0.064	0.064	0.062
Arrowood	Mecklenburg (NC)	37–119–1005	0.073	0.076	0.077	0.072	0.066	(**)	(**)	(**)	(**)	(**)	(**)
Crouse	Lincoln (NC)	37–109–0004	0.072	0.071	0.075	0.072	0.068	0.065	0.067	0.067	0.065	0.064	0.060
Enochville	Rowan (NC)	37–159–0022	0.077	0.076	0.077	0.072	(***)	(***)	(***)	(***)	(***)	(***)	(***)
Garinger High School	Mecklenburg (NC)	37–119–0041	0.078	0.079	0.083	0.078	0.070	0.068	0.069	0.069	0.068	0.070	0.067
County Line	Mecklenburg (NC)	37–117–1009	0.082	0.078	0.083	0.078	0.073	0.067	(****)	(****)	(****)	(****)	(****)
University Meadows	Mecklenburg (NC)	37–119–0046	(****)	(****)	(****)	(****)	(****)	(****)	0.070	0.070	0.070	0.069	0.067
Rockwell	Rowan (NC)	37–159–0021	0.077	0.075	0.078	0.073	0.068	0.064	0.065	0.064	0.062	0.062	0.061
Monroe School	Union (NC)	37–179–0003	0.072	0.070	0.073	0.070	0.068	0.065	0.068	0.067	0.068	0.068	0.063

* The ozone monitor in the Catawba Indian Nation (AQS Site ID 45–091–8801) began operation for the 2016 ozone season.
** The Arrowood monitor in Mecklenburg County (AQS Site ID 37–119–1005) was shut down in 2014.
*** The Enochville School monitor in Rowan County (AQS Site ID 37–159–0022) was shut down in 2013.
**** In 2014, the ozone monitor at Mecklenburg County Line (AQS Site ID 37–117–1009) changed locations to University Meadows (AQS ID 37–119–0046).

Therefore, the Catawba Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_X emissions control programs in the Charlotte NC-SC 1997 8-hour NAAQS Area, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area through the second 10-year maintenance period and beyond.

Additional supporting information that the Area is expected to continue to maintain the NAAQS can be found in projections of future year design values that EPA recently completed for the Revised Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS that EPA finalized on April 30, 2021.[24] Those projections, made for the year 2023, show that the maximum design value for the Charlotte NC-SC 1997 Ozone Area is expected to be 60.3 ppb and the maximum design value of the Catawba Area monitor is expected to be 53.3 ppb. EPA is not proposing to make any finding in this action regarding interstate transport obligations for any state.

2. Stability of Ozone Levels

As discussed above, the Charlotte NC-SC 1997 8-hour NAAQS Area has maintained air quality below the 1997 8-hour ozone NAAQS over the past eleven design values. Additionally, the design value data shown in Table 3 illustrates that ozone levels have been relatively stable over this timeframe, with a modest downward trend. For example, the data in Table 3 indicates that the largest, year over year change in design value at any one monitor during these eleven years was 0.008 ppm which occurred between the 2013 design value and the 2014 design value, representing approximately a 10 percent decrease at monitor 37–119–0041 (Garinger High School). Furthermore, there is an overall downward trend in design values for the Charlotte NC-SC 1997 8-hour NAAQS Area. *See, e.g.,* Table 1, above, data for monitor 37–159–0021 (Rockwell)0.016 ppm, or 20.8 percent). This downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the Catawba Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

D. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring networks operated and maintained by the states in accordance with 40 CFR part 58. The network plans, which are submitted annually to EPA, are consistent with the ambient air quality monitoring network assessment. It is important to note that the Charlotte NC-SC 1997 8-hour NAAQS Area was designated nonattainment due to violating monitors in the North Carolina portion of that area and that South Carolina has never operated any part 58 monitors in the Charlotte NC-SC 1997 8-hour NAAQS Area.[25] [26] North Carolina operates a network plan with multiple monitors within the boundary of the Charlotte NC-SC 1997 8-hour NAAQS Area. The annual network plan developed by North Carolina follows a public notification and review process. EPA has reviewed and approved the North Carolina's 2020 Ambient Air Monitoring Network Plan (''2020 Annual Network Plan'') which addresses the relevant monitors used to determine attainment for the Charlotte NC-SC 1997 8-hour NAAQS Area.[27]

[24] On April 30, 2021, EPA published the final Revised Cross-State Air Pollution Rule (CSAPR) Update (RCU) using updated modeling that focused on analytic years 2023 and 2028 and an ''interpolation'' analysis of these modeling results to generate air quality and contribution values for the 2021 analytic year. *See* 86 FR 23054. *https://www.govinfo.gov/content/pkg/FR-2021-04-30/pdf/2021-05705.pdf*. This modeling included projected ozone design values for ozone monitors in the Catawba Area and Charlotte SC-NC maintenance areas.

[25] *See* 69 FR 23858 (April 30, 2004) for the final designation action for the 1997 8-hour ozone NAAQS and *https://www.epa.gov/ground-level-ozone-pollution/1997-ozone-national-ambient-air-quality-standards-naaqs-nonattainment* for the monitoring data associated with the designation for the 1997 8-hour ozone NAAQS.

[26] South Carolina maintains one monitor in York County. Although that monitor is near the maintenance boundary, it is not used to determine compliance of the Charlotte NC-SC 1997 8-hour NAAQS Area with the 1997 8-hour ozone NAAQS because it is not located within the maintenance area.

[27] *See* October 30, 2020, letter and approval from Caroline Freeman, Director, Air and Radiation Division, EPA Region 4 to Mike Abraczinskas, Director, Division of Air Quality, North Carolina

Separately, North Carolina has committed to maintain the monitoring network that is used to monitor ozone for compliance with the 1997 8-hour ozone NAAQS, which includes the monitors within the North Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area.[28]

Subsequent to the nonattainment designation for the 1997 8-hour ozone NAAQS, the Catawba Indian Nation, under a CAA section 103 grant agreement with EPA, erected and operates a monitor in the Catawba Area. EPA provides oversight of the Catawba Indian Nation's operation of this monitor through normal grant monitoring activities on annual basis.

To verify the attainment status of the Area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, North Carolina's 2020 Annual Network Plan, which covers the monitors within the Charlotte NC-SC 1997 8-hour NAAQS Area, has been approved by EPA in accordance with 40 CFR part 58, and North Carolina has committed to continue to maintain a network in accordance with EPA requirements. Although South Carolina does not operate any part 58 monitors in the Charlotte NC-SC 1997 8-hour NAAQS Area, the State commits to continue operating an approved ozone monitoring network near the South Carolina portion of that area; commits to consult with the EPA prior to making changes to the existing monitoring network should changes become necessary in the future; and acknowledges the obligation to meet monitoring requirements in compliance with 40 CFR part 58.[29] EPA proposes to find that there is an adequate ambient air quality monitoring network in the Charlotte NC-SC 1997 8-hour NAAQS Area to verify continued attainment of the 1997 8-hour ozone NAAQS.

E. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period. These contingency measures are required to be implemented expeditiously once they are triggered by a future violation of the NAAQS or some other trigger. The state should identify specific triggers which will be used to determine when the contingency measures need to be implemented.

The trigger identified in the Catawba Area LMP is a Quality Assured/Quality Controlled (QA/QC) violating design value of the 1997 8-hour ozone NAAQS within or near the Charlotte NC-SC 1997 8-hour NAAQS Area.[30] If this trigger is activated, the maintenance plan requires South Carolina to conduct analyses to determine the emission control measures that will be necessary for attaining or maintaining the 1997 8-hour ozone NAAQS. The maintenance plan outlines the steps that South Carolina must conduct to determine control measures, including verification and analysis of data related to the exceedance, and possible causes. South Carolina will adopt and implement appropriate contingency measures tailored to the specific circumstances of the violation (or increased concentrations) within 24 months after a triggering event.[31] [32]

EPA proposes to find that the contingency provisions in South Carolina's second maintenance plan for the 1997 8-hour ozone NAAQS meet the requirements of the CAA section 175A(d).

F. Conclusion

EPA proposes to find that the Catawba Area LMP for the 1997 8-hour ozone NAAQS includes an approvable update of various elements of the initial EPA-approved Maintenance Plan for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the Catawba Area qualifies for the LMP option and adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels below the NAAQS and historically stable design values. EPA believes the Catawba Area LMP, which retains existing control measures in the SIP, is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area over the second maintenance period (*i.e.,* through 2032) and thereby satisfies the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve South Carolina's July 7, 2020, submission of the Catawba Area LMP as a revision to the South Carolina SIP.

V. Transportation Conformity and General Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93 subpart A requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicles emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as ''the portion of the total allowable emissions defined in the submitted or approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.'' *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). On October 9, 2012, EPA made a finding that the MVEBs for the first 10 years of the 1997 8-hour ozone

Department of Environmental Quality, available in the docket for this proposed action.

[28] *See* 78 FR 72036 (December 2, 2013), 78 FR 45152 (July 26, 2013).

[29] *See* South Carolina's July 7, 2020, SIP submittal at page 7.

[30] If QA/QC data indicates a violating design value for the 8-hour ozone NAAQS, then the triggering event will be the date of the design value violation, and not the final QA/QC date. However, if initial monitoring data indicates a possible design value violation but later QA/QC indicates that a NAAQS violation did not occur, then a triggering event will not have occurred, and contingency measures will not need to be implemented.

[31] As stated above, the Catawba Area LMP contains the same contingency measures that were included in the first 10-year maintenance plan, as tailored to the Catawba Area. For example, some contingency measures included only in the first 10-year LMP would have limited emissions reductions or were not applicable based on the characteristics of the Catawba Area (for example, alternative fuel programs for fleet vehicle operations, as there are no vehicle fleets in the Catawba Area). In addition, South Carolina added a provision to work closely with the York County Air Coalition for outreach and stakeholder input, contingency measure support, and community emission reduction efforts, which is a logical extension in recognition that this LMP is for a subset of the larger South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area.

[32] See the Contingency Plan section of the Catawba Area LMP for further information regarding the contingency plan, including measures that South Carolina will consider for adoption if the trigger is activated, as well as additional steps and notification to EPA if DHEC determines additional time than 24 months is necessary to implement specific contingency measures.

maintenance plan for the South Carolina portion of the Charlotte NC-SC 1997 8-hour NAAQS Area were adequate for transportation conformity purposes. In a **Federal Register** notice dated September 24, 2012, EPA notified the public of that finding. *See* 77 FR 58829. This adequacy determination became effective on October 9, 2012. After approval of this LMP or an adequacy finding for this LMP, there is no requirement to meet the budget test pursuant to the transportation conformity rule for the Catawba Area. All actions that would require a transportation conformity determination for the Catawba Area under EPA's transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and ''budget test'' requirements in 40 CFR 93.118 as a result of EPA's adequacy finding for this LMP. *See* 69 FR 40004 (July 1, 2004).

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determinations, RTPs, TIPs, and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113) as well as meet the hot-spot requirements for projects (40 CFR 93.116).[33] Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104. In addition, in order for projects to be approved they must come from a currently conforming RTP and TIP. *See* 40 CFR 93.114 and 40 CFR 93.115. The Charlotte NC-SC 2008 NAAQS Area must continue to meet all of the applicable requirements of the general conformity regulations.

VI. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Catawba Area LMP for the 1997 8-hour ozone NAAQS, submitted by DHEC on July 7, 2020, as a revision to the South Carolina SIP. EPA is proposing to approve the Catawba Area LMP because it includes an acceptable update of various elements of the 1997 8-hour ozone NAAQS Maintenance Plan approved by EPA for the first 10-year period and retains the relevant provisions of the SIP.

EPA also finds that the Catawba Area qualifies for the LMP option and that therefore the Catawba Area LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes the Catawba Area's 1997 8-Hour Ozone LMP to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Catawba Area over the second 10-year maintenance period, through 2032, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

VII. 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. *See* 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 CAA. This proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 CAA; 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).

Because this Catawba Area LMP merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law, this Catawba Area LMP for the State of South Carolina does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). Therefore, this action will not impose substantial direct costs on Tribal governments or preempt Tribal law. The Catawba Indian Nation (CIN) Reservation is located within the boundary of York County, South Carolina. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120 (Settlement Act), ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' The CIN also retains authority to impose regulations applying higher environmental standards to the Reservation than those imposed by state law or local governing bodies, in accordance with the Settlement Act.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental Relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile Organic Compounds.

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

Dated: November 17, 2021.

John Blevins,

Acting Regional Administrator,Region 4.

[FR Doc. 2021–25527 Filed 11–24–21; 8:45 am]

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[33] A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section (93.109(e)) is still required, including the hot-spot requirements for projects in CO, PM_{10}, and fine particulate matter ($PM_{2.5}$) areas.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2020–0400; FRL–9274–01–R4]

Air Plan Approval; Georgia; Atlanta Area Emissions Inventory Requirements for the 2015 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Georgia through the Georgia Environmental Protection Division (GA EPD) on July 2, 2020, to address the base year emissions inventory requirements for the 2015 8-hour ozone national ambient air quality standards (NAAQS) for the Atlanta, Georgia 2015 8-hour ozone nonattainment area (hereinafter referred to as the ''Atlanta Area''). These requirements apply to all ozone nonattainment areas. This action is being proposed pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2020–0400 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. The telephone number is (404) 562–9088. Ms. Bell can also be reached via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 1, 2015, EPA promulgated a revised 8-hour primary and secondary ozone NAAQS, strengthening both from 0.075 parts per million (ppm) to 0.070 ppm (the 2015 8-hour ozone NAAQS). *See* 80 FR 65292. The 2015 8-hour ozone NAAQS is set at 0.070 ppm based on an annual fourth-highest daily maximum 8-hour average concentration averaged over three years. Under EPA's regulations at 40 Code of Federal Regulations (CFR) part 50, the 2015 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.070 ppm. *See* 40 CFR 50.19. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. *See* 40 CFR part 50, Appendix U. The ambient air quality monitoring data completeness requirement is met when the average percentage of days with valid ambient monitoring data is greater than 90 percent and no single year has less than 75 percent data completeness as determined using Appendix U.

Upon promulgation of a new or revised ozone NAAQS, the CAA requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data. On April 30, 2018, EPA designated a seven-county area in and around metropolitan Atlanta as a marginal ozone nonattainment area for the 2015 8-hour ozone NAAQS.[1] The Atlanta Area was designated nonattainment for the 2015 8-hour ozone NAAQS on April 30, 2018 (effective August 3, 2018) using 2014–2016 ambient air quality data. *See* 83 FR 25776. On December 6, 2018, EPA finalized a rule titled ''Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area State Implementation Plan Requirements'' (SIP Requirements Rule) that establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2015 8-hour ozone NAAQS.[2] *See* 83 FR 62998; 40 CFR part 51, subpart CC. This rule establishes nonattainment area attainment deadlines based on Table 1 of section 181(a) of the Clean Air Act (CAA), including an attainment deadline of August 3, 2021, three years after the August 3, 2018 effective date, for areas classified as marginal for the 2015 8-hour ozone NAAQS.

Based on the nonattainment designation, Georgia was required to develop a SIP revision addressing certain CAA requirements for the Atlanta Area. Among other things, Georgia was required to submit a SIP revision addressing the emissions inventory requirements in CAA section 182(a)(1).

Ground level ozone is not emitted directly into the air but is created by chemical reactions between oxides of nitrogen (NO_X) and volatile organic compounds (VOC) in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_X and VOC. Section 182(a)(1) of the CAA requires states with areas designated nonattainment for the ozone NAAQS to submit a SIP revision providing a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area. NO_X and VOCs are the relevant pollutants because they are the precursors—*i.e.,* the pollutants that contribute to the formation—of ozone.

II. State's Submittal

On July 2, 2020, Georgia submitted a SIP revision addressing the emissions inventory requirements related to the 2015 8-hour ozone NAAQS for the Atlanta Area.[3] EPA is proposing to approve this SIP revision as meeting the inventory requirements of section 182(a)(1) of the CAA and meeting EPA's

[1] The nonattainment area for the 2015 8-hour ozone standard consists of the following counties: Bartow, Clayton, Cobb, Dekalb, Fulton, Gwinnett, and Henry.

[2] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2015 8-hour ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major nonattainment new source review, emission inventories, and the timing of SIP submissions and compliance with emission control measures in the SIP.

[3] In the July 2, 2020, SIP revision, GA EPD submitted a certification that existing SIP-approved Georgia rules satisfy the permit program requirements found in section 172(c)(5) and section 173 of the CAA. GA EPD also provided a written commitment to take action to meet the emissions statement requirement located in section 182(a)(3)(B) of the CAA. EPA will take action on these SIP revisions in separate rulemakings.

SIP Requirements Rule. More information on EPA's analysis of Georgia's SIP revision and how this SIP revision addresses these requirements is provided below.

III. Analysis of State's Submittal

As discussed above, section 182(a)(1) of the CAA requires areas to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in each ozone nonattainment area. The section 182(a)(1) base year inventory is defined in the SIP Requirements Rule as ''a comprehensive, accurate, current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the nonattainment area as required by CAA section 182(a)(1).'' *See* 40 CFR 51.1300(p). The inventory year must be selected consistent with the baseline year for the RFP plan as required by 40 CFR 51.1310(b),[4] and the inventory must include actual ozone season day emissions as defined in 40 CFR 51.1300(q)[5] and contain data elements consistent with the detail required by 40 CFR part 51, subpart A. *See* 40 CFR 51.1315(a), (c), (e). In addition, the point source emissions included in the inventory must be reported according to the point source emissions thresholds of the Air Emissions Reporting Requirements (AERR) in 40 CFR part 51, subpart A.

Georgia selected 2014 as the base year for the emissions inventory, which is the year corresponding with the first triennial inventory under 40 CFR part 51, subpart A. This base year is one of the three years of ambient data used to designate the Atlanta Area as a nonattainment area and therefore represents emissions associated with nonattainment conditions. The emissions inventory is based on data developed and submitted by GA EPD to EPA's 2014 Emission Inventory (NEI), and it contains data elements consistent with the requirements of 40 CFR part 51, subpart A.[6]

Georgia's emissions inventory for the Atlanta Area provides 2014 typical average summer day emissions for NO_X and VOCs for the following general source categories: Point sources, MAR (marine vessels, aircraft and rail) sources, nonpoint sources, on-road mobile sources, non-road mobile sources, fire events, and biogenic sources. The summer day emissions were calculated as the average of emissions during weekdays in July 2014. A detailed discussion of the inventory development is located on pages 1 through 6 of the documents in the July 2, 2020 submission entitled ''Atlanta Nonattainment Area Emissions Inventory for the 2015 8-Hour Ozone NAAQS'' (Inventory Document) in the State's July 2, 2020 submittal. The table below provides a summary of the emissions inventory.

TABLE 1—2014 EMISSIONS FOR THE ATLANTA AREA[7]

[Tons per summer day]

County	Point		Marine vessels, aircraft, and rail		Nonpoint		On-road		Non-road	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
Bartow	17.01	1.07	0.84	0.06	0.14	3.61	11.03	3.51	1.30	1.29
Clayton	0.28	0.59	13.27	1.85	0.15	6.69	8.39	3.63	2.45	1.26
Cobb	2.05	1.35	2.73	0.73	0.59	18.14	26.23	11.87	7.24	9.30
Dekalb	0.33	3.43	0.75	0.08	0.53	18.41	25.84	10.46	6.27	8.06
Fulton	1.17	0.69	2.49	0.16	1.23	25.76	42.83	19.54	10.74	9.04
Gwinnett	0.00	0.21	0.64	0.05	0.58	21.77	24.18	11.54	10.58	11.04
Henry	4.37	1.18	0.82	0.04	0.13	4.66	4.35	2.40	2.38	1.46
Total	25.21	8.52	21.54	2.97	3.35	99.04	142.85	62.95	40.96	41.45

The emissions reported for the Atlanta Area reflect the emissions within the seven counties comprising the nonattainment area. The inventory contains point source emissions data for the facilities located within the Area. More detail on the emissions for individual source categories is provided below and in Appendix A of Georgia's July 2, 2020 submittal.

Point sources are large, stationary, identifiable sources of emissions that release pollutants into the atmosphere. The Electric Generating Units (EGU) point source emissions inventory was developed from facility-specific emissions data. NO_X emissions were calculated using continuous emissions monitoring system data which included hourly measurements. For VOC emissions, GA EPD used facility-specific emissions data reported to the 2014 NEI from sources that are required to submit inventory data according to the AERR. The non-EGU point source emissions inventory for the Atlanta Area was

[4] 40 CFR 51.1310(b) states that ''at the time of designation for the ozone NAAQS the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of this part. States may use an alternative baseline emissions inventory provided that the year selected corresponds with the year of the effective date of designation as nonattainment for that NAAQS. All states associated with a multi-state nonattainment area must consult and agree on using the alternative baseline year. The emissions values included in the inventory required by this section shall be actual ozone season day emissions.'' For additional information, please see the guidance document titled ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' EPA–454/B–17–003, July 2017, available at: *https://www.epa.gov/air-emissions-inventories/air-emissions-inventory-guidance-implementation-ozone-and-particulate.*

[5] ''Ozone season day emissions'' is defined as ''an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity.'' *See* 40 CFR 51.1300(q).

[6] Data downloaded from the EPA Emissions Inventory System (EIS) from the 2014 NEI was subjected to quality assurance procedures described under quality assurance details under 2014 NEI Version 1 located at *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data.* The quality assurance and quality control procedures and measures associated with this data are outlined in the State's Emission Inventory Quality Assurance Project Plan. The 2017 GA EI QAPP can be found at *https://epd.georgia.gov/document/document/appendix-e-georgia-quality-assurance-project-plan-document/download.*

[7] For the purpose of Table 1—2014 Emissions for the Atlanta Area, EPA rounded to the nearest hundredth of a ton per summer day.

developed from non-EGU facility-specific data reported to the 2014 NEI from sources that are required to submit inventory data according to the AERR. The point source emissions data meets the point source emissions requirements of 40 CFR part 51, subpart A. A detailed account of the non-EGU point sources can be found on pages 4 through 6 of the emissions inventory document in Georgia's submittal.

MAR sources are marine, aircraft, and rail sources of emissions separated from the point and nonpoint source categories. Emissions for these sources were obtained from the 2014 NEI. A detailed account of the MAR sources can be found on pages 2 and 5–6 of the emissions inventory document in Georgia's submittal.

Nonpoint sources are small stationary sources of emissions which, due to their large number, collectively have significant emissions (*e.g.,* dry cleaners, service stations). Emissions for these sources were obtained from the 2014 NEI. A detailed account of the nonpoint sources can be found on page 2 of the emissions inventory document in Georgia's submittal.

On-road mobile sources include vehicles used on roads for transportation of passengers or freight. Georgia developed its on-road emissions inventory using EPA's Motor Vehicle Emission Simulator (MOVES) model for each ozone nonattainment county.[8] County level on-road modeling was conducted using county-specific vehicle population and other local data. A detailed account of the on-road sources can be found in Appendix A and page 2 through 3 of the emissions inventory document in Georgia's submittal.

Non-road mobile sources include vehicles, engines, and equipment used for construction, agriculture, recreation and other purposes that do not use the roadways (*e.g.,* lawn mowers, construction equipment, railroad locomotives and aircraft). Georgia obtained emissions for the non-road mobile sources from the 2014 NEI. Those emissions were estimated using EPA's National Mobile Inventory Model (NMIM) with updated NMIM County Database (NCD) files from GA EPD. A detailed account of non-road mobile sources can be found in Appendix D of the July 2, 2020, submittal.

Georgia also included 2014 actual emissions from fire events and biogenic sources in its emission inventory. Wildland fires are unplanned, unwanted wild land fires including unauthorized human-caused fires, escaped prescribed fire projects, or other inadvertent fire situations where the objective is to put the fire out. Prescribed fires are any fires ignited by management actions to meet specific objectives related to the reduction of the biomass potentially available for wildfires. Fire event emissions were developed by GA EPD using fire records collected from the Georgia Forestry Commission (GFC). When fire activities were not included in the GFC database, military bases and federal agencies (USFS and FWS) records were used. In addition, GA EPD collected detailed burning records for the Okefenokee area which showed burned area per day. A detailed account of fire event sources can be found in Appendix A and on page 4 of the emissions inventory document in the July 2, 2020, submittal.

Biogenic emission sources are emissions that come from natural sources. GA EPD obtained biogenic emissions for 2014 from the 2014 NEI and used the summary of county-specific daily biogenic emissions.[9] A detailed account of biogenic sources can be found in Appendix A and on page 4 of the emissions inventory document in the Georgia submittal. The table below provides a summary of the 2014 fire event [10] and biogenic emissions for the Atlanta Area.

TABLE 2—2014—FIRE EVENT AND BIOGENIC EMISSIONS FOR THE ATLANTA AREA

[Tons per summer day]

County	Fire events		Biogenic	
	NO_X	VOC	NO_X	VOC
Bartow	0.00	0.00	0.43	67.00
Clayton	0.00	0.00	0.14	26.68
Cobb	0.00	0.00	0.22	46.82
Dekalb	0.00	0.00	0.16	45.75
Fulton	0.00	0.00	0.27	64.04
Gwinnett	0.00	0.00	0.33	52.45
Henry	0.00	0.00	0.30	42.98
Total	0.00	0.00	1.85	345.72

EPA has preliminarily determined that Georgia's emissions inventory meets the requirements under CAA section 182(a)(1) and the SIP Requirements Rule for the 2015 8-hour ozone NAAQS.

IV. Proposed Action

EPA is proposing to approve the SIP revision submitted by Georgia on July 2, 2020, addressing the base year emissions inventory requirements for the 2015 8-hour ozone NAAQS for the Atlanta Area. EPA proposes to find that the State's submission meets the requirements of sections 110 and 182 of the CAA.

V. 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. *See* 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 they meet the criteria of the

[8] Georgia used MOVES version 2014a because this was the latest version available at the time that the State submitted its SIP revision.

[9] The biogenic emissions were calculated from the Biogenic Emission Inventory System (BEIS) version 3.61 model in the Sparse Matrix Operator Kernel Emissions model (SMOKE). These emissions were obtained from NEI2014. The data was downloaded from the U.S. EPA's Air Emissions Inventories website: *https://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data*. More detailed information can be found in the SMOKE manual (*https://www.cmascenter.org/smoke/*).

[10] There were minimal emissions from fire events in 2014 such that, with rounding, there were 0.00 tons of NO_X and VOC emitted per summer day. For the purpose of Table 2, EPA rounded to the nearest hundredth of a ton per summer day.

CAA. This proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: November 17, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021–25526 Filed 11–24–21; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2021–0033; FRL–9278–01–R4]

Air Plan Approval; North Carolina; Mecklenburg: Source Testing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision to the Mecklenburg County portion of the North Carolina SIP, hereinafter referred to as the Mecklenburg County Local Implementation Plan (LIP). The revision was submitted through the North Carolina Division of Air Quality (NCDAQ), on behalf of Mecklenburg County Air Pollution Control (MCAQ), via a letter dated April 24, 2020, which was received by EPA on June 19, 2020. This SIP revision includes changes to Mecklenburg County Air Pollution Control Ordinance (MCAPCO) rules incorporated into the LIP regarding performance testing for stationary sources of air pollution. EPA is proposing to approve these changes pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2021–0033 at *www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: D. Brad Akers, Air Regulatory Management Section, Air Planning and Implementation Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW, Atlanta, Georgia 30303–8960. Mr. Akers can be reached via electronic mail at *akers.brad@epa.gov* or via telephone at (404) 562–9089.

SUPPLEMENTARY INFORMATION:

I. Background and Overview

The Mecklenburg LIP was submitted to EPA on June 14, 1990, and EPA approved the plan on May 2, 1991. *See* 56 FR 20140. Mecklenburg County is now requesting that EPA approve changes to the LIP for, among other things, general consistency with the North Carolina SIP.[1] Mecklenburg County prepared three submittals in order to update the LIP and reflect regulatory and administrative changes that NCDAQ made to the North Carolina SIP since EPA's 1991 LIP approval.[2] The three submittals were submitted as follows: NCDAQ transmitted the October 25, 2017, submittal to EPA but later withdrew it from review through a letter dated February 15, 2019. On April 24, 2020, NCDAQ resubmitted the October 25, 2017, update to EPA and also submitted the January 21, 2016, and January 14, 2019, updates. Due to an inconsistency with public notices at the local level, these submittals were withdrawn from EPA through the letter dated February 15, 2019. Mecklenburg County corrected this error, and NCDAQ submitted the updates to EPA in a submittal dated April 24, 2020. This proposed rule proposes to modify the LIP by revising, adding, and removing several rules related to the source testing rules, located in MCAPCO Article 2.0000, *Air Pollution and Control Regulations and Procedures.* The specific sections addressed in this proposal are Section 2.2600, *Source*

[1] Hereinafter, the terms ''North Carolina SIP'' and ''SIP'' refer to the North Carolina regulatory portion of the North Carolina SIP (*i.e.,* the portion that contains SIP-approved North Carolina regulations).

[2] The Mecklenburg County, North Carolina revision that is dated April 24, 2020, and received by EPA on June 19, 2020, is comprised of three previous submittals—one dated January 21, 2016; one dated October 25, 2017; and one dated January 14, 2019.

Testing Section 2.0900, *Volatile Organic Compounds,* and Rule 2.0501 of Section 2.0500, *Compliance with Emission Control Standards.*

II. What action is EPA proposing?

The April 24, 2020, SIP submittal revises the Mecklenburg LIP by primarily relocating testing methods and procedures for stationary sources to new Section 2.2600, *Source Testing.* Many of these provisions are being moved, or modified and moved, from existing LIP-approved Rule MCAPCO Rule 2.0501, *Compliance with Emission Control Standards,* or from several existing rules at Section 2.0900, *Volatile Organic Compounds.*

Specifically, the April 24, 2020, submittal transmits changes to existing Rule 2.0501, *Compliance with Emissions Control Standards,* at paragraph (c), wherein several subparagraphs are recodified at Section 2.2600, *Source Testing,* and in some cases further modified. Next, the submittal transmits changes to existing LIP-approved Rules 2.0901, *Definitions;* 2.0912, *General Provisions on Test Methods and Procedures;* 2.0943, *Synthetic Organic Chemical and Polymer Manufacturing;* and 2.0945, *Petroleum Dry Cleaning.* The April 24, 2020, submittal also transmits a removal and recodification to Section 2.2600 of the following Section 2.0900 Rules: 2.0913, *Determination of Volatile Content of Surface Coatings;* 2.0914, *Determination of VOC Emission Control System Efficiency;* 2.0915, *Determination of Solvent Metal Cleaning VOC Emissions;* 2.0916, *Determination: VOC Emissions from Bulk Gasoline Terminals;* 2.0939, *Determination of Volatile Organic Compound Emissions;* 2.0940, *Determination of Leak Tightness and Vapor Leaks;* and 2.0942, *Determination of Solvent in Filter Waste.* Finally, Rule 2.0941, *Alternative Method for Leak Tightness,* is removed.

With regard to Section 2.2600, the April 24, 2020, submittal requests approval of the following Rules—as recodified and further modified from existing Rule 2.0501 and Section 2.0900: 2.2602, *General Provisions on Test Methods;* 2.2603, *Testing Protocol;* 2.2604, *Number of Test Points;* 2.2605, *Velocity and Volume Flow Rate;* 2.2606, *Molecular Weight;* 2.2607, *Determination of Moisture Content;* 2.2608, *Number of Runs and Compliance Determination;* Rule 2.2610, *Opacity;* 2.2612, *Nitrogen Oxide Testing Methods;* 2.2613, *Volatile Organic Compound Testing Methods;* 2.2614, *Determination of VOC Emission Control System Efficiency;* and 2.2615, *Determination of Leak Tightness and Vapor Leaks.*[3] [4]

EPA is proposing to approve the recodification and other substantive and non-substantive changes to Mecklenburg County's source testing provisions.

III. EPA's Analysis of the State's Submittal of Mecklenburg's Regulations

The April 24, 2020, SIP revision transmits changes to existing Rule 2.0501, *Compliance with Emission Control Standards,* and certain rules from Section 2.0900, *Volatile Organic Compounds,* and also recodifies and revises source testing provisions from Rule 2.0501 and rules in Section 2.0900 to new rules at Section 2.2600, *Source Testing.* These revised rules are consistent with SIP-approved regulations for the State of North Carolina at 15A North Carolina Administrative Code (NCAC) Subchapter 02D, Section .2600, *Source Testing.* The rules are discussed in further detail hereinafter.

A. Rule 2.0501, Compliance With Emission Control Standards

The April 24, 2020, SIP revision modifies Rule 2.0501, *Compliance with Emission Control Standards,* first by removing language at former paragraph (b) noting that the owner must provide the means to allow for periodic sampling and measuring of emission rates. This language is recodified at 2.2602, which EPA is addressing in Section III.C of this notice of proposed rulemaking (NPRM). Former paragraph (b) also noted that data must be supplied to MCAQ upon request, and this is recodified at paragraph 2.2602(g) to instead require the information be provided without first needing the request. See Section III.C of this NPRM for more information. Furthermore, MCAQ retains authority to obtain such data, such as in Rules 1.5111, *General Recordkeeping, Reporting, and Monitoring Requirements;* 1.5232, *Issuance, Revocation, and Enforcement of Permits;* 2.0600, *Air Pollutants; Monitoring; Reporting;* 2.0903, *Recordkeeping: Reporting: Monitoring;* and 2.0912, *General Provisions on Test Methods and Procedures.* Next, the submittal revises former paragraph (d) to recodify the provision to paragraph (b), remove historical compliance deadlines for emission control standards, and retain language providing that all new sources must be in compliance prior to beginning operations.

Next, several subparagraphs under paragraph 2.0501(c) are recodified to rules at Section 2.2600, *Source Testing.* For more details on these changes, see Section III.C. of this NPRM. EPA is not acting on the changes to remove and recodify the prefatory text at 2.0501(c) and subparagraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)(10), (c)(15), (c)(16), and (c)(18), which will remain in place and are state effective June 14, 1990.

Former paragraph 2.0501(e) is also recodified to paragraph 2.0501(c). This paragraph provides that if more stringent controls than those in Section 2.0500 are necessary to either prevent emissions from a source of air pollution from causing exceedances of the ambient air quality standards at 2.0400, *Ambient Air Quality Standards,* or to create offsets, those controls must be included in a permit.

Next, former paragraph 2.0501(f) describing the requirements for establishing bubble emission limits is recodified to paragraph 2.0501(d). The changes to the bubble concept provisions include the addition of language to (d)(1)(D) to clarify that the review of a potential alternative mix of controls and enforcement of any resulting permit will not require expenditures for Mecklenburg County ''in excess of five times that which would otherwise be required'' in place of LIP-approved language that it would not ''require excessive expenditures on the part of Mecklenburg County.'' Subparagraphs (d)(2)(D) and (d)(5) add language noting that the **Federal Register** notice cited is incorporated by reference with no subsequent amendments or editions. The bubble concept provisions also include ministerial minor changes such as including a reference to the MCAPCO throughout wherever regulations are referenced, other minor wording changes, and formatting changes. At this time, EPA is not acting on the addition of paragraph (e) to 2.0501, which prescribes procedures for issuing permits incorporating the bubble emission limits described at paragraph (d). The Mecklenburg LIP currently includes procedural language regarding approval of bubble emission limits in permitting at LIP-approved Rule 1.5213, *Action on Application; Issuance of Permit,* at paragraph (j).

[3] Additionally, EPA notes that NCDAQ did not request EPA approval into the LIP of several Section 2.2600 rules, including: Rules 2.2616, *Fluorides;* 2.2618, *Mercury;* 2.2619, *Arsenic, Beryllium, Cadmium, Hexavalent Chromium;* and 2.2620, *Dioxins and Furans.* Provisions for these pollutants were not previously included in the Mecklenburg LIP.

[4] At this time, EPA is not taking action on Rules 2.2601, *Purpose and Scope;* 2.2609, *Particulate Testing Methods;* 2.2617, *Total Reduced Sulfur;* and 2.2621, *Determination of Fuel Content Using the F-Factor.*

Next, former paragraph 2.0501(g), which noted that the version of the methods referenced were those which appeared in the **Federal Register** notice dated November 1, 1986, is being removed. This language is being removed because Section 2.2600 will now specify the appropriate testing methods.

A general statement is then added at the end of Rule 2.0501 which directs owners and operators of sources or control equipment subject to Section 2.0500, *Emission Control Standards,* to procedures for determining compliance at Section 2.2600, *Source Testing.* Finally, because EPA is not acting on certain subparagraphs of existing paragraph 2.0501(c) as identified above, revising former paragraph 2.0501(e) to paragraph 2.0501(c) leaves the section with two paragraphs (c), one with a state effective date of June 14, 1990, for the identified subparagraphs, and one with a state effective date of June 1, 2008. The remaining subparagraphs of paragraph (c) with the state effective date of June 14, 1990 in Rule 2.0501 will be addressed in a separate action.

B. Section 2.0900, Volatile Organic Compounds

The April 24, 2020, SIP revision modifies much of Section 2.0900, *Volatile Organic Compounds,* including the recodification of several rules to Section 2.2600, *Source Testing.* In this NPRM, EPA is only considering changes to those Section 2.0900 rules which are either recodified to Section 2.2600, or include updated cross-references to new Section 2.2600 for source testing procedures, among their other changes. EPA will consider the remaining changes to other Section 2.0900 rules in a separate action. Specifically, in this NPRM, EPA is proposing to remove and recodify to Section 2.2600 the following Rules: 2.0913, *Determination of Volatile Content of Surface Coatings;* 2.0914, *Determination of VOC Emission Control System Efficiency;* 2.0915, *Determination of Solvent Metal Cleaning VOC Emissions;* 2.0916, *Determination: VOC Emissions from Bulk Gasoline Terminals;* 2.0939, *Determination of Volatile Organic Compound Emissions;* 2.0940, *Determination of Leak Tightness and Vapor Leaks;* and 2.0942, *Determination of Solvent in Filter Waste.* EPA is also proposing to repeal Rule 2.0941, *Alternative Method for Leak Tightness.* Finally, EPA is addressing changes to the following Rules: 2.0901, *Definitions;* 2.0912, *General Provisions on Test Methods and Procedures;* 2.0943, *Synthetic Organic Chemical and Polymer Manufacturing;* and 2.0945, *Petroleum Dry Cleaning.*

The April 24, 2020, SIP revision modifies Rule 2.0901, *Definitions,* by clarifying existing definitions applicable to Section 2.0900 and by adding one definition. First, the April 24, 2020, SIP revision removes unnecessary language at (a)(7) defining ''high solids coating.'' The deleted language noted that this term would apply to coatings that would have potentially lower volatile organic compounds (VOC) emission and is often applied to coatings meeting EPA's Control Technique Guidelines. Next, the definition of ''potential emissions'' in (a)(15) is clarified by noting that the referenced permit is a federally enforceable permit. Additional changes include, writing out ''degrees Fahrenheit'' in the definition for ''standard conditions'' at (a)(21) instead of abbreviating, adding the definition of ''Stage I'' vapor recovery,[5] renumbering paragraphs due to the addition of the ''Stage I'' definition, and clarifying that a ''topcoat'' applies to multiple or single coat operations at renumbered (a)(25). The ''Stage I'' definition affects owners and operators of gasoline service stations and gasoline tank trucks. The incorporation of this definition of ''Stage I'' is intended to clarify a term used in existing LIP-approved Rule 2.0928,[6] *Gasoline Service Stations Stage I,* and is consistent with the SIP-approved definition at 15A NCAC 02D .0901.[7]

Next, the definition of ''volatile organic compound'' as renumbered at 2.0901(a)(29) is updated to cross-reference Section 2.2600 for the procedure that determines volatile content of a compound of carbon, instead of Rules 2.0913 and 2.0939, which are being recodified and repealed. The definition of VOC is also updated by replacing the listed excluded compounds with a reference to EPA's definition at 40 CFR 51.100(s), which lists the compounds that have been determined to have negligible photochemical reactivity by the Agency. These changes more closely align Rule 2.0901 with the SIP-approved state rule at 15A NCAC 02D .0901 *Definitions.*

Next, Rule 2.0912, *General Provisions on Test Methods and Procedures,* is revised to cross-reference Section 2.2600, *Source Testing,* and remove explanations of testing expectations and schedules to more closely align the rule with the SIP-approved state rule at 15A NCAC 02D .0912, *General Provisions on Test Methods and Procedures.* The explanations of testing expectations and schedules were transferred to new Section 2.2600 at Rule 2.2602, ''*General Provisions on Test Methods and Procedures,*'' which is described in more detail in Section III.C of this NPRM.

Next, EPA is proposing to remove Rule 2.0941, *Alternative Method for Leak Testing,* from the Mecklenburg LIP. This rule provided for an alternative method for determining leak testing specifically for gasoline tank trucks, which were subject to Method 27 of Appendix A to 40 CFR part 60 under 2.0940, *Determination of Leak Tightness and Vapor Leaks,* which is removed and recodified at Rule 2.2615.[8] The federal Method 27 continues to be an appropriate test for determining vapor tightness of tank trucks, and the removal of this alternative method simply removes a flexibility previously allowed in the rules.

The April 24, 2020, revision next modifies Rule 2.0943, *Synthetic Organic Chemical and Polymer Manufacturing,* by updating a cross-reference from repealed and recodified Rule 2.0939 and replacing it with a reference to Section 2.2600 for quarterly VOC monitoring requirements. Next, the April 24, 2020, revision modifies Rule 2.0945, *Petroleum Dry Cleaning,* by clarifying that filter paper is included in the definition of ''cartridge filter'' in paragraph (a), clarifying a reference to Rule 2.0903 in paragraph (e), updating a cross-reference to Rule 2.0939 with a reference to Section 2.2600, removing an unnecessary statement that only suggests the point for measuring the flow rate of recovered solvents in paragraph(g), and including minor grammatical changes.

EPA is proposing to approve the updates to Rules 2.0901, 2.0912, 2.0943, and 2.0945 because they are clarifying changes, better align the Mecklenburg LIP with the State's approved SIP, and will not interfere with any applicable CAA requirements. EPA is also proposing to remove Rule 2.0941 for the reasons discussed above. Finally, EPA is proposing to remove and recodify to Section 2.2600 with additional changes the following Rules: 2.0913, 2.0914, 2.0915, 2.0916, 2.0939, 2.0940, and 2.0942. For more details on the

[5] Stage I vapor recovery is the control of gasoline vapors emitted during the transfer of gasoline from tank trucks to stationary gasoline storage tanks.

[6] The April 20, 2020, submittal transmits changes to Rule 2.0928, *Gasoline Service Stations Stage I,* which will be considered by EPA in a separate action.

[7] Finding it consistent with statutory and regulatory requirements, EPA approved the definition into the North Carolina SIP on May 9, 2013. *See* 78 FR 27065.

[8] For more information on the recodification of Rule 2.0940, *Determination of Leak Tightness and Vapor Leaks,* see Section III.C of this NPRM.

recodification of Rules 2.0913, 2.0914, 2.0915, 2.0916, 2.0939, 2.0940, and 2.0942 and other changes in the recodified rules, see Section III.C. of this NPRM.

C. Section 2.2600, Source Testing

The April 24, 2020, SIP revision adds Section 2.2600, *Source Testing,* including recodification of several source testing provisions from LIP-approved Rule 2.0501, *Compliance with Emission Control Standards,* and Section 2.0900, *Volatile Organic Compounds.* At this time, EPA is not acting on the changes to add the following Rules in Section 2.2600: 2.2601, *Purpose and Scope;* portions of 2.2602,[9] *General Provisions on Test Methods;* 2.2609, *Particulate Testing Methods;* 2.2611, *Sulfur Dioxide Testing Methods;* 2.2617, *Total Reduced Sulfur;* and 2.2621, *Determination of Fuel Content Using the F-Factor.*[10] The requirements addressed in these provisions will remain at the prefatory text at existing paragraph 2.0501(c) and subparagraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)(10), (c)(15), (c)(16), and (c)(18), state effective June 14, 1990. EPA will act on these other changes in a separate action.

First, Rule 2.2602, *General Provisions on Test Methods and Procedures,* is established from general procedures formerly included in 2.0501 and 2.0912. Portions of paragraph 2.0912(a) are recodified to paragraph 2.2602(a), which notes that the owner or operator will perform any required test at their own expense, and paragraph 2.2602(b), which notes that the final test report must describe the training and air experience of the individual conducting the test. Paragraph 2.2602(c) provides that air emission testing protocols be provided to the MCAQ Director prior to testing, which is partially recodified from 2.0912(c). This paragraph also provides that the protocols are not required to be pre-approved by the Director ahead of testing, but that the Director will review protocols for pre-approval if they are provided at least 45 days in advance. Paragraph 2.2602(d) is recodified from portions of 2.0912(c) and requires that the protocol for a test intended to demonstrate compliance with an applicable emission standard must provide notice ahead of the test such that the Director may elect to observe the test, but with 15 days as the lead time instead of 21 days as provided in 2.0912(c). Former 2.0912(c) also contained specific requirements for the contents of a testing notification to the Director, some of which are covered in Rule 2.2603, as discussed below. One effect of the recodification of testing notification procedures from former paragraphs 2.0912(c) to 2.2602(c) and (d) is that the requirements are more broadly applicable for all required source testing instead of only testing for VOCs.

Paragraph 2.2602(e) requires that the owner and operator of the source shall provide for the physical infrastructure to conduct testing, as recodified and consolidated from former 2.0912(e) and 2.0501(b). Paragraph 2.2602(f) is recodified from a portion of 2.0939(a) and requires that the test results be reported in the same units as the emission limits given in the applicable rule. Paragraph (f) also provides that the units can be different if required by the applicable permit at the time of the test, or if specified in the protocol review by the Director. This possible alternative to expressing the results in the same units as the emission limits given in the applicable rule is a new flexibility, but would not prevent MCAQ from determining compliance with the applicable SIP emission limit. The remainder of 2.0939(a) included references to Methods 25, 25A, or 25B of Appendix A to Part 60 ''[w]here the test methods are applicable.'' However, these test methods were not specified in the LIP for any source categories. This language is removed and not recodified at Section 2.2600, except to the extent that those methods are available via a provision in Rule 2.2613, *Volatile Organic Compound Testing Methods,* which includes a general reference to Appendix A of 40 CFR part 60 for determining applicable testing methods where a specific method is not otherwise specified in 2.2613.

Paragraph 2.2602(g) is recodified from former 2.0501(c)(14) and a portion of paragraph 2.0501(b) and provides that the owner or operator shall arrange for controlling and measuring the production rates during the period of testing, and requires that the individual conducting the test report the process used to obtain accurate process data and report the average production rates during each test. Former 2.0501(b) provided that the Director could request information on the emission rates, while recodified 2.2602(g) provides instead that the information shall be reported to the Director.

Paragraph 2.2602(h) recodifies the requirement in former 2.0912(c) to submit a test report to the Director no later than 60 days after testing. As modified, paragraph (h) instead requires that a final test report be submitted to the Director no later than 30 days after sample collection, but that the owner or operator may submit a request for an extension on the report, which the Director will approve if they concur that extension is the result of actions beyond the control of the owner or operator. With the final report due generally within 30 days, there is no longer a need for the owner or operator to share preliminary results in 30 days, so that requirement was not carried over from 2.0912(c). EPA is not acting on paragraph (i) in this NPRM, which corresponds to LIP-approved 2.0501(c)(18), and it will be considered in a separate action. Finally, paragraph 2.2602(j) is recodified and revised from former 2.0912(g), and provides that the Director may authorize independent tests of any source subject to a rule in Section 2.2600 to determine compliance status or verify test data submitted. This paragraph also provides that tests conducted by the Division of Air Quality with the appropriate methods would take precedence for their purposes in determining compliance. Former 2.0912(g) also provided similar language noting that EPA could verify any test and that tests conducted by EPA would similarly take precedence. This language was not carried over to 2.2602(j).

Next, Rule 2.2603, *Testing Protocol,* specifies the information that must be included in the testing protocol to be provided to the MCAQ, as recodified from former paragraph 2.0912(c) for VOC testing and now made applicable more broadly to all source testing. This rule requires that technical, facility, and case-specific information be included in testing protocols and also requires that deviations from the protocol must be documented. Former 2.0912(c) also required a timetable to be submitted with the protocol, but this is covered in (1) 2.2602(d), which requires that the director be notified at least 15 days ahead of a test, and (2) 2.2602(h), which specifies that final reports from the test are due within 30 days, as stated above. These procedures would be newly applicable to source testing other than VOC testing in the Mecklenburg LIP.

Rule 2.2604, *Number of Test Points,* is reorganized and recodified from existing paragraph 2.0501(c)(1) and requires the use of Method 1 of Appendix A of 40 CFR part 60 to select a suitable measurement site and the appropriate number of test points for several source tests, including: Particulate testing, velocity and/or volume flow rate measurements, testing for acid mist or other pollutants which occur in liquid droplets, sampling for which velocity

[9] EPA is not proposing to act on paragraph 2.2602(i) at this time. This provision will instead remain at 2.0501(c)(18), and the recodification to 2.2602(i) with additional changes will be considered in a separate action.

[10] *See* footnote 5 of this NPRM.

and volume flow rate measurements are required, or any sampling which specifies isokinetic sampling. Paragraph 2.2604(a) also includes testing for VOC as one of the situations covered by Method 1 at 2.2604(a), as removed and relocated from 2.0939(a). The only remaining changes are related to reformatting from 2.0501(c)(1), such as breaking out paragraph 2.2604(b) from former 2.0501(c)(1)(E), which includes clarifications to Method 1. Similarly, Rule 2.2605, *Velocity and Volume Flow Rate,* is recodified from existing 2.0501(c)(2) and requires that Method 2 of 40 CFR part 60 be used concurrently in any test in which velocity and volume flow rate measurements are required.

Next, Rule 2.2606, *Molecular Weight,* is recodified from existing paragraph 2.0501(c)(13) and requires Method 3 of Appendix A to 40 CFR part 60 be used in determining the molecular weight of a gas being sampled to determine the fraction of carbon dioxide, oxygen, carbon monoxide, and nitrogen. This rule maintains at paragraph (b) the alternative to use the grab sample technique with instruments such as Bacharyte Fyrite™ in specific circumstances. This rule does not retain the alternative ability for fuel burning sources to determine concentrations of oxygen and nitrogen from combustion reactions for various fuels from 2.0501(c)(3), which means the aforementioned Method 3 must be used.

Next, Rule 2.2607, *Determination of Moisture Content,* is a new rule which appropriately requires the use of Method 4 of Appendix A to 40 CFR part 60 concurrently with any test method requiring the determination of gas moisture content.

Rule 2.2608, *Number of Runs and Compliance Determination,* is modified and recodified from paragraph 2.0501(c)(12). This rule requires that three repetitions must be used for tests (except for fuel sampling), and the SIP revision adds language to provide that in circumstances where a third run could not be completed due to ''an unavoidable and unforeseeable event,'' the Director may approve the arithmetic average of two samples. This approach in 2.2608 is consistent with the flexibility provided for showing compliance with the federal New Source Performance Standards in 40 CFR Section 60.8(f). Accordingly, EPA is proposing to approve this change as an appropriate amendment to the required number of test runs.

Rule 2.2610, *Opacity,* is recodified from paragraph 2.0501(c)(8), and is further modified to include an alternative test at paragraph (b), which specifies Method 22 of Appendix A to 40 CFR part 60 in instances where compliance is determined by the frequency of fugitive emissions. This alternative method is appropriate for determining the presence of visual emissions, whereas Method 9 is useful for determining the characteristics of visual emissions (*e.g.,* percent opacity).

Rule 2.2612, *Nitrogen Oxide Testing Methods,* is recodified from paragraph 2.0501(c)(7), retaining the use of Method 7 of Appendix A to 40 CFR part 60 for combustion sources. This rule also adds the alternative of Method 7E where appropriate for determining compliance via continuous sampling. Rule 2.2612 is also modified to include Method 20 of Appendix A to 40 CFR part 60 at paragraph (b) to include a method for stationary gas turbines. This is an appropriate addition to the nitrogen oxide testing methods for determining compliance at these units.

Rule 2.2613, *Volatile Organic Compounds Testing Methods,* is established with recodified rules from Section 2.0900, which are simultaneously removed. Paragraph (a) is recodified from 2.0913, *Determination of Volatile Content of Surface Coatings,* and requires Method 24 Appendix A to 40 CFR part 60, for surface coating materials. Paragraph (b) is similarly recodified from 2.0913 and requires Method 24A for printing inks and related coatings. Paragraph (c) includes procedures for conducting a material balance for solvent metal cleaning and is recodified from 2.0915, *Determination of Solvent Metal Cleaning VOC Emissions.* Paragraph (d) prescribes 40 CFR 60.503, *Test Methods and Procedures,* from 40 CFR part 60, subpart XX, *Standards of Performance for Bulk Gasoline Terminals* for those bulk gasoline terminals, which is a recodification of former 2.0916, *Determination: VOC Emissions from Bulk Gasoline Terminals.* Paragraph (e) is recodified from former 2.0939, *Determination of Volatile Organic Compound Emissions* at paragraph (b), which prescribes Method 21 of Appendix A to 40 CFR part 60 for organic process equipment leaks. This covers the remaining portion of 2.0939, which is removed.

Paragraph 2.2613(f) provides procedures for identifying filter waste, which is a recodification of former Rule 2.0942, *Determination of Solvent Filter Waste.* Next, paragraph (g) is added to include a general statement that for sources of VOCs not covered by paragraphs 2.2613(b)–(e), the applicable methods in Appendix M to 40 CFR part 51 or Appendix A to 40 CFR part 60 shall be used. These Appendices are appropriate references for determining applicable test methods for source categories which are not specifically covered in the LIP.

Paragraph 2.2613(h) includes a provision that compounds excluded from the definition of volatile organic compound at Rule 2.0901, *Definitions,* are to be treated as water. This is appropriate because other volatile compounds that have been determined to have negligible reactivity photochemical reactivity are not regulated as VOCs pursuant to 40 CFR part 51, as established at 40 CFR 51.100(s). Additionally, with the creation of 2.2613, 2.0501(c)(17) was no longer accurate because it stated that emissions of VOCs would be measured via test procedures in Section 2.0900 instead of 2.2600. Therefore, with cross-references within 2.0900 to 2.2600 for the appropriate test methods, 2.0501(c)(17) is no longer needed and is removed from the SIP.

Rule 2.2614, *Determination of VOC Emission Control System Efficiency,* is recodified from former 2.0914. This rule is also modified by clarifying the procedures by which the control efficiency is determined. First, a provision at former paragraph 2.0914(b)(2) that the efficiency of any control and capture system would use accepted engineering practices for the computation and be approved by the Director is removed in favor of 2.2614(c), which is added to instead specify the procedures for determining the control efficiency as outlined in an EPA guidance document.[11] Next, former 2.0914(b)(4), which cited to former 2.0939 ''or a method approved by the director'' for determining the total combustible VOCs is removed. Rule 2.2613 adequately prescribes which methods are to be used to determine the VOC content. Paragraph (d), which is new, then notes that the EPA document cited in paragraph (c) is incorporated by reference.

Finally, Rule 2.2615, *Determination of Leak Tightness and Vapor Leaks,* is recodified from Rule 2.0940. The framework of the rule and procedures from former 2.0940 do not change for leak testing included at paragraph (a). The certification requirements at paragraph (b) are rewritten to eliminate a cross-reference to 2.0941, *Alternative Method for Leak Tightness,*[12] and

[11] Mecklenburg cites to EPA guidance from the Air Emissions Measurement Center, entitled ''Guidelines for Determining Capture Efficiency,'' available at: *https://www.epa.gov/sites/production/files/2020-08/documents/gd-035.pdf.*

[12] Rule 2.0941 is removed in the April 24, 2020, submittal. See Section III.B of this NPRM for more details.

exclusively require Method 27 of Appendix A to 40 CFR part 60 for truck tanks equipped with vapor collection systems. This rule is also revised to clarify that the certification is an annual requirement, as specified in 2.0932. Consistent with SIP-approved procedures for the State of North Carolina, paragraph (b) includes minor differences in wording from Method 27 of Appendix A to 40 CFR part 60, and subparagraph (b)(3) does not allow for any alternative procedures that the federal method allows for at Section 16.0 of Method 27. Additionally, Appendices B and C of a cited EPA document in paragraph (a) are incorporated by reference via paragraph (c). Considering the elimination of the cross-reference to possible alternative procedures in Rule 2.0941, which is removed, and the clarifying nature of other changes to the test methods, Rule 2.2615 is at least as stringent as LIP-approved 2.0940.

The changes to the Mecklenburg LIP as described in this Section would maintain and/or add source testing procedures, if approved. These procedures are necessary components of the SIP, consistent with 40 CFR part 51, subpart K, *Source Surveillance,* at 51.212, *Testing, inspection, enforcement, and complaints.* These rules are also consistent with the SIP-approved provisions for the State at 15A NCAC 02D Section .2600 and would not interfere with any applicable requirements. EPA has preliminarily determined that these rules are consistent with federal requirements.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the following Mecklenburg County rules, with an effective date of June 1, 2008: 2.0501, *Compliance with Emission Control Standards;*[13] 2.0912, *General Provisions on Test Methods and Procedures;* 2.0943, *Synthetic Organic Chemical and Polymer Manufacturing;* 2.0945, *Petroleum Dry Cleaning;* 2.2602, *General Provisions on Test Methods and Procedures;*[14] 2.2603, *Testing Protocol;* 2.2604, *Number of Test Points;* 2.2605, *Velocity and Volume Flow Rate;* 2.2606, *Molecular Weight;* 2.2607, *Determination of Moisture Content;* 2.2608, *Number of Runs and Compliance Determination;* 2.2610, *Opacity;* 2.2612, *Nitrogen Oxide Testing Methods;* 2.2613, *Volatile Organic Compound Testing Methods;* 2.2614, *Determination of VOC Emission Control System Efficiency;* and 2.2615, *Determination of Leak Tightness and Vapor Leaks.* EPA is also proposing to incorporate by reference Rule 2.0901, *Definitions,* with an effective date of January 1, 2009. Also in this document, EPA is proposing to remove provisions of the EPA-Approved Mecklenburg County rules from the Mecklenburg portion of the North Carolina State Implementation Plan, which are incorporated by reference in accordance with the requirements of 1 CFR part 51. EPA has made, and will continue to make, the State Implementation Plan generally available at the EPA Region 4 office (please contact the person identified in the ''For Further Information Contact'' section of this preamble for more information).

V. Proposed Action

EPA is proposing to approve the April 24, 2020, SIP revision to revise and recodify, to new rules at Section 2.2600, *Source Testing,* portions of Rule 2.0501, *Compliance with Emission Control Standards,* and certain rules from Section 2.0900, *Volatile Organic Compounds.* Specifically, EPA is proposing to approve the source testing methods and procedures identified in Section III of this NPRM into the LIP. EPA is proposing to approve these changes for the reasons discussed above.

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. *See* 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 CAA. This proposed action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

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.

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

[13] Except for the addition of paragraph 2.0501(e), with an effective date of June 1, 2008, and except for changes to remove and recodify the prefatory text at 2.0501(c) and subparagraphs (c)(3), (c)(4), (c)(5), (c)(6), (c)10, (c)(15), (c)(16), and (c)(18), which will remain unchanged with a state effective date of June 14, 1990. Because EPA is acting on other portions of Rule 2.0501, which includes moving former paragraph (e) to paragraph (c) with an effective date of June 1, 2008, there will be two paragraphs 2.0501(c), with different effective dates. EPA will consider the remaining portions of the June 14, 1990 version of paragraph (c) in a separate action.

[14] Except for paragraph 2.2602(i), which corresponds to 2.0501(c)(18).

Dated: November 17, 2021.

John Blevins,

Acting Regional Administrator, Region 4.

[FR Doc. 2021–25528 Filed 11–24–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2021–0558; FRL–9224–01–R3]

Air Plan Approval; Pennsylvania; Revision of the Maximum Allowable Sulfur Content Limit for Number 2 and Lighter Commercial Fuel Oil in Allegheny County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. The revision updates Allegheny County's portion of the Pennsylvania SIP, which includes regulations concerning sulfur content in fuel oil. This revision pertains to the reduction of the maximum allowable sulfur content limit for Number 2 (No. 2) and lighter commercial fuel oil, generally sold and used for residential and commercial furnaces and oil heat burners for home or space heating, water heating or both, from the current limit of 500 parts per million (ppm) to 15 ppm. This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2021–0558 at *http://www.regulations.gov,* or via email to *Gordon.Mike@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Sean Silverman, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–5511. Mr. Silverman can also be reached via electronic mail at *Silverman.Sean@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 1, 2020, the Allegheny County Health Department (ACHD) through the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP to reduce the SIP-approved maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil from a limit of 500 ppm of sulfur to 15 ppm. The proposed SIP revision continues to allow for the limited sale of higher sulfur fuel under certain specified circumstances, as provided for under the current SIP.

I. Background

The revision consists of an amendment to the Pennsylvania SIP to incorporate a reduction in the SIP-approved maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil in Allegheny County from a limit of 500 ppm of sulfur to 15 ppm.[1]

Combustion of sulfur-containing commercial fuel oil releases sulfur dioxide (SO_2) emissions, which contribute to the formation of regional haze and fine particulate matter ($PM_{2.5}$), both of which impact the environment and human health. Regional haze is pollution produced by sources and activities that emit fine particles and their precursors which impairs visibility through scattering and absorption of light. Fine particles may be emitted directly or formed from emissions of precursors, the most important of which includes SO_2. $PM_{2.5}$ pollution exposure has been linked to a variety of health problems. In addition to improving public health and the environment, decreased emissions of SO_2, and therefore subsequently $PM_{2.5}$, will contribute to the attainment or maintenance, or both, of their respective national ambient air quality standards (NAAQS).

Pennsylvania is a member of the Mid-Atlantic/Northeast Visibility Union (MANE–VU) Regional Planning Office (RPO), established in 2001, to assist the Mid-Atlantic and Northeast states in planning and developing their regional haze SIP revisions. The other MANE–VU states are Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island and Vermont. The District of Columbia, certain Native American tribes in the Region, the EPA, the United States Fish and Wildlife Service, and the United States Forest Service are also members of MANE–VU. ACHD revised Article XXI, § 2104.10 and the PADEP is submitting it to EPA as a SIP revision in response to a 2017 ''MANE–VU Ask'' to pursue adoption of a maximum allowable sulfur content limit of 15 ppm for No. 2 and lighter commercial fuel oil statewide for purposes of reducing regional haze and visibility impairment in Pennsylvania and affected Federal Class I areas.[2]

II. Summary of SIP Revision and EPA Analysis

Through the December 2020 SIP revision submittal, Pennsylvania seeks to revise its SIP by including amendments to ACHD's Rules and Regulations in Article XXI, Air Pollution Control, namely, § 2104.10, Commercial Fuel Oil. The amendments to Article XXI, § 2104.10, reduce the SIP-approved maximum allowable sulfur content limit for No. 2 and lighter commercial fuel oil, generally sold for and used in residential and commercial furnaces and oil heat burners for home or space heating, water heating, or both, in Allegheny County from a limit of 500 ppm of sulfur to 15 ppm. These ACHD amendments to Article XXI, § 2104.10, became effective on September 1, 2020.

Commercial Fuel that was stored by the ultimate consumer in Allegheny County prior to the September 1, 2020 effective date may be used by the ultimate consumer on or after

[1] On June 3, 2019, EPA approved a SIP revision incorporating the maximum allowable sulfur content of No. 2 and lighter fuel oil at 500 ppm in Allegheny County (84 FR 18738).

[2] Areas statutorily designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. 42 U.S.C. 7472(a). There are 156 mandatory Class I areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

September 1, 2020 if it met the applicable maximum allowable sulfur content through August 31, 2020 at the time it was stored.

This SIP revision to implement low sulfur fuel oil provisions will reduce regional haze and visibility impairment in Pennsylvania. Additionally, decreased emissions of SO_2 will contribute to the attainment and maintenance, or both, of the SO_2 and $PM_{2.5}$ NAAQS in Pennsylvania and the MANE–VU region.

III. Proposed Action

EPA has determined that Pennsylvania's proposed SIP revisions to 40 CFR 52.2020(c)(2), which incorporate amendments made to Article XXI, Air Pollution Control § 2104.10 will lower the maximum allowable sulfur content limit in No. 2 fuel oil and lighter combusted or sold in Allegheny County and aid in reducing SO_2 emissions. These emissions are a cause of regional haze and reducing them will help to attain or maintain the SO_2 and $PM_{2.5}$ NAAQS. EPA is proposing to approve the December 1, 2020 Pennsylvania SIP revision which amends commercial No. 2 fuel oil and lighter sulfur limits for combustion and sale in Allegheny County. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this document, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference Pennsylvania's maximum allowable sulfur content in commercial fuel oil regulation as described in Section II of this document. EPA has made, and will continue to make, these materials generally available through *http://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA 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 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 proposed 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 CAA; 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, this proposed rule regarding commercial fuel oil sulfur limits for combustion and sale in Allegheny County does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Regional haze, Sulfur oxides.

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

Dated: November 19, 2021.

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2021–25738 Filed 11–24–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2021–0793; FRL–8521.1–02–OAR]

RIN 2060–AV57

Renewable Fuel Standard (RFS) Program: Extension of Compliance and Attest Engagement Reporting Deadlines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to modify certain compliance dates under the Renewable Fuel Standard (RFS) program. First, EPA is proposing to extend the RFS compliance reporting deadline and the associated attest engagement reporting deadline for the 2019 compliance year for small refineries only. Second, EPA is proposing to extend the RFS compliance reporting deadline and the associated attest engagement reporting deadline for the 2020 and 2021 compliance years for all obligated parties. Finally, EPA is proposing to change the way in which future RFS compliance and attest engagement reporting deadlines are determined.

DATES: *Comments.* Comments must be received on or before January 3, 2022.

Public hearing. EPA will hold a virtual public hearing on December 3, 2021. Please refer to the **SUPPLEMENTARY INFORMATION** section for additional information on the public hearing.

ADDRESSES: *Comments.* You may send your comments, identified by Docket ID No. EPA–HQ–OAR–2021–0793, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov* (our preferred method) Follow the online instructions for submitting comments.
- *Email: a-and-r-Docket@epa.gov.* Include Docket ID No. EPA–HQ–OAR–2021–0793 in the subject line of the message.
- *Mail:* U.S. Environmental Protection Agency, EPA Docket Center, Air Docket, Mail Code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

• *Hand Delivery or Courier (by scheduled appointment only):* EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Avenue NW, Washington, DC 20004. The Docket Center's hours of operations are 8:30 a.m.–4:30 p.m., Monday—Friday (except Federal Holidays).

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided. For the full EPA public comment policy, information about confidential business information (CBI) or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.*

Out of an abundance of caution for members of the public and our staff, the EPA Docket Center and Reading Room are closed to the public, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

EPA continues to carefully and continuously monitor information from the Centers for Disease Control and Prevention (CDC), local area health departments, and our Federal partners so that we can respond rapidly as conditions change regarding COVID–19.

Public hearing. The virtual public hearing will be held on December 3, 2021. The hearing will begin at 10 a.m. Eastern Time (ET) and end when all parties who wish to speak have had an opportunity to do so. All hearing attendees (including even those who do not intend to provide testimony) should register for the public hearing by November 30, 2021. Information on how to register can be found at *https://www.epa.gov/renewable-fuel-standard-program/proposed-extension-renewable-fuel-standard-compliance-deadlines.* Additional information regarding the hearing appears below under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: For questions regarding this action, contact Karen Nelson, Office of Transportation and Air Quality, Compliance Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; telephone number: (734) 214–4657; email address: *nelson.karen@epa.gov.* For questions regarding the public hearing, contact Nick Parsons at (734) 214–4479 or *ASD-Registration@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline, diesel, and renewable fuels such as ethanol, biodiesel, renewable diesel, and biogas. Potentially affected categories include:

Category	NAICS [1] code	Examples of potentially affected entities
Industry	324110	Petroleum refineries.
Industry	325193	Ethyl alcohol manufacturing.
Industry	325199	Other basic organic chemical manufacturing.
Industry	424690	Chemical and allied products merchant wholesalers.
Industry	424710	Petroleum bulk stations and terminals.
Industry	424720	Petroleum and petroleum products merchant wholesalers.
Industry	221210	Manufactured gas production and distribution.
Industry	454319	Other fuel dealers.

[1] North American Industry Classification System (NAICS).

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. Other types of entities not listed in the table could also be affected. To determine whether your entity would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Participation in Virtual Public Hearing

Please note that EPA is deviating from its typical approach because the President has declared a national emergency. Because of current CDC recommendations, as well as state and local orders for social distancing to limit the spread of COVID–19, EPA cannot hold in-person public meetings at this time.

Information on how to register for the hearing can be found at *https://www.epa.gov/renewable-fuel-standard-program/proposed-extension-renewable-fuel-standard-compliance-deadlines.* The last day to pre-register to speak at the hearing will be November 30, 2021.

Each commenter will have 3 minutes to provide oral testimony. EPA may ask clarifying questions during the oral presentations, but will not respond to the presentations at that time. Written statements and supporting information submitted during the comment period will be considered with the same weight as oral comments and supporting information presented at the public hearing.

Please note that any updates made to any aspect of the hearing will be posted online at *https://www.epa.gov/renewable-fuel-standard-program/proposed-extension-renewable-fuel-standard-compliance-deadlines.* While EPA expects the hearing to go forward as set forth above, please monitor the website or contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to determine if there are any updates. EPA does not intend to publish a document in the **Federal Register** announcing updates.

If you require the services of a translator or special accommodations such as audio description, please pre-register for the hearing and describe your needs by November 30, 2021. EPA may not be able to arrange accommodations without advance notice.

Outline of This Preamble

I. Background and Proposed Extension of Deadlines
A. Extension of the 2019 RFS Compliance Reporting Deadline for Small Refineries
B. Extension of the 2020 and 2021 RFS Compliance Reporting Deadline for All Obligated Parties
C. Corresponding Attest Engagement Reporting Deadlines
D. Annual Compliance and Attest Engagement Reporting Deadlines Based on Effective Date
II. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act (PRA)
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act (UMRA)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
III. Statutory Authority

I. Background and Proposed Extension of Deadlines

The RFS regulations establish deadlines for obligated parties with renewable volume obligations (RVOs) to submit annual compliance reports to EPA, and later deadlines for the same parties to submit associated attest engagement reports. Under existing RFS regulations, obligated parties must submit compliance reports for each calendar year by March 31 of the following year, and the associated attest engagements by June 1 of the following year.[1] On April 1, 2021, EPA extended the deadlines for small refineries to demonstrate compliance with their 2019 RFS obligations and for all obligated parties to demonstrate compliance with their 2020 RFS obligations.[2] In that same action, we also extended the deadlines for the corresponding attest engagements reports.[3] As discussed in Sections I.A through C, we are proposing to again extend certain reporting deadlines applicable to the 2019 and 2020 compliance years, and additionally extending certain reporting deadlines for the 2021 compliance year, due to continued delay in the promulgation of the 2021 RFS standards and uncertainty around EPA's small refinery exemption (SRE) policy. We are also proposing a new approach to setting reporting deadlines for obligated parties that would automatically establish the annual compliance and attest engagement reporting deadlines for a given compliance year based on the effective date of the subsequent compliance year's RFS standards, if such a date is after the March 31 regulatory deadline. We discuss this proposed approach in more detail in Section I.D.

A. Extension of the 2019 RFS Compliance Reporting Deadline for Small Refineries

For small refineries, we are proposing to further extend the 2019 compliance reporting deadline to the next quarterly reporting deadline that is after the effective date of the 2021 RFS percentage standards,[4] in light of the continued uncertainty surrounding SREs under the RFS program.[5] For example, under this proposal, if the final rule establishing the 2021 standards is published in the **Federal Register** on March 1, 2022, the effective date of the 2021 standards would be 60 days later (April 30, 2022), and the 2019 compliance reporting deadline for small refineries would be June 1, 2022, because that would be the next quarterly reporting deadline after the effective date of the 2021 standards. We are proposing to tie the 2019 compliance reporting deadline to the effective date of the 2021 standards to allow for the proper sequencing of deadlines such that 2019 compliance would be complete prior to 2020 compliance, and 2020 compliance would be complete prior to 2021 compliance, given the continued delay in promulgating the 2021 standards. EPA is still evaluating SRE petitions consistent with the recent case law, including those for 2019.[6]

On January 24, 2020, the U.S. Court of Appeals for the Tenth Circuit issued a decision in *Renewable Fuels Association* v. *EPA* (*RFA*) invalidating on multiple grounds three SREs granted by EPA.[7] The small refineries whose SREs were invalidated by the court in the *RFA* case sought rehearing from the Tenth Circuit, which was denied on April 7, 2020.[8] Thus, the Tenth Circuit's decision was not final until after the 2019 compliance reporting deadline of March 31, 2020, had already passed. On September 4, 2020, the small refinery intervenors in that suit filed a petition for a writ of certiorari from the U.S. Supreme Court, which was granted on January 8, 2021, in *HollyFrontier* v. *RFA*.[9] On June 25, 2021, the Supreme Court issued its opinion in *HollyFrontier*.[10] EPA is still considering how to adjust its SRE policy in light of these two judicial opinions, including holdings from the *RFA* case that were not appealed; for this reason, there is still uncertainty regarding the 2019 SRE petitions.

Therefore, we believe it appropriate to further extend the 2019 annual compliance reporting deadline for small refineries. We believe that it is appropriate to do so only for small refineries because it is only their compliance requirements that have been affected by the recent *HollyFrontier* decision. We are proposing to extend this flexibility to all small refineries regardless of whether they have an SRE petition for 2019 pending before EPA because those that do not may elect to submit petitions in the future. All other obligated parties' compliance obligation deadlines for 2019 have already passed and remain unchanged.[11]

We recognize that some small refineries, despite the previous compliance reporting deadline extension for 2019, have already submitted their 2019 compliance reports. However, we are proposing to allow small refineries to revisit their 2019 compliance reports before their new 2019 compliance reporting deadline. This means that if a small refinery carried forward a deficit to demonstrate compliance for 2019 by March 31, 2020, but later receives an SRE for 2019 or retires RINs in accordance with its RVOs, that initial decision to carry forward a deficit will not constitute a carry-forward deficit (*i.e.,* failing to meet the requirement to retire sufficient RINs as described in 40 CFR 80.1427(a)(1)) that would make the small refinery ineligible to do the same for 2020 under 40 CFR 80.1427(b). Small refineries that did not submit a compliance report by March 31, 2020, would need to submit a compliance report to comply with the new 2019 compliance reporting deadline, unless they receive an exemption for 2019.

This proposed deadline extension would apply only to those parties who meet the definition of small refinery in Clean Air Act (CAA) section 211(o)(1)(k) and 40 CFR 80.1441(e)(2)(iii) for the 2019 compliance year. Limiting the extension in this way is appropriate because only small refineries' compliance obligations are affected by the *HollyFrontier* and *RFA* opinions and it is consistent with our eligibility requirements regarding SREs. We recognize that, in recent years, we have determined that some parties who have petitioned for SREs have been deemed ineligible by EPA, often due to the refinery's throughput (*i.e.,* more than 75,000 barrels of crude oil per day) or

[1] See 40 CFR 80.1451(a) and 80.1464(d).

[2] See 86 FR 17073 (April 1, 2021).

[3] Id.

[4] The effective date of 2021 RFS percentage standards is generally expected to be 60 days after publication of the action establishing the standards in the **Federal Register**.

[5] A small refinery may petition EPA for an exemption from its RFS obligations under 40 CFR 80.1441(e)(2).

[6] More information about SREs and the number of SRE petitions that EPA is currently evaluating is available at *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/rfs-small-refinery-exemptions.*

[7] *Renewable Fuels Ass'n* v. *EPA,* 948 F.3d 1206 (10th Cir. 2020) (*RFA).*

[8] Order, *RFA,* No. 18–9533 (10th Cir. Apr. 7, 2020).

[9] *HollyFrontier Cheyenne Refining, LLC* v. *Renewable Fuels Ass'n,* 114 S.Ct. 2172 (2021).

[10] *Id.* at 2181.

[11] The 2019 compliance and attest engagement reporting deadlines were March 31, 2020, and June 1, 2020, respectively.

the nature of their business (*i.e.,* not a petroleum refinery). The parties that EPA has found ineligible because they do not meet the definition of small refinery in recent years will similarly not be eligible for the 2019 compliance date extension for small refineries.

We note that all of the existing regulatory flexibilities for small refineries—including the ability to satisfy up to 20 percent of their 2019 RVOs using 2018 carryover RINs under 40 CFR 80.1427(a)(5) and the ability to carry forward a deficit from 2019 to 2020 if they did not carry forward a deficit from 2018 under 40 CFR 80.1427(b)—would continue to be available to them to demonstrate compliance for 2019 by the proposed 2019 compliance reporting deadline. This means that small refineries that carried forward a deficit for 2019 in their initial 2019 compliance reports (filed in 2020) could reverse that decision in new compliance reports and retain their ability to carry forward a deficit for 2020. It also means that small refineries that did not submit a 2019 compliance report by March 31, 2020, could also carry forward a deficit for 2020. Finally, small refineries could either carry forward a deficit for 2019 (if they did not do so for 2018) or for 2020 (if they do not do so for 2019). We seek comments on the proposed deadlines for small refineries for the 2019 compliance year.

B. Extension of the 2020 and 2021 RFS Compliance Reporting Deadline for All Obligated Parties

We are proposing to further extend the 2020 compliance reporting deadline for all obligated parties from January 31, 2022, to the next quarterly reporting deadline after the 2019 compliance reporting deadline for small refineries, and to extend the 2021 compliance reporting deadline for all obligated parties from March 31, 2022, to the next quarterly reporting deadline that is after the 2020 compliance reporting deadline. We are proposing to do so because EPA has not yet established the 2021 or 2022 standards, including applicable volumes, and we recognize the importance to obligated parties of planning their compliance for a given calendar year by understanding their obligations for the years before and after.[12] This is particularly true given the two-year ''lifespan'' for RINs, such that 2020 RINs can be used for compliance with either 2020 or 2021 obligations. Compliance obligations for 2021 and 2022 will remain unknown until EPA finalizes the 2021 and 2022 standards.

These proposed deadline extensions would allow several things to occur prior to those compliance dates. First, it would allow small refineries to complete compliance with their 2019 obligations before having to comply with their 2020 RFS obligations. Second, it would provide at least 60 days between the 2019 and 2020 compliance reporting deadlines and at least 60 days between the 2020 and 2021 compliance reporting deadlines to allow for obligated parties to make additional RIN acquisitions, transfers, transactions, and retirements prior to the compliance reporting deadlines. Finally, these deadlines would provide at least 60 days between 2021 and 2022 compliance reporting deadlines, allowing the 2022 compliance reporting deadline to remain on March 31, 2023, as currently prescribed in our regulations.[13]

Using the prior example, if the final rule establishing the 2021 standards is published in the **Federal Register** on March 1, 2022, the 2019 compliance reporting deadline for small refineries would be June 1, 2022. Furthermore, by operation of law, under this scenario, the 2020 compliance reporting deadline for all obligated parties would be September 1, 2022, and the 2021 compliance reporting deadline would be December 1, 2022. This would allow for at least 60 days before the 2022 compliance reporting deadline of March 31, 2023. We seek comments on the proposed deadlines for all obligated parties for the 2020 and 2021 compliance years.

C. Corresponding Attest Engagement Reporting Deadlines

We are proposing to extend the deadline for attest engagement reports required under 40 CFR 80.1464(g) for small refineries for 2019 compliance demonstrations and for all obligated parties for 2020 and 2021 compliance demonstrations to the next June 1 annual attest engagement reporting deadline that is at least 60 days after the applicable 2019, 2020, and 2021 compliance reporting deadline. Using the example described in Section IX.C where the final rule establishing the 2021 standards is published in the **Federal Register** on March 1, 2022, under this proposal, the 2019 attest engagement reporting deadline for small refineries and the 2020 and 2021 attest engagement reporting deadline for all obligated parties would be due on June 1, 2023.

We are proposing these extended attest engagement reporting deadlines to ensure enough time for attest auditors to reasonably conduct the 2019, 2020, and 2021 attest engagement reports. Because the annual attest engagement reporting deadline occurs only once each year (June 1), it is likely that with the proposed compliance deadline extensions, several or all of the affected 2019, 2020, and 2021 attest engagement reports would be due on the same deadline (June 1, 2023). This proposed change would therefore minimize confusion and maximize efficiency for the attest auditors to conduct and prepare reports. We seek comment on the proposed attest engagement reporting deadlines for 2019, 2020, and 2021.

D. Annual Compliance and Attest Engagement Reporting Deadlines Based on Effective Date

For annual compliance and annual attest engagement reporting deadlines for 2022 and beyond, we are proposing the same approach as that outlined above for 2019, 2020, and 2021. Under this proposal, for 2022 and beyond, the annual compliance reporting deadline would be the latest date of the following:

- March 31st of the subsequent calendar year;
- The next quarterly reporting deadline that is after the effective date of the subsequent compliance year's renewable fuel standards (typically 60 days after publication of the final rule in the **Federal Register**); or
- The next quarterly reporting deadline under 40 CFR 80.1451(f)(2) after the annual compliance reporting deadline for the prior compliance year.

Under this approach, the annual compliance reporting deadline would also be at least 60 days after publication of the subsequent year's RFS standards in the **Federal Register** and 60 days after the prior year's compliance reporting deadline. This approach would also avoid EPA having to repeatedly extend compliance reporting deadlines for obligated parties should promulgation of the subsequent year's standards be delayed. We believe this approach would provide regulatory certainty for obligated parties, and we seek comment on whether we should adopt this approach for 2022 and beyond.

Similarly, for 2022 and beyond, we are proposing to tie the annual attest engagement reporting deadline to the effective date of the RFS standards in the same manner as proposed for the 2019, 2020, and 2021 annual attest

[12] For discussion of obligated parties' interest in such extensions in past actions, see 80 FR 33100, 33149–50 (June 10, 2015) and 78 FR 49794, 49823 (August 15, 2013).

[13] See 40 CFR 80.1451.

engagement reporting deadlines, which would make it the latest date of the following:

- June 1 of the subsequent calendar year; or
- The next June 1 annual attest engagement reporting deadline that is at least 60 days after the annual compliance reporting deadline.

Under this proposed approach, annual attest engagement reports would be due at least 60 days after the annual compliance reporting deadline like under the current regulations. We seek comment on whether we should adopt this approach for 2022 and beyond.

To help communicate the annual compliance and annual attest engagement reporting deadlines, we are also proposing to post the annual compliance and annual attest engagement reporting deadlines on our website.[14]

II. Statutory and Executive Order Reviews

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

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

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2060–0725 and 2060–0723. This action only makes a one-time change in the compliance dates for certain regulated parties and adjusts the due date of their compliance reports and attest engagements to reflect this change. It does not change the information to be collected or increase the frequency of collection.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. In making this determination, EPA concludes that the impact of concern for this proposed rule is any significant adverse economic impact on small entities and that the agency is certifying that this rulemaking will not have a significant economic impact on a substantial number of small entities if the proposed rule has no net burden on the small entities subject to the proposed rule. This action extends the RFS compliance and attest engagement reporting deadlines. We do not anticipate that there will be any costs associated with these changes. We have therefore concluded that this action will have no net regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain an unfunded mandate of $100 million or more as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action imposes no enforceable duty on any state, local or tribal governments. Requirements for the private sector do not exceed $100 million in any one year.

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. This proposed rule only affects RFS obligated parties. Thus, Executive Order 13175 does not apply to this action.

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

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that 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 subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA) and 1 CFR Part 51

This action 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 establish an environmental health or safety standard. This action addresses the RFS compliance and attest engagement reporting deadlines and does not impact the RFS standards themselves.

III. Statutory Authority

Statutory authority for this action comes from section 211(o) of the Clean Air Act, 42 U.S.C. 7545(*o*).

List of Subjects in 40 CFR Part 80

Environmental protection, Administrative practice and procedure, Air pollution control, Diesel fuel, Fuel additives, Gasoline, Imports, Oil imports, Penalties, Petroleum, Renewable fuel, Reporting and recordkeeping requirements.

Michael S. Regan,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 80 as follows:

PART 80—REGISTRATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

Subpart M—Renewable Fuel Standard

■ 2. Amend § 80.1451 by:
■ a. Revising paragraph (a)(1) introductory text;
■ b. Removing and reserving paragraph (a)(1)(xiv);
■ c. Revising paragraph (f) introductory text; and
■ d. Adding paragraph (f)(1) and section headings for paragraphs (f)(2) and (3).

The revisions and additions read as follows:

[14] Information related to annual compliance and attest engagement reporting is available at: *https://www.epa.gov/fuels-registration-reporting-and-compliance-help/reporting-fuel-programs.*

§ 80.1451 What are the reporting requirements under the RFS program?

(a) * * *

(1) Annual compliance reports must include all the following information:

* * * * *

(f) *Report submission deadlines.* The submission deadlines for annual and quarterly reports are as follows:

(1) *Annual compliance reports*—(i) *Obligated parties.* (A) Except as specified in paragraph (f)(1)(i)(B) of this section, for obligated parties, annual compliance reports must be submitted by whichever of the following dates is latest:

(*1*) March 31 of the subsequent calendar year.

(*2*) The next quarterly reporting deadline under paragraph (f)(2) of this section that is after the date the subsequent compliance year's renewable fuel standards become effective in § 80.1405(a).

(*3*) The next quarterly reporting deadline under paragraph (f)(2) of this section after the annual compliance reporting deadline for the prior compliance year.

(B)(*1*) For obligated parties that meet the requirements for a small refinery under § 80.1441(e)(2)(iii), for the 2019 compliance year, annual compliance reports must be submitted no later than the next quarterly reporting deadline under paragraph (f)(2) of this section that is after the date the 2021 renewable fuel standards become effective in § 80.1405(a).

(*2*) For the 2020 compliance year, annual compliance reports must be submitted no later than the next quarterly reporting deadline in paragraph (f)(2) of this section after the deadline in paragraph (f)(1)(i)(B)(*1*) of this section.

(*3*) For the 2021 compliance year, annual compliance reports must be submitted no later than the next quarterly reporting deadline in paragraph (f)(2) of this section after the deadline in paragraph (f)(1)(i)(B)(*2*) of this section.

(ii) *All other parties.* For all parties other than obligated parties, annual compliance reports must be submitted by March 31 of the subsequent year.

(iii) *Deadline publication.* The annual compliance reporting deadline will be calculated in accordance with paragraph (f)(1)(i) of this section and published on EPA's website.

(2) *Quarterly compliance reports.*

* * *

(3) *Report certification.* * * *

* * * * *

■ 3. Amend § 80.1464 by:

■ a. Revising paragraph (d); and

■ b. Removing and reserving paragraphs (g) and (i)(3).

The revision reads as follows:

§ 80.1464 What are the attest engagement requirements under the RFS program?

* * * * *

(d) *Report submission deadlines*—(1) *Obligated parties.* (i) Except as specified in paragraph (d)(1)(ii) of this section, for obligated parties, annual attest engagement reports must be submitted to EPA by whichever of the following dates is latest:

(A) June 1 of the subsequent calendar year.

(B) The next June 1 annual attest engagement reporting deadline that is at least 60 days after the annual compliance reporting deadline under § 80.1451(f)(1)(i)(A).

(ii)(A) For obligated parties that meet the requirements for a small refinery under § 80.1441(e)(2)(iii), for the 2019 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting deadline that is at least 60 days after the annual compliance reporting deadline under § 80.1451(f)(1)(i)(B)(*1*).

(B) For obligated parties, for the 2020 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting deadline that is at least 60 days after the annual compliance reporting deadline under § 80.1451(f)(1)(i)(B)(*2*).

(C) For obligated parties, for the 2021 compliance year, annual attest engagement reports must be submitted to EPA no later than the next June 1 annual attest engagement reporting deadline that is at least 60 days after the annual compliance reporting deadline under § 80.1451(f)(1)(i)(B)(*3*).

(2) *All other parties.* All parties other than obligated parties must submit annual attest engagement reports to EPA by June 1 of the subsequent calendar year.

(3) *Deadline publication.* The annual attest engagement reporting deadline will be calculated in accordance with paragraph (d)(1) of this section and published on EPA's website.

* * * * *

[FR Doc. 2021–25444 Filed 11–24–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[EPA–HQ–OAR–2019–5304; FRL–9213–01–OAR]

Notification of Completeness of the Department of Energy's Compliance Recertification Application for the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency (EPA).

ACTION: Plant 2019 Compliance Recertification Application is complete; end of comment period concerning the 2019 Compliance Recertification Application.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) has determined that the Department of Energy (DOE) 2019 Compliance Recertification Application (CRA) for the Waste Isolation Pilot Plant (WIPP) is complete. The EPA provided written notice of the completeness decision to the Department of Energy on November 17, 2021.The Agency has determined that the CRA is complete, in accordance with the, ''Criteria for the Certification and Recertification of the WIPP's Compliance with the Disposal Regulations'' (Compliance Certification Criteria). The EPA also gives notice of the end of the comment period relating to the CRA.

DATES: The EPA opened the public comment period after receipt of some documentation of continued compliance and before the completeness determination concerning the CRA and gave notice that the comment period would remain open until after the completeness determination to a date which would be specified later (84 FR 50367, September 25, 2019). Comments must be received on or before December 27, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2019–5304, to the *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI), or other information of which disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points

you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *http://www2.epa.gov/dockets/commenting-epa-dockets.* The EPA is temporarily suspending its Docket Center and Reading Room for public visitors, with limited exceptions, to reduce the risk of transmitting COVID–19. Our Docket Center staff will continue to provide remote customer service via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Ray Lee, Radiation Protection Division, Center for Radiation Information and Outreach, Mail Code 6608T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, Washington, DC 20460; telephone number: 202–343–9463; fax number: 202–343–2305; email address: *lee.raymond@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to the EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

The WIPP is a disposal system for transuranic (TRU) radioactive waste. The WIPP Land Withdrawal Act, Public Law 102–579 (Oct. 30, 1972) [1] (LWA) imposed various conditions or restrictions on the WIPP, including limiting radioactive waste disposal in the WIPP to TRU radioactive wastes generated by defense-related activities. The waste proposed for disposal at the WIPP derives from federal facilities across the United States, including locations in California, Colorado, Idaho, New Mexico, Nevada, Ohio, South Carolina, Tennessee and Washington. The LWA also provides that the DOE will submit information to the EPA to determine whether the WIPP complies with the Agency's final disposal regulations, 40 CFR part 191, subparts B and C (Disposal Regulations). This includes an initial determination or certification of compliance, and then subsequent, periodic recertifications of continued compliance. LWA § 8. Under the LWA, the periodic recertifications occur on a five-year cycle, beginning five years after the initial receipt of transuranic waste for disposal at the WIPP. LWA § 8(f)(1). The EPA promulgated the Compliance Certification Criteria to set out criteria for the certification and recertification of the WIPP's compliance with the Disposal Regulations. Among the criteria is the requirement that information submitted by the DOE shall be complete and accurate and a preliminary step for the EPA to determine and notify DOE, in writing, that a complete recertification application has been received. 40 CFR 194.11. The completeness determination is an administrative step; it does not imply in any way that the CRA demonstrates compliance with the Compliance Certification Criteria or the disposal regulations. The EPA is now engaged in the final technical review that will determine if the WIPP remains in compliance with the disposal regulations.

The DOE submitted its first documentation of continued compliance and request for recertification of the WIPP, typically referred to as a compliance recertification application, in March 2004. The DOE submitted the second compliance recertification application in March 2009 and the third in March 2014. In March 2019, the DOE submitted the CRA, its fourth, and currently pending compliance recertification application. In September 2019, after receipt of the CRA, the EPA gave notice of receipt of the CRA and requested comment on all aspects of the application. 84 FR 50367 (Sept. 25, 2019). The Agency indicated that the comment period would remain open until a date after the EPA's completeness determination in accordance with § 194.11, a date that EPA would specify in a subsequent notice.[2]

After receiving the CRA, the EPA engaged in a preliminary review of the information submitted for completeness. The Agency's review identified multiple topics for which additional information was necessary to perform a technical evaluation. The EPA sent a series of letters to the DOE requesting additional information, and the Department provided documents and analyses in response to these requests. This completeness-related correspondence—along with other supporting documentation—is available in the Agency's public dockets (*https://www.regulations.gov;* Docket ID: EPA–HQ–OAR–2019–5304). Links to the electronic docket and additional information are also available at the EPA's WIPP website (*https://www.epa.gov/radiation/certification-and-recertification-wipp*).

[1] The 1992 WIPP Land Withdrawal Act was amended by the ''Waste Isolation Pilot Plant Land Withdrawal Act Amendments,'' a part of the National Defense Authorization Act for Fiscal Year 1997. Public Law 104–201, Title 31, Subtitle F (Sept. 23, 1996).

[2] For additional background information concerning the WIPP, the LWA, and periodic compliance recertification, see the September 25, 2019 notice of receipt and availability of the CRA and opening of the comment period. 84 FR 50367.

In addition, since the opening of the public comment period on the 2019 CRA, the Agency has received 12 sets of public comments regarding the application and the recertification process in general. In addition to soliciting written public comments, the EPA held a virtual, informal public meeting in August 2021 to discuss stakeholders' concerns and issues related to recertification. All submitted public comments can also be referenced via *https://www.regulations.gov;* Docket ID: EPA–HQ–OAR–2019–5304.

In a letter dated November 17, 2021, from the EPA's Director of the Office of Radiation and Indoor Air to the Assistant Secretary of the Office of Environmental Management, Department of Energy, the Agency notified the DOE that the CRA for the WIPP is complete. This letter can be referenced via *https://www.regulations.gov;* Docket ID: EPA–HQ–OAR–2019–5304. This determination is solely an administrative measure and does not reflect any conclusion regarding the WIPP's continued compliance with the disposal regulations.

The EPA will now undertake a full technical evaluation of the complete 2019 CRA to determine whether the WIPP continues to comply with the Disposal Regulations. The Agency will consider relevant public comments and other information relevant to the WIPP's compliance. The Agency is most interested in whether new or changed information has been appropriately incorporated into the performance assessment calculations for the WIPP and whether the potential long-term effects of changes are properly characterized.

If the Agency approves the CRA, it will then serve as the baseline for the next recertification. As required by the WIPP LWA, the EPA will make a final recertification decision within six months of issuing the completeness determination letter to the Secretary of Energy. In accordance with the Compliance Certification Criteria, the Agency will seek to publish notice of EPA's recertification decision. 40 CFR 194.64.

Jonathan D. Edwards,

Director, Office of Radiation and Indoor Air.

[FR Doc. 2021–25590 Filed 11–24–21; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 665

[Docket No. 211119–0240]

RIN 0648–BK66

Pacific Island Fisheries; Rebuilding Plan for Guam Bottomfish

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to implement a rebuilding plan that includes annual catch limits (ACL) and accountability measures (AM) for the overfished bottomfish stock complex in Guam. This action is necessary to rebuild the overfished stock consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: NMFS must receive comments by January 10, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2021–0104, by either of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2021–0104 in the Search box, click the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Send written comments to Michael D. Tosatto, Regional Administrator, NMFS Pacific Islands Region (PIR), 1845 Wasp Blvd., Bldg. 176, Honolulu, HI 96818.

Instructions: NMFS may not consider comments sent by any other method, to any other address or individual, or received after the end of the comment period. All comments received are a part of the public record, and NMFS will generally post them for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The Western Pacific Fishery Management Council (Council) prepared Amendment 6 to the Fishery Ecosystem Plan for the Mariana Archipelago (FEP), which includes a draft environmental assessment (EA) and Regulatory Impact Review. Copies of Amendment 6 and other supporting documents are available at *www.regulations.gov,* or from the Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, *www.wpcouncil.org.*

FOR FURTHER INFORMATION CONTACT: Kate Taylor, NMFS PIR Sustainable Fisheries, 808–725–5182.

SUPPLEMENTARY INFORMATION: NMFS and the Council manage the Guam bottomfish fishery under the FEP and implementing regulations. The Guam fishery harvests 11 species of emperors, snappers, groupers, and jacks. There are more than 300 participants in the fishery. Most (73.6 percent) of the bottomfish habitat is in territorial waters (generally from the shoreline to 3 nautical miles (5.6 km) offshore), with the rest in Federal waters (*i.e.,* the U.S Exclusive Economic Zone) around offshore banks to the northeast and southwest of Guam. Fishing is mostly from vessels less than 25 ft (7.6 m) in length close to shore, targeting shallow-water species for recreational, subsistence, and small-scale commercial purposes. A few larger vessels make trips to offshore banks to harvest deepwater species primarily for commercial purposes.

There is no mandatory reporting catch data collection system in Guam. The Guam Division of Aquatic and Wildlife Resources (DAWR) collects fishery catch information from fishermen through voluntary creel surveys, and commercial sales data from the commercial receipt book program. NMFS requires large vessels (>50 ft, 15.2 m) that fish in Federal waters to hold a Federal permit and report their catch; there are no current Federal permits holders. The NOAA Office of Law Enforcement and the U.S. Coast Guard are responsible for the enforcement of regulations in Federal waters and Guam's Department of Agriculture Law Enforcement Section is responsible for the enforcement of regulations in territorial waters.

Since 2001, the fishery has landed between 11,711 (5,312 kg) and 54,062 lb (24,522 kg) annually. The most recent 3-year average (2018–2020) Guam bottomfish catch (from both Federal and territorial waters) was 27,306 lb (12,386 kg), and the fishery landed 18,933 lb (8,588 kg) in 2020. Although bottomfish have accounted for only 10–15 percent of Guam's boat-based fish harvest, bottomfish hold fundamental dietary and cultural importance for the people of Guam. Federal waters around Guam

remain important for the harvest of deepwater snappers at offshore banks to provide locally sourced bottomfish.

On February 10, 2020, NMFS notified the Council that the Guam bottomfish stock complex was overfished, but not subject to overfishing (85 FR 26940, May 6, 2020). Bottomfish are considered to be overfished when the stock complex's biomass (B) declines below the level necessary to produce the maximum sustainable yield (MSY) on a continuing basis. Consistent with section 304(e) of the Magnuson-Stevens Act and implementing regulations at 50 CFR 600.310(j), the Council must prepare, and NMFS must implement a rebuilding plan within two years of the notification. The rebuilding plan must specify the timeframe for rebuilding the Guam bottomfish stock complex's biomass to B_{MSY}, which is the long-term average size of the stock complex that would be achieved by fishing at maximum sustainable yield. The rebuilding timeframe must be as short as possible, taking into account the status and biology of the overfished stock, the needs of fishing communities, and the interaction of the overfished stock of fish within the marine ecosystem and cannot exceed 10 years, except in cases where the biology of the stock of fish, other environmental conditions, or management measures under an international agreement in which the United States participates dictate otherwise. The rebuilding must also have at least a 50 percent probability of attaining the $B_{msy,}$ where such probabilities can be calculated.

If approved, Amendment 6 would implement a rebuilding plan for the Guam bottomfish stock complex that consists of an ACL and two AMs. We would set the ACL at 31,000 lb (14,061 kg) starting in 2022. Because the complex exists in both territorial and Federal waters around Guam, we are obligated to manage the stock throughout its range and would count harvests from territorial and Federal waters toward the ACL. However, existing data collection programs do not differentiate catch from territorial versus Federal waters.

As an in-season AM, if NMFS projects that the fishery will reach the ACL in any year, then we would close the fishery in Federal waters for the remainder of that year. Because Guam does not currently have regulations in place to implement a complementary ACL and in-season AM in territorial waters, as an additional AM, if subsequent analyses indicate that the fishery exceeded the ACL during a year, we would close the fishery in Federal waters until NMFS and the Territory of Guam implement a coordinated management approach and implement regulations to ensure that the catch in both Federal and territorial waters is maintained at levels that allow the stock to rebuild to B_{msy}. The rebuilding plan would remain in place until NMFS determines that the stock complex is rebuilt, which is expected to take nine years. This rebuilding plan was selected because it allows for the least disruption to the fishing community and minimizes negative socio-economic impacts while still rebuilding the stock complex within the 10-year period required by the Magnuson-Stevens Act. NMFS and the Council would review the rebuilding plan routinely every two years and modify it, as necessary, per section 304(e)(7) of the Magnuson-Stevens Act.

NMFS must receive comments on this proposed rule by the date provided in the **DATES** section. NMFS is also soliciting comments on proposed Amendment 6, as stated in the Notice of Availability (NOA) published on November 15, 2021 (86 FR 62982). NMFS must receive comments on the NOA by January 14, 2022. NMFS may not consider any comments not postmarked or otherwise transmitted by that date. NMFS will consider comments on the NOA and this proposed rule in our decision to approve, disapprove, or partially approve Amendment 6.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed action is consistent with the FEP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. A description of the proposed action, why it is being considered, and the legal basis for it are contained in the preamble to this proposed rule.

The Guam bottomfish fishery consists of the shallow water component and deepwater component, with an estimated 300 or more participants. The shallow water component is likely larger than the deepwater component in terms of catch and effort due to the lower expense and ease of fishing close to shore. Smaller fishing vessels (<25 ft, 7.6 m) comprise most of the Guam bottomfish fishing fleet, and tend to target shallow water bottomfish species for recreational, subsistence, and small-scale commercial purposes. The few relatively large vessels in the fishery are more likely to target the deepwater complex at offshore banks and primarily fish for commercial reasons, although small non-commercial boats do fish offshore. Fishermen sometimes combine bottomfish fishing with other methods of harvest such as trolling, spearing and jigging, and many commercial fishermen supplement their bottomfish fishing effort with trolling for pelagic fish. Guam's bottomfish fishery is highly seasonal with fishing effort higher during the summer months. Although bottomfish fishing has only accounted for 10 to 15 percent of Guam's long-term boat-based fisheries harvest, bottomfish hold fundamental dietary and cultural importance for the people of Guam. Fishing grounds in Federal waters around Guam remain important for the harvest of deepwater snappers at offshore banks to provide locally sourced bottomfish the island's inhabitants, and the extensive community networks for sharing locally caught fish suggest that it is likely that the social benefits of fishing are widely shared by many of Guam's long-term residents. Bottomfish catch ranged from 11,711 lb (5,312 kg) to 31,760 lb (14,406 kg) between 2012 and 2020, and the catch over the last three years averaged 27,306 lb (12,386 kg). The Guam bottomfish fishery has been managed with ACL and AMs since 2012 and although catch from both territorial waters and Federal waters count toward the ACL, catch reports do not specify whether the bottomfish catch came from territorial or Federal waters.

Bottomfish catches in the fishery has surpassed 31,000 lb (14,061 kg) only twice in the past 10 years: 31,226 lb (14,164 kg) in 2018 and 31,760 lb (14,406 kg) in 2019. We do not expect the fishery to reach the proposed ACL, but it is possible, and we anticipate a 30 percent probability of a closure in Federal waters. If the fishery exceeds the ACL, the fishery will be subject to the higher performance standard for subsequent years, which would close the bottomfish fishery in Federal waters until a coordinated management approach is developed to ensure both Federal and territorial waters can be maintained at levels that allow the stock to rebuild. The direct economic effects annually of closing Federal waters is evaluated using the recent three year average catch (27,306 lb, 12,386 kg) and

assuming that the proportion of bottomfish habitat in Federal and territorial waters (26.4 and 73.6 percent respectively) reflect the proportion of catch. If Federal waters are closed, NMFS estimates that an estimated 7,209 lb (3,270 kg) that might have ordinarily been caught in Federal waters would not be caught and 20,097 lb (9,116 kg) would still be caught in territorial waters. The reduction in catch could be offset if fishing effort in Federal waters relocates to territorial waters (assuming the Guam government does not implement complementary measures in territorial waters). Additionally, fishery participants might decrease fishing effort as the fishery approaches the ACL in order to avoid a fishery closure in Federal waters. If complementary measures were implemented in territorial waters and the fishery exceeded the ACL, then catch would be 0 lb for every subsequent year after the closures until the stock is rebuilt or the rebuilding plan is modified based on the best scientific information available.

With regard to revenue, with expected catch at 27,306 lb (12,386 kg) and roughly 17.5 percent of that catch sold at $4.82/lb ($10.56/kg), the total expected fishery-wide revenue is $23,283, which is similar to recent years. If the fishery exceeds the ACL and Federal waters are closed, there would be an expected loss of revenue of $6,081, or over $20 per fishery participant for every subsequent years of the rebuilding plan compared to the status quo, assuming fishermen do not transfer effort to territorial waters. However, fishermen could offset loss in revenue by selling some of their catch that had been intended to be retained or shared (non-commercial catch) or by relocating fishing effort to territorial waters, which could remain open.

The fishery is not expected to substantially change the way it fishes with respect to fishing gear, fishing effort, participation, or intensity, but may change slightly with respect to total catch and areas fished, with the fishermen who would normally choose to fish in Federal waters being affected more adversely. Larger impacts would occur if the Guam government implemented a complementary closure in territorial waters. While limiting total bottomfish catches to 31,000 lb (14,061 kg) annually may result in short-term economic impacts to Guam bottomfish participants, rebuilding stock biomass to B_{MSY} is expected to increase the exploitable biomass, which in turn is expected to provide for long-term sustainability of fishery resources while allowing fishery participants to continue to benefit from their use.

NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all its affiliated operations worldwide. Based on available information, NMFS has determined that all vessels subject to the proposed action are small entities, *i.e.,* they are engaged in the business of finfish harvesting (NAICS code 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $11 million. Even though this proposed action would apply to a substantial number of vessels, the implementation of this action would not result in significant adverse economic impact to individual vessels.

The proposed action does not duplicate, overlap, or conflict with other Federal rules and is not expected to have significant impact on small entities (as discussed above), organizations or government jurisdictions. There does not appear to be disproportionate adverse economic impacts from the proposed rule based on home port, gear type, or relative vessel size. The proposed rule will not place a substantial number of small entities, or any segment of small entities, at a significant competitive disadvantage to large entities. As a result, an initial regulatory flexibility analysis is not required and none has been prepared.

This proposed rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR 665

Administrative practice and procedure, Bottomfish, Guam, Fisheries, Fishing, Mariana, Pacific Islands.

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

Dated: November 19, 2021.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR part 665 as follows:

PART 665—FISHERIES IN THE WESTERN PACIFIC

■ 1. The authority citation for 50 CFR part 665 continues to read as follows:

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

■ 2. In § 665.405, add paragraphs (g) and (h) to read as follows:

§ 665.405 Prohibitions

* * * * *

(g) Fish for or possess any Mariana Bottomfish MUS as defined in § 665.401 in the Guam Management Subarea after a closure of the fishery in violation of § 665.409(d).

(h) Sell or offer for sale any Mariana Bottomfish MUS as defined in § 665.401 in the Guam Management Subarea after a closure of the fishery in violation of § 665.409(e)

■ 3. Revise § 665.408 to read as follows:

§ 665.408 CNMI Annual Catch Limits (ACL) and Annual Catch Targets (ACT).

(a) In accordance with § 665.4, the ACL and ACT for Mariana bottomfish MUS in the CNMI Management Subarea for each fishing year is as follows:

TABLE 1 TO PARAGRAPH (a)

	2021	2022	2023
ACL (lb)	84,000	84,000	84,000
ACT (lb)	78,000	78,000	78,000

(b) If the average catch of the three most recent years exceeds the specified ACL in a fishing year, the Regional Administrator will reduce the ACL and the ACT for the subsequent year by the amount of the overage in a separate rulemaking.

■ 4. Add § 665.409 to read as follows:

§ 665.409 Guam Annual Catch Limits (ACL).

(a) In accordance with § 665.4, the ACL for Mariana bottomfish MUS in the Guam Management Subarea is 31,000 lb.

(b) When NMFS projects the ACL will be reached, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register, through the end of the fishing year in which the catch limit is reached.

(c) If the ACL is exceeded in any fishing year, the Regional Administrator shall publish a document to that effect in the **Federal Register** and shall use other means to notify permit holders. The document will include an advisement that the fishery will be closed, beginning at a specified date that is not earlier than seven days after the date of filing the closure notice for public inspection at the Office of the Federal Register. The fishery will remain closed until such time that a coordinated approach to management is developed and regulations are implemented that ensures catch in both Federal and territorial waters can be maintained at levels that allow the stock to rebuild or the rebuilding plan is modified based on the best scientific information available.

(d) On and after the date the fishery is closed as specified in paragraphs (b) or (c) of this section, fishing for and possession of Mariana bottomfish MUS is prohibited in the Guam Management Subarea, except as otherwise authorized by law.

(e) On and after the date the fishery is closed as specified in paragraphs (b) or (c) of this section, sale, offering for sale, and purchase of any Mariana bottomfish MUS caught in the Guam Management Subarea is prohibited.

[FR Doc. 2021–25737 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 86, No. 225
Friday, November 26, 2021

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on 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. Comments regarding this information collection received by December 27, 2021 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Patent License Application.

OMB Control Number: 0518–0003.

Summary of Collection: Public Law 96–517, HR 209 (Technology Transfer Commercialization Act of 2000), and 37 CFR part 404 requires Federal agencies to use the patent system to promote the utilization of inventions arising from federally supported research and provide the authority to grant patent licenses. 37 CFR 404.8 specifies the information which must be submitted by a patent license applicant to the Federal agency having custody of a patent. Form ADS–761 collects the information specified under 37 CFR 404.8.

Need and Use of the Information: The Agricultural Research Service (ARS) will collect identifying information on the applicant, identifying information for the business, and a detailed description for development and/or marketing of the invention using form AD–761. The collected information is used by the Office of Technology Transfer (OTT) to evaluate a patent license applicant's ability to bring an invention to practical application, as defined in 37 CFR 404.3. The information collected is used to determine whether the applicant has both a complete and sufficient plan for developing and marketing the invention and the necessary manufacturing, marketing, technical, and financial resources to carry out the submitted plan.

Description of Respondents: Business or other for profit; Not-for-profit institutions; Individuals or households.

Number of Respondents: 75.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 225.

Dated: November 22, 2021.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2021–25797 Filed 11–24–21; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Federal Claims Collection Methods for Supplemental Nutrition Assistance Program Recipient Claims

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this Notice invites the general public and other public agencies to comment on proposed information collections. This revision of an existing collection announces the intent of the Food and Nutrition Service to revise and continue the requirements associated with initiating and conducting Federal collection actions against households with delinquent Supplemental Nutrition Assistance Program (SNAP) recipient debts.

DATES: Written comments must be submitted on or before January 25, 2022 to be assured consideration.

ADDRESSES: Comments may be sent to Maribelle Balbes, Branch Chief, State Administration Branch, Program Accountability and Administration Division, Food and Nutrition Service, 5th floor, 703–605–4272, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314. You may also download an electronic version of this notice at *http://www.fns.usda.gov/snap/federal-register-documents/rules/view-all* and comment via email at *SNAPSAB@fns.usda.gov* or the Federal e-Rulemaking Portal. Go to *http://www.regulations.gov* and follow the online instructions for submitting comments electronically. All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5:00 p.m., Monday through Friday) at 1320 Braddock Place, Alexandria, VA 22314, 5th floor.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of this information collection should be directed to Evan Sieradzki at 703–605–3212.

SUPPLEMENTARY INFORMATION: 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, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: Federal Claims Collection Methods for Supplemental Nutrition Assistance Program Recipient Claims.

OMB Number: 0584–0446.

Form Number: None.

Expiration Date: November 30, 2022.

Type of Request: Revision of a currently approved collection.

Abstract: Section 13(b) of the Food and Nutrition Act of 2008, as amended (7 U.S.C. 2022(b)), and Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR 273.18 require State agencies to refer delinquent debtors for SNAP benefit over-issuance to the U.S. Department of the Treasury for collection. The Debt Collection Improvement Act of 1996 (Pub. L. 104–134), as amended by the Digital Accountability and Transparency Act of 2014 (Pub. L. 113–101), requires these debts to be referred to Treasury for collection when they are 120 days or more delinquent. Through the Treasury Offset Program (TOP), 31 CFR part 285, payments such as Federal income tax refunds, Federal salaries and other Federal payments payable to these delinquent debtors will be offset and the amount applied to the delinquent debt. TOP places a burden on State agencies and/or former SNAP recipients who owe delinquent debts in three areas: (1) 60-Day notices from State agencies to debtors that their debt will be referred to TOP; (2) State-level submissions; and (3) automated data processing (ADP). Below, the burden narrative and chart depicts the burden estimates by these three areas and affected public.

TOP 60-Day Notice Burden

The burden associated with the information collection involves both the households (debtors) and the State agencies. The TOP 60-day notice notifies the household of the proposed referral to TOP and provides the right for review and appeal. The State agency prepares and mails the notices to households as well as responds to inquiries and appeals. The household, in turn, receives and reads the notice and may make an inquiry or appeal the impending action. Based on an average of the number of records for claims the States sent to TOP for calendar years 2018, 2019, and 2020, we estimate that State agencies will produce and send, and that households will read, 249,953 TOP 60-day notices. We estimate that the households will submit and State agencies will respond to about 17,497 phone and informal inquiries. Households will file and the States will respond to an estimated 1,499 appeals. An additional 2,458 notices will be sent directly from FNS to Federal employees concerning the potential offset of their Federal salary. Historically, 30 percent of these notices will result in a phone inquiry from a household, and approximately 16 notices will result in a formal appeal to FNS requiring documentation from the State. Thus, the total number of responses for the 60-day notice and household inquiry is 547,650 responses (272,161 household responses + 275,489 State Agency responses) per year resulting in an annual reporting burden of 48,099.64 hours. The existing burden for activity relating to the 60-day notice is 56,653 hours. The net decrease of 8,553.36 hours is due to a decrease in the average number of 60-day notices sent to debtors by State agencies between 2018 and 2020.

TOP State-Level Submissions

Treasury prescribes specific processes and file formats for FNS to use to send debts to TOP. FNS provides guidance and file formats to State agencies and monitors their compliance with such. State agencies must submit an annual letter to FNS certifying that all of the debts submitted in the past and all debts to be submitted in the upcoming calendar year by the State agency to TOP are valid and legally enforceable in the amount stated. FNS estimates that it will take State agencies a total of 26.5 hours per year for these State submissions. This burden has not changed with this revision. The burden requirements associated with establishing claims (demand letters) and for reporting activity with the FNS–209 (648 burden hours and 212 total annual responses) are already approved under the information collections for SNAP Repayment Demand and Program Disqualification (OMB burden numbers 0584–0492, expiration date 07/31/2024; and 0584–0594, expiration date 07/31/2023, respectively) and therefore, not duplicated in this request.

TOP ADP Burden

The burden for ADP includes weekly file processing, monthly address requests and system maintenance. Weekly and monthly file processing includes requesting addresses to use to send out 60-day notices, adding and maintaining debts in TOP, correcting errors on unprocessable records, and posting weekly collection files. Much of this activity is completed using automation and involves an estimated 1.4 million records annually. FNS estimates that this activity takes 12,374.82 annual reporting hours. Per 7 CFR 272.1(f), State agencies are required to retain all records associated with the administration of SNAP for no less than 3 years. The burden for the retention of weekly TOP files is estimated to take each of the 53 State agencies approximately 15 minutes per week, or 689 recordkeeping burden hours. These burden estimates have not changed with this revision.

Summary of Estimated Burden

The net aggregate change from the existing to the revised annual burden for this entire Information Collection is a decrease of 7,864.36 hours from the previous submission. For the activity relating to the 60-day notice, we are decreasing the estimated annual burden for State agencies and households from 56,653 hours to 48,099.64 hours to reflect a decrease in the number of notices and the resulting inquiries and appeals. The State-level submissions portion of the reporting and recordkeeping burden is estimated to require the same number of hours as the currently approved collection, 26.5 hours. The annual ADP portion of this burden package is also estimated to require the same number of hours as the currently approved collection, 12,374.82 reporting and 689 recordkeeping hours. This results in a final total of 48,788.64 annual burden hours.

Reporting Burden

Affected Public: Individuals/Households (respondent type—Debtors).

Estimated Number of Respondents: 272,161.

Estimated Number of Responses per Respondent: 1.00.

Estimated Total Number of Annual Responses: 272,161.

Estimated Hours per Response: 0.096974.

Estimated Total Annual Burden: 26,392.43 hours.

Affected Public: State, Local or Tribal government.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 5,197.91.

Estimated Total Number of Annual Responses: 275,489.

Estimated Hours per Response: .08.

Estimated Total Annual Burden: 21,707.21 hours.

State Agency Recordkeeping Burden

Affected Public: State, Local or Tribal government.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 52.

Estimated Total Number of Annual Responses: 2,756.

Estimated Hours per Response: .25.

Estimated Total Annual Burden: 689.

Reporting and Recordkeeping Burden Estimates

Section of reg	Description	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total annual burden hours
Households (Debtors)						
A. Due-Process Notice Requirements:						
273.18(n)(2)	Reading State Issued Notice	249,953	1.00	249,953	0.0835	20,871.10
	Informal Inquiries to State	17,497	1.00	17,497	0.25	4,374.19
	Formal Appeals to State	1,499	1.00	1,499	0.50	749.29
	Reading FNS issued letter to Federal employees.	2,458	1.00	2,458	0.0835	205.28
	Phone Inquires and informal appeals for FNS letter.	738	1.00	738	0.25	184.38
	Formal appeals to FNS	16	1.00	16	0.5	8.19
Totals		272,161	1.00	272,161	0.096974	26,392.43
State Agencies						
A. Due-Process Notice Requirements:						
273.18(n)(2)	State Notice Production	53	4,716.10	249,953	0.0167	4,174.22
	Responding to State Phone/informal Inquires.	53	330.13	17,497	0.25	4,374.19
	Responding to State Formal Appeals	53	28.28	1,499	0.50	749.29
	Providing documents for formal appeals to FNS.	53	0.31	16	0.50	8.19
B. State Agency Reporting:						
273.18(n)(1)(ii)	Certification Letter	53	1.00	53	0.50	26.50
C. TOP Automated Data Processing:						
273.18(n)(1), 273.18(n)(4)	System Compatibility File	53	1.00	53	11.50	609.50
	Address File	53	8.00	424	1.6346	693.07
	Collections File	53	8.00	424	6.50	2,756.00
	State Agency Profile	53	1.00	53	0.25	13.25
	Testing New System	5	1.00	5	7.00	35.00
	Weekly Files	53	52.00	2,756	1.50	4,134.00
	Weekly Files—Post TOP Data	53	52.00	2,756	1.50	4,134.00
Totals		53	5,197.91	275,489	0.08	21,707.21
Overall Totals		272,214	2.01	547,650	0.09	48,099.64

CFR 272.1(f) State Agency Recordkeeping Only

Number of recordkeepers	Annual records per recordkeeper	Total records per recordkeeper	Hours per record	Total recordkeeping burden
53	52	2,756	0.25	689.00

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2021–25811 Filed 11–24–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Employment and Training Performance Measurement, Monitoring and Reporting Requirements

AGENCY: Food and Nutrition Service (FNS), USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This is an extension, without change, of a currently approved collection for annual outcome data for the Supplemental Nutrition Assistance Program (SNAP) Employment and Training (E&T) programs.

DATES: Written comments must be received on or before January 25, 2022.

ADDRESSES: Comments may be submitted to Moira Johnston, Director, SNAP, Food and Nutrition Service, U.S. Department of Agriculture, 1320 Braddock Place, Alexandria, VA 22314, via email to *moira.johnston@usda.gov,* or via fax to 703–305–2515. Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Moira Johnston at 703–305–2515.

SUPPLEMENTARY INFORMATION: 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 shall 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 that were 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, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Title: SNAP E&T Performance Measure, Monitoring, and Reporting Requirements.

Form Number: Not applicable.

OMB Number: 0584–0614.

Expiration Date: 12/31/2022.

Type of Request: Extension, without change, of a currently approved collection.

Abstract: Section 16(h)(5) of the Food and Nutrition Act of 2008, as amended, and Supplemental Nutrition Assistance Program (SNAP) regulations at 7 CFR 273.7(c)(17) require State agencies to submit annual outcome reports to monitor the effectiveness of SNAP Employment and Training (E&T) programs. State agencies must maintain records in order to support data reported in the annual outcome reports. The information collected on the annual outcome report includes: (1) The number and percentage of E&T participants who retain employment 2 quarters and 4 quarters after completing E&T; (2) the median wages for participants with earnings 2 quarters after completion of E&T; (3) the number and percentage of participants that completed a training, education, work experience or on-the-job training component; (4) certain unique characteristics of SNAP E&T participants; and (5) additional reporting requirements for State agencies that pledge to serve all at-risk Able-bodied Adults without Dependents (ABAWDs). State agencies are also required to identify appropriate outcome reporting measures for each proposed component that is intended to serve a threshold number of participants of at least 100 a year. The reporting measures for these components are identified in State agencies' E&T annual plans (OMB Control Number 0584–0083, expiration 8/31/2023) and the outcome data are reported to the Food and Nutrition Service (FNS) in State agencies' annual outcome reports. State agencies are required to submit outcome reports to FNS Regional Offices annually.

Using the information from the annual outcome reports, as well as information contained within States' Employment and Training Plans and quarterly Program Activity Reports (FNS–583) collected through the Food Programs Reporting System (FPRS) (OMB Control Number 0584–0594, expiration 07/31/2023), FNS conducts an analysis to identify and resolve technical or programmatic issues with the data as reported by the State agencies. Once data issues are resolved FNS prepares an Outcome Summary Report and a Technical Assistance Report for each State agency that highlights the State's outcome data and identifies areas for improvement. The expectation is that State agencies will use these reports for continuous program improvement. This process is critical to building a more effective E&T operation nationally that will help move more individuals into the workforce. FNS is not seeking to modify the FNS–583 (OMB Control Number 0584–0594, expiration 7/31/2023) data collection through this request.

State agencies use a combination of methods to collect the outcome data, including existing automated data systems, new data collection, sampling methods, and some direct contact with SNAP E&T participants. FNS estimates that the burden associated with these activities averages approximately 231 hours annually per State, or 12,233 hours per year total. The breakdown of the burden hours is itemized in the table below.

Affected Public: State, Local and Tribal Government.

Estimated Number of Respondents: The total estimated number of respondents is 53 State agencies, including the agencies responsible for SNAP administration in 50 States, the District of Columbia, Guam and the U.S. Virgin Islands.

Estimated Number of Responses per Respondent: The 53 State agencies are required to submit data on the outcome report annually. State agencies are required to maintain data to support 1 report per year.

Estimated Total Annual Responses: 53.

Estimated Time per Response: The estimated time of response, including recordkeeping and reporting is 32.796 hours per response.

Estimated Total Annual Burden on Respondents: 12,233 hours See the table below for estimated total annual burden for each type of respondent.

ESTIMATED ONGOING REPORTING AND RECORDKEEPING BURDEN HOURS

Regulation section	Description of activity	Number of respondents	Annual report/ record filed	Total annual responses	Average burden hours per response	Total burden hours
272.1(f) Record-keeping.	.....	53	1	53	1	53
273.7(c)(17)(i) Reporting.	E&T participants who have earnings in the second quarter after completion of E&T.	53	1	53	40	2,120
273.7(c)(17)(ii) Reporting.	E&T participants who have earnings in the fourth quarter after completion of E&T.	53	1	53	40	2,120
273.7(c)(17)(iii) Reporting.	Median quarterly earnings	53	1	53	40	2,120
273.7(c)(17)(iv) Reporting.	E&T participants that completed a training, educational, work experience or an on-the-job training component within 6 months after completion of participation in E&T.	45	1	45	80	3,600

ESTIMATED ONGOING REPORTING AND RECORDKEEPING BURDEN HOURS—Continued

Regulation section	Description of activity	Number of respondents	Annual report/ record filed	Total annual responses	Average burden hours per response	Total burden hours
273.7(c)(17)(v) & (vi) Reporting.	Characteristics of E&T participants, some broken out by 4 above measures.	53	1	53	20	1,060
273.7(c)(17)(vii) Reporting.	Measures in a State agencies' E&T plan for components that are designed to serve at least 100 E&T participants a year.	53	1	53	20	1,060
273.7(c)(17)(viii) Reporting.	Information about ABAWDs from State agencies that have committed to offering them participation in a qualifying activity.	10	1	10	10	100
Total Reporting.	.....	53	7	320	38	12,180
Total Recordkeeping.	.....	53	1	53	1	53
Total	.....	53	7.03774	373	32.7962	12,233

Cynthia Long,

Administrator, Food and Nutrition Service.

[FR Doc. 2021–25806 Filed 11–24–21; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Services Surveys: BE–30, Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers, and the BE–37, Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance, in accordance with the Paperwork Reduction Act of 1995 (PRA), on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on September 20, 2021, during a 60-day comment period. This notice allows for an additional 30 days for public comments.

Agency: Bureau of Economic Analysis.

Title: BE–30, Quarterly Survey of Ocean Freight Revenues and Foreign Expenses of U.S. Carriers will obtain quarterly sample data on U.S. Ocean carriers' foreign revenues and expenses. The BE–37, Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses, will obtain quarterly sample data on U.S. airline operators' foreign revenues and expenses.

OMB Control Number: 0608–0011.

Form Number(s): BE–30 and BE–37.

Type of Request: Regular submission, extension of a current information collection.

Number of BE–30 Respondents: 200 annually (50 filed each quarter; 48 reporting mandatory data, and 2 that would file exemption claims or voluntary responses).

Number of BE–37 Respondents: 120 annually (30 filed each quarter; 28 reporting mandatory data, and 2 that would file exemption claims or voluntary responses).

Average Hours per Response: For the BE–30, 4 hours is the average for those reporting data and one hour is the average for those filing an exemption claim. For the BE–37, 5 hours is the average for those reporting data and one hour is the average for those filing an exemption claim. For the BE–30 and BE–37 surveys, hours may vary considerably among respondents because of differences in company size and complexity.

Burden Hours: 1,344 hours annually (776 for the BE–30; 568 for the BE–37).

Needs and Uses: The data are needed to monitor U.S. trade in transport services, to analyze the impact of these cross-border services on the U.S. and foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The data are used in estimating the trade in transport services component of the U.S. international transactions accounts (ITAs) and national income and product accounts (NIPAs).

Affected Public: U.S. ocean carriers and U.S. airline operators.

Frequency: Quarterly.

Respondent's Obligation: Mandatory.

Legal Authority: International Investment and Trade in Services Survey Act (Pub. L. 94–472, 22 U.S.C. 3101–3108, as amended).

This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view the Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0608–0011.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2021–25804 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–179–2021]

Foreign-Trade Zone 49—Newark, New Jersey, Application for Subzone, Valbruna Stainless, Inc., Pompton Lakes, New Jersey

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Port Authority of New York and New Jersey, grantee of FTZ 49, requesting subzone status for the facility of Valbruna Stainless, Inc. (Valbruna), located in Pompton Lakes, New Jersey. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on November 19, 2021.

The proposed subzone (8.08 acres) is located at 1000 Cannonball Road, Pompton Lakes, New Jersey. No authorization for production activity has been requested at this time. The proposed subzone would be subject to the existing activation limit of FTZ 49.

In accordance with the FTZ Board's regulations, Christopher Kemp of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is January 5, 2022. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to January 20, 2022.

A copy of the application will be available for public inspection in the ''Online FTZ Information Section'' 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: November 19, 2021.

Camile R. Evans,

Acting Executive Secretary.

[FR Doc. 2021–25769 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–433–813]

Strontium Chromate From Austria: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) preliminarily determines that strontium chromate from Austria was not sold in the United States at less than normal value (NV) during the period of review (POR) of June 18, 2019, through October 31, 2020.

DATES: Applicable November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Jaron Moore or Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3640 or (202) 482–1766, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2019, Commerce published the antidumping duty order on strontium chromate from Austria.[1] On January 6, 2020, in accordance with 19 CFR 351.221(c)(1)(i), Commerce initiated an administrative review of the *Order,*[2] covering one company, Habich GmbH (Habich).

On June 29, 2021, we extended the deadline for the preliminary results of this review until November 19, 2021.[3] For a detailed description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[4]

Scope of the Order

The merchandise covered by the *Order* is strontium chromate from Austria. For a complete description of the scope of the order, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act). Constructed export price and export price were calculated in accordance with section 772 of the Act. NV is calculated in accordance with section 773 of the Act.

For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed at *http://access.trade.gov/public/FRNoticesListLayout.aspx.* A list of the topics discussed in the Preliminary Decision Memorandum is attached as an appendix to this notice.

Preliminary Results

Commerce preliminarily determines that the following weighted-average dumping margin exists for the period June 18, 2019, through October 31, 2020:

Exporter/producer	Weighted-average dumping margin (percent)
Habich GmbH	0.00

Disclosure and Public Comment

We intend to disclose the calculations performed for these preliminary results of review to interested parties within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Pursuant to 19 CFR 351.309(c), interested parties may submit case briefs no later than 30 days after the date of publication of this notice. Rebuttal briefs, the content of which is limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[5] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a

[1] *See Strontium Chromate from Austria and France: Antidumping Duty Orders,* 84 FR 65349 (November 27, 2019) (*Order*).

[2] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 511 (January 6, 2021) (*Initiation Notice*).

[3] *See* Memorandum, ''Strontium Chromate from Austria: Extension of Deadline for Preliminary Results of 2019–2020 Antidumping Duty Administrative Review,'' dated June 29, 2021.

[4] *See* Memorandum, ''Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Strontium Chromate from Austria, 2019–2020,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *See* 19 CFR 351.309(d).

table of authorities.[6] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via ACCESS. An electronically filed request must be received successfully in its entirety by 5:00 p.m. Eastern Time within 30 days of the date of publication of this notice.[7] Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold a hearing at a time and date to be determined.[8] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions to Commerce must be filed using ACCESS [9] and must be served on interested parties.[10] An electronically filed document must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information until further notice.[11]

Assessment Rates

Upon completion of the administrative review, Commerce shall determine, and U.S Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries in accordance with 19 CFR 351.212(b). For any individually examined respondent whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.5 percent) in the final results of this review and the respondent reported entered values, we will calculate importer-specific *ad valorem* assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those sales, in accordance with 19 CFR 351.212(b)(1). Where we do not have entered values for all U.S. sales to a particular importer, we will calculate an importer-specific per-unit assessment rate on the basis of the ratio of the total amount of dumping calculated for the importer's examined sales to the total quantity of those sales.[12] To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis* in the final results of review, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If a respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* ''{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis,* no antidumping duties will be assessed.'' [13]

In accordance with Commerce's ''automatic assessment'' practice, for entries of subject merchandise during the POR produced by Habich for which it did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate those entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[14]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Habich will be equal to the weighted-average dumping margin established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) if the exporter is not a firm covered in this review, a prior completed review, or the less-than-fair value (LTFV) investigation, but the producer is, then the cash deposit rate will be the company-specific rate established for the most recently-completed segment of this proceeding for the producer of subject merchandise; and (3) the cash deposit rate for all other producers and exporters will continue to be 25.90 percent, the all-others rate established in the LTFV investigation.[15]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

Final Results of Review

Commerce intends to issue the final results of this administrative review, including the results of its analysis of the issues raised in any case or rebuttal briefs, no later than 120 days after the date of publication of this notice, unless extended.[16]

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

[6] *See* 19 CFR 351.309.

[7] *See* 19 CFR 351.310(c).

[8] *See* 19 CFR 351.310(d).

[9] *See* 19 CFR 351.303(b).

[10] *See* 19 CFR 351.303(f).

[11] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006 (March 26, 2020); and *Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[12] *See* 19 CFR 351.212(b)(1).

[13] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings; Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[14] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[15] *See Order.*

[16] *See* section 751(a)(3)(A) of the Act; and 19 CFR 351.213(h).

Dated: November 19, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Discussion of the Methodology
V. Currency Conversion
VI. Recommendation

[FR Doc. 2021–25782 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–894]

Certain Tissue Paper Products From the People's Republic of China: Continuation of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) in their five year (sunset) review that revocation of the antidumping duty (AD) order on certain tissue paper products (tissue paper) from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order on tissue paper from China.

DATES: Applicable November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Brian Smith, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1766.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 2005, Commerce published the AD order on tissue paper from China.[1] On June 1, 2021, the ITC instituted [2] and Commerce initiated [3] a five-year (sunset) review of the AD order on tissue paper from China, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the AD order on tissue paper from China would likely lead to a continuation or recurrence of dumping. Therefore, Commerce notified the ITC of the magnitude of the margin of dumping likely to prevail were the order to be revoked.[4]

On November 18, 2021, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the AD order on tissue paper from China would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The products covered by the order are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30, 4802.54, 4802.61, 4802.62, 4802.69, 4804.31.1000, 4804.31.2000, 4804.31.4020, 4804.31.4040, 4804.31.6000, 4804.39, 4805.91.1090, 4805.91.5000, 4805.91.7000, 4806.40, 4808.30, 4808.90, 4811.90, 4823.90, 4802.50.00, 4802.90.00, 4805.91.90, 9505.90.40. Although the HTSUS tariff classifications are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.[6]

Excluded from the scope of this order are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.,* disposable sanitary covers for toilet seats; and (3) toilet or facial tissue stock towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Continuation of the AD Order

As a result of the determinations by Commerce and the ITC that revocation of the AD order on tissue paper from China would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to sections 751(c) and 751(d)(2) of the Act, Commerce hereby orders the continuation of the AD order on tissue paper from China. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, Commerce intends to initiate the next five-year review of this order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China,* 70 FR 16223 (March 30, 2005).

[2] *See Certain Tissue Paper Products from the People's Republic of China; Institution of a Five-Year Review,* 86 FR 29289 (June 1, 2021).

[3] *See Initiation of Five-Year (Sunset) Reviews,* 86 FR 29239 (June 1, 2021).

[4] *See Certain Tissue Paper Products from the People's Republic of China: Final Results of Expedited Sunset Review of Antidumping Duty Order,* 86 FR 52444 (September 21, 2021).

[5] *See Certain Tissue Paper Products from China; Determination,* 86 FR 64527 (November 18, 2021).

[6] On January 30, 2007 at the direction of CBP, Commerce added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six digit classifications for these numbers were already listed in the scope.

This five-year (sunset) review and notice are in accordance with sections 751(c) and (d)(2), and 777(i) the Act, and 19 CFR 351.218(f)(4).

Dated: November 19, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–25772 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–842]

Certain Uncoated Paper From Brazil: Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) is initiating a changed circumstances review (CCR) of the antidumping duty (AD) order on certain uncoated paper (uncoated paper) from Brazil. Further, Commerce preliminarily determines that Sylvamo do Brasil Ltda. (SVBR) is the successor-in-interest to International Paper do Brasil Ltda. (IP) and that Sylvamo Exports Ltda. (SVEX) is the successor-in-interest to International Paper Exportadora Ltda. (IPEX). Interested parties are invited to comment on these preliminary results.

DATES: Applicable November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Christopher Maciuba, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5831.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2016, Commerce published in the **Federal Register** an AD order on uncoated paper from Brazil.[1] We assigned IP and IPEX (collectively, International Paper) a cash deposit rate of 41.39 percent.[2] International Paper last received a calculated rate, in the third administrative review of this proceeding, of 20.80 percent.[3] On October 4, 2021, Commerce received a request on behalf of SVBR and SVEX (collectively, Sylvamo) for an expedited CCR to establish SVBR and SVEX as the successors-in-interest to IP and IPEX, respectively.[4] Sylvamo asked that it be subject to International Paper's AD margin for uncoated paper from Brazil. No interested parties filed comments opposing the CCR request.

Scope of the Order

The merchandise covered by the *Order* is uncoated paper. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

We are conducting this CCR in accordance with section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.216. For a full description of the methodology underlying our preliminary conclusions, see the Preliminary Decision Memorandum.[5] A list of the topics discussed in the Preliminary Decision Memorandum is included as an appendix to this notice. The Preliminary Decision Memorandum is a public document and is made available to the public via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum is available at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Initiation and Preliminary Results of CCR

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), Commerce will conduct a CCR upon receipt of information concerning, or a request from an interested party for a review of, an AD order which shows changed circumstances sufficient to warrant a review of the order.

We find that the information regarding IP and IPEX's name changes to SVBR and SVEX, respectively, demonstrates changed circumstances sufficient to warrant a CCR with respect to the *Order.* Therefore, we are initiating a CCR to determine whether SVBR and SVEX are the successors-in-interest to IP and IPEX, respectively, for purposes of the *Order.*

Pursuant to 19 CFR 351.221(c)(3)(ii)), Commerce may combine the notice of initiation of a CCR and the notice of preliminary results of a CCR into a single notice if Commerce concludes that expedited action is warranted. We have on the record the information necessary to make a preliminary finding and, therefore, we find that expedited action is warranted. Consequently, we are combining the initiation of the CCR described above and our preliminary results.

In determining whether one company is the successor to another for AD purposes, Commerce examines a number of factors including, but not limited to, changes in: (1) Management; (2) production facilities; (3) suppliers; and (4) customer base.[6] While no single factor or combination of factors will necessarily provide a dispositive indication of a successor-in-interest relationship, Commerce will generally consider one company to be the successor to a previous company if its resulting operations are not materially dissimilar to those of its predecessor.[7] Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the company, in its current form, operates as essentially the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.[8]

Sylvamo provided evidence that: (1) IP and IPEX's names changed to SVBR and SVEX, respectively, in August 2021, and the companies were transferred from their ultimate parent company, the International Paper Company, to a new parent company, Sylvamo Corp., in October 2021; [9] and (2) there were no significant changes to management,[10]

[1] *See Certain Uncoated Paper from Australia, Brazil, Indonesia, the People's Republic of China, and Portugal: Amended Final Affirmative Antidumping Determinations for Brazil and Indonesia and Antidumping Duty Orders,* 81 FR 11174 (March 3, 2016) (*Order*).

[2] *Id.,* 81 FR at 11176.

[3] *See Certain Uncoated Paper from Brazil: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 7254 (January 27, 2021).

[4] *See* Sylvamo's Letter, ''Request for Changed Circumstances Review and Successor-in-Interest Determination,'' dated October 4, 2021.

[5] *See* Memorandum, ''Decision Memorandum for the Initiation and Preliminary Results of the Changed Circumstances Review of the Antidumping Duty Order on Certain Uncoated Paper from Brazil,'' dated concurrently with this notice.

[6] *See Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Multilayered Wood Flooring from the People's Republic of China,* 79 FR 48117 (August 15, 2014), unchanged in *Multilayered Wood Flooring from the People's Republic of China: Final Results of Changed Circumstances Review,* 79 FR 58740 (September 30, 2014).

[7] *Id.*

[8] *See, e.g., Certain Preserved Mushrooms from India: Initiation and Preliminary Results of Changed-Circumstances Review,* 67 FR 78416 (December 24, 2002), unchanged in *Certain Preserved Mushrooms from India: Final Results of Changed-Circumstances Review,* 68 FR 6884 (February 11, 2003); and *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

[9] *See* CCR Letter at 2.

[10] *Id.* at Attachments 9, 10, 12, and 13.

production facilities,[11] suppliers,[12] or customer base.[13] Based on these facts, which are explained in greater detail in the accompanying Preliminary Decision Memorandum, we preliminarily determine that SVBR and SVEX are the successors-in-interest to IP and IPEX, respectively, for purposes of the *Order,* and, thus, Sylvamo is the successor-in-interest to International Paper.

Should our final results of review remain unchanged from these preliminary results of review, we will instruct U.S. Customs and Border Protection to apply International Paper's cash deposit rate to Sylvamo.

Public Comment

Pursuant to 19 CFR 351.310(c), any interested party may request a hearing within 14 days of publication of this notice.[14] In accordance with 19 CFR 351.309(c)(1)(ii), interested parties may submit case briefs not later than 14 days after the date of publication of this notice.[15] Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than seven days after the due date for case briefs, in accordance with 19 CFR 351.309(d).[16] Parties who submit case briefs or rebuttal briefs in this CCR are requested to submit with each argument: (1) A statement of the issues; (2) a brief summary of the arguments; and (3) a table of authorities.[17]

Hearing requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and the time of the hearing two days before the scheduled date.

All submissions must be filed electronically using Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), and must also be served on interested parties.[18] An electronically-filed document must be received successfully in its entirely by ACCESS by 5:00 p.m. Eastern Time (ET) on the due date.[19] Note that Commerce has temporarily modified certain requirements for serving documents containing business proprietary information, until further notice.[20]

Consistent with 19 CFR 351.216(e), we intend to issue the final results of this CCR no later than 270 days after the date on which this reviews was initiated, or within 45 days of publication of these preliminary results, if all parties agree to the preliminary findings.

Notification to Interested Parties

We are issuing and publishing this initiation and preliminary results notice in accordance with section 751(b)(1) and 777(i)(1) of the Act, and 19 CFR 351.216(b) and 351.221(c)(3).

Dated: November 19, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the Order
IV. Successor-in-Interest Determination
V. Recommendation

[FR Doc. 2021–25781 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–896]

Magnesium Metal From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (Commerce) and the International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on magnesium metal from the People's Republic of China (China) would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of this AD order.

DATES: Applicable November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Deborah Cohen, AD/CVD Operations, Office III, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4521.

SUPPLEMENTARY INFORMATION:

Background

On April 15, 2005, Commerce published the AD order on magnesium metal from China.[1] On June 1, 2021, Commerce initiated,[2] and the ITC instituted,[3] the third sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act). As a result of its review, Commerce determined that revocation of the *Order* would likely lead to continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the *Order* be revoked.[4]

On November 17, 2021, the ITC published notice of its determination, pursuant to section 751(c) of the Act, that revocation of the *Order* would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[5]

Scope of the Order

The product covered by the *Order* is magnesium metal from China, which includes primary and secondary alloy magnesium metal, regardless of chemistry, raw material source, form, shape, or size. Magnesium is a metal or alloy containing by weight primarily the element magnesium. Primary magnesium is produced by decomposing raw materials into magnesium metal. Secondary magnesium is produced by recycling magnesium-based scrap into magnesium metal. The magnesium covered by the *Order* includes blends of primary and secondary magnesium. The subject merchandise includes the following

[11] *Id.* at Attachment 11.

[12] *Id.* at Attachment 16.

[13] *Id.* at Attachment 14.

[14] Commerce is exercising its discretion under 19 CFR 351.310(c) to alter the time limit for requesting a hearing.

[15] Commerce is exercising its discretion under 19 CFR 351.309(c)(1)(ii) to alter the time limit for the filing of case briefs.

[16] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020).

[17] *See* 19 CFR 351.309(c)(2).

[18] ACCESS is available to registered users at *https://access.trade.gov.*

[19] *See* 19 CFR 351.303(b).

[20] *See Temporary Rule Modifying AD/CVD Service Requirements Due to Covid–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[1] *See Notice of Antidumping Duty Order: Magnesium Metal from the People's Republic of China,* 70 FR 19928 (April 15, 2005) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Review,* 86 FR 29239 (June 1, 2021).

[3] *See Magnesium from China; Institution of a Five-Year Review,* 86 FR 29280 (June 1, 2021).

[4] *See Magnesium Metal from the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order,* 86 FR 51654 (September 16, 2021).

[5] *See Alloy Magnesium from China, (Investigation No. 731–TA–1071),* 86 FR 64230, (November 17, 2021).

alloy magnesium metal products made from primary and/or secondary magnesium including, without limitation, magnesium cast into ingots, slabs, rounds, billets, and other shapes; magnesium ground, chipped, crushed, or machined into rasping, granules, turnings, chips, powder, briquettes, and other shapes; and products that contain 50 percent or greater, but less than 99.8 percent, magnesium, by weight, and that have been entered into the United States as conforming to an ''ASTM Specification for Magnesium Alloy'' [6] and are thus outside the scope of the existing antidumping orders on magnesium from China (generally referred to as ''alloy'' magnesium).

The scope of the Order excludes: (1) All forms of pure magnesium, including chemical combinations of magnesium and other material(s) in which the pure magnesium content is 50 percent or greater, but less than 99.8 percent, by weight, that do not conform to an ''ASTM Specification for Magnesium Alloy;'' [7] (2) magnesium that is in liquid or molten form; and (3) mixtures containing 90 percent or less magnesium in granular or powder form by weight and one or more of certain non-magnesium granular materials to make magnesium-based reagent mixtures, including lime, calcium metal, calcium silicon, calcium carbide, calcium carbonate, carbon, slag coagulants, fluorspar, nephaline syenite, feldspar, alumina (Al203), calcium aluminate, soda ash, hydrocarbons, graphite, coke, silicon, rare earth metals/mischmetal, cryolite, silica/fly ash, magnesium oxide, periclase, ferroalloys, dolomite lime, and colemanite.[8] The merchandise subject to this order is classifiable under items 8104.19.00, and 8104.30.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS items are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

[6] The meaning of this term is the same as that used by the American Society for Testing and Materials in its Annual Book for ASTM Standards: Volume 01.02 Aluminum and Magnesium Alloys.

[7] The material is already covered by existing antidumping orders. *See Notice of Antidumping Duty Orders: Pure Magnesium from the People's Republic of China, the Russian Federation and Ukraine; Notice of Amended Final Determination of Sales at Less Than Fair Value: Antidumping Duty Investigation of Pure Magnesium from the Russian Federation,* 60 FR 25691 (May 12, 1995); and *Antidumping Duty Order: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 57936 (November 19, 2001).

[8] This third exclusion for magnesium-based reagent mixtures is based on the exclusion for reagent mixtures in the 2000–2001 investigations of magnesium from China, Israel, and Russia. *See Final Determination of Sales at Less Than Fair Value: Pure Magnesium in Granular Form from the People's Republic of China,* 66 FR 49345 (September 27, 2001); *see also Final Determination of Sales at Less Than Fair Value: Pure Magnesium from Israel,* 66 FR 49349 (September 27, 2001); and *Final Determination of Sales at Not Less Than Fair Value: Pure Magnesium from the Russian Federation,* 66 FR 49347 (September 27, 2001). These mixtures are not magnesium alloys, because they are not combined in liquid form and cast into the same ingot.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to a continuation or recurrence of dumping as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.* U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year review of the *Order* no later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751(c) and 751(d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: November 19, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2021–25770 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–840]

Certain Frozen Warmwater Shrimp From India: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that producers and/or exporters of certain frozen warmwater shrimp (shrimp) from India made sales at less than normal value during the period of review (POR) February 1, 2019, through January 31, 2020.

DATES: Applicable November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Adam Simons, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6172.

SUPPLEMENTARY INFORMATION:

Background

This administrative review covers 154 producers and/or exporters of the subject merchandise. Commerce selected two mandatory respondents for individual examination: H.N. Indigos Private Limited (HN Indigos) and RSA Marines. The producers/exporters not selected for individual examination are listed in the ''Final Results of the Review'' section of this notice.

On June 25, 2021, Commerce published the *Preliminary Results.*[1] On August 2, 2021, we received case briefs from HN Indigos and RSA Marines. On August 9, 2021, we received rebuttal briefs from the petitioner [2] and the American Shrimp Processors Association. On October 14, 2021, we postponed the final results to no later than November 19, 2021.[3] For a complete discussion of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[4]

[1] *See Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 33658 (June 25, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] The petitioner is the Ad Hoc Shrimp Trade Action Committee.

[3] *See* Memorandum, ''Extension of Deadline for Final Results of the 2019–2020 Antidumping Duty Administrative Review,'' dated October 14, 2021.

[4] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2019–2020 Antidumping Duty Administrative Review of

Scope of the Order

The merchandise subject to the order is certain frozen warmwater shrimp.[5] The product is currently classified under the following Harmonized Tariff Schedule of the United States (HTSUS) item numbers: 0306.17.00.03, 0306.17.00.06, 0306.17.00.09, 0306.17.00.12, 0306.17.00.15, 0306.17.00.18, 0306.17.00.21, 0306.17.00.24, 0306.17.00.27, 0306.17.00.40, 1605.21.10.30, and 1605.29.10.10. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in Appendix I to this notice and addressed in the Issues and Decision Memorandum. Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at http://access.trade.gov. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin calculations for HN Indigos and the companies not selected for individual review.[6]

Final Results of the Review

As a result of this review, we determine the following weighted-average dumping margins for the period February 1, 2019, through January 31, 2020:

Producers/exporters	Weighted-average dumping margin (percent)
H.N. Indigos Private Limited	10.39
RSA Marines/Royal Oceans	4.73
Companies Not Selected for Individual Review[7]	7.15

Review-Specific Rate for Companies Not Selected for Individual Review

The exporters/producers not selected for individual review are listed in Appendix II.

Disclosure of Calculations

We intend to disclose the calculations performed for HN Indigos in connection with these final results within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), because HN Indigos and RSA Marines reported the entered value for their U.S. sales, we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For the companies that were not selected for individual examination, we used, as the assessment rate, the average of the cash deposit rates assigned to HN Indigos and RSA Marines, in accordance with our practice.[8] The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the final results of this review and for future deposits of estimated duties, where applicable.[9]

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by HN Indigos or RSA Marines for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[10]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided

Certain Frozen Warmwater Shrimp from India,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[5] For a complete description of the scope of the order, *see Preliminary Results* PDM at 4–5.

[6] *See* Issues and Decision Memorandum at 2. We made no changes to the calculation of RSA Marines' preliminary weighted-average dumping margin.

[7] This rate is based on the weighted-average of the margins calculated for the companies selected for individual review using the publicly-ranged U.S. quantities. Because we cannot apply our normal methodology of calculating a weighted-average margin due to requests to protect business proprietary information, we find this rate to be the best proxy of the actual weighted-average margin determined for the mandatory respondents. *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010); *see also* Memorandum, ''Calculation of the Review-Specific Average Rate for the Final Results,'' dated concurrently with this notice.

[8] *See, e.g., Certain Frozen Warmwater Shrimp from India: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 32835 (July 16, 2018).

[9] *See* section 751(a)(2)(C) of the Act.

[10] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

by section 751(a)(2)(C) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all-other manufacturers or exporters will continue to be 10.17 percent, the all-others rate established in the LTFV investigation.[11] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: November 19, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing the Non-Exclusive Functions and Duties of The Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Margin Calculations
IV. Discussion of the Issues
  Comment 1: Result of Collapsing RSA Marines and Royal Oceans
  Comment 2: Universe of Sales for HN Indigos
  Comment 3: Adjustment for Warranty Expenses
V. Recommendation

Appendix II

Review-Specific Average Rate Applicable to Companies Not Selected for Individual Review

1. Abad Fisheries Private Limited
2. ADF Foods Ltd.
3. Albys Agro Private Limited
4. Al-Hassan Overseas Private Limited
5. Allana Frozen Foods Pvt. Ltd.
6. Allanasons Ltd.
7. Alps Ice & Cold Storage Private Limited
8. Amarsagar Seafoods Private Limited
9. Amulya Seafoods
10. Anantha Seafoods Private Limited
11. Anjaneya Seafoods
12. Asvini Agro Exports
13. Ayshwarya Seafood Private Limited
14. B R Traders
15. Baby Marine Eastern Exports
16. Baby Marine Exports
17. Baby Marine International
18. Baby Marine Sarass
19. Baby Marine Ventures
20. Balasore Marine Exports Private Limited
21. BB Estates & Exports Private Limited
22. Bell Exim Private Limited (Bell Foods (Marine Division))
23. Bell Exim Pvt. Ltd.
24. Bhatsons Aquatic Products
25. Bhavani Seafoods
26. Bijaya Marine Products
27. Blue Fin Frozen Foods Pvt. Ltd.
28. Blue Water Foods & Exports P. Ltd.
29. Britto Seafood Exports Pvt Ltd.
30. Canaan Marine Products
31. Capithan Exporting Co.
32. Cargomar Private Limited
33. Chakri Fisheries Private Limited
34. Chemmeens (Regd)
35. Cherukattu Industries (Marine Div)
36. Cochin Frozen Food Exports Pvt. Ltd.
37. Continental Fisheries India Pvt. Ltd.
38. Coreline Exports
39. Corlim Marine Exports Pvt. Ltd.
40. Crystal Sea Foods Private Limited
41. Delsea Exports Pvt. Ltd.
42. Devi Sea Foods Limited[12]
43. Empire Industries Limited
44. Entel Food Products Private Limited
45. Esmario Export Enterprises
46. Everblue Sea Foods Private Limited
47. Febin Marine Foods
48. Fouress Food Products Private Limited
49. Frontline Exports Pvt. Ltd.
50. G A Randerian Ltd.
51. Gadre Marine Exports
52. Galaxy Maritech Exports P. Ltd.
53. Geo Aquatic Products (P) Ltd.
54. Godavari Mega Aqua Food Park Private Limited
55. Grandtrust Overseas (P) Ltd.
56. Green House Agro Products
57. GVR Exports Pvt. Ltd.
58. Hari Marine Private Limited
59. Haripriya Marine Export Pvt. Ltd.
60. HIC ABF Special Foods Pvt. Ltd.
61. Hiravati Exports Pvt. Ltd.
62. Hiravati International Pvt. Ltd. (located at Jawar Naka, Porbandar, Gujarat, 360 575, India)
63. Hiravati Marine Products Private Limited
64. HMG Industries Limited
65. Hyson Logistics and Marine Exports Private Limited
66. Indian Aquatic Products
67. Indo Aquatics
68. Indo Fisheries
69. Indo French Shellfish Company Private Limited
70. International Freezefish Exports
71. Jinny Marine Traders
72. Jiya Packagings
73. Karunya Marine Exports Private Limited
74. Kaushalya Aqua Marine Products Exports Pvt. Ltd.
75. Kay Exports
76. Kings Marine Products
77. Koluthara Exports Ltd.
78. Landauer Ltd.
79. Libran Cold Storages (P) Ltd.
80. Mangala Sea Products
81. Marine Harvest India
82. Megaa Moda Pvt. Ltd.
83. Milsha Agro Exports Private Limited
84. Milsha Sea Products
85. Minaxi Fisheries Private Limited
86. Mindhola Foods LLP
87. MMC Exports Limited
88. MTR Foods
89. N.K. Marine Exports LLP
90. Naik Frozen Foods
91. Naik Oceanic Exports Pvt. Ltd./Rafiq Naik Exports Pvt. Ltd.
92. Naik Seafoods Ltd.
93. Nekkanti Mega Food Park Private Limited
94. Nine Up Frozen Foods
95. Nutrient Marine Foods Limited
96. Oceanic Edibles International Limited
97. Paragon Sea Foods Pvt. Ltd.
98. Paramount Seafoods
99. Parayil Food Products Pvt., Ltd.
100. Pesca Marine Products Pvt., Ltd.
101. Pijikay International Exports P Ltd.
102. Pravesh Seafood Private Limited
103. Premier Exports International
104. Premier Marine Foods
105. Premier Seafoods Exim (P) Ltd.

[11] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 70 FR 5147, 5148 (February 1, 2005).

[12] Shrimp produced and exported by Devi Sea Foods Limited (Devi) was excluded from the order effective February 1, 2009. *See Certain Frozen Warmwater Shrimp from India: Final Results of the Antidumping Duty Administrative Review, Partial Rescission of Review, and Notice of Revocation of Order in Part,* 75 FR 41813, 41814 (July 19, 2010). Accordingly, the results of this administrative review apply to Devi only for shrimp produced in India where Devi acted as either the manufacturer or exporter (but not both).

106. RDR Exports
107. R F Exports
108. RF Exports Private Limited
109. R V R Marine Products Limited
110. Raju Exports
111. Raunaq Ice & Cold Storage
112. Royal Imports and Exports
113. Rupsha Fish Private Limited
114. S Chanchala Combines Private Limited
115. Sagar Samrat Seafoods
116. Sahada Exports
117. Salet Seafoods Private Limited
118. Samaki Exports Private Limited
119. Sasoondock Matsyodyog Sahakari Society Ltd.
120. Seagold Overseas Pvt. Ltd.
121. Shimpo Exports Private Limited
122. Shimpo Seafoods Private Limited
123. Shiva Frozen Food Exp. Pvt. Ltd.
124. Shroff Processed Food & Cold Storage P Ltd.
125. Silver Seafood
126. Sita Marine Exports
127. Sonia Fisheries Private Limited
128. Sri Sakkthi Cold Storage
129. SSF Ltd.
130. Star Agro Marine Exports Private Limited
131. Star Organic Foods Private Limited
132. Stellar Marine Foods Private Limited
133. Sterling Foods
134. Sun Agro Exim
135. Supran Exim Private Limited
136. Suvarna Rekha Exports Private Limited
137. Suvarna Rekha Marines P Ltd.
138. TBR Exports Pvt Ltd.
139. Teekay Marine P. Ltd.
140. The Waterbase Limited
141. Triveni Fisheries P Ltd.
142. U & Company Marine Exports
143. Ulka Sea Foods Private Limited
144. Uniroyal Marine Exports Ltd.
145. Unitriveni Overseas
146. Vasai Frozen Food Co.
147. Veronica Marine Exports Private Limited
148. Victoria Marine & Agro Exports Ltd.
149. Vinner Marine
150. Vitality Aquaculture Pvt. Ltd.
151. VRC Marine Foods LLP
152. Zeal Aqua Limited

[FR Doc. 2021–25771 Filed 11–24–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–943, C–570–944]

Oil Country Tubular Goods From the People's Republic of China: Final Affirmative Determinations of Circumvention

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) determines that imports of welded oil country tubular goods (OCTG) completed in Brunei or the Philippines using inputs manufactured in the People's Republic of China (China) are circumventing the antidumping and countervailing duty orders on OCTG from China.

DATES: Applicable November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Yang Jin Chun or John Drury, AD/CVD Operations Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–5760 and (202) 482–0195, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2021, Commerce published the preliminary affirmative determinations of circumvention of the antidumping and countervailing duty orders on welded OCTG from China.[1] In the *Preliminary Determinations,* Commerce extended the deadline for the final determinations of these circumvention inquiries to October 28, 2021.[2] On October 18, 2021, Commerce extended the deadline for the final determinations of these circumvention inquiries to November 19, 2021.[3]

We received case and rebuttal briefs with respect to the *Preliminary Determinations.* We conducted these circumvention inquiries in accordance with section 781(b) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.225(h).

Scope of the Orders

The products covered by the orders are certain OCTG, which are hollow steel products of circular cross-section, including oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, regardless of end finish. A full description of the scope of the orders is contained in the Issues and Decision Memorandum.[4] The written description is dispositive.

Scope of the Circumvention Inquiries

These circumvention inquiries cover welded OCTG completed in Brunei or the Philippines using inputs manufactured in China and subsequently exported from Brunei or the Philippines to the United States.[5]

Methodology

Commerce is conducting these circumvention inquiries in accordance with section 781(b) of the Act and 19 CFR 351.225(h). For a full description of the methodology underlying Commerce's final determinations, *see* the Issues and Decision Memorandum. The Issues and Decision Memorandum is a public document and on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties in these inquiries are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as an appendix. Based on our analysis of the comments received, we made a change to the *Preliminary Determinations.*

Final Affirmative Determinations

As detailed in the Issues and Decision Memorandum, we determine that welded OCTG assembled or completed in Brunei or the Philippines using inputs manufactured in China and subsequently exported from Brunei or the Philippines to the United States are circumventing the antidumping and countervailing duty orders on OCTG from China. Therefore, we determine that it is appropriate to include this merchandise within the scope of the antidumping and countervailing duty orders of OCTG from China and to instruct U.S. Customs and Border Protection (CBP) to continue to suspend any entries of merchandise produced using Chinese inputs in Brunei or the Philippines and exported to the United States.

Continued Suspension of Liquidation

In accordance with 19 CFR 351.225(l)(3), based on these final determinations in these circumvention inquiries, Commerce will direct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties on unliquidated entries of

[1] *See Oil Country Tubular Goods from the People's Republic of China: Preliminary Affirmative Determinations of Circumvention,* 86 FR 43627 (August 10, 2021) (*Preliminary Determinations*).

[2] *Id.* at 43629.

[3] *See* Memorandum, ''Oil Country Tubular Goods from the People's Republic of China: Extension of Deadline for Final Determinations of the Anti-Circumvention Inquiries of the Antidumping and Countervailing Duty Orders,'' dated October 18, 2021.

[4] *See* Memorandum, ''Oil Country Tubular Goods from the People's Republic of China: Issues and Decision Memorandum for Final Affirmative Determinations of Circumvention,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum) at 2–3.

[5] *See Preliminary Determinations,* 86 FR 43628.

welded OCTG completed in Brunei or the Philippines using inputs manufactured in China, subsequently exported from Brunei or the Philippines to the United States, and entered, or withdrawn from warehouse, for consumption on or after November 12, 2020, the date of publication of the notice of initiation of these circumvention inquiries.[6] The suspension of liquidation will remain in effect until further notice. As we explained in the *Preliminary Determinations,*[7] Commerce will instruct CBP to require antidumping duty cash deposits equal to the rate established for the China-wide entity, *i.e.,* 99.14 percent,[8] and countervailing duty cash deposits equal to the current all-others rate, *i.e.,* 27.08 percent.[9]

Welded OCTG assembled or completed in Brunei or the Philippines using non-Chinese inputs is not subject to these circumvention inquiries. However, because the mandatory respondents are unable to track welded OCTG to the country of origin of inputs used in the production of welded OCTG,[10] Commerce did not implement a certification process at the preliminary stage and required cash deposits on all entries of welded OCTG produced in Brunei or the Philippines.[11] We invited parties to comment on this issue in their case briefs and we received comments from the mandatory respondents on this issue. For the final determinations, we will not implement a certification process for welded OCTG already suspended,[12] and we will require cash deposits on all entries of welded OCTG produced in either Brunei or the Philippines, with a slight modification from the *Preliminary Determinations.*[13] However, producers and/or exporters in Brunei or the Philippines may request reconsideration of our denial of the certification process in a future segment of the proceeding, *i.e.,* a changed circumstances review or administrative review.[14]

Administrative Protective Order

This notice will serve as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction or APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

These final affirmative determinations of circumvention are issued and published in accordance with section 781(b) of the Act and 19 CFR 351.225(f).

Dated: November 19, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Scope of the Orders
IV. Scope of the Circumvention Inquiries
V. The Period of Inquiries
VI. Discussion of the Issues
  Comment 1: Production of Hot-Rolled Steel vs. Production of OCTG
  Comment 2: Production Processes
  Comment 3: Appropriateness of Finding Circumvention
  Comment 4: Certification Eligibility
  Comment 5: Effective Date of Suspension of Liquidation
VII. Recommendation

[FR Doc. 2021–25832 Filed 11–24–21; 8:45 am]

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[6] *See* Issues and Decision Memorandum at Comment 5; *see also Oil Country Tubular Goods from the People's Republic of China: Self-Initiation of Anti-Circumvention Inquiries on the Antidumping Duty and Countervailing Duty Orders,* 85 FR 71877 (November 12, 2020).

[7] *See Preliminary Determinations,* 86 FR 43628.

[8] *See Oil Country Tubular Goods from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 32125, 32126 (July 5, 2019).

[9] *See Oil Country Tubular Goods from the People's Republic of China: Notice of Court Decision Not in Harmony With the Amended Final Determination of the Countervailing Duty Investigation,* 82 FR 25770 (June 5, 2017).

[10] *See, e.g.,* HLDS (B) Steel Sdn. Bhd.'s Letter, ''HLDSB Initial Questionnaire Response,'' dated March 16, 2021 at 25; and HLD Clark Steel Pipe Co., Inc.'s Letter, ''HLD Clark Initial Questionnaire Response,'' dated March 16, 2021 at 26.

[11] *See Preliminary Determinations,* 86 FR 43628.

[12] *See* Issues and Decision Memorandum at Comment 4.

[13] *Id.* at Comment 5.

[14] *See, e.g., Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Determination of Anti-Circumvention Inquiry,* 85 FR 9737, 9739 (February 20, 2020) (''However, Protech may request reconsideration of our denial of the certification process in a future segment of the proceeding, *i.e.,* a changed circumstances review or administrative review.''); *see also Diamond Sawblades and Parts Thereof from the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review,* 85 FR 86905 (December 31, 2020) (''. . . Protech is eligible to participate in a certification process because Protech has demonstrated that it can identify diamond sawblades that it produced in Canada using non-Chinese cores and Chinese segments.'').

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–842]

Large Residential Washers From Mexico: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that sales of large residential washers from Mexico were made at less than normal value during the period of review (POR) February 1, 2019, through January 31, 2020.

DATES: Applicable November 24, 2021 November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

This review covers one producer/exporter of the subject merchandise, Electrolux Home Products Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V. (collectively, Electrolux). On June 28, 2021, Commerce published the *Preliminary Results.*[1] On July 28, 2021, we received a case brief on behalf of Electrolux.[2] On August 4, 2021, we received a rebuttal brief on behalf of Whirlpool Corporation (the petitioner).[3]

Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Mexico. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the

[1] *See Preliminary Results of the Antidumping Duty Administrative Review; 2019–2020,* 86 FR 33986 (June 28, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Electrolux's Letter, ''Case Brief of Electrolux,'' dated August 4, 2021.

[3] *See* Petitioner's Letter, ''Brief of Whirlpool Corporation,'' dated August 4, 2021.

merchandise subject to this scope is dispositive.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum.[5] Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin for Electrolux.[6]

Final Results of the Review

As a result of this review, we determine the following weighted-average dumping margin for the period February 1, 2019, through January 31, 2020.

Producers/exporters	Weighted-average dumping margin (percent)
Electrolux Home Products Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V	2.06

Disclosure of Calculations

We intend to disclose the calculations performed in connection with these final results to interested parties within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), Electrolux reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Electrolux for which the company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7]

Commerce intends to issue liquidation instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Electrolux will be equal to the weighted-average dumping margin that is established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 36.52 percent, the all-others rate established in the LTFV investigation.[8] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which

[4] For a full description of the scope of the *order, see Preliminary Results* PDM at 2–4.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Large Residential Washers from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See* Issues and Decision Memorandum at 8.

[7] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders,* 78 FR 11148 (February 15, 2013).

continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 19, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing The Non-Exclusive Functions And Duties Of The Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

I. Summary
II. Background
III. Margin Calculations
IV. Discussion of the Issues
Comment 1: Differential Pricing—Calculating the Denominator of the Cohen's *d Test*
Comment 2: Differential Pricing—Application of the Cohen's *d* Test
Comment 3: Ministerial Error in the Margin Program
V. Recommendation

[FR Doc. 2021–25773 Filed 11–24–21; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–842]

Large Residential Washers From Mexico: Final Results of Antidumping Duty Administrative Review; 2019–2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Commerce) finds that sales of large residential washers from Mexico were made at less than normal value during the period of review (POR) February 1, 2019, through January 31, 2020.

DATES: Applicable November 26, 2021.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3874.

SUPPLEMENTARY INFORMATION:

Background

This review covers one producer/exporter of the subject merchandise, Electrolux Home Products Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V. (collectively, Electrolux). On June 28, 2021, Commerce published the *Preliminary Results*.[1] On July 28, 2021, we received a case brief on behalf of Electrolux.[2] On August 4, 2021, we received a rebuttal brief on behalf of Whirlpool Corporation (the petitioner).[3]

Scope of the Order

The products covered by the order are all large residential washers and certain subassemblies thereof from Mexico. The products are currently classifiable under subheadings 8450.20.0040 and 8450.20.0080 of the Harmonized Tariff System of the United States (HTSUS). Products subject to this order may also enter under HTSUS subheadings 8450.11.0040, 8450.11.0080, 8450.90.2000, and 8450.90.6000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this scope is dispositive.[4]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum.[5] Interested parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

[1] *See Preliminary Results of the Antidumping Duty Administrative Review; 2019–2020,* 86 FR 33986 (June 28, 2021) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Electrolux's Letter, ''Case Brief of Electrolux,'' dated August 4, 2021.

[3] *See* Petitioner's Letter, ''Brief of Whirlpool Corporation,'' dated August 4, 2021.

[4] For a full description of the scope of the *order, see Preliminary Results* PDM at 2–4.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the 2019–2020 Administrative Review of the Antidumping Duty Order on Large Residential Washers from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results,* we made certain changes to the preliminary weighted-average margin for Electrolux.[6]

Final Results of the Review

As a result of this review, we determine the following weighted-average dumping margin for the period February 1, 2019, through January 31, 2020.

Producers/exporters	Weighted-average dumping margin (percent)
Electrolux Home Products Corp. N.V. and Electrolux Home Products de Mexico, S.A. de C.V	2.06

Disclosure of Calculations

We intend to disclose the calculations performed in connection with these final results to interested parties within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), Electrolux reported the entered value of its U.S. sales such that we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the examined sales to the total entered value of the sales for which entered value was reported. Where the respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

Commerce's ''automatic assessment'' practice will apply to entries of subject merchandise during the POR produced by Electrolux for which the company did not know that the merchandise it sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to

[6] *See* Issues and Decision Memorandum at 8.

liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[7]

Commerce intends to issue liquidation instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Electrolux will be equal to the weighted-average dumping margin that is established in the final results of this review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not participating in this review, the cash deposit will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the cash deposit rate established for the most recently completed segment for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 36.52 percent, the all-others rate established in the LTFV investigation.[8] These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

Notification to Interested Parties

This notice is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: November 19, 2021.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations, Performing The Non-Exclusive Functions and Duties of The Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

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Comment 1: Differential Pricing—Calculating the Denominator of the Cohen's *d Test*
Comment 2: Differential Pricing—Application of the Cohen's *d* Test
Comment 3: Ministerial Error in the Margin Program
V. Recommendation

[FR Doc. 2021–25780 Filed 11–24–21; 8:45 am]

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[7] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[8] *See Large Residential Washers from Mexico and the Republic of Korea: Antidumping Duty Orders,* 78 FR 11148 (February 15, 2013).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB601]

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops will be held in January, February, and March of 2022. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted during 2022 and will be announced in a future notice. In addition, NMFS anticipates the implementation of online recertification workshops beginning in the fall of 2021 for persons who have already taken in-person training. Affected permit holders will be notified of this option when it becomes available.

DATES: The Atlantic Shark Identification Workshops will be held on January 20, and March 10, 2022. The Safe Handling, Release, and Identification Workshops will be held on January 7, February 23, and March 9, 2022. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Manahawkin, NJ, and Fort Pierce, FL. The Safe Handling, Release, and Identification Workshops will be held in Charleston, SC; Portsmouth, NH; and Houston, TX. See **SUPPLEMENTARY INFORMATION** for further details on workshop locations.

FOR FURTHER INFORMATION CONTACT: Rick Pearson by phone: (727) 824–5399, or by email at *rick.a.pearson@noaa.gov,* or Craig Cockrell by email at *craig.cockrell@noaa.gov.*

SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (HMS) fisheries are managed under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan and its amendments are implemented by regulations at 50 CFR part 635. Section 635.8 describes the requirements for the Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification

Workshops. The workshop schedules, registration information, and a list of frequently asked questions regarding the Atlantic Shark Identification and Safe Handling, Release, and Identification workshops are posted online at: *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops* and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057; October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Thus, certificates that were initially issued in 2019 will expire in 2022. Approximately 189 free Atlantic Shark Identification Workshops have been conducted since October 2008.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit that first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate must be in any trucks or other conveyances that are extensions of a dealer's place of business.

Workshop Dates, Times, and Locations

1. January 20, 2022, 12 p.m.–4 p.m., Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.

2. March 10, 2022, 12 p.m.–4 p.m., Hampton Inn, 1985 Reynolds Drive, Fort Pierce, FL 34945.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *ericssharkguide@yahoo.com* or at (386) 852–8588. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited-access and swordfish limited-access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057; October 2, 2006). These certificate(s) are valid for 3 years. Certificates issued in 2019 will expire in 2022. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited-access permits. Additionally, new shark and swordfish limited-access permit applicants who intend to fish with longline or gillnet gear must attend a Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued. Approximately 388 free Safe Handling, Release, and Identification Workshops have been conducted since 2006.

In addition to vessel owners, at least one operator on board vessels issued a limited-access swordfish or shark permit that uses longline or gillnet gear is required to attend a Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited-access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates onboard at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited-access permits on which longline or gillnet gear is used.

Workshop Dates, Times, and Locations

1. January 7, 2022, 9 a.m.–5 p.m., Hampton Inn, 678 Citadel Haven Drive, Charleston, SC 29414.

2. February 23, 2022, 9 a.m.–5 p.m., Residence Inn, 100 Deer Street, Portsmouth, NH 03801.

3. March 9, 2022, 9 a.m.–5 p.m., Holiday Inn Express, 9300 South Main Street, Houston, TX 77025.

Registration

To register for a scheduled Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at (386) 682–0158. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification;
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable

swordfish and/or shark permit(s), and proof of identification; and

- Vessel operators must bring proof of identification.

Workshop Objectives

The Safe Handling, Release, and Identification Workshops are designed to teach longline and gillnet fishermen the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, smalltooth sawfish, Atlantic sturgeon, and prohibited sharks. In an effort to improve reporting, the proper identification of protected species and prohibited sharks will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species and prohibited sharks, which may prevent additional regulations on these fisheries in the future.

Online Recertification Workshops

NMFS anticipates the implementation of online recertification workshops beginning in the fall of 2021 for persons who have already taken in-person training. Affected permit holders will be notified of this option when it becomes available.

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

Dated: November 19, 2021.

Ngagne Jafnar Gueye,

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

[FR Doc. 2021–25699 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XB597]

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico

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

ACTION: Notice of issuance of Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, its implementing regulations, and NMFS' MMPA Regulations for Taking Marine Mammals Incidental to Geophysical Surveys Related to Oil and Gas Activities in the Gulf of Mexico, notification is hereby given that a Letter of Authorization (LOA) has been issued to W&T Offshore Inc. (W&T) and its designees for the take of marine mammals incidental to geophysical survey activity in the Gulf of Mexico.

DATES: The LOA is effective from December 1, 2021, through July 1, 2022.

ADDRESSES: The LOA, LOA request, and supporting documentation are available online at: *www.fisheries.noaa.gov/action/incidental-take-authorization-oil-and-gas-industry-geophysical-survey-activity-gulf-mexico.* In case of problems accessing these documents, please call the contact listed below (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Kim Corcoran, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Except with respect to certain activities not pertinent here, the MMPA defines ''harassment'' as: Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

On January 19, 2021, we issued a final rule with regulations to govern the unintentional taking of marine mammals incidental to geophysical survey activities conducted by oil and gas industry operators, and those persons authorized to conduct activities on their behalf (collectively ''industry operators''), in Federal waters of the U.S. Gulf of Mexico (GOM) over the course of 5 years (86 FR 5322; January 19, 2021). The rule was based on our findings that the total taking from the specified activities over the 5-year period will have a negligible impact on the affected species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of those species or stocks for subsistence uses. The rule became effective on April 19, 2021.

Our regulations at 50 CFR 217.180 *et seq.* allow for the issuance of LOAs to industry operators for the incidental take of marine mammals during geophysical survey activities and prescribe the permissible methods of taking and other means of effecting the least practicable adverse impact on marine mammal species or stocks and their habitat (often referred to as mitigation), as well as requirements pertaining to the monitoring and reporting of such taking. Under 50 CFR 217.186(e), issuance of an LOA shall be based on a determination that the level of taking will be consistent with the findings made for the total taking allowable under these regulations and a determination that the amount of take authorized under the LOA is of no more than small numbers.

Summary of Request and Analysis

As the designee of W&T, Echo plans conduct an archaeological and geohazards survey in the Eugene Island Area, Block EI389 and portions of Blocks EI385 and EI386, and in the Ewing Bank Area, in the E/2 portion of Block EW979. Echo plans to simultaneously use a single, 20-cubic inch airgun, as well as a suite of high-resolution geophysical (HRG) acoustic sources aboard an autonomous underwater vehicle. Please see W&T and Echo's application for additional detail.

Consistent with the preamble to the final rule, the survey effort proposed by W&T and Echo in their LOA request was used to develop LOA-specific take estimates based on the acoustic exposure modeling results described in

the preamble (86 FR 5322, 5398; January 19, 2021). In order to generate the appropriate take number for authorization, the following information was considered: (1) Survey type; (2) location (by modeling zone [1]); (3) number of days; and (4) season.[2] The acoustic exposure modeling performed in support of the rule provides 24-hour exposure estimates for each species, specific to each modeled survey type in each zone and season.

The survey is planned to occur for 2.5 days over a span of 5–7 days. As sources will be used simultaneously, exposure modeling results were generated using the single airgun proxy as it produced the greater value for each species (as opposed to the HRG proxy). Because those results assume use of a 90-in^3 airgun, the take numbers authorized through this LOA are considered conservative (*i.e.,* they likely overestimate take) due to differences in the sound source planned for use by Echo, as compared to those modeled for the rule. The geographic distribution of survey effort is not known precisely, but would occur for 3 days in Zones 2 and 5. Therefore, the take estimates for each species are based on the zone that has the greater value for the species (*i.e.,* Zone 2 or 5). Similarly, as the survey could potentially occur in either season, the take estimates for each species are also based on the season that has the greater value for the species (*i.e.,* winter or summer).

In this case, use of the exposure modeling produces results that are substantially smaller than average GOM group sizes for multiple species (*i.e.,* estimated exposure values are less than 10 percent of assumed average group size for the majority of species) (Maze-Foley and Mullin, 2006). NMFS' typical practice in such a situation is to increase exposure estimates to the assumed average group size for a species in order to ensure that, if the species is encountered, exposures will not exceed the authorized take number. However, other relevant considerations here lead to a determination that increasing the estimated exposures to average group sizes would likely lead to an overestimate of actual potential take. In this circumstance, the very short survey duration and relatively small Level B harassment isopleths produced through use of a single airgun (compared with an airgun array) means that it is unlikely that certain species would be encountered at all, much less that the encounter would result in exposure of a greater number of individuals than is estimated through use of the exposure modeling results. As a result, in this case NMFS has not increased the estimated exposure values to assumed average group sizes in authorizing take.

Based on the results of our analysis, NMFS has determined that the level of taking expected for this survey and authorized through the LOA is consistent with the findings made for the total taking allowable under the regulations. See Table 1 in this notice and Table 9 of the rule (86 FR 5322; January 19, 2021).

Small Numbers Determination

Under the GOM rule, NMFS may not authorize incidental take of marine mammals in an LOA if it will exceed ''small numbers.'' In short, when an acceptable estimate of the individual marine mammals taken is available, if the estimated number of individual animals taken is up to, but not greater than, one-third of the best available abundance estimate, NMFS will determine that the numbers of marine mammals taken of a species or stock are small. For more information please see NMFS' discussion of the MMPA's small numbers requirement provided in the final rule (86 FR 5322, 5438; January 19, 2021).

The take numbers for authorization, which are determined as described above, are used by NMFS in making the necessary small numbers determinations, through comparison with the best available abundance estimates (see discussion at 86 FR 5322, 5391; January 19, 2021). For this comparison, NMFS' approach is to use the maximum theoretical population, determined through review of current stock assessment reports (SAR; *www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and model-predicted abundance information (*https://seamap.env.duke.edu/models/Duke/GOM/*). For the latter, for taxa where a density surface model could be produced, we use the maximum mean seasonal (*i.e.,* 3-month) abundance prediction for purposes of comparison as a precautionary smoothing of month-to-month fluctuations and in consideration of a corresponding lack of data in the literature regarding seasonal distribution of marine mammals in the GOM. Information supporting the small numbers determinations is provided in Table 1.

TABLE 1—TAKE ANALYSIS

Species	Authorized take [1]	Abundance [2]	Percent abundance
Rice's whale [3]	0	51	0.0
Kogia sp	1	4,373	0.0
Beaked whales	47	3,768	1.3
Bottlenose dolphin	93	176,108	0.1
Short-finned pilot whale	0	1,981	0.0
Sperm whale	2	2,207	0.1
Atlantic spotted dolphin	20	74,785	0.0
Clymene dolphin	2	11,895	0.0
False killer whale	1	3,204	0.0
Fraser's dolphin	0	1,665	0.0
Killer whale	0	267	0.0
Melon-headed whale	2	7,003	0.0
Pantropical spotted dolphin	10	102,361	0.0
Pygmy killer whale	0	2,126	0.0
Risso's dolphin	1	3,764	0.0
Rough-toothed dolphin	2	4,853	0.0
Spinner dolphin	3	25,114	0.0

[1] For purposes of acoustic exposure modeling, the GOM was divided into seven zones. Zone 1 is not included in the geographic scope of the rule.

[2] For purposes of acoustic exposure modeling, seasons include Winter (December-March) and Summer (April-November).

TABLE 1—TAKE ANALYSIS—Continued

Species	Authorized take [1]	Abundance [2]	Percent abundance
Striped dolphin	1	5,229	0.0

[1] Scalar ratios were not applied in this case due to brief survey duration.
[2] Best abundance estimate. For most taxa, the best abundance estimate for purposes of comparison with take estimates is considered here to be the model-predicted abundance (Roberts *et al.,* 2016). For those taxa where a density surface model predicting abundance by month was produced, the maximum mean seasonal abundance was used. For those taxa where abundance is not predicted by month, only mean annual abundance is available. For the killer whale, the larger estimated SAR abundance estimate is used.
[3] The final rule refers to the GOM Bryde's whale (*Balaenoptera edeni*). These whales were subsequently described as a new species, Rice's whale (*Balaenoptera ricei*) (Rosel *et al.,* 2021).

Based on the analysis contained herein of W&T and Echo's proposed survey activity described in its LOA application and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals will be taken relative to the affected species or stock sizes (*i.e.,* less than one-third of the best available abundance estimate) and therefore the taking is of no more than small numbers.

Authorization

NMFS has determined that the level of taking for this LOA request is consistent with the findings made for the total taking allowable under the incidental take regulations and that the amount of take authorized under the LOA is of no more than small numbers. Accordingly, we have issued an LOA to W&T authorizing the take of marine mammals incidental to its geophysical survey activity, as described above.

Dated: November 22, 2021.

Kimberly Damon-Randall,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2021–25784 Filed 11–24–21; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: *Date added to and deleted from the Procurement List:* December 26, 2021.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: Michael R. Jurkowski, Telephone: (703) 785–6404 or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 5/28/2021 and 6/4/2021, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed additions to the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the product(s) and service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product(s) and service(s) to the Government.

2. The action will result in authorizing small entities to furnish the product(s) and service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) and service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product(s) and service(s) are added to the Procurement List:

Product(s)

NSN(s)—Product Name(s):
6540–00–NIB–0079—Lens Cleaning Station, Disposable, 16 Oz. Spray Bottle Cleaner
6540–00–NIB–0080—Lens Cleaning Station, Disposable, 8 Oz. Spray Bottle Cleaner
Designated Source of Supply: Chicago Lighthouse Industries, Chicago, IL
Mandatory For: Total Government Requirement
Contracting Activity: DEFENSE LOGISTICS AGENCY, DLA TROOP SUPPORT
Distribution: A-List

NSN(s)—Product Name(s):
MR 10797—Flashlight, Includes Shipper 20797
MR 11509—Pet Collar
MR 11510—Toy, Pet, Squeaky
MR 10807—Pantry Basket, Includes Shipper 20807
MR 10806—Cutting Board, Includes Shipper 20806
MR 10806—Cutting Board, Includes Shipper 20806
MR 13153—Pizza Crisper
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Mandatory For: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4
Contracting Activity: Defense Commissary Agency
Distribution: C-List

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2021–25788 Filed 11–24–21; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the procurement list.

SUMMARY: The Committee is proposing to add product(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete and service(s) previously furnished by such agencies.

DATES: *Comments must be received on or before:* December 25, 2021.

ADDRESSES: Committee for Purchase From People who are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the product(s) and service(s) listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following product(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Product(s)

NSN(s)—Product Name(s): 6840–00–NIB–0158—Lysol Disinfecting Wipes, Pre-Moistened, Lemon and Lime, Soft Pack
Designated Source of Supply: LC Industries, Inc., Durham, NC
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI
Mandatory for: Total Government Requirement
Distribution: A-List

NSN(s)—Product Name(s): 8415–01–610–7322—Work Gloves, Unisex, Anti-Static Impact Control, Black, X-Small
8415–01–610–7323—Work Gloves, Unisex, Anti-Static Impact Control, Black, Medium
8415–01–610–7324—Work Gloves, Unisex, Anti-Static Impact Control, Black, Large
8415–01–610–7325—Work Gloves, Unisex, Anti-Static Impact Control, Black, Small
8415–01–610–7326—Work Gloves, Unisex, Anti-Static Impact Control, Black, Extra-Large
8415–01–610–7327—Work Gloves, Unisex, Anti-Static Impact Control, Black, Extra-Extra-Large
Designated Source of Supply: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI
Mandatory for: Broad Government Requirement
Distribution: B-List

NSN(s)—Product Name(s): MR 10815—Meat Baller, Includes Shipper 20815
Designated Source of Supply: Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity: Military Resale-Defense Commissary Agency
Mandatory for: The requirements of military commissaries and exchanges in accordance with the 41 CFR 51–6.4
Distribution: C-List

NSN(s)—Product Name(s): 680000100S—Odor H2S Remover, Cleaner and Post Conditioner, KCD–X Lift Station & Sewer, 25 lb.
680000200S—Toxic Gases & Vapors (VOCs) Remover, KCD–X HAZMAT Handling, Response & Recovery, 25 lb.
680000300S—Wastewater Treatment, SETTApHY Flocculant, 25 lb.
680000000S—Treatment, KCD Wastewater Lift Station & Collections System (Sewer), 25 lb.
680000400S—Treatment, GasKat Odor & Toxic Gases Remover, 24 oz.
Designated Source of Supply: Brevard Achievement Center, Inc., Rockledge, FL
Contracting Activity: FEDERAL ACQUISITION SERVICE, GSA/FSS GREATER SOUTHWEST ACQUISITI
Mandatory for: Broad Government Requirement
Distribution: B-List

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Service(s)

Service Type: Custodial service
Mandatory for: TSA, Central Illinois Regional Airport, Bloomington, IL, Airport Business Center, Bloomington, IL
Contracting Activity: PUBLIC BUILDINGS SERVICE, ACQUISITION MANAGEMENT DIVISION

Michael R. Jurkowski,

Acting Director, Business Operations.

[FR Doc. 2021–25787 Filed 11–24–21; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy (USMA)

AGENCY: Department of the Army, DoD.

ACTION: Meeting cancellation notice.

Under the provisions of the Federal Advisory Committee Act of 1972, the Government in the Sunshine Act of 1976 the Department of Defense announces that the following Federal advisory committee meeting will not take place.

1. *Name of Committee:* United States Military Academy Board of Visitors.

2. *Date:* Friday, November 19, 2021.

3. Time: 9:00–11:30 a.m.

4. *Location:* Jefferson Hall's Haig Room, West Point, NY, and virtually, via Microsoft Office 365 Teams.

5. *Reason for Cancellation:* Due to a change in the schedule of the U.S. House of Representatives for the week of November 14–20, 2021, all U.S. Representatives will be unavailable due to Congressional obligations. The USMA Board of Visitors meeting originally scheduled for Friday, November 19, 2021, is cancelled.

6. *Committee's Designated Federal Officer or Point of Contact:* Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@westpoint.edu.*

FOR FURTHER INFORMATION CONTACT: The Committee's Designated Federal Officer or Point of Contact is Ms. Deadra Ghostlaw, (845) 938–4200, *Deadra.Ghostlaw@westpoint.edu.*

SUPPLEMENTARY INFORMATION: Due to circumstances beyond the control of the DoD and the Designated Federal Officer for the United States Military Academy Board of Visitors was unable to provide public notification, as required by 41 CFR 102–3.150(a), of the cancellation of the United States Military Academy Board of Visitors' November 19, 2021 meeting, which was announced in the **Federal Register** on October 29, 2021. Accordingly, the DoD Advisory Committee Management Officer, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.''

James W. Satterwhite, Jr.,

Army Federal Register Liaison Officer.

[FR Doc. 2021–25723 Filed 11–24–21; 8:45 am]

BILLING CODE 5001–03–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0120]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment, Department of Defense (DoD).

ACTION: 15-Day information collection notice.

SUMMARY: Consistent with the Paperwork Reduction Act of 1995 and

its implementing regulations, this document provides notice DoD is submitting an Information Collection Request to the Office of Management and Budget (OMB) to facilitate the grant application and post-grant award reporting requirements of those entities receiving or seeking to receive technical and/or financial assistance from the Office of Local Defense Community Cooperation via its programs of assistance. DoD requests emergency processing and OMB authorization to collect the information after publication of this notice for a period of six months.

DATES: Comments must be received by December 13, 2021.

ADDRESSES: The Department has requested emergency processing from OMB for this information collection request by 15 days after publication of this notice. Interested parties can access the supporting materials and collection instrument as well as submit comments and recommendations to OMB at *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 15-day Review—Open for Public Comments'' or by using the search function. 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.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION: The Office of Local Defense Community Cooperation (OLDCC), in coordination with the other Federal Agencies, delivers a program of technical and financial assistance to enable states and communities to plan and carry out civilian responses to workforce, business, and community needs arising from Defense actions; cooperate with military installations and leverage public and private capabilities to deliver public infrastructure and services to enhance the military mission and achieve facility and infrastructure savings; and increase military, civilian, and industrial readiness and resiliency, and support military families. The Economic Adjustment Data System (EADS) supports this mission by providing a platform for authorized grant applicants to submit their application packages, and for grant awardees to submit quarterly or semi-annual performance reports. We are requesting emergency approval as this system supports all grants management functions for grant applications, active grant monitoring and oversight, and grant closeout activities for OLDCC's portfolio consisting of approximately 225 active grants valued at $1.4B annually.

Title; Associated Form; and OMB Number: Office of Local Defense Community Cooperation Economic Adjustment Data System; OMB Control Number 0704–EADS.

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

Number of Respondents: 62.

Responses per Respondent: 6.

Annual Responses: 372.

Average Burden per Response: 170 minutes.

Annual Burden Hours: 1,054.

Affected Public: State, Local, or Tribal Government; Business or other for-profit; Not-for-profit Institutions.

Frequency: As required.

Respondent's Obligation: Voluntary.

Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information collected has practical utility; (2) the accuracy of DoD'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.

Dated: November 22, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2021–25826 Filed 11–24–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–OS–0121]

Proposed Collection; Comment Request

AGENCY: Washington Headquarters Services (WHS), Department of Defense (DoD).

ACTION: Information collection notice.

SUMMARY: As part of a Federal Government-wide effort to streamline the process to seek feedback from the public on service delivery, we are seeking comment on the extension of the following Generic Information Collection Request (Generic ICR): ''Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery'' for approval under the Paperwork Reduction Act (PRA). This notice announces our intent to submit this collection to OMB for approval and solicits comments on specific aspects for the proposed information collection.

DATES: Consideration will be given to all comments received by January 25, 2022.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.

Mail: DoD cannot receive written comments at this time due to the COVID–19 pandemic. Comments should be sent electronically to the docket listed above.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Washington Headquarters Services, the Director of Administration and Management, ATTN: Angela Duncan, 4800 Mark Center Drive, Alexandria, VA 22350, Suite 03F09, (571) 372–7574, or email *angela.n.duncan6.civ@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Fast Track Generic Clearance for the Collection of Qualitative Feedback on Agency Service Delivery; OMB Control Number 0704–0553.

Needs and Uses: The information collection activity provides a means to garner qualitative customer and stakeholder feedback in an efficient, timely manner, in accordance with the Administration's commitment to improving service delivery. By qualitative feedback, we mean information that provides useful insights on perceptions and opinions, but are not statistical surveys that yield quantitative results that can be generalized to the population of study. This feedback will provide insights into customer or stakeholder perceptions, experiences and expectations, provide

an early warning of issues with service, or focus attention on areas where communication, training or changes in operations might improve delivery of products or services. These collections will allow for ongoing, collaborative and actionable communications between the Agency and its customers and stakeholders. It will also allow feedback to contribute directly to the improvement of program management.

The solicitation of feedback will target areas such as: Timeliness, appropriateness, accuracy of information, courtesy, efficiency of service delivery, and resolution of issues with service delivery. Responses will be assessed to plan and inform efforts to improve or maintain the quality of service offered to the public. If this information is not collected, vital feedback from customers and stakeholders on the Agency's services will be unavailable.

The Agency will only submit a collection for approval under this generic clearance if it meets the following conditions:

- The collections are voluntary;
- The collections are low-burden for respondents (based on considerations of total burden hours, total number of respondents, or burden-hours per respondent) and are low-cost for both the respondents and the Federal Government;
- The collections are noncontroversial and do not raise issues of concern to other Federal agencies;
- Any collection is targeted to the solicitation of opinions from respondents who have experience with the program or may have experience with the program in the near future;
- Personally identifiable information is collected only to the extent necessary and is not retained;
- Information gathered will be used only internally for general service improvement and program management purposes and is not intended for release outside of the agency;
- Information gathered will not be used for the purpose of substantially informing influential policy decisions; and
- Information gathered will yield qualitative information; the collections will not be designed or expected to yield statistically reliable results or used as though the results are generalizable to the population of study.

Feedback collected under this generic clearance provides useful information, but it does not yield data that can be generalized to the overall population. This type of generic clearance for qualitative information will not be used for quantitative information collections that are designed to yield reliably actionable results, such as monitoring trends over time or documenting program performance. Such data uses require more rigorous designs that address: The target population to which generalizations will be made, the sampling frame, the sample design (including stratification and clustering), the precision requirements or power calculations that justify the proposed sample size, the expected response rate, methods for assessing potential nonresponse bias, the protocols for data collection, and any testing procedures that were or will be undertaken prior to fielding the study. Depending on the degree of influence the results are likely to have, such collections may still be eligible for submission for other generic mechanisms that are designed to yield quantitative results.

As a general matter, information collections will not result in any new system of records containing privacy information and will not ask questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

Affected Public: Individuals or households; Businesses or other for-profits; Not-for-profit institutions; Farms; Federal Government; State, Local, or Tribal Governments.

Annual Burden Hours: 50,000.

Number of Respondents: 300,000.

Responses per Respondent: 1.

Annual Responses: 300,000.

Average Burden per Response: 10 minutes.

Frequency: On occasion.

Dated: November 22, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2021–25833 Filed 11–24–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2021–HA–0086]

Submission for OMB Review; Comment Request

AGENCY: The Office of the Assistant Secretary of Defense for Health Affairs, Department of Defense (DoD).

ACTION: 30-Day information collection notice.

SUMMARY: The DoD has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by December 27, 2021.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Angela Duncan, 571–372–7574, or *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Department of Defense Patient Safety Culture Survey; OMB Control Number 0720–0034.

Type of Request: Revision.

Number of Respondents: 7,820.

Responses per Respondent: 1.

Annual Responses: 7,820.

Average Burden per Response: 0.16 hours.

Annual Burden Hours: 1,251.

Needs and Uses: The 2001 National Defense Authorization Act contains specific sections addressing patient safety in military and veterans' health care systems. This legislation states that the Secretary of Defense shall establish a patient care error reporting and management system to study occurrences of errors in patient care and that one purpose of the system should be to ''identify systemic factors that are associated with such occurrences'' and ''to provide for action to be taken to correct the identified systemic factors'' (Sec. 754, items b2 and b3). In addition, the legislation states that the Secretary shall ''continue research and development investments to improve communication, coordination, and team work in the provision of health care'' (Sec. 754, item d4).

In its ongoing response to this legislation and in support of its mission to ''promote a culture of safety to eliminate preventable patient harm by engaging, educating and equipping patient-care teams to institutionalize evidence-based safe practices,'' the DoD Patient Safety Program plans to field the DoD Patient Safety Culture Survey. The Culture Survey is based on the Department of Health and Human Services' Agency for Healthcare Research and Quality's validated survey instrument. The survey obtains Military Health System staff opinions on patient safety issues such as teamwork, communications, medical error occurrence and response, error

reporting, and overall perceptions of patient safety.

Affected Public: Federal Government; individuals or households.

Frequency: As required.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Julie Wise.

You may also submit comments and recommendations, identified by Docket ID number and title, by the following method:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name, Docket ID number, and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Angela Duncan.

Requests for copies of the information collection proposal should be sent to Ms. Duncan at *whs.mc-alex.esd.mbx.dd-dod-information-collections@mail.mil.*

Dated: November 22, 2021.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2021–25829 Filed 11–24–21; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2021–SCC–0164]

Agency Information Collection Activities; Comment Request; Evaluation of the Implementation of the Statewide Family Engagement Centers

AGENCY: Institute of Educational Science (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before January 25, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2021–SCC–0164. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208C, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Andrew Abrams, 202–245–7500.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Evaluation of the Implementation of the Statewide Family Engagement Centers.

OMB Control Number: 1850–NEW.

Type of Review: A new information collection.

Respondents/Affected Public: Private Sector; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 65.

Total Estimated Number of Annual Burden Hours: 66.

Abstract: Despite the important role family engagement may play in children's educational progress, families below the poverty line are significantly less likely than those at or above the poverty line to be involved in their child's schooling. The Statewide Family Engagement Centers (SFEC) is one of the key U.S. Department of Education programs designed to close this gap. Funded for the first time in 2018, SFEC builds on an earlier program and provides grants to partnerships of education organizations and their states. The partners are expected to both deliver services directly to families to increase their engagement and to provide technical assistance and training to state, district, and school staff to help them help families. This study will describe the work of the first 12 grantees, focusing on the extent to which certain program priorities are being implemented. The results are intended to help federal policy makers refine the goals and objectives of the SFEC program, as well as inform the work of education organizations and state and local education agencies beyond the current grantees to improve their work with families.

Dated: November 22, 2021.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2021–25815 Filed 11–24–21; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public roundtable agenda.

SUMMARY: Election Official Security: Response, Preparation & Available Resources.

DATES: Wednesday, December 8, 2021, 12:00 p.m.–2:00 p.m. Eastern.

ADDRESSES: Virtual via Zoom.

The panel discussion is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://*

www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual panel discussion with election officials who have dealt with threats and representatives from state and federal partners who offer resources to respond and prevent threats facing election officials, staff, and poll workers as they administer elections.

Agenda: The U.S. Election Assistance Commission (EAC) will hold a panel discussion with several current and former election officials who received threats related to the 2020 election and learn more about how they responded, how they are preparing for the upcoming midterm election year, and what resources they need to keep their staff and offices safe. The second panel for this event will consist of state and federal partners of the election official community, including representation from law enforcement agencies. This panel will discuss their efforts to provide additional security resources for election officials, best practices for evidence gathering and responding to threatening messages, and legal consideration for any election official who may face this sort of harassment in the future.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This roundtable discussion will be open to the public.

Kevin Rayburn,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2021–25856 Filed 11–23–21; 11:15 am]

BILLING CODE 6820–KF–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Meetings

AGENCY: U.S. Election Assistance Commission.

ACTION: Sunshine Act notice; notice of public meeting agenda.

SUMMARY: Public Meeting: U.S. Election Assistance Commission Local Leadership Council Inaugural Meeting.

DATES: Friday, December 10, 2021, 1:00 p.m.–2:30 p.m. Eastern.

ADDRESSES: Virtual via Zoom.

The meeting is open to the public and will be livestreamed on the U.S. Election Assistance Commission YouTube Channel: *https://www.youtube.com/channel/UCpN6i0g2rlF4ITWhwvBwwZw.*

FOR FURTHER INFORMATION CONTACT: Kristen Muthig, Telephone: (202) 897–9285, Email: *kmuthig@eac.gov.*

SUPPLEMENTARY INFORMATION:

Purpose: In accordance with the Government in the Sunshine Act (Sunshine Act), Public Law 94–409, as amended (5 U.S.C. 552b), the U.S. Election Assistance Commission (EAC) will conduct a virtual inaugural meeting of the EAC Local Leadership Council to introduce members to the roles and responsibilities of this new advisory board and give members an overview of the role and work of the agency.

Agenda: The U.S. Election Assistance Commission (EAC) Local Leadership Council will hold their inaugural meeting to launch this new FACA board.

Board members will be officially sworn in, and will receive information from the Designated Federal Officer and senior EAC staff about the duties and roles members are responsible for. Members will also receive a briefing on the work of the EAC and what the agency is working on for the year to come.

Background: The Local Leadership Council was established in June 2021 under agency authority pursuant to and in accordance with the provisions of the Federal Advisory Committee Act, as amended (5 U.S.C. App. 2). The Advisory Committee is governed by the Federal Advisory Committee Act, which sets forth standards for the formation and use of advisory committees. The Advisory Committee shall advise the EAC on how best to fulfill the EAC's statutory duties set forth in 52 U.S.C. 20922 as well as such other matters as the EAC determines. It shall provide a relevant and comprehensive source of expert, unbiased analysis and recommendations to the EAC on local election administration topics to include but not limited to voter registration and registration database maintenance, voting system user practices, ballot administration (programming, printing, and logistics), processing, accounting, canvassing, chain of custody, certifying results, and auditing.

The Local Leadership Council shall consist of 100 members. The Election Assistance Commission shall appoint two members from each state after soliciting nominations from each state's election official professional association. At the time of submission, the Local Leadership Council has 81 appointed members. Upon appointment, Advisory Committee members must be serving or have previously served in a leadership role in a state's local election official professional association.

The full agenda will be posted in advance on the EAC website: *https://www.eac.gov.*

Status: This meeting will be open to the public.

Kevin Rayburn,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2021–25857 Filed 11–23–21; 11:15 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–433–000]

Indra Power Business PA, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Indra Power Business PA, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 9, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling

link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 19, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–25853 Filed 11–24–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–434–000]

Altop Energy Trading LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Altop Energy Trading LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 9, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 19, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–25851 Filed 11–24–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–423–000]

Columbia Utilities Power Business LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Columbia Utilities Power Business LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 9, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link.

Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 19, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–25850 Filed 11–24–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–425–000]

Enerwise Global Technologies, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Enerwise Global Technologies, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 9, 2021.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: November 19, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–25852 Filed 11–24–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP20–908–004.

Applicants: Alliance Pipeline L.P.

Description: Alliance Pipeline L.P. submits tariff filing per 154.501: Alliance RP20–908 Refund Report to be effective N/A.

Filed Date: 11/10/21.

Accession Number: 20211110–5197.

Comment Date: 5 p.m. ET 11/22/21.

Docket Numbers: RP22–329–000.

Applicants: National Grid LNG, LLC.

Description: Compliance filing: 2021–11–18 Order 587–Z. Compliance Filing Adopting NAESB WQC Version 3.2 to be effective 6/1/2022.

Filed Date: 11/18/21.

Accession Number: 20211118–5176.

Comment Date: 5 p.m. ET 11/30/21.

Docket Numbers: RP22–330–000.

Applicants: Natural Gas Pipeline Company of America LLC.

Description: § 4(d) Rate Filing: Negotiated Rate Filing—Luminant Energy Company LLC to be effective 12/1/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5000.

Comment Date: 5 p.m. ET 12/1/21.

Docket Numbers: RP22–331–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Non-Conforming—Leidy South—In-Svc—Cabot/Coterra to be effective 12/1/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5001.

Comment Date: 5 p.m. ET 12/1/21.

Docket Numbers: RP22–332–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Compliance filing: Annual Cash-Out Activity Report 2021 to be effective N/A.

Filed Date: 11/19/21.

Accession Number: 20211119–5067.

Comment Date: 5 p.m. ET 12/1/21.

Docket Numbers: RP22–333–000.

Applicants: Southern Star Central Gas Pipeline, Inc.

Description: Compliance filing: Annual Operational Flow Order Report 2021 to be effective N/A.

Filed Date: 11/19/21.

Accession Number: 20211119–5072.

Comment Date: 5 p.m. ET 12/1/21.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP20–614–006.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: Refund Report: Cash Out Refund Report Supplement Docket Nos. RP20–614 & RP20–618 to be effective N/A.

Filed Date: 11/19/21.

Accession Number: 20211119–5022.

Comment Date: 5 p.m. ET 12/1/21.

Any person desiring to protest in any the above proceedings must file in

accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 19, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–25849 Filed 11–24–21; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–17–000.

Applicants: Beulah Solar, LLC, PGR 2021 Lessee 2, LLC.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Beulah Solar, LLC, et al.

Filed Date: 11/19/21.

Accession Number: 20211119–5227.

Comment Date: 5 p.m. ET 12/10/21.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER15–1434–005.

Applicants: ISO New England Inc.

Description: Compliance filing: ISO New England Inc. submits tariff filing per 35: Versant Power; Docket No. ER15–1434—Joint Offer of Settlement to be effective N/A.

Filed Date: 11/19/21.

Accession Number: 20211119–5116.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER17–1821–004.

Applicants: Panda Stonewall LLC.

Description: Refund Report: Potomac Energy Center, LLC submits tariff filing per 35.19a(b): Refund Report to be effective N/A.

Filed Date: 11/19/21.

Accession Number: 20211119–5179.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER20–1977–001.

Applicants: Versant Power.

Description: Compliance filing: Joint Offer of Settlement Re: Maine Public District Charges (ER20–1977–) to be effective 6/1/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5024.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER21–2460–001.

Applicants: New York Independent System Operator, Inc.

Description: Compliance filing: Additional Information for Order No. 2222 Compliance to be effective N/A.

Filed Date: 11/19/21.

Accession Number: 20211119–5226.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–392–001.

Applicants: El Paso Electric Company.

Description: Compliance filing: EPE Order No. 864 Compliance filing to be effective 1/1/2022.

Filed Date: 11/19/21.

Accession Number: 20211119–5187.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–420–001.

Applicants: Wisconsin Public Service Corporation.

Description: Tariff Amendment: Amendment to AS Tariff Filing for Reactive Supply Service to be effective 11/18/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5056.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–432–000.

Applicants: Public Service Company of Colorado.

Description: § 205(d) Rate Filing: 2021–11–18 Cedar Creek II–LGIA Amnd-277 to be effective 11/19/2021.

Filed Date: 11/18/21.

Accession Number: 20211118–5193.

Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER22–433–000.

Applicants: Indra Power Business PA, LLC.

Description: Baseline eTariff Filing: Tariffs and Agreements to be effective 1/18/2022.

Filed Date: 11/18/21.

Accession Number: 20211118–5196.

Comment Date: 5 p.m. ET 12/9/21.

Docket Numbers: ER22–434–000.

Applicants: Altop Energy Trading LLC.

Description: Baseline eTariff Filing: Petition of Altop Energy Trading LLC MBR Tariff Application to be effective 1/1/2022.

Filed Date: 11/19/21.

Accession Number: 20211119–5003.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–435–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original ISA, Service Agreement No. 6225; Queue Nos. AA1–111/AB1–092/AD2–055 to be effective 10/20/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5040.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–436–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Big Country EC-Golden Spread EC 2nd A&R IA to be effective 10/27/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5062.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–437–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Rayos Del Sol 5th A&R Generation Interconnection Agreement to be effective 10/27/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5068.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–438–000.

Applicants: AEP Texas Inc.

Description: § 205(d) Rate Filing: AEPTX-Lunis Creek Solar Project Generation Interconnection Agreement to be effective 10/29/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5070.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–439–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3872 WAPA–RMR and NPPD Interconnection Agreement to be effective 12/1/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5078.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–440–000.

Applicants: PJM Interconnection, L.L.C., Pennsylvania Electric Company, Jersey Central Power & Light Company, Metropolitan Edison Company.

Description: § 205(d) Rate Filing: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Penelec, JCPL, and Met-Ed submit Revised WASPs, SA Nos. 4221, 4222, and 4223 to be effective 1/19/2022.

Filed Date: 11/19/21.

Accession Number: 20211119–5098.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–441–000.

Applicants: Midcontinent Independent System Operator, Inc., American Transmission Company LLC.

Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2021–11–19_SA 3749 ATC-Uplands Wind E&P (J1773 J1781) to be effective 11/17/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5100.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–442–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 5294; Queue No. AC2–120 to be effective 2/7/2019.

Filed Date: 11/19/21.

Accession Number: 20211119–5101.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–443–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: Dominion Energy SC Interconnection Agreement Amendment Filing to be effective 11/4/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5128.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–444–000.

Applicants: Alabama Power Company.

Description: § 205(d) Rate Filing: SCPSA Amended and Restated Interchange Contract Filing to be effective 10/21/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5129.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–445–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3871 Southwestern Power Admin & AECC Interconnection Agr to be effective 1/1/2022.

Filed Date: 11/19/21.

Accession Number: 20211119–5195.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–446–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Initial Filing of Rate Schedule No. 337 to be effective 11/20/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5214.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–447–000.

Applicants: Duke Energy Indiana, LLC.

Description: § 205(d) Rate Filing: DEI-Ameren Rate Schedule No. 275 Reimbursement Agreement to be effective 11/20/2021.

Filed Date: 11/19/21.

Accession Number: 20211119–5220.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–448–000.

Applicants: Northern Indiana Public Service Company LLC, Indiana Crossroads Solar Generation LLC, Meadow Lake Solar Park LLC.

Description: Request for Authorization to Undertake Affiliate Sales of Northern Indiana Public Service Company LLC, et al.

Filed Date: 11/19/21.

Accession Number: 20211119–5233.

Comment Date: 5 p.m. ET 12/10/21.

Docket Numbers: ER22–449–000.

Applicants: Northern Indiana Public Service Company LLC, Dunn's Bridge I Solar Generation LLC, Dunns Bridge Solar Center, LLC.

Description: Request for Authorization to Undertake Affiliate Sales of Dunns Bridge Solar Center, LLC, et al.

Filed Date: 11/19/21.

Accession Number: 20211119–5239.

Comment Date: 5 p.m. ET 12/10/21.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH22–2–000.

Applicants: BlackRock, Inc.

Description: BlackRock, Inc. submits FERC–65A Notice of Change in Fact to Waiver Notification.

Filed Date: 11/19/21.

Accession Number: 20211119–5188.

Comment Date: 5 p.m. ET 12/10/21.

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: November 19, 2021.

Kimberly D. Bose,

Secretary.

[FR Doc. 2021–25848 Filed 11–24–21; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2020–0693; FRL–9306–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Pesticides Data Call-In (DCI) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), Pesticides Data Call-In (DCI) Program (EPA ICR Number 2288.04, OMB Control Number 2070–0174) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through November 30, 2021. Public comments were previously requested via the **Federal Register** on March 31, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may 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: Additional comments may be submitted on or before December 27, 2021.

ADDRESSES: Submit your comments to EPA, referencing docket ID No. EPA–HQ–OPP–2020–0693, 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 docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Carolyn Siu, Mission Support Division (7101M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: (703) 347–0159; email address: *siu.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: This ICR covers the information collection activities associated with the issuance of DCIs under section 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA regulates the use of pesticides under the authority of two federal statutes: FIFRA (7.U.S.C. 136 *et seq.*) and the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346). In general, before manufacturers can sell pesticides in the United States, EPA must evaluate the pesticides thoroughly to ensure that they meet federal safety standards to protect human health and the environment. EPA grants a ''registration'' or license that permits a pesticide's distribution, sale, and use only after the company meets the scientific and regulatory requirements.

In evaluating a pesticide registration application, EPA assesses a wide variety of potential human health and environmental effects associated with the use of the product. Applicants, or potential registrants, must generate or provide the scientific data necessary to address concerns pertaining to the identity, composition, potential adverse effects, and environmental fate of each pesticide. The data allow EPA to evaluate if a pesticide has the potential to cause harmful effects on certain non-target organisms and endangered species, and on surface or ground water.

Through a scientific and public process, EPA specifies the kinds of data and information necessary to make regulatory judgments about the risks and benefits of pesticide products under FIFRA sections 3, 4 and 5, as well as the data and information needed to determine the safety of pesticide chemical residues under FFDCA section 408. The regulations in 40 CFR part 158 describe the minimum data and information EPA typically requires in an application for pesticide registration or amendment; reregistration of a pesticide product; maintenance of a pesticide registration by means of the DCI process (*e.g.,* as used in the registration review program); or to establish or maintain a tolerance or exemption from the requirements of a tolerance for a pesticide chemical residue. EPA uses the DCIs issued under this ICR to acquire the data necessary for its statutorily mandated review of a pesticide's registration, which assess if the continued registration of a pesticide causes an unreasonable adverse effect on human health or the environment.

Form Numbers: EPA Form No. 8570–4, 8574–27, 8570–28, 8570–32, 8579–34, 8570–35, 8570–36, 8570–37, 6300–3, and 6300–4.

Respondents/affected entities: Pesticide registrants.

Respondent's obligation to respond: Mandatory under FIFRA section 3(c)(2)(B).

Estimated number of respondents: 122 (total).

Frequency of response: On occasion.

Total estimated burden: 3,227,892 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $254,539,344 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in the Estimates: Due to an error in past ICRs where annual totals were misreported as 3-year totals underestimating the total approved burden hours and costs by a factor of 3. Also, due to a clerical error, a burden of 58,206 hours was approved rather than the submitted 625,669 burden hours from the currently approved ICR by OMB. The Agency has corrected this error and there is an increase of 2,649,183 hours in the total estimated respondent burden compared with the ICR currently approved by OMB. This increase is due to an increase of DCIs issued over the next three years from 663 to 802, that will require data generation thus raising the average of DCIs issued annually from 221 to 267. Other factors are the addition of high-test costs for certain DCIs, and an increase in non-government wage rates. This is a program adjustment and correction.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2021–25812 Filed 11–24–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9127–01–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Mission Support (OMS), Environmental Protection Agency (EPA).

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA), Office of Mission Support (OMS) is giving notice that it proposes to modify a system of records pursuant to the provisions of the Privacy Act of 1974. The Federal Retirement Benefits Calculator is being modified to update the categories of records in the system, collect leave data and change the name of the system to Federal Human Resource Navigator (FedHR Navigator). The purpose of the FedHR Navigator system is to integrate employees benefits and retirement information into one central database. The application allows EPA employees to access personnel and benefits related information that will be used by EPA employees to calculate their retirement benefits. All exemptions and provisions included in the previously published Federal Retirement Benefits Calculator system of record notice will transfer to the modified system of record notice for FedHR Navigator.

DATES: Persons wishing to comment on this system of records notice must do so by December 27, 2021. New routine uses for this modified system of records will be effective December 27, 2021.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2006–0014, by one of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the online instructions for submitting comments.

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: 202–566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2006–

0014. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *https://www.regulations.gov.* The *https://www.regulations.gov* website is an ''anonymous access'' system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.govindex.* Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752.

Temporary Hours During COVID–19

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 customerservice via email, phone, and webform. We encourage the public to submit comments via *https://www.regulations.gov/* or email, as there may be a delay in processing mail and faxes. Hand deliveries and couriers may be received by scheduled appointment only. For further information on EPA Docket Center services and the current status, please visit us online at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Linda Datcher, Diversity, Outreach and Employee Services (DOES) Division Director, 1301 Constitution Ave. NW, Washington, DC 20004, *datcher.linda@epa.gov,* 202–564–2101; Ryan Atkinson, Division Director, 109 TW Alexander Dr., Research Triangle Park, NC 27711, *atkinson.ryan@epa.gov,* 919–541–2425.

SUPPLEMENTARY INFORMATION: The FedHR Navigator application is being expanded to incorporate various types of leave data. We are updating the categories of records. The information in the system includes voluntary, early, and disability retirement benefits; part-time and intermittent service; deposits and re-deposits owed; Social Security/Federal Employee Retirement System (FERS) supplement benefits; Civil Service Retirement System benefits; Thrift Savings Plan benefits; survivor benefits; and severance pay.

SYSTEM NAME AND NUMBER:

Federal Human Resource Navigator, EPA–55.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

EPA Headquarters: 1200 Pennsylvania Avenue NW, Washington, DC 20460; Economic Systems Inc., 3141 Fairview Park Dr., Suite 700, Falls Church, Virginia 22042–4507.

SYSTEM MANAGER(S):

Kendal Holt, System Administrator, 1200 Pennsylvania Avenue NW, Washington, DC 20460, *holt.kendal@epa.gov*, 513–569–7796; Alice Martinson, System Administrator, 109 TW Alexander Dr., Research Triangle Park N.C. 27711, *martinson.alice@epa.gov*, 919–541–5420.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. Chapter 53, Pay Rates and Systems; 5 U.S.C. 5101 *et seq.*; 5 U.S.C. 3323; 5 U.S.C. 8301; 5 U.S.C. 5525 *et seq.*; 5 U.S.C. 6301 *et seq.*; Executive Order 9397 (Nov. 22, 1943); The American Rescue Plan Act of 2021 (Pub. L. 117–2, H.R. 1319).

PURPOSE(S) OF THE SYSTEM:

The purpose of the FedHR Navigator system is to integrate employees benefits and retirement information into one central database. The application allows EPA employees to access personnel and benefits-related information that will be used by EPA employees to calculate their retirement benefits. The information in the system includes voluntary, early, and disability retirement benefits; part-time and intermittent service; deposits and re-deposits owed; Social Security/Federal Employee Retirement System (FERS) supplement benefits; Civil Service Retirement System benefits; Thrift Savings Plan benefits; survivor benefits; and severance pay.

CATEGORIES OF INDIVIDUALS COVERED BY SYSTEM:

Current and former employees of the Environmental Protection Agency (EPA). Because FedHR Navigator contains records related to benefits, individuals including an employee's spouse, former spouse, dependents, parents, or other family members are also covered by the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Full name (last, first, middle), Social Security Number, Date of Birth, Home Address, Work Address, Service Computation Date, Number of hours worked, Citizenship, Telephone Numbers, Email Addresses, Salary History, Position Titles, Series, Grade, Life and Health Insurance information, Military Service, Financial Institution Account and Routing Numbers for direct deposit, Marriage Certificate, Date of Marriage, Death Certificate/Benefits, Date of Death, Birth Certificate, Beneficiaries, Worker's Comp Claim Number, Signature of Witness, TSP Account Number, Estate/Trust/Tax ID, Financial Institution (Name, Address, Phone, Email), Medical Diagnosis, Healthcare Provider, Medical Prognosis, Divorce Decree, Custody Agreement, Date of Marriage, Date of Death, Social Security Statements and Medicare CMS–L564.

RECORD SOURCE CATEGORIES: INFORMATION IN THIS SYSTEM OF RECORDS IS OBTAINED FROM:

1. Department of Interior: Federal Personnel Processing System (FPPS).

2. Oracle Business Intelligence Enterprise Edition (OBIEE).

3. The employee and family members about whom the record is maintained.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses below are both related to and compatible with the original purpose for which the information was collected.

1. To the Department of Treasury to issue checks, make payments, make electronic funds transfers, and issue U.S. Savings Bonds.

2. To the Department of Agriculture National Finance Center to credit Thrift Savings Plan deductions and loan payments to employee accounts.

3. To the Department of Labor in connection with a claim filed by an employee for compensation due to a job connected injury or illness.

4. To the Internal Revenue Service; Social Security Administration; and State and local tax authorities in connection with the withholding of employment taxes.

5. To State Unemployment Offices in connection with a claim filed by former employees for unemployment benefits.

6. To the Office of Personnel Management and to Health Benefit carriers in connection with enrollment and payroll deductions.

7. To the Office of Personnel Management in connection with employee retirement, thrift savings plan, flexible spending account, military service and life insurance deductions.

8. To the Combined Federal Campaign in connection with payroll deductions for charitable contributions.

9. To the Office of Management and Budget and Department of the Treasury to provide required reports on financial management responsibilities.

10. To the Internal Revenue Service in connection with withholdings for tax levies.

11. To the Office of Personnel Management in connection with employee leave enrollment and leave deductions.

The following general routine uses apply to this system (73 FR 2245):

B. Disclosure Incident to Requesting Information: Information may be disclosed to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purpose of the request, and to identify the type of information requested,) when necessary to obtain information relevant to an agency decision concerning retention of an employee or other personnel action (other than hiring,) retention of a security clearance, the letting of a contract, or the issuance or retention of a grant, or other benefit.

C. Disclosure to Requesting Agency: Disclosure may be made to a Federal, State, local, foreign, or tribal or other public authority of the fact that this system of records contains information relevant to the retention of an employee, the retention of a security clearance, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for the entire record if it so chooses. No disclosure will be made unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another Federal agency for criminal, civil, administrative, personnel, or regulatory action.

D. Disclosure to Office of Management and Budget: Information may be disclosed to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

G. Disclosure to the National Archives: Information may be disclosed to the National Archives and Records Administration in records management inspections.

H. Disclosure to Contractors, Grantees, and Others: Information may be disclosed to contractors, grantees, consultants, or volunteers performing or working on a contract, service, grant, cooperative agreement, job, or other activity for the Agency and who have a need to have access to the information in the performance of their duties or activities for the Agency. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

I. Disclosures for Administrative Claims, Complaints and Appeals: Information from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other person properly engaged in investigation or settlement of an administrative grievance, complaint, claim, or appeal filed by an employee, but only to the extent that the information is relevant and necessary to the proceeding. Agencies that may obtain information under this routine use include, but are not limited to, the Office of Personnel Management, Office of Special Counsel, Merit Systems Protection Board, Federal Labor Relations Authority, Equal Employment Opportunity Commission, and Office of Government Ethics.

J. Disclosure to the Office of Personnel Management: Information from this system of records may be disclosed to the Office of Personnel Management pursuant to that agency's responsibility for evaluation and oversight of Federal personnel management.

K. Disclosure in Connection with Litigation: Information from this system of records may be disclosed in connection with litigation or settlement discussions regarding claims by or against the Agency, including public filing with a court, to the extent that disclosure of the information is relevant and necessary to the litigation or discussions and except where court orders are otherwise required under section (b)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(b)(11).

The two routine uses below (L and M) are required by OMB Memorandum M–17–12.

L. Disclosure to Persons or Entities in Response to an Actual or Suspected Breach of Personally Identifiable Information: To appropriate agencies, entities, and persons when (1) the Agency suspects or has confirmed that there has been a breach of the system of records, (2) the Agency has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, the Agency (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Agency's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

M. Disclosure to Assist Another Agency in Its Efforts to Respond to a Breach of Personally Identifiable Information: To another Federal agency or Federal entity, when the Agency determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in electronic media at Economic Systems Inc., 3141 Fairview Park Dr., Suite 700, Falls Church, Virginia 22042–4507.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Personnel information will be retrieved by employee name, email address, employee ID number, or date of birth.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The retention of data in the system will be in accordance with any applicable EPA Records Schedule, as approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personnel sensitive data in FedHR Navigator are commensurate with those required for an information system rated moderate for confidentiality, integrity, and availability, as prescribed in NIST Special Publication, 800–53, ''Security and Privacy Controls for Information Systems and Organizations,'' Revision 5.

1. Administrative Safeguards: HR Specialists will be the only authorized personnel with access to PII data and must ensure they receive IT Security Training to use the system.

2. Technical Safeguards: Electronic records are maintained in a secure password-protected computer system and are accessible only by authorized personnel. Individual users will gain access to the system using a combination of two-factor authentication using PIV/CAC card or user ID and password.

3. Physical Safeguards: Network servers are in a locked room with physical access limited to only authorized personnel such as IT personnel.

RECORD ACCESS PROCEDURES:

Individuals requesting access will be required to provide adequate identification, such as a driver's license, employee identification badge, or other identifying document. Requests must meet the requirements of EPA regulations that implement the Privacy Act of 1974, at 40 CFR part 16.

CONTESTING RECORDS PROCEDURES:

Individuals wishing to contest or amend information maintained in this system should specify the information being contested, the reason for contesting it, and the proposed amendment to such information. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURE:

Individuals who wish to be informed whether a Privacy Act system of records maintained by EPA contains any record pertaining to them, should make a written request to the EPA, Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, *privacy@epa.gov*.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

Notice of a New System of Records [**Federal Register** Vol 71, No. 40 (March 1, 2006)].

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2021–25783 Filed 11–24–21; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9059–5]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed November 15, 2021 10 a.m. EST Through November 19, 2021 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search.*

EIS No. 20210177, Draft, FERC, FL, Big Bend Project, Comment Period Ends: 01/10/2022, Contact: Office of External Affairs 866–208–3372.

Dated: November 19, 2021.

Cindy S. Barger,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2021–25776 Filed 11–24–21; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[FR ID 59370]

Federal Advisory Committee Act; Communications Security, Reliability, and Interoperability Council

AGENCY: Federal Communications Commission.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the Federal Communications Commission's (Commission) Communications Security, Reliability, and Interoperability Council (CSRIC) VIII will hold its second meeting on December 15, 2021 at 1:00 p.m. EST.

DATES: December 15, 2021.

ADDRESSES: The Meeting will be held via conference call and available to the public via WebEx at *http://www.fcc.gov/live.*

FOR FURTHER INFORMATION CONTACT: Suzon Cameron, Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–1916 or email: *suzon.cameron@fcc.gov,* or Kurian Jacob, Deputy Designated Federal Officer, Federal Communications Commission, Public Safety and Homeland Security Bureau, (202) 418–2040 or email: *kurian.jacob@fcc.gov.*

SUPPLEMENTARY INFORMATION: The meeting on December 15, 2021, at 1:00 p.m. EST, will be held electronically only and may be viewed live, by the public, at *http://www.fcc.gov/live.* Any questions that arise during the meeting should be sent to *CSRIC@fcc.gov* and will be answered at a later date. The meeting is being held in a wholly electronic format in light of travel and gathering restrictions related to COVID–19 in place in Washington, DC, and the larger U.S., which affect members of CSRIC and the Commission.

The CSRIC is a Federal Advisory Committee that will provide recommendations to the Commission to improve the security, reliability, and interoperability of communications systems. On June 30, 2021, the Commission, pursuant to the Federal Advisory Committee Act, renewed the charter for CSRIC VII for a period of two years through June 29, 2023. The meeting on December 15, 2021, will be the second meeting of CSRIC VIII under the current charter.

The Commission will provide audio and/or video coverage of the meeting over the internet from the FCC's web page at *http://www.fcc.gov/live.* The public may submit written comments before the meeting to Suzon Cameron, CSRIC VIII Designated Federal Officer, by email to *CSRIC@fcc.gov.*

Open captioning will be provided for this event. Other reasonable accommodations for people with disabilities are available upon request. Requests for such accommodations should be submitted via email to *fcc504@fcc.gov* or by calling the

Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty). Such requests should include a detailed description of the accommodation needed. In addition, please include a way the Commission can contact you if it needs more information. Please allow at least five days' advance notice; last-minute requests will be accepted but may be impossible to fill.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–25824 Filed 11–24–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0748 and OMB 3060–0692; FR ID 58110]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before January 25, 2022. If you anticipate that you will be submitting comments but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0748.

Title: Section 64.104, 64.1509, 64.1510 Pay-Per-Call and Other Information Services.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,125 respondents; 5,175 responses.

Estimated Time per Response: 2 to 260 hours.

Frequency of Response: Annual and on occasion reporting and recordkeeping requirements; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority(s) for the information collection is found at 47 U.S.C. 228(c)(7)–(10); Public Law 192–556, 106 stat. 4181 (1992), codified at 47 U.S.C. 228 (The Telephone Disclosure and Dispute Resolution Act of 1992).

Total Annual Burden: 47,750 hours.

Total Annual Cost: None.

Needs and Uses: 47 CFR 64.1504 of the Commission's rules incorporates the requirements of Sections 228(c)(7)–(10) of the Communications Act restricting the manner in which toll-free numbers may be used to charge telephone subscribers for information services. Common carriers may not charge a calling party for information conveyed on a toll-free number call, unless the calling party: (1) Has executed a written agreement that specifies the material terms and conditions under which the information is provided, or (2) pays for the information by means of a prepaid account, credit, debit, charge, or calling card and the information service provider gives the calling party an introductory message disclosing the cost and other terms and conditions for the service. The disclosure requirements are intended to ensure that consumers know when charges will be levied for calls to toll-free numbers and are able to obtain information necessary to make informed choices about whether to purchase toll-free information services. 47 CFR 64.1509 of the Commission rules incorporates the requirements of 47 U.S.C. (c)(2) and 228 (d)(2)–(3) of the Communications Act. Common carriers that assign telephone numbers to pay-per-call services must disclose to all interested parties, upon request, a list of all assigned pay-per-call numbers. For each assigned number, carriers must also make available: (1) A description of the pay-per-call services; (2) the total cost per minute or other fees associated with the service; and (3) the service provider's name, business address, and telephone number. In addition, carriers handling pay-per-call services must establish a toll-free number that consumers may call to receive information about pay-per-call services. Finally, the Commission requires carriers to provide statements of pay-per-call rights and responsibilities to new telephone subscribers at the time service is established and, although not required by statute, to all subscribers annually.

Under 47 CFR 64.1510 of the Commission's rules, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that: (1) The charges are for non-communication services; (2) local and long distance telephone services may not be disconnected for failure to pay per-call charges; (3) pay-per-call (900 number) blocking is available upon request; and (4) access to pay-per-call services may be involuntarily blocked for failure to pay per-call charges. In addition, each call billed must show the type of services, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure requirements are intended to ensure that telephone subscribers billed for pay-per-call or other information services can understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

OMB Control Number: 3060–0692.

Type of Review: Extension of a currently approved collection.

Title: Sections 76.802 and 76.804, Home Wiring Provisions; Section 76.613, Interference from a Multi-channel Video Programming Distributor (MVPD).

Form Number: N/A.

Respondents: Individuals or households; Business or other for-profit entities.

Number of Respondents and Responses: 22,000 respondents and 253,010.

Estimated Time per Response: 0.083–2 hours.

Frequency of Response: On occasion reporting requirement; Recordkeeping requirement; Annual reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection is contained in Sections 1, 4, 224, 251, 303, 601, 623, 624 and 632 of the Communications Act of 1934, as amended.

Total Annual Burden: 36,114 hours.

Total Annual Cost: No cost.

Needs and Uses: In the Cable Television Consumer Protection and Competition Act of 1992, Congress directed the FCC to adopt rules governing the disposition of home wiring owned by a cable operator when a subscriber terminates service. The rules at 76.800 *et seq.,* implement that directive. The intention of the rules is to clarify the status and provide for the disposition of existing cable operator-owned wiring in single family homes and multiple dwelling units upon the termination of a contract for cable service by the home owner or MDU owner. Section 76.613(d) requires that when Multichannel Video Programming Distributors (MVPDs) cause harmful signal interference MVPDs may be required by the District Director and/or Resident Agent to prepare and submit a report regarding the cause(s) of the interference, corrective measures planned or taken, and the efficacy of the remedial measures.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–25822 Filed 11–24–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–0292, OMB 3060–0743, 3060–1151; FR ID 59383]

Information Collections Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees. The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before January 25, 2022. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicole Ongele, FCC, via email *PRA@fcc.gov* and to *nicole.ongele@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Nicole Ongele, (202) 418–2991.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0292.

Title: Part 69—Access Charges (Section 69.605, Reporting and Distribution of Pool Access Revenues).

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 732 respondents; 8,773 responses.

Estimated Time per Response: 0.75 hours–1 hour.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained 47 U.S.C. 154, 201, 202, 203, 205, 218 and 403 of the Communications Act of 1934, as amended.

Frequency of Response: Annual and monthly reporting requirements and third party disclosure requirement.

Total Annual Burden: 6,580 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: Section 69.605 requires that access revenues and cost data shall be reported by participants in association tariffs to the association for computation of monthly pool revenues distributions. The association shall submit a report on or before February 1 of each calendar year describing the association's cost study review process for the preceding calendar year as well as the results of that process. For any revisions to the cost study results made or recommended by the association that would change the respective carrier's calculated annual common line or traffic sensitive revenue requirement by ten percent or more, the report shall include the following information:

(1) Name of the carrier;

(2) A detailed description of the revisions;

(3) The amount of the revisions;

(4) The impact of the revisions on the carrier's calculated common line and traffic sensitive revenue requirements; and

(5) The carrier's total annual common line and traffic sensitive revenue requirement.

The information is used by the Commission to compute charges in tariffs for access service (or origination and termination) and to compute revenue pool distributions. Neither

process could be implemented without this information.

OMB Control Number: 3060–0743.

Title: Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, CC Docket No. 96–128.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 4,471 respondents; 10,071 responses.

Estimated Time per Response: 0.50–100 hours.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority is contained in 47 U.S.C. 276 of the Telecommunications Act of 1996, as amended.

Frequency of Response: On occasion, quarterly and monthly reporting requirements, recordkeeping requirement and third-party disclosure requirement.

Total Annual Burden: 118,137 hours.

Total Annual Cost: No cost.

Privacy Act Impact Assessment: No impact(s).

Nature of Extent of Confidentiality: The Commission is not requesting that the respondents submit confidential information to the FCC. Respondents may, however, request confidential treatment for information they believe to be confidential under 47 CFR 0.459 of the Commission's rules.

Needs and Uses: This collection will be submitted as an extension of a currently approved collection to the Office of Management and Budget (OMB) in order to obtain the full three-year clearance. The Commission promulgated rules and reporting requirements implementing section 276 of the Telecommunications Act of 1996. Among other things, the rules: (1) Establish fair compensation for every completed intrastate and interstate payphone calls; (2) discontinue intrastate and interstate access charge payphone service elements and payments, and intrastate and interstate payphone subsidies from basic exchange services; and (3) adopt guidelines for use by the states in establishing public interest payphones to be located where there would otherwise not be a payphone. The information collected is provided to third parties and to ensure that interexchange carriers, payphone service providers (''PSP'') LECs, and the states comply with their obligations under the 1996 Act.

OMB Control Number: 3060–1151.

Title: Sections 1.1411, 1.1412, and 1.1415 Pole Attachment Access Requirements.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,313 respondents; 163,866 responses.

Estimated Time per Response: 0.50–6 hours.

Frequency of Response: On-occasion reporting requirement, recordkeeping requirement, and third-party disclosure requirement.

Obligation to Respond: Mandatory. Statutory authority for this information collection is contained in 47 U.S.C. 224.

Total Annual Burden: 112,534 hours.

Total Annual Cost: $6,750,000.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: No questions of a confidential nature are asked.

Needs and Uses: The Commission is requesting the Office of Management and Budget (OMB) approval for this revised information collection. In Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment, WC Docket No. 17–84, WT Docket No. 17–70, Third Report and Order and Declaratory Ruling, FCC 18–111 (2018) (Order), the Commission adopted rules that implement the pole attachment requirements in section 224 of the Communications Act of 1934, as amended. The Order substantially revised 47 CFR 1.1411 and 1.1412. It also added new 47 CFR 1.1415.

Section 1.1411. In the Order, the Commission adopted a one-touch, make-ready (OTMR) process for when a telecommunications carrier or cable television system (new attacher) elects to do the work itself to prepare a utility pole for a simple wireline attachment in the communications space. As part of the OTMR process, the new attacher typically first conducts a survey of the affected poles, giving the utility and existing attachers a chance to be present for the survey. New attachers must elect the OTMR process in their pole attachment application and must demonstrate to the utility that the planned work qualifies for OTMR. The utility then must determine whether the pole attachment application is complete and whether the work qualifies for OTMR, and then must either grant or deny pole access and explain its decision in writing. The utility also can object to the new attacher's determination that the work qualifies for OTMR, and that objection is final and determinative so long as it is specific and in writing, includes all relevant evidence and information supporting its decision, made in good faith, and explains how such evidence and information relates to a determination that the make-ready is not simple. If the new attacher's OTMR application is approved, then it can proceed with OTMR work by giving advance notice to the utility and existing attachers and allowing them an opportunity to be present when OTMR work is being done. New attachers must provide immediate notice to affected utilities and existing attachers if outages or equipment damage is caused by their OTMR work. Finally, new attachers must provide notice to affected utilities and existing attachers after OTMR work is completed, allowing them to inspect the work and request remediation, if necessary. The Commission also adopted changes to its existing pole attachment timeline, which still will be used for complex work, work above the communications space on a utility pole, and in situations where new attachers do not want to elect OTMR. The Commission largely kept the existing pole attachment timeline intact, except for the following changes: (1) Revising the definition of a complete pole attachment application and establishing a timeline for a utility's determination whether an application is complete; (2) requiring utilities to provide at least three business days' advance notice of any surveys to attachers; (3) establishing a 30-day deadline for completion of all make-ready work in the communications space; (4) eliminating the 15-day utility make-ready period for communications space attachments; (5) streamlining the utility's notice requirements; (6) enhancing the new attacher's self-help remedy by making the remedy available for surveys and make-ready work for all attachments anywhere on the pole in the event that the utility or the existing attachers fail to meet the required deadlines; (7) providing notice requirements when new attachers elect self-help, such notices to be given when new attachers perform self-help surveys and make-ready work, when outages or equipment damage results from self-help work, and upon completion of self-help work to allow for inspection; (8) allowing utilities to meet the survey requirement by electing to use surveys previously prepared on the affected poles by new attachers; and (9) requiring utilities to provide detailed make-ready cost estimates and final invoices on a pole-by-pole basis if requested by new

attachers. Both utilities and existing attachers can deviate from the existing pole attachment make-ready timeline for reasons of safety or service interruption by giving written notice to the affected parties that includes a detailed explanation of the need for the deviation and a new completion date. The deviation shall be for a period no longer than necessary to complete make-ready on the affected poles, and the deviating party shall resume make-ready without discrimination when it returns to routine operations.

Section 1.1412. The Commission required utilities to make available, and keep up-to-date, a reasonably sufficient list of contractors that they authorize to perform surveys and make-ready work that are complex or involve self-help work above the communications space of a utility pole. Attachers can request to add to the list any contractor that meets certain minimum qualifications, subject to the utility's ability to reasonably object. For simple work, a utility may, but is not required, to keep an up-to-date, reasonably sufficient list of contractors that they authorize to perform surveys and simple make-ready work. For any utility-supplied contractor list, the utility must ensure that the contractors meet certain minimum requirements. Attachers can request to add to the list any contractor that meets the minimum qualifications, subject to the utility's ability to reasonably object. If the utility does not provide a list of approved contractors for surveys or simple make-ready, or no utility-approved contractor is available within a reasonable time period, then the new attacher may choose its own qualified contractor that meets the minimum requirements, subject to notice and the utility's ability to disqualify the chosen contractor for reasonable safety or reliability concerns.

Section 1.1415. The Commission codified its policy that utilities may not require an attacher to obtain prior approval for overlashing on an attacher's existing wires or for third-party overlashing of an existing attachment when such overlashing is conducted with the permission of the existing attacher. In addition, the Commission adopted a rule that allows utilities to establish reasonable advance notice requirements for overlashing (up to 15 days' advance notice). If a utility requires advance notice for overlashing, then the utility must provide existing attachers with advance written notice of the notice requirement or include the notice requirement in the attachment agreement with the existing attacher. If, after receiving advance notice, the utility determines that an overlash would create a capacity, safety, reliability, or engineering issue, then it must provide specific documentation of the issue to the party seeking to overlash within the 15-day advance notice period, and the party seeking to overlash must address any identified issues before continuing with the overlash either by modifying its proposal or by explaining why, in the party's view, a modification is unnecessary. An overlashing party must notify the affected utility within 15 days of completion of the overlash and provide the affected utility at least 90 days to inspect the overlash. If damage or code violations are discovered by the utility during the inspection, then it must notify the overlashing party, provide adequate documentation of the problem, and elect to either fix the problem itself at the overlashing party's expense or require remediation by the overlashing party.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2021–25820 Filed 11–24–21; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

TIME AND DATE: Thursday, December 2, 2021 following the conclusion of the audit hearing.

PLACE: Virtual meeting. Note: Because of the COVID–19 pandemic, we will conduct the open meeting virtually. If you would like to access the meeting, see the instructions below.

STATUS: This meeting will be open to the public. To access the virtual meeting, go to the Commission's website *www.fec.gov* and click on the banner to be taken to the meeting page.

MATTERS TO BE CONSIDERED:

Draft Advisory Opinion 2021–11: DSCC and DCCC

Management and Administrative Matters

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2021–25865 Filed 11–23–21; 11:15 am]

BILLING CODE 6715–01–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 December 13, 2021.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *The Tom E. Marantz Exempt Trust and Tom E. Marantz, as trustee, Gregory Marantz, as trustee of the Gregory R. Marantz Spring Bancorp Irrevocable Trust, and Melissa Knoedler, as trustee of the Melissa L. Knoedler Spring Bancorp Irrevocable Trust, all of Springfield, Illinois; the Marla J. Marantz Exempt Trust and Marla J. Marantz, as trustee, both of Springfield, Missouri; and Jennifer Marantz, as trustee of the Jennifer A. Marantz Spring Bancorp Irrevocable Trust, both of St. Louis, Missouri;* to join the Marantz family control group, a group acting in concert, to acquire voting shares of Spring Bancorp, Inc., and thereby indirectly acquire voting shares of Bank of Springfield, both of Springfield, Illinois.

B. Federal Reserve Bank of Kansas City (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. *The Nancy A. Kvols Irrevocable Bank Trust, Ronald K. Kvols, trustee, and the Ronald K. Kvols Irrevocable Bank Trust, Nancy Kvols, trustee, all of Wisner, Nebraska;* to become members of the Kvols/Ott/Cheney Family Group, a group acting in concert, to acquire voting shares of Citizens National Corporation, and thereby indirectly acquire voting shares of Citizens State Bank, both of Wisner, Nebraska.

Board of Governors of the Federal Reserve System, November 22, 2021.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2021–25814 Filed 11–24–21; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0048; Docket No. 2021–0053; Sequence No. 12]

Information Collection; Certain Federal Acquisition Regulation Part 15 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision concerning certain Federal Acquisition Regulation (FAR) part 15 requirements.

DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through January 31, 2022. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by January 25, 2022.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0048, Certain Federal Acquisition Regulation Part 15 Requirements. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0048, Certain Federal Acquisition Regulation Part 15 Requirements.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision of the expiration date of OMB Control No. 9000–0048 and combines it with the previously approved information collections under OMB Control No. 9000–0078, with the new title ''Certain Federal Acquisition Regulation Part 15 Requirements.'' Upon approval of this consolidated information collection, OMB Control No. 9000–0078 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0048.

This clearance covers the information that offerors and contractors must submit to comply with the following FAR requirements:

1. FAR 15.407–2(e), Make-or-buy programs. When prospective contractors are required to submit proposed make-or-buy program plans for negotiated acquisitions, paragraph (e) requires the following information in their proposal:

(a) A description of each major item or work effort;

(b) Categorization of each major item or work effort as ''must make,'' ''must buy, or ''can either make or buy'';

(c) For each item or work effort categorized as ''can either make or buy,'' a proposal either to ''make'' or to ''buy'';

(d) Reasons for categorizing items and work efforts as ''must make'' or ''must buy,'' and proposing to ''make'' or to ''buy'' those categorized as ''can either make or buy'';

(e) Designation of the plant or division proposed to make each item or perform each work effort, and a statement as to whether the existing or proposed new facility is in or near a labor surplus area;

(f) Identification of proposed subcontractors, if known, and their location and size status;

(g) Any recommendations to defer make-or-buy decisions when categorization of some items or work efforts is impracticable at the time of submission; and

(h) Any other information the contracting officer requires in order to evaluate the program.

2. FAR 52.215–1(c)(2)(iv)—Authorized Negotiators. This provision requires firms offering supplies or services to the Government under negotiated solicitations to provide the names, titles, and telephone and facsimile numbers (and electronic addresses if available) of authorized negotiators to assure that discussions are held with authorized individuals.

3. FAR 52.215–9, Changes or Additions to Make-or-Buy Program. This clause requires the contractor to submit, in writing, for the contracting officer's advance approval a notification and justification of any proposed change in the make-or-buy program incorporated in the contract.

4. FAR 52.215–14—Integrity of Unit Prices. This clause requires offerors and contractors under negotiated solicitations and contracts to identify those supplies which they will not

manufacture or to which they will not contribute significant value, if requested by the contracting officer or when contracting without adequate price competition.

5. FAR 52.215–19—Notification of Ownership Changes. This clause requires contractors to notify the administrative contracting officer when the contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records.

6. FAR 52.215–22, Limitations on Pass-Through Charges—Identification of Subcontract Effort. This provision requires offerors submitting a proposal for a contract, task order, or delivery order to provide the following information with their proposal:

(a) The total cost of the work to be performed by the offeror, and the total cost of the work to be performed by each subcontractor;

(b) If the offeror intends to subcontract more than 70 percent of the total cost of work to be performed, the amount of the offeror's indirect costs and profit/fee applicable to the work to be performed by the subcontractor(s), and a description of the value added by the offeror as related to the work to be performed by the subcontractor(s); and

(c) If any subcontractor proposed intends to subcontract to a lower-tier subcontractor more than 70 percent of the total cost of work to be performed, the amount of the subcontractor's indirect costs and profit/fee applicable to the work to be performed by the lower-tier subcontractor(s) and a description of the added value provided by the subcontractor as related to the work to be performed by the lower-tier subcontractor(s).

7. FAR 52.215–23, Limitations on Pass-Through Charges. This clause requires contractors to provide a description of the value added by the contractor or subcontractor, as applicable, as related to the subcontract effort if the effort changes from the amount identified in the proposal such that it exceeds 70 percent of the total cost of work to be performed.

C. Annual Burden

Respondents: 715,477.

Total Annual Responses: 744,638.

Total Burden Hours: 80,946 (80,941 reporting hours + 5 recordkeeping hours).

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0048, Certain Federal Acquisition Regulation Part 15 Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2021–25794 Filed 11–24–21; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0189; Docket No. 2021–0053; Sequence No. 13]

Information Collection; Certain Federal Acquisition Regulation Part 4 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, and the Office of Management and Budget (OMB) regulations, DoD, GSA, and NASA invite the public to comment on a revision concerning certain Federal Acquisition Regulation (FAR) part 4 requirements.

DoD, GSA, and NASA invite comments on: Whether the proposed collection of information is necessary for the proper performance of the functions of Federal Government acquisitions, including whether the information will have practical utility; the accuracy of the estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. OMB has approved this information collection for use through January 31, 2022. DoD, GSA, and NASA propose that OMB extend its approval for use for three additional years beyond the current expiration date.

DATES: DoD, GSA, and NASA will consider all comments received by January 25, 2022.

ADDRESSES: DoD, GSA, and NASA invite interested persons to submit comments on this collection through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

Instructions: All items submitted must cite OMB Control No. 9000–0189, Certain Federal Acquisition Regulation Part 4 Requirements. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *www.regulations.gov,* approximately two-to-three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0189, Certain Federal Acquisition Regulation Part 4 Requirements.

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision of the expiration date of OMB Control No. 9000–0189 and combines it with the previously approved information collections under OMB Control Nos. 9000–0097 and 9000–0197, with the new title ''Certain Federal Acquisition Regulation Part 4 Requirements''. Upon approval of this consolidated information collection, OMB Control Nos. 9000–0097 and 9000–0197 will be discontinued. The burden requirements previously approved under the discontinued numbers will be covered under OMB Control No. 9000–0189.

This clearance covers the information that offerors and contractors must submit to comply with the following FAR requirements:

1. FAR 52.204–3, and 52.212–3(l)—Taxpayer Identification Number Information. When there is not a requirement to be registered in the System for Award Management (SAM), offerors are required to submit their Taxpayer Identification Number information by the provision at FAR 52.204–3, Taxpayer Identification, for other than commercial acquisitions, and by paragraph (l) of the provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, for commercial acquisitions.

2. FAR 52.204–6, 52.212–1(j), and 52.204–12—Unique Entity Identifier. When there is not a requirement to be registered in SAM, offerors are required to submit their unique entity identifier by the provision at FAR 52.204–6, Unique Entity Identifier, for other than commercial acquisitions, and by paragraph (j) of the provision at FAR 52.212–1, Instructions to Offerors—Commercial Products and Commercial Services, for commercial acquisitions. The clause at FAR 52.204–12, Unique Entity Identifier Maintenance, requires contractors to maintain their unique entity identifier with the organization designated in SAM to issue such identifiers, for the life of the contract. The clause also requires contractors to notify contracting officers of any changes to the unique entity identifier.

3. FAR 52.204–7, 52.204–13, and 52.212–3(b)—SAM Registration and Maintenance. The provision at FAR 52.204–7, System for Award Management, requires offerors to be registered in SAM when submitting an offer or quotation, except in certain limited cases, and to continue to be registered through final payment of any award that results from such offer. The clause at FAR 52.204–13, System for Award Management Maintenance, requires contractors to make sure their SAM data is kept current, accurate, and complete throughout contract performance and final payment; this maintenance is, at a minimum, to be done through an annual review and update of the contractor's SAM registration. Paragraph (b) of the provision at FAR 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, contains the equivalent of FAR 52.204–7 and 52.204–13, for commercial acquisitions.

4. FAR 52.204–14, and 52.204–15—Service Contract Reporting Requirements. The clauses at FAR 52.204–14, Service Contract Reporting Requirements, and FAR 52.204–15, Service Contract Reporting Requirements for Indefinite-Delivery Contracts, require contractors to report the following information in SAM annually:

(a) Contract number and, as applicable, order number.

(b) The total dollar amount invoiced for services performed during the previous Government fiscal year under each contract.

(c) The number of contractor direct labor hours expended on the services performed during the previous Government fiscal year.

(d) Data reported by each first-tier subcontractor providing services under the contract if required to do so.

5. FAR 52.204–20, Predecessor of Offeror. This provision requires offerors to identify if the offeror is, within the last three years, a successor to another entity that received a Federal Government award and, if so, to provide the Commercial and Government Entity code and legal name of the predecessor.

6. FAR 52.204–23, Prohibition on Contracting for Hardware, Software, and Services Developed or Provided by Kaspersky Lab and Other Covered Entities. This clause requires contractors to report, in writing, to the contracting officer or, in the case of DoD, to the website at *https://dibnet.dod.mil,* any instance when the contractor identifies a covered article provided to the Government during contract performance, or if contractors are notified of such an event by subcontractors at any tier or any other source.

C. Annual Burden

Respondents: 301,907.

Total Annual Responses: 612,575.

Total Burden Hours: 378,847.

Obtaining Copies: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 9000–0189, Certain Federal Acquisition Regulation Part 4 Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2021–25795 Filed 11–24–21; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0044; Docket No. 2021–0001; Sequence No. 14]

Information Collection; Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453

AGENCY: Public Buildings Service, General Services Administration (GSA).

ACTION: Notice of request for comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.

DATES: *Submit comments on or before:* January 25, 2022.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to *http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by searching the OMB control number. Select the link ''Submit a Comment'' that corresponds with ''Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453,'' on your attached document.

Instructions: Please submit comments only and cite Information Collection 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, in all correspondence related to this collection. Comments received generally will be posted without change to *regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *regulations.gov,* approximately two-to-three business days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Handsfield, Public Buildings Service, at telephone 202–208–2444, or via email to *karen.handsfield@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The general public uses Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, to request the use of public space in Federal buildings and on Federal grounds for cultural, educational, or recreational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany this request.

B. Annual Reporting Burden

Respondents: 8,000.
Responses per Respondent: 1.
Hours per Response: 0.05.
Total Burden Hours: 400.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the GSA Regulatory Secretariat Division, by calling 202–501–4755 or emailing *GSARegSec@gsa.gov.* Please cite OMB Control No. 3090–0044, Application/Permit for Use of Space in Public Buildings and Grounds, GSA Form 3453, in all correspondence.

Beth Anne Killoran,

Deputy Chief Information Officer.

[FR Doc. 2021–25796 Filed 11–24–21; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the World Health Organization (WHO)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces the award of approximately $375,000 with an expected total funding of $1,875,000 over a five-year period to the World Health Organization (WHO) to support activities that promote the development of data systems to monitor injuries and violence; and to implement and evaluate evidence-based strategies to prevent and control injuries and violence.

DATES: The period for this award will be September 1, 2022, through August 31, 2027.

FOR FURTHER INFORMATION CONTACT: Ericka Lowe Marvin, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, MS S106–10, Atlanta, GA 30341, Telephone: 800–232–6348, email: *ERL2@cdc.gov.*

SUPPLEMENTARY INFORMATION: Both injuries and violence are leading causes of death around the world. These deaths occur due to road traffic crashes, falls, drownings, other unintentional injuries, and from acts of interpersonal violence. However, this represents a fraction of the problem, as tens of millions more suffer injuries that lead to hospitalization or other medical care. Many of those who survive injuries are left with temporary or permanent disabilities. Additionally, victims of physical, sexual, and emotional abuse suffer from a range of chronic conditions, diseases, and mental health problems throughout their lifetimes. The objective of this award is to continue to raise awareness of these issues; measure the scope of the problem; and implement evidence-based solutions that will be relevant for violence and injury prevention efforts globally, including the United States.

WHO is in a unique position to conduct this work, as it is responsible for providing leadership on global health matters, shaping the health research agenda, articulating evidence-based policy options, providing technical support to countries, and monitoring and assessing health trends. WHO is the directing and coordinating authority for health within the United Nations. As a UN agency, it has a relationship with many national governments, which allows access to vital records and other governmental surveillance systems. Additionally, WHO has access to government staff who would conduct training related to violence and injury prevention nationally. The WHO has a mandate under a variety of UN General Assembly and World Health Assembly Resolutions to coordinate the efforts of UN agencies to work together to prevent injuries and violence in developing countries.

Summary of the Award

Recipient: World Health Organization (WHO).

Purpose of the Award: The purpose of this award is to support activities that promote the development of data systems to monitor injuries and violence; and to implement and evaluate evidence-based, comprehensive strategies to prevent and control injuries and violence.

Amount of Award: $375,000 in Federal Fiscal Year (FFY) 2022 funds, and a total of $1,875,000 for a five-year period of performance, subject to availability of funds.

Authority: This program is authorized under sections 301(a) and 391(a) of the Public Health Service Act [42 U.S.C. 241(a) and 280b (a)], as amended, and Section 392(b)(2) of the Public Health Service Act [42 U.S.C. 280b–1 (b) (2).

Period of Performance: September 1, 2022 through August 31, 2027.

Dated: November 19, 2021.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–25765 Filed 11–24–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Award of a Single-Source Cooperative Agreement To Fund the United Nations Children's Fund (UNICEF)

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS) announces the award of $750,000 with an expected total funding of approximately $3,750,000 in funding to the United Nations Children's Fund (UNICEF) to plan and conduct assessments of micronutrient deficiencies burden and to design and implement systems to monitor and evaluate micronutrient and nutrition interventions in select countries, including Nepal, Ghana, Tanzania, Uganda, Niger, and Guatemala.

DATES: The period for this award will be January 1, 2022 through December 31, 2026.

FOR FURTHER INFORMATION CONTACT: Maria Elena Jefferds, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, 4770 Buford Highway, MS S107–5, Atlanta, GA 30341, Telephone: 770.488.5862, email: *mnj5@cdc.gov.*

SUPPLEMENTARY INFORMATION: The single-source award will focus on assessments of micronutrient status and the design and implementation of systems to monitor and evaluate micronutrient interventions, such as vitamin and mineral supplementation and fortification programs, and other nutrition interventions, such as infant and young child feeding, dietary counseling, and growth monitoring, in select countries. Specifically, the award will focus on the development of recommendations that inform country-specific nutrition strategies. The award will build in-country capacity to implement standardized national nutrition programs and micronutrient interventions to reduce the worldwide burden of micronutrient deficiencies. Key strategies include collaborating with ministries of health (MOH) and other key partners in developing countries. This work will advance the knowledge base about micronutrient deficiencies, and has the potential to benefit other countries, including the U.S.

UNICEF has a unique position among the world's health agencies as the technical agency for maternal and child health within the United Nations, with access to all national health promotion and disease prevention programs and potential surveillance sites through its regional offices located in seven (7) regions (Central and Eastern Europe and the Commonwealth of Independent States, East Asia and the Pacific, Eastern and Southern Africa, Latin America and the Caribbean, Middle East and Northern Africa, South Asia, West and Central Africa) and in 190 country offices.

Summary of the Award

Recipient: United Nations Children's Fund (UNICEF).

Purpose of the Award: The purpose of this award is to develop recommendations that inform country-specific nutrition strategies and build in-country capacity to implement standardized national nutrition programs and micronutrient interventions to reduce the worldwide burden of micronutrient deficiencies.

Amount of Award: $750,000 in Federal Fiscal Year (FFY) 2022 funds, and a total of $3,750,000 for a five-year period of performance, subject to availability of funds.

Authority: Public Health Service Act, Title 42, Sections 307 and 301 U.S.C. 241*l* and 241(a).

Period of Performance: January 1, 2022 through December 31, 2026.

Dated: November 19, 2021.

Terrance Perry,

Chief Grants Management Officer, Centers for Disease Control and Prevention.

[FR Doc. 2021–25764 Filed 11–24–21; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10599, CMS–10433, CMS–10330 and CMS–10780]

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 January 25, 2022.

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–10599 Review Choice Demonstration for Home Health Services

CMS–10433 Continuation of Data Collection to Support QHP Certification and other Financial Management and Exchange Operations

CMS–10330 Notice of Rescission of Coverage and Disclosure Requirements for Patient Protection under the Affordable Care Act

CMS–10780 Requirements Related to Surprise Billing: Qualifying Payment Amount, Notice and Consent, and Disclosure on Patient Protections Against Balance Billing, and State Law Opt-in

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:* Revision of a currently approved collection; *Title of Information Collection:* Review Choice Demonstration for Home Health Services; *Use:* Section 402(a)(1)(J) of the Social Security Amendments of 1967 (42 U.S.C. 1395b–1(a)(1)(J)) authorizes the Secretary to ''develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by the Social Security Act (the Act).'' Pursuant to this authority, the CMS seeks to develop and implement a Medicare demonstration project, which CMS believes will help assist in developing improved procedures for the identification, investigation, and prosecution of Medicare fraud occurring among Home Health Agencies (HHA) providing services to Medicare beneficiaries.

This revised demonstration helps assist in developing improved procedures for the identification, investigation, and prosecution of potential Medicare fraud. The demonstration helps make sure that payments for home health services are appropriate through either pre-claim or postpayment review, thereby working towards the prevention and identification of potential fraud, waste, and abuse; the protection of Medicare Trust Funds from improper payments; and the reduction of Medicare appeals. CMS has implemented the demonstration in Illinois, Ohio, North Carolina, Florida, and Texas with the option to expand to other states in the Palmetto/JM jurisdiction. Under this demonstration, CMS offers choices for providers to demonstrate their compliance with CMS' home health policies. Providers in the demonstration states may participate in either 100 percent pre-claim review or 100 percent postpayment review. These providers will continue to be subject to a review method until the HHA reaches the target affirmation or claim approval rate. Once a HHA reaches the target pre-claim review affirmation or post-payment review claim approval rate, it may choose to be relieved from claim reviews, except for a spot check of their claims to ensure continued compliance. Providers who do not wish to participate in either 100 percent pre-claim or postpayment reviews have the option to furnish home health services and submit the associated claim for payment without undergoing such reviews; however, they will receive a 25 percent payment reduction on all claims submitted for home health services and may be eligible for review by the Recovery Audit Contractors.

The information required under this collection is required by Medicare contractors to determine proper payment or if there is a suspicion of fraud. Under the pre-claim review option, the HHA sends the pre-claim review request along with all required documentation to the Medicare contractor for review prior to submitting the final claim for payment. If a claim is submitted without a pre-claim review decision one file, the Medicare contractor will request the information from the HHA to determine if payment is appropriate. For the postpayment review option, the Medicare contractor will also request the information from the HHA provider who submitted the claim for payment from the Medicare program to determine if payment was appropriate. *Form Number:* CMS–10599 (OMB control number: 0938–1311); *Frequency:* Frequently, until the HHA reaches the target affirmation or claim approval threshold and then occasionally; *Affected Public:* Private Sector (Business or other for-profits and Not-for-profits); *Number of Respondents:* 3,631; *Number of Responses:* 1,467,243; *Total Annual Hours:* 744,5143. (For questions regarding this collection contact Jennifer McMullen (410)786–7635.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Continuation of Data Collection to Support QHP Certification and other Financial Management and Exchange Operations; *Use:* As directed by the rule Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers (77 FR 18310) (Exchange rule), each Exchange is responsible for the certification and offering of Qualified Health Plans (QHPs). To offer insurance through an Exchange, a health insurance issuer must have its health plans certified as QHPs by the Exchange. A QHP must meet certain necessary minimum certification standards, such as network adequacy, inclusion of Essential Community Providers (ECPs), and non-discrimination. The Exchange is responsible for ensuring that QHPs meet these minimum certification standards as described in the Exchange rule under 45 CFR 155 and 156, based on the Patient Protection and Affordable Care Act (PPACA), as well as other standards determined by the Exchange. Issuers can offer individual and small group market plans outside of the Exchanges that are not QHPs. *Form Number:* CMS–10433 (OMB control number: 0938–1187); *Frequency:* Annually; *Affected Public:* Private sector, State, Local, or Tribal Governments, Business or other for-profits; *Number of Respondents:* 2,925; *Number of Responses:* 2,925; *Total Annual Hours:* 71,660. (For questions regarding this collection, contact Nicole Levesque at (617) 565–3138).

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Notice of Rescission of Coverage and Disclosure Requirements for Patient Protection under the Affordable Care Act; *Use:* Sections 2712 and 2719A of the Public Health Service Act (PHS Act), as added by the Affordable Care Act, contain rescission notice, and patient protection disclosure requirements that are subject to the Paperwork Reduction Act of 1995. The No Surprises Act, enacted as part of the Consolidated Appropriations Act, 2021, amended section 2719A of the PHS Act to sunset when the new emergency services protections under the No Surprises Act take effect. The provisions of section 2719A of the PHS Act will no longer apply with respect to plan years beginning on or after January 1, 2022. The No Surprises Act re-codified the patient protections related to choice of health care professional under section 2719A of the PHS Act in newly added section 9822 of the Internal Revenue Code, section 722 of the Employee Retirement Income Security Act, and section 2799A–7 of the PHS Act and extended the applicability of these provisions to grandfathered health plans for plan years beginning on or after January 1, 2022. The rescission notice will be used by health plans to provide advance notice to certain individuals that their coverage may be rescinded as a result of fraud or intentional misrepresentation of material fact. The patient protection notification will be used by health plans to inform certain individuals of their right to choose a primary care provider or pediatrician and to use obstetrical/gynecological services without prior authorization. The related provisions are finalized in the 2015 final regulations titled ''Final Rules under the Affordable Care Act for Grandfathered Plans, Preexisting Condition Exclusions,

Lifetime and Annual Limits, Rescissions, Dependent Coverage, Appeals, and Patient Protections'' (80 FR 72192, November 18, 2015) and 2021 interim final regulations titled ''Requirements Related to Surprise Billing; Part I'' (86 FR 36872, July 13, 2021). The 2015 final regulations also require that, if State law prohibits balance billing, or a plan or issuer is contractually responsible for any amounts balanced billed by an out-of-network emergency services provider, a plan or issuer must provide a participant, beneficiary or enrollee adequate and prominent notice of their lack of financial responsibility with respect to amounts balanced billed in order to prevent inadvertent payment by the individual. Plans and issuers will not be required to provide this notice for plan years beginning on or after January 1, 2022. *Form Number:* CMS–10330 (OMB control number: 0938–1094); *Frequency:* On Occasion; *Affected Public:* State, Local, or Tribal Governments, Private Sector; *Number of Respondents:* 2,277; *Total Annual Responses:* 15,752; *Total Annual Hours:* 814. (For policy questions regarding this collection, contact Usree Bandyopadhyay at (410) 786–6650.)

4. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Requirements Related to Surprise Billing: Qualifying Payment Amount, Notice and Consent, Disclosure on Patient Protections Against Balance Billing, and State Law Opt-in; *Use:* On December 27, 2020, the Consolidated Appropriations Act, 2021 (Pub. L. 116–260), which included the No Surprises Act, was signed into law. The No Surprises Act provides federal protections against surprise billing and limits out-of-network cost sharing under many of the circumstances in which surprise medical bills arise most frequently. The 2021 interim final regulations ''Requirements Related to Surprise Billing; Part I'' (86 FR 36872, 2021 interim final regulations) issued by the Departments of Health and Human Services, the Department of Labor, the Department of Treasury, and the Office of Personnel Management, implement provisions of the No Surprises Act that apply to group health plans, health insurance issuers offering group or individual health insurance coverage, and carriers in the Federal Employees Health Benefits (FEHB) Program that provide protections against balance billing and out-of-network cost sharing with respect to emergency services, non-emergency services furnished by nonparticipating providers at certain participating health care facilities, and air ambulance services furnished by nonparticipating providers of air ambulance services. The 2021 interim final regulations prohibit nonparticipating providers, emergency facilities, and providers of air ambulance services from balance billing participants, beneficiaries, and enrollees in certain situations unless they satisfy certain notice and consent requirements. The No Surprises Act and the 2021 interim final regulations require group health plans and issuers of health insurance coverage to provide information about qualifying payment amounts to nonparticipating providers and facilities and to provide disclosures on patient protections against balance billing to participants, beneficiaries and enrollees. Self-insured plans opting in to a specified state law are required to provide a disclosure to participants. Certain nonparticipating providers and nonparticipating emergency facilities may provide participants, beneficiaries, and enrollees with notice and obtain their consent to waive balance billing protections, provided certain requirements are met. In addition, certain providers and facilities are required to provide disclosures on patient protections against balance billing to participants, beneficiaries and enrollees. *Form Number:* CMS–10780 (OMB control number: 0938–1401); *Frequency:* On Occasion; *Affected Public:* Individuals, State, Local, or Tribal Governments, Private Sector; *Number of Respondents:* 2,494,683; *Total Annual Responses:* 58,696,352; *Total Annual Hours:* 4,933,110. (For policy questions regarding this collection, contact Usree Bandyopadhyay at 410–786–6650.)

Dated: November 22, 2021.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2021–25816 Filed 11–24–21; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Privacy Act of 1974; System of Records

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services (HHS).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the HHS is establishing a new system of records to be maintained by HHS's HRSA, 09–15–0093, ''Provider Support Records.'' The new system of records will include payment-related records containing information about any sole proprietor health care providers (including health care-practitioners and suppliers) who applied for payments or reimbursements, received a payment, attested to a payment, reported on the use of a payment, or otherwise participated in one of HRSA's provider support programs, and about patients identified in certain claims records submitted to HRSA for payment by entity providers and sole proprietor providers. The records are used to support the health care population and administer the programs.

DATES: The new system of records is applicable November 26, 2021, subject to a 30-day period in which to comment on the routine uses. Submit any comments by December 27, 2021.

ADDRESSES: The public should address written comments by email to *OPSInformation.hrsa@hrsa.gov* or by mail to Executive Officer, Provider Support, HRSA, 5600 Fishers Lane, Room 9N21, Rockville, MD, 20857.

FOR FURTHER INFORMATION CONTACT: General questions about the new system of records may be submitted to Executive Officer, Provider Support, HRSA, 5600 Fishers Lane, Room 9N21, Rockville, MD, 20857, or to *OPSInformation.hrsa@hrsa.gov.*

SUPPLEMENTARY INFORMATION: New system of records 09–15–0093 will cover records HRSA uses to reimburse claims and make payments to healthcare providers and to receive reports on the use of funds for activities under the following programs:

- COVID–19 Claims Reimbursement to Health Care Providers and Facilities for Testing, Treatment and Vaccine Administration for the Uninsured (Uninsured Program).
- COVID–19 Coverage Assistance Fund (CAF).
- Provider Relief Fund (PRF), including American Rescue Plan Act (ARPA) Rural Payments.

The records used by HRSA in these programs include patient and provider information needed to administer the programs. HHS provided advance notice of the new system of records to the Office of Management and Budget and

Congress as required by 5 U.S.C. 552a(r) and OMB Circular A–108.

Diana Espinosa,
Acting Administrator.

SYSTEM NAME AND NUMBER:

Provider Support Records, 09–15–0093.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the HHS component responsible for this system of records (*i.e.,* HRSA) is shown in the System Manager(s) section, below.

SYSTEM MANAGER(S):

The System Manager is Executive Officer, Provider Support, HRSA, 5600 Fishers Lane, Rockville, MD, 20857, *OPSInformation.hrsa@hrsa.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authorities include the following appropriations laws. Collection of participating providers' Taxpayer Identification Numbers is required by 31 U.S.C. 7701(c).

• *Uninsured Program:* ''The Families First Coronavirus Response Act or FFCRA (P.L. 116–127) and the Paycheck Protection Program and Health Care Enhancement Act or PPPHCEA (P.L. 116–139), which each appropriated $1 billion to reimburse providers for conducting COVID–19 testing for uninsured individuals''

• *Provider Relief Fund:* ''The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116–136), which provided $100 billion in relief funds, including to hospitals and other health care providers on the front lines of the COVID–19 response; the Paycheck Protection Program and Health Care Enhancement Act or PPPHCEA (P.L. 116–139), which appropriated an additional $75 billion in relief funds; and the Coronavirus Response and Relief Supplemental Appropriations Act (CRRSA) (P.L. 116–260), which appropriated an additional $3 billion (collectively, the Provider Relief Fund).

• *Uninsured program, continued:* Within the Provider Relief Fund, a portion of the funding supports health care-related expenses attributable to COVID–19 testing for the uninsured and treatment of uninsured individuals with COVID–19. A portion of the funding is also used to reimburse providers for administering Food and Drug Administration (FDA)-authorized or licensed COVID–19 vaccines to uninsured individuals.

• *Uninsured program, continued:* The American Rescue Plan Act of 2021 (ARPA, P.L. 117–2), which allocated funding to reimburse providers for COVID–19 testing of the uninsured.

• *ARPA Rural Payments:* The American Rescue Plan Act of 2021 (ARPA, P.L. 117–2). ARPA amends the SSA. The citation to Section 1150C of ARPA can be found at 42 U.S.C. 1320b-26.

• *Coverage Assistance Fund:* The HRSA COVID–19 CAF is a program established by and administered by HRSA, using funds appropriated by Congress under the PRF.

PURPOSE(S) OF THE SYSTEM:

Relevant agency personnel and contractors use records about individuals from this system of records on a need to know basis to administer the provider support programs, which support the resilience of the healthcare population. Such programs include:

• COVID–19 Claims Reimbursement to Health Care Providers and Facilities for Testing, Treatment and Vaccine Administration for the Uninsured (Uninsured Program).

• COVID–19 CAF Program.

• Provider Relief Fund, including the ARPA Rural payments.

Specific purposes include:

1. To obtain marketing and communication information for providers who submitted applications to make them aware of policy and funding opportunities.

2. To make payments and reimburse claims to eligible healthcare providers under the above-identified programs.

3. To assist the HHS Program Support Center (PSC), the Department of Justice (DOJ), and other government entities in the collection of program debts.

4. To respond to inquiries from providers, their attorneys or other authorized representatives, and Congressional representatives.

5. To compile and generate managerial and statistical reports.

6. To perform program administrative activities, including, but not limited to, payment tracking, monitoring a provider's compliance with the Terms and Conditions of payment, receipt of provider reports on the use of funds, and other program requirements, and recoupment determinations.

7. To transfer information to the HHS central accounting system(s) covered by system of records 09–90–0024, HHS Financial Management System Records, maintained by the Office of the Assistant Secretary for Financial Resources, for purposes of effecting program payments and preparing and maintaining financial management and accounting documentation related to obligations and disbursements of funds (including providing required notifications to the Department of the Treasury) related to payments to, or on behalf of, healthcare providers. Information transferred to the Office of the Assistant Secretary for Financial Resources for these purposes is limited to the individual's name, address, SSN, and other information necessary for identification and processing of the payment.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The records are about these categories of individuals:

• Sole proprietor providers who submit claims under the programs mentioned above.

• Patients identified in claims and claims-related records submitted to HRSA by entity providers and sole proprietor providers.

• Sole proprietor providers who applied for or who have received payments under the programs mentioned above.

CATEGORIES OF RECORDS IN THE SYSTEM:

The categories of records are provider claims, claims-related records, payment applications, reports on the use of funds, and other records used by HRSA to process the claims, applications, and payments. Contents include the provider's name, address(es), telephone number(s), and email address(es); National Provider Identifier; Taxpayer Identification Number (TIN) (which could be a Social Security Number (SSN)); CMS Credentialing Number; tax, audit, and revenue data; banking information; payment data and supporting documentation; repayment/recoupment information; claims forms (including patient-related information, such as principal diagnosis code, admitting diagnosis code, procedure codes, date(s) of service and charges); and each applicable patient's name, control number, patient identification number; health insurance policy member identification number; gender, date of birth, zip code, state, and county.

RECORD SOURCE CATEGORIES:

The information in the system of records is obtained from payment applications, claims, reports on the use of funds, and other information submitted to HRSA by providers; from other HHS components; from commercial and other payers; and from any relevant federal, state, territorial, local, or tribal agencies. Other agencies and HHS components may provide information to HRSA needed to verify provider eligibility; validate provider-

submitted information; determine payment distribution or claims reimbursement amounts; and approve payments and claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to other disclosures authorized directly in the Privacy Act at 5 U.S.C. 552a(b)(1) and (2) and (b)(4) through (11), HHS may disclose records about a subject individual (provider or patient) from this system of records to parties outside HHS as described in these routine uses, without the individual's prior written consent:

1. To any agent or contractor (including another federal agency) engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records, if the agent or contractor needs to have access to the records in order to provide the assistance. For example, HHS may disclose records consisting of a provider's or patient's name, SSN, TIN, mailing address, email address, or telephone number, to Department contractors and subcontractors who assist with the implementation of the above-identified programs, for the purposes of distributing funds; collecting, compiling, aggregating, analyzing, or refining records in the system of records; or improving program operations. Any agent or contractor will be required to comply with the requirements of the Privacy Act, as amended, with respect to the records, and to ensure that any subcontractors also maintain Privacy Act safeguards with respect to the records.

2. To another federal, state, or local agency about a provider who fails to return payments identified for recoupment at the direction of HHS, to ensure that the provider does not receive federal funds for which the provider is ineligible. Disclosure will be limited to the provider's name, address, SSN, TIN, inclusion on the Do Not Pay List, and any other information necessary to identify them.

3. To another federal, state, local, territorial, or Tribal agency to contribute to the accuracy of HHS' proper payment of health care providers' payment requests and claims (such as to determine a provider's eligibility for a distribution, validate a provider's tax identification number, or confirm a patient's uninsured status).

4. To another federal agency or an instrumentality of any governmental jurisdiction within or under the control of the United States (including any state, local, or Tribal governmental agency) that administers, or that has the authority to investigate potential fraud or abuse in, a health care payment program funded in whole or in part by federal funds, when the disclosure is deemed reasonably necessary by HHS to prevent, deter, discover, detect, investigate, examine, prosecute, sue with respect to, defend against, correct, remedy, or otherwise combat fraud or abuse in such programs.

5. To a congressional office from the record of an individual in response to a written inquiry from the congressional office made at the written request of that individual. If a congressional inquiry on behalf of a patient seeks disclosure of any information about the patient's provider which is or could be proprietary information of that provider, the congressional request must be accompanied by an authorization form signed by the provider.

6. To DOJ or to a court or other adjudicative body in litigation or other proceedings when HHS or any of its components, or any employee of HHS acting in the employee's official capacity, or any employee of HHS acting in the employee's individual capacity where the DOJ or HHS has agreed to represent the employee, or the United States Government, is a party to the proceedings or has an interest in the proceedings and, by careful review, HHS determines that the records are both relevant and necessary to the proceedings.

7. To representatives of the National Archives and Records Administration (NARA) during records management inspections conducted pursuant to 44 U.S.C. 2904 and 2906.

8. To appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records, (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security, and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. To another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are maintained in electronic database servers and backup servers.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by a provider's or patient's name, TIN, or other identifying number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

The records are not currently scheduled, so are retained indefinitely pending scheduling with the NARA. HRSA anticipates proposing a retention period of at least 6 years to NARA for the records, for consistency with General Records Schedule 1.1, Financial Management and Reporting Records, which provides for such records to be retained for 6 years after final payment or cancellation, or longer if required for business use.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html.* HHS safeguards these records in accordance with applicable laws, rules and policies, including the HHS Information Technology Security Program Handbook; the E-Government Act of 2002, which includes the Federal Information Security Management Act of 2002, 44 U.S.C. 3541–3549, as amended by the Federal Information Security Modernization act of 2014, 44 U.S.C. 3551–3558; pertinent National Institutes of Standards and Technology (NIST) publications; and OMB Circular A–130, Managing Information as a Strategic Resource. HHS protects the records from unauthorized access through appropriate administrative, physical, and technical safeguards. These safeguards include protecting the facilities where records are stored or accessed with security guards, badges and cameras; controlling access to physical locations where records are maintained and used by means of combination locks and identification badges issued only to authorized users; limiting access to electronic databases to authorized users based on roles and either two-factor authentication or password protection; using a secured operating system protected by encryption, firewalls, and intrusion

detection systems; and training personnel in Privacy Act and information security requirements. After the records have been scheduled with NARA, records that are eligible for destruction will be disposed of in accordance with the applicable schedule, using secure destruction methods prescribed by NIST SP 800–88.

RECORD ACCESS PROCEDURES:

An individual seeking access to records about that individual in this system of records must submit a written access request to the applicable System Manager identified in the ''System Manager'' section of this System of Records Notice (SORN). The request must contain the requester's full name, address, and signature. The request should also contain sufficient identifying particulars (such as, the provider's National Provider Identifier, TIN, or patient medical record number, or the patient's patient identifier or SSN to enable HHS to locate the requested records. So that HHS may verify the requester's identity, the requester's signature must be notarized or the request must include the requester's written certification that the requester is the individual who the requester claims to be and that the requester understands that the knowing and willful request for or acquisition of a record pertaining to an individual under false pretenses is a criminal offense subject to a fine of up to $5,000.

If an access request by a patient seeks disclosure of any information about the patient's provider which is or could be proprietary information of that provider, the request must be accompanied by a disclosure authorization form signed by the provider.

CONTESTING RECORD PROCEDURES:

An individual seeking to amend a record about that individual in this system of records must submit an amendment request to the applicable System Manager identified in the ''System Manager'' section of this SORN, containing the same information required for an access request. The request must include verification of the requester's identity in the same manner required for an access request; must reasonably identify the record and specify the information contested, the corrective action sought, and the reasons for requesting the correction; and should include supporting information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

NOTIFICATION PROCEDURES:

An individual who wishes to know if this system of records contains records about that individual should submit a notification request to the applicable System Manager identified in in the ''System Manager'' section of this SORN. The request must contain the same information required for an access request and must include verification of the requester's identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

None.

[FR Doc. 2021–25760 Filed 11–24–21; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Public Comment Request; The Stem Cell Therapeutic Outcomes Database, OMB No. 0915–0310—Extension

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with the requirement for opportunity for public comment on proposed data collection projects of the Paperwork Reduction Act of 1995, HRSA announces plans to submit an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Prior to submitting the ICR to OMB, HRSA seeks comments from the public regarding the burden estimate, below, or any other aspect of the ICR.

DATES: Comments on this ICR should be received no later than January 25, 2022.

ADDRESSES: Submit your comments to *paperwork@hrsa.gov* or by mail to the HRSA Information Collection Clearance Officer, Room 14N136B, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call Samantha Miller, the acting HRSA Information Collection Clearance Officer at (301) 443–9094.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the information collection request title for reference.

Information Collection Request Title: The Stem Cell Therapeutic Outcomes Database OMB No. 0915–0310—Extension

Abstract: Given the rapid evolution of COVID–19 and its impact on those with compromised immune systems, it is imperative for the transplant community to continue collecting COVID–19 related data. Having access to COVID–19 vaccination status on blood stem cell recipients and understanding immune responses will assist with making informed decisions regarding direct clinical care. This will also inform critical policy decisions.

The Stem Cell Therapeutic and Research Act of 2005, Public Law (P.L.) 109–129, as amended, provides for the collection and maintenance of human blood stem cells for the treatment of patients and research. It also maintains a scientific database of information relating to patients who have been recipients of a stem cell therapeutics product (*e.g.,* bone marrow, cord blood, or other such product) from a donor.

Given the rapid evolution of the COVID–19 public health emergency and its impact on immunocompromised patients, availability of new vaccines, and continual changes in vaccination recommendations, HRSA wants to leverage the required data collection platform of the Stem Cell Therapeutic Outcomes Database to obtain vaccine information for all U.S. allogeneic hematopoietic stem cell transplant recipients.

Need and Proposed Use of the Information: To collect COVID–19 vaccine data, HRSA is requesting an extension of OMB's approval of both the Pre-Transplant Essential Data Form 2400 and Post-Transplant Essential Data (Post-TED) Form 2450. Collecting these data will help clinicians and policymakers to understand the landscape of vaccination among immunocompromised patients before and after a blood stem cell transplant.

HRSA will use this information to analyze outcomes based on vaccine manufacturer/type, doses received (including potential boosters), timing, and inform future vaccination strategies. Information currently collected regarding COVID–19 infections has already been used in research studies.

HRSA will use data collected prior to a patient receiving a blood stem cell transplant to characterize frequencies of vaccination and level of protection afforded during and after transplant based on incidence of COVID infection. Post-transplant, this information can be used to assess vaccination rates and

timing in blood stem cell recipients, characterize emerging vaccination strategies (which may include boosters), describe possible short and long-term side effects of vaccines, and analyze the incidence of COVID–19 infection based on different vaccination approaches. This information may guide future vaccination strategies or COVID treatments. Vaccination status of recipients may also be useful for risk adjustment in the annual transplant center specific analysis. For example, Centers for Disease Control and Prevention advisors could potentially use COVID–19 vaccination data on blood stem cell transplant recipients to make informed decisions regarding whether to issue any recommendations for this medically vulnerable population. The data collected under this extension request could help answer these and other questions.

The additional COVID–19 vaccine questions capture basic information on vaccination status, vaccine manufacturer/type, dose(s) given, and date(s) received. Patients who need a blood stem cell transplant are typically aware of their COVID–19 risk and vaccination status, and the information is also found on the vaccine cards carried by most recipients. Questions about vaccination status will likely become universal during the intake process at transplant centers for the next 12 months or more. For these reasons, HRSA believes the data will be readily available to data professionals working at transplant centers via the medical record. To reduce burden, an ''unknown'' option has been included for scenarios where the data cannot be located, and a ''date estimated'' checkbox has been included when the exact date of vaccination is not known. Although these questions are anticipated to be asked over the next 12 months and then removed, it is possible that other COVID–19 related questions may be requested for inclusion on these forms in the future given the rapid evolution of COVID–19 and its impact on immunocompromised patients, availability of new vaccines, and continual changes in vaccination recommendations.

Likely Respondents: Transplant Centers.

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 [1]	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
Baseline Pre-Transplant Essential Data (TED)	200	48	9,600	[2] 0.70	6,720
Disease Classification	200	48	9,600	[3] 0.43	4,160
Product Form (includes Infusion, HLA, and Infectious Disease Marker inserts)	200	45	9,000	1.00	9,000
100-day Post-TED	200	48	9,600	0.88	8,448
6 month Post-TED	200	43	8,600	0.85	7,310
1 year Post-TED	200	40	8,000	0.65	5,200
2 year Post-TED	200	34	6,800	0.65	4,420
3+ years Post-TED	200	172	34,400	[4] 0.52	17,773
Total	200	.....	95,600	.....	63,031

[1] The total of 200 is the number of centers completing the form; the same group will complete all of the forms.
[2] The decimal is rounded down, and the actual number is .683333333.
[3] The decimal is rounded down, and the actual number is .433333333.
[4] The decimal is rounded up, and the actual number is .516667.

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. 2021–25786 Filed 11–24–21; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2022 Through September 30, 2023

AGENCY: Office of the Secretary, DHHS.

ACTION: Notice.

The Federal Medical Assistance Percentages (FMAP), Enhanced Federal Medical Assistance Percentages (eFMAP), and disaster-recovery FMAP adjustments for Fiscal Year 2023 have been calculated pursuant to the Social Security Act (the Act). These percentages will be effective from October 1, 2022 through September 30, 2023. This notice announces the calculated FMAP rates, in accordance with sections 1101(a)(8) and 1905(b) of the Act, that the U.S. Department of Health and Human Services (HHS) will use in determining the amount of federal matching for state medical assistance (Medicaid), Temporary Assistance for Needy Families (TANF) Contingency Funds, Child Support Enforcement collections, Child Care Mandatory and Matching Funds of the Child Care and Development Fund, Title IV–E Foster Care Maintenance payments, Adoption Assistance payments and Kinship Guardianship

Assistance payments, and the eFMAP rates for the Children's Health Insurance Program (CHIP) expenditures. Table 1 gives figures for each of the 50 states, the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. This notice reminds states of adjustments available for states meeting requirements for disproportionate employer pension or insurance fund contributions and adjustments for disaster recovery. At this time, no state qualifies for such adjustments, and territories are not eligible.

Programs under title XIX of the Act exist in each jurisdiction. Programs under titles I, X, and XIV operate only in Guam and the Virgin Islands. The percentages in this notice apply to state expenditures for most medical assistance and child health assistance, and assistance payments for certain social services. The Act provides separately for federal matching of administrative costs.

Sections 1905(b) and 1101(a)(8)(B) of the Social Security Act (the Act) require the Secretary of HHS to publish the FMAP rates each year. The Secretary calculates the percentages, using formulas in sections 1905(b) and 1101(a)(8), and calculations by the Department of Commerce of average income per person in each state and for the United States (meaning, for this purpose, the fifty states and the District of Columbia). The percentages must fall within the upper and lower limits specified in section 1905(b) of the Act. The percentages for the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Northern Mariana Islands are specified in statute, and thus are not based on the statutory formula that determines the percentages for the 50 states.

Federal Medical Assistance Percentage (FMAP)

Section 1905(b) of the Act specifies the formula for calculating FMAPs as follows:

> ''`Federal medical assistance percentage' for any state shall be 100 per centum less the state percentage; and the state percentage shall be that percentage which bears the same ratio to 45 per centum as the square of the per capita income of such state bears to the square of the per capita income of the continental United States (including Alaska) and Hawaii; except that (1) the Federal medical assistance percentage shall in no case be less than 50 per centum or more than 83 per centum. . . .''

Section 1905(b) further specifies that the FMAP for Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa shall be 55 percent. Section 4725(b) of the Balanced Budget Act of 1997 amended section 1905(b) to provide that the FMAP for the District of Columbia, for purposes of titles XIX and XXI, shall be 70 percent. For the District of Columbia, we note under Table 1 that other rates may apply in certain other programs. In addition, we note the rate that applies for Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands in certain other programs pursuant to section 1118 of the Act. The rates for the States, District of Columbia and the territories are displayed in Table 1, Column 1.

Section 1905(y) of the Act, as added by section 2001 of the Patient Protection and Affordable Care Act of 2010 (''Affordable Care Act'') (Pub. L. 111–148), provides for a significant increase in the FMAP for medical assistance expenditures for newly eligible individuals described in section 1902(a)(10)(A)(i)(VIII) of the Act, as added by the Affordable Care Act (the new adult group); ''newly eligible'' is defined in section 1905(y)(2)(A) of the Act. The FMAP for the new adult group is 100 percent for Calendar Years 2014, 2015, and 2016, gradually declining to 90 percent in 2020, where it remains indefinitely. In addition, section 1905(z) of the Act, as added by section 10201 of the Affordable Care Act, provides that states that offered substantial health coverage to certain low-income parents and nonpregnant, childless adults on the date of enactment of the Affordable Care Act, referred to as ''expansion states,'' shall receive an enhanced FMAP beginning in 2014 for medical assistance expenditures for nonpregnant childless adults who may be required to enroll in benchmark coverage under section 1937 of the Act. These provisions are discussed in more detail in the Medicaid Program: Eligibility Changes Under the Affordable Care Act of 2010 proposed rule published on August 17, 2011 (76 FR 51148, 51172) and the final rule published on March 23, 2012 (77 FR 17144, 17194). This notice is not intended to set forth the matching rates for the new adult group as specified in section 1905(y) of the Act or the matching rates for nonpregnant, childless adults in expansion states as specified in section 1905(z) of the Act.

Section 6008 of the Families First Coronavirus Response Act (FFCRA) (Pub. L. 116–127) as amended by section 3720 of the CARES Act (Pub. L. 116–136), provides a temporary 6.2 percentage point FMAP increase to each qualifying state and territory's FMAP under section 1905(b) of the Act, effective January 1, 2020 and extending through the last day of the calendar quarter in which the public health emergency declared by the Secretary of HHS for COVID–19, including any extensions, terminates. The FY 2023 FMAP rates listed in Table 1 do not include the 6.2 percentage point increase in the FMAP that qualifying states may receive under Section 6008 of the FFCRA (Pub. L. 116–127).

Other Adjustments to the FMAP

For purposes of Title XIX (Medicaid) of the Social Security Act, the Federal Medical Assistance Percentage (FMAP), defined in section 1905(b) of the Social Security Act, for each state beginning with fiscal year 2006, can be subject to an adjustment pursuant to section 614 of the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), Public Law 111–3. Section 614 of CHIPRA stipulates that a state's FMAP under Title XIX (Medicaid) must be adjusted in two situations.

In the first situation, if a state experiences no growth or positive growth in total personal income and an employer in that state has made a significantly disproportionate contribution to an employer pension or insurance fund, the state's FMAP must be adjusted. The adjustment involves disregarding the significantly disproportionate employer pension or insurance fund contribution in computing the per capita income for the state (but not in computing the per capita income for the United States). Employer pension and insurance fund contributions are significantly disproportionate if the increase in contributions exceeds 25 percent of the total increase in personal income in that state. A **Federal Register** Notice with comment period was published on June 7, 2010 (75 FR 32182) announcing the methodology for calculating this adjustment; a final notice was published on October 15, 2010 (75 FR 63480).

The second situation arises if a state experiences negative growth in total personal income. Beginning with Fiscal Year 2006, section 614(b)(3) of CHIPRA specifies that, for the purposes of calculating the FMAP for a calendar year in which a state's total personal income has declined, the portion of an employer pension or insurance fund contribution that exceeds 125 percent of the amount of such contribution in the previous calendar year shall be disregarded in computing the per capita income for the state (but not in computing the per capita income for the United States).

No Federal source of reliable and timely data on pension and insurance contributions by individual employers and states is currently available. We request that states report employer pension or insurance fund contributions to help determine potential FMAP adjustments for states experiencing significantly disproportionate pension or insurance contributions and states experiencing a negative growth in total personal income. See also the information described in the January 21, 2014 **Federal Register** notice (79 FR 3385).

Section 2006 of the Affordable Care Act provides a special adjustment to the FMAP for certain states recovering from a major disaster. This notice does not contain an FY 2023 adjustment for a major statewide disaster for any state (territories are not eligible for FMAP adjustments) because no state had a recent major statewide disaster and had its FMAP decreased by at least three percentage points from FY 2021 to FY 2022. See information described in the December 22, 2010 **Federal Register** notice (75 FR 80501).

Enhanced Federal Medical Assistance Percentage (eFMAP) for CHIP

Section 2105(b) of the Act specifies the formula for calculating the eFMAP rates as follows:

[T]he ''enhanced FMAP'', for a state for a fiscal year, is equal to the Federal medical assistance percentage (as defined in the first sentence of section 1905(b)) for the state increased by a number of percentage points equal to 30 percent of the number of percentage points by which (1) such Federal medical assistance percentage for the state, is less than (2) 100 percent; but in no case shall the enhanced FMAP for a state exceed 85 percent.

The eFMAP rates are used in the Children's Health Insurance Program under Title XXI, and in the Medicaid program for expenditures for medical assistance provided to certain children as described in sections 1905(u)(2) and 1905(u)(3) of the Act. There is no specific requirement to publish the eFMAP rates. We include them in this notice for the convenience of the states (Table 1, Column 2).

DATES: The percentages listed in Table 1 will be applicable for each of the four quarter-year periods beginning October 1, 2022 and ending September 30, 2023.

FOR FURTHER INFORMATION CONTACT: Ann Conmy, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201, (202) 690–6870.

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Enforcement; 93.596: Child Care Mandatory and Matching Funds of the Child Care and Development Fund; 93.658: Foster Care Title IV–E; 93.659: Adoption Assistance; 93.769: Ticket-to-Work and Work Incentives Improvement Act (TWWIIA) Demonstrations to Maintain Independence and Employment; 93.778: Medical Assistance Program; 93.767: Children's Health Insurance Program)

Xavier Becerra,

Secretary.

TABLE 1—FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2022–SEPTEMBER 30, 2023

[Fiscal Year 2023]

State	Federal medical assistance percentages	Enhanced federal medical assistance percentages
Alabama	72.43	80.70
Alaska	50.00	65.00
American Samoa*	55.00	68.50
Arizona	69.56	78.69
Arkansas	71.31	79.92
California	50.00	65.00
Colorado	50.00	65.00
Connecticut	50.00	65.00
Delaware	58.49	70.94
District of Columbia**	70.00	79.00
Florida	60.05	72.04
Georgia	66.02	76.21
Guam*	55.00	68.50
Hawaii	56.06	69.24
Idaho	70.11	79.08
Illinois	50.00	65.00
Indiana	65.66	75.96
Iowa	63.13	74.19
Kansas	59.76	71.83
Kentucky	72.17	80.52
Louisiana	67.28	77.10
Maine	63.29	74.30
Maryland	50.00	65.00
Massachusetts	50.00	65.00
Michigan	64.71	75.30
Minnesota	50.79	65.55
Mississippi	77.86	84.50
Missouri	65.81	76.07
Montana	64.12	74.88
Nebraska	57.87	70.51
Nevada	62.65	73.86
New Hampshire	50.00	65.00
New Jersey	50.00	65.00
New Mexico	73.26	81.28
New York	50.00	65.00

TABLE 1—FEDERAL MEDICAL ASSISTANCE PERCENTAGES AND ENHANCED FEDERAL MEDICAL ASSISTANCE PERCENTAGES, EFFECTIVE OCTOBER 1, 2022–SEPTEMBER 30, 2023—Continued

[Fiscal Year 2023]

State	Federal medical assistance percentages	Enhanced federal medical assistance percentages
North Carolina	67.71	77.40
North Dakota	51.55	66.09
Northern Mariana Islands *	55.00	68.50
Ohio	63.58	74.51
Oklahoma	67.36	77.15
Oregon	60.32	72.22
Pennsylvania	52.00	66.40
Puerto Rico *	55.00	68.50
Rhode Island	53.96	67.77
South Carolina	70.58	79.41
South Dakota	56.74	69.72
Tennessee	66.10	76.27
Texas	59.87	71.91
Utah	65.90	76.13
Vermont	55.82	69.07
Virgin Islands *	55.00	68.50
Virginia	50.65	65.46
Washington	50.00	65.00
West Virginia	74.02	81.81
Wisconsin	60.10	72.07
Wyoming	50.00	65.00

* For purposes of section 1118 of the Social Security Act, the percentage used under titles I, X, XIV, and XVI will be 75 per centum.
** The values for the District of Columbia in the table were set for the state plan under titles XIX and XXI and for capitation payments and disproportionate share hospital (DSH) allotments under those titles. For other purposes, the percentage for D.C. is 50.00, unless otherwise specified by law.

[FR Doc. 2021–25798 Filed 11–24–21; 8:45 am]
BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2021–0824]

National Maritime Security Advisory Committee

AGENCY: U.S. Coast Guard, Department of Homeland Security.

ACTION: Notice of Federal Advisory Committee teleconference meeting.

SUMMARY: The National Maritime Security Advisory Committee (Committee) will meet via teleconference, to review and discuss matters relating to national maritime security. Specifically, the Coast Guard intends to present and issue a task focused on improving and enhancing the sharing of information related to cybersecurity risks that may cause a transportation security incident. This teleconference will be open to the public.

DATES:

Meeting: The Committee will meet by teleconference on Wednesday, December 15, 2021 from 1 p.m. until 3 p.m. Eastern Standard Time (EST). This teleconference may close early if all business is finished.

Comments and supporting documentation: To ensure your comments are received by Committee members before the teleconference, submit your written comments no later than December 7, 2021.

ADDRESSES: To join the teleconference or to request special accommodations, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section no later than 1 p.m. EST on December 7, 2021, to obtain the needed information. The number of teleconference lines are limited and will be available on a first-come, first-served basis.

For information on services for individuals with disabilities, or to request special assistance, contact the individual listed in **FOR FURTHER INFORMATION CONTACT** below as soon as possible.

Instructions: You are free to submit comments at any time, including orally at the teleconference as time permits, but if you want Committee members to review your comment before the teleconference, please submit your comments no later than December 7, 2021. We are particularly interested in comments on the issues in the ''Agenda'' section below. We encourage you to submit comments through Federal eRulemaking Portal at *https://regulations.gov.* If your material cannot be submitted using *https://regulations.gov,* call or email the individual in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions. You must include the docket number [USCG–2021–0824]. Comments received will be posted without alteration at *https://www.regulations.gov* including any personal information provided. You may wish to view the Privacy and Security Notice available on the homepage of *https://www.regulations.gov* and DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020). If you encounter technical difficulties with comment submission, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Docket Search: Documents mentioned in this notice as being available in the docket, and all public comments, will be in our online docket at *https://www.regulations.gov,* and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign-up for email alerts, you

will be notified when comments are posted.

FOR FURTHER INFORMATION CONTACT: Mr. Ryan Owens, Alternate Designated Federal Officer of the National Maritime Security Advisory Committee, 2703 Martin Luther King Jr. Avenue SE, Washington, DC 20593, Stop 7581, Washington, DC 20593–7581; telephone 202–302–6565 or email *ryan.f.owens@uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is in compliance with the *Federal Advisory Committee Act,* (5 U.S.C., Appendix). The Committee was established on December 4, 2018, by § 601 of the *Frank LoBiondo Coast Guard Authorization Act of 2018,* Public Law 115–282, 132 Stat. 4190. The National Maritime Security Advisory Committee provides advice, consults with, and makes recommendations to the Secretary of Homeland Security, via the Commandant of the Coast Guard, on matters relating to national maritime security.

Agenda

(1) Call to Order.
(2) Introduction.
(3) Designated Federal Official Remarks.
(4) Roll call of Committee members and determination of quorum.
(5) Presentation of task. The Coast Guard will present the following task and the Committee will determine if they will accept the tasks and form working groups:
a. Recommendations on Cybersecurity Information Sharing.
(6) Public comment period.
(7) Closing Remarks/plans for next meeting.
(8) Adjournment of meeting.

A copy of all meeting documentation will be available at *https://homeport.uscg.mil/NMSAC* by December 13, 2021. Alternatively, you may contact Mr. Ryan Owens as noted in the **FOR FURTHER INFORMATION** section above.

There will be a public comment period at the end of the meeting. Speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the period allotted, following the last call for comments. Contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section above to register as a speaker.

Dated: November 22, 2021.

Wayne R. Arguin, Jr.

Captain, U.S. Coast Guard, Director of Inspections and Compliance.

[FR Doc. 2021–25790 Filed 11–24–21; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2021–0033]

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Homeland Security, U.S. Citizenship and Immigration Services.

ACTION: Notice of a re-established matching program.

SUMMARY: Pursuant to the Privacy Act of 1974, as amended by the Computer Matching and Privacy Protection Act of 1988 and the Computer Matching and Privacy Protections Amendment of 1990 (Privacy Act), and Office of Management and Budget (OMB) guidance on the conduct of matching programs, notice is hereby given of the re-establishment of a matching program between the Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS), and the California Department of Healthcare Services (CA–DHCS). CA–DHCS will match against DHS–USCIS data to verify the immigration status of non-U.S. citizens who apply for federal benefits (Benefit Applicants) under Medicaid programs that CA–DHCS administers to determine whether Benefit Applicants possess the requisite immigration status to be eligible for the Medicaid it administers.

DATES: Please submit comments on or before December 27, 2021. The matching program will be effective on December 27, 2021 unless comments have been received from interested members of the public that require modification and republication of the notice. The matching program will continue for 18 months from the beginning date and may be extended an additional 12 months if the conditions specified in 5 U.S.C. 552a(o)(2)(D) have been met.

ADDRESSES: You may submit comments, identified by docket number *DHS–2021–0033,* by one of the following methods:

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–343–4010.
- *Mail:* Lynn Parker Dupree, Chief Privacy Officer, Privacy Office, Department of Homeland Security, Washington, DC 20528–0655.

Instructions: All submissions received must include the agency name and docket number DHS–2021–0033. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: To obtain additional information about this matching program and the contents of this Computer Matching Agreement between DHS–USCIS and CA–DHCS, please view this Computer Matching Agreement at the following website: *https://www.dhs.gov/publication/computer-matching-agreements-and-notices.* For general questions about this matching program, contact Jonathan M. Mills, Acting Chief, USCIS SAVE Program at (202) 306–9874. For general privacy questions, please contact Lynn Parker Dupree, (202) 343–1717, Chief Privacy Officer, Department of Homeland Security, Washington, DC 20528–0655.

SUPPLEMENTARY INFORMATION: DHS–USCIS provides this notice in accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100–503) and the Computer Matching and Privacy Protection Amendments of 1990 (Pub. L. 101–508) (Privacy Act); Office of Management and Budget (OMB) Final Guidance Interpreting the Provisions of Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, 54 FR 25818 (June 19, 1989); and OMB Circular A–108, 81 FR 94424 (December 23, 2016).

Participating Agencies: DHS–USCIS and CA–DHCS.

Authority for Conducting the Matching Program: Section 121 of the Immigration Reform and Control Act (IRCA) of 1986, Public Law 99–603, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. 104–193, 110 Stat. 2168 (1996), requires DHS to establish a system for the verification of immigration status of noncitizens applicants for, or recipients of, certain types of benefits as specified within IRCA, and to make this system available to state agencies that administer such benefits. The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, 110 State. 3009 (1996) grants federal, state, or local government agencies seeking to verify or ascertain the citizenship or immigration status of any individual within the jurisdiction of the agency with the authority to request such information from DHS–USCIS for any purpose authorized by law.

Purpose: This Agreement re-stablishes the terms and conditions governing CA–DHCS's access to, and use of, the DHS–

USCIS Systematic Alien Verification for Entitlements (SAVE) Program, which provides immigration status information from federal immigration records to authorized users, and to comply with the Computer Matching and Privacy Protection Act of 1988 (CMPPA).

CA–DHCS will use the SAVE Program to verify the immigration status of noncitizens who apply for federal benefits (Benefit Applicants) under Medicaid programs that it administers. CA–DHCS will use the information obtained through the SAVE Program to determine whether Benefit Applicants possess the requisite immigration status to be eligible for the Medicaid administered by CA–DHCS.

This Agreement describes the respective responsibilities of DHS–USCIS and CA–DHCS to verify Benefit Applicants' immigration status while safeguarding against unlawful discrimination and preserving the confidentiality of information received from the other party. The requirements of this Agreement will be carried out by authorized employees and/or contractor personnel of DHS–USCIS and CA–DHCS.

Categories of Individuals: The individuals about whom DHS–USCIS maintains information, which is contained in its Verification Information System (VIS) database used by the SAVE Program to verify immigration status, that are involved in this matching program include noncitizens (meaning any person as defined in Immigration and Nationality Act section 101(a)(3)), those naturalized, and to the extent those that have applied for Certificates of Citizenship, derived U.S. citizens, on whom DHS–USCIS has a record as an applicant, petitioner, sponsor, or beneficiary. The individuals about whom CA–DHCS maintains information that is involved in this matching program include non-citizen Benefit Applicants for, or recipients of, Medicaid administered by CA–DHCS.

Categories of Records: Data elements to be matched between CA–DHCS records and DHS–USCIS federal immigration records include the following: Last Name, First Name, Middle Name, Date of Birth, Immigration Numbers (*e.g.,* Alien Registration/USCIS Number, I–94 Number, SEVIS ID Number, Certificate of Naturalization Number, Certificate of Citizenship Number, or Unexpired Foreign Passport Number), and Other Information from Immigration Documentation (for example, Country of Birth, Date of Entry, Employment Authorization Category). Additional Data elements provided to CA–DHCS from DHS–USCIS records related to the match may include: Citizenship or Immigration Data (for example, immigration class of admission and/or employment authorization), Sponsorship Data (for example, name, address, and social security number of Form I–864/I–864EZ sponsors and Form I–864A household members, when applicable) and Case Verification Number.

System of Records: DHS/USCIS–004 Systematic Alien Verification for Entitlements (SAVE) System of Records Notice, 85 FR 31798 (May 27, 2020).

Lynn Parker Dupree,

Chief Privacy Officer, Department of Homeland Security.

[FR Doc. 2021–25847 Filed 11–24–21; 8:45 am]

BILLING CODE 9110–9L–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. CISA–2021–0017]

Notice of Cybersecurity and Infrastructure Security Agency Cybersecurity Advisory Committee Meeting

AGENCY: Cybersecurity and Infrastructure Security Agency (CISA), Department of Homeland Security (DHS).

ACTION: Notice of *Federal Advisory Committee Act* (FACA) meeting; request for comments.

SUMMARY: CISA is publishing this notice to announce the following CISA Cybersecurity Advisory Committee meeting. This meeting will be partially closed to the public.

DATES:

Meeting Registration: Registration to attend the meeting is required and must be received no later than 5:00 p.m. Eastern Time (ET) on December 8, 2021. For more information on how to participate, please contact *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.*

Speaker Registration: Registration to speak during the meeting's public comment period must be received no later than 5:00 p.m. ET on December 8, 2021.

Written Comments: Written comments must be received no later than 5:00 p.m. ET on December 8, 2021.

Meeting Date: The CISA Cybersecurity Advisory Committee will meet on December 10, 2021, from 10:30 a.m. to 3:30 p.m. ET. The meeting may close early if the committee has completed its business.

ADDRESSES: The CISA Cybersecurity Advisory Committee's open session will be held in-person at 7525 Colshire Drive, McLean, VA 22102. Capacity and location are subject to change based on DHS protocol regarding COVID–19 pandemic restrictions at the time of the meeting. Due to pandemic restrictions, members of the public may participate via teleconference only. Requests to participate will be accepted and processed in the order in which they are received. For access to the conference call bridge, information on services for individuals with disabilities, or to request special assistance, please email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.* by 5:00 p.m. ET on December 8, 2021.

Comments: Members of the public are invited to provide comments on issues that will be considered by the committee as outlined in the **SUPPLEMENTARY INFORMATION** section below. Associated materials that may be discussed during the meeting will be made available for review at *https://www.cisa.gov/cisa-cybersecurity-advisory-committee* on November 24, 2021. Comments should be submitted by 5:00 p.m. ET on December 10, 2021, and must be identified by Docket Number CISA–2021–0017. Comments may be submitted by one of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Please follow the instructions for submitting written comments.
- *Email: CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.* Include the Docket Number CISA–2021–0017 in the subject line of the email.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the Docket Number for this action. Comments received will be posted without alteration to *www.regulations.gov,* including any personal information provided.

Docket: For access to the docket and comments received by the CISA Cybersecurity Advisory Committee, please go to *www.regulations.gov* and enter docket number CISA–2021–0017.

A public comment period is scheduled to be held during the meeting from 3:10 p.m. to 3:20 p.m. ET. Speakers who wish to participate in the public comment period must email *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov* to register. Speakers should limit their comments to 3 minutes and will speak in order of registration. Please note that the public comment period may end before the time indicated, depending on the number of speakers who register to participate.

FOR FURTHER INFORMATION CONTACT: Megan Tsuyi, 202–594–7374, *CISA_CybersecurityAdvisoryCommittee@cisa.dhs.gov.*

SUPPLEMENTARY INFORMATION: The CISA Cybersecurity Advisory Committee was established under the National Defense Authorization Act for Fiscal Year 2021 (Pub. L. 116–283). Notice of this meeting is given under FACA, 5 U.S.C. appendix (Pub. L. 92–463). The CISA Cybersecurity Advisory Committee advises the CISA Director on matters related to the development, refinement, and implementation of policies, programs, planning, and training pertaining to the cybersecurity mission of the Agency.

Agenda: The CISA Cybersecurity Advisory Committee will meet in an open session on Friday, December 10, 2021, from 1:00 p.m. to 3:30 p.m. ET to discuss CISA Cybersecurity Advisory Committee activities and the Government's ongoing cybersecurity initiatives. The open session will include: (1) A keynote address; (2) an overview of CISA; and (3) a discussion on CISA's big challenges, priorities, and potential study topics for the CISA Cybersecurity Advisory Committee.

The committee will also meet in a closed session from 10:30 a.m. to 12:00 p.m. ET during which time senior Government intelligence officials will provide a classified threat briefing concerning cybersecurity threats to the Government and critical infrastructure.

Basis for Closure: In accordance with section 10(d) of FACA and 5 U.S.C. 552b(c)(1), *The Government in the Sunshine Act,* it has been determined that one agenda item requires closure, as the disclosure of the information that will be discussed would not be in the public interest.

This agenda item includes a threat briefing, which will provide CISA Cybersecurity Advisory Committee members the opportunity to discuss information concerning cybersecurity threats with senior Government intelligence officials. The briefing is anticipated to be classified at the top secret/sensitive compartmented information level. Disclosure of the threats, vulnerabilities, and mitigation techniques discussed during the briefing would present a risk to the Nation's cybersecurity posture, as adversaries could use this information to compromise commercial and Government networks. The premature disclosure of this information to the public would provide adversaries who wish to intrude into commercial and government networks with information on potential vulnerabilities, current mitigation techniques, and existing cybersecurity defense tactics.

Therefore, this portion of the meeting is required to be closed pursuant to section 10(d) of FACA and 5 U.S.C. 552b(c)(l), (3).

Megan Tsuyi,

Designated Federal Officer, CISA Cybersecurity Advisory Committee, Cybersecurity and Infrastructure Security Agency, Department of Homeland Security.

[FR Doc. 2021–25744 Filed 11–24–21; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[DHS Docket No. ICEB–2021–0009]

RIN 1653–ZA22

Employment Authorization for F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of Emergent Circumstances in Hong Kong

AGENCY: U.S. Immigration and Customs Enforcement (ICE), DHS.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students who are Hong Kong residents (regardless of country of birth) and who are experiencing severe economic hardship as a direct result of the emergent circumstances in Hong Kong. The Secretary is taking action to provide relief to Hong Kong residents [1] who are lawful F–1 nonimmigrant students so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status. DHS will deem an F–1 nonimmigrant student who receives employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

DATES: This F–1 notice is effective on November 26, 2021 through February 5, 2023.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/*.

SUPPLEMENTARY INFORMATION:

What action is the Department of Homeland Security (DHS) taking under this notice?

The Secretary is exercising authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students who, on the date of publication of this notice, are Hong Kong residents, regardless of country of birth, are present in the United States in lawful F–1 nonimmigrant student status and are experiencing severe economic hardship as a direct result of the emergent circumstances in Hong Kong. Effective with this publication, suspension of the employment limitations is available through February 5, 2023, for those who are in lawful F–1 nonimmigrant status. DHS will deem an F–1 nonimmigrant student granted employment authorization through the notice to be engaged in a ''full course of study,'' for the duration of the employment authorization if the student satisfies the minimum course load set forth in this notice.[2] *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

[1] For purposes of this Notice, a Hong Kong resident is defined as an individual of any nationality, or without nationality, who has met the requirements for, and been granted, a Hong Kong Special Administrative Region Passport, a British National Overseas Passport, a British Overseas Citizen Passport, a Hong Kong Permanent Identity card, or a Hong Kong Special Administrative Region (HKSAR) Document of Identity for Visa Purposes.

[2] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of February 5, 2023, provided the student satisfies the minimum course load requirements in this notice. DHS also considers students who engage in online coursework pursuant to ICE coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *available at https://www.ice.gov/coronavirus* [last visited September 2021].

(1) Are Hong Kong residents, regardless of country of birth;

(2) Were lawfully present in the United States in an F–1 nonimmigrant status on the date of publication of this notice, under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the emergent circumstances in Hong Kong.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school in grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

On August 5, 2021, President Biden issued a memorandum to the Secretary of State and the Secretary of DHS to defer for 18 months the removal of certain Hong Kong residents present in the United States.[3] There are compelling foreign policy reasons to grant Deferred Enforced Departure (DED), including the defense of democracy and the promotion of human rights in Hong Kong. Now, DHS is taking action so eligible F–1 nonimmigrant students who are Hong Kong residents, regardless of country of birth, may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

As of April 20, 2021, 5,067 F–1 nonimmigrants students who are Hong Kong residents were physically present in the United States and enrolled in SEVP-certified academic institutions. Many of these students are impacted by the emergent circumstances in Hong Kong because their primary means of financial support comes from Hong Kong. Without employment authorization, these students may lack the means to meet basic living expenses. Therefore, in support of affected F–1 nonimmigrant students who may be unable to return to Hong Kong for the foreseeable future, the Secretary is exempting them from the normal student employment requirements so that they may support themselves as they continue their program of study in the United States.

What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term.[4] A graduate-level F–1 nonimmigrant student who receives on-campus or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless the course of study is in a language study program.[5] *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in grades kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F–1 nonimmigrant student who is a Hong Kong resident, regardless of country of birth, who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i)(A) and (B) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that the designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].

Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces their ''full course of study''?

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [6] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction

[3] ''*Deferred Enforced Departure for Certain Hong Kong Residents Memorandum for the Secretary of State [and] the Secretary of Homeland Security*'' 86 FR 43587 (Aug. 5, 2021).

[4] Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B).

[5] DHS considers students who engage in online coursework pursuant to ICE coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *available at https://www.ice.gov/coronavirus* [last visited September 2021].

[6] *See* 8 CFR 214.2(f)(6).

per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term.[7] See 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible to apply for employment authorization?

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status. *See* 8 CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to an individual who receives an initial F–1 visa and makes an initial entry in the United States after the effective date of this notice in the ***Federal Register****?*

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are Hong Kong residents, regardless of country of birth;

(2) Were lawfully present in the United States in F–1 nonimmigrant status on the date of publication of this notice, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i);

(3) Are enrolled in an academic institution that is SEVP certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the emergent circumstances in Hong Kong.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the emergent circumstances in Hong Kong).

Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the ***Federal Register*** *and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?*

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa in order to continue their educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students enrolled in private kindergarten through grade 12, or public school grades 9 through 12. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation. *See* 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session. Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

On-Campus Employment Authorization

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the SEVIS student record, which will be reflected on the student's Form I–20:

> Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the emergent circumstances in Hong Kong. An F–1 nonimmigrant student authorized by the student's DSO to engage in on-campus employment by means of this notice does not need to file any applications with USCIS. The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply. *See* 8 CFR 214.2(f)(9)(i).

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain their F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [8] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment if the student satisfies the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the school's minimum course load requirement for continued enrollment.[9]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F–1 nonimmigrant student covered by this notice, as provided

[7] Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B).

[8] *See* 8 CFR 214.2(f)(6).

[9] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant status for one full academic year in order to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [10] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice. *See* 8 CFR 214.2(f)(6)(i)(F). However, the authorization for reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[11]

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the emergent circumstances in Hong Kong. Filing instructions are located at: *http://www.uscis.gov/i-765.*

Fee considerations. Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See www.uscis.gov/feewaiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c).

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to the DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the emergent circumstances in Hong Kong.

If the DSO agrees that the F–1 nonimmigrant student should receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on the student's Form I–20:

> Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765, according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that a F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [12] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a Hong Kong resident, regardless of country of birth, and is experiencing severe economic hardship as a direct result of the emergent circumstances in Hong Kong, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of 8 CFR 214.2(f)(5)(v) and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level; and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the emergent circumstances in Hong Kong.

Processing. To facilitate prompt adjudication of the student's application for off-campus employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes all of the following documents:

(1) A completed Form I–765;

(2) The required fee or properly documented fee waiver request, Form I–912, as defined in 8 CFR 103.7(c); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

Deferred Enforced Departure Considerations

Can an F–1 nonimmigrant student apply for a DED-related EAD and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[13] under this notice may want to obtain a DED-based EAD by

[10] *See* 8 CFR 214.2(f)(6).

[11] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[12] *See* 8 CFR 214.2(f)(6).

[13] DHS Study in the States, Special Student Relief available at *https://studyinthestates.dhs.gov/students/special-student-relief* [last accessed March 2021].

filing Form I–765, Application for Employment Authorization, and pay the associated fee (or request a fee waiver). Although not required to do so, if an F–1 nonimmigrant student wants to obtain a new EAD that is valid through February 5, 2023, based on DED, the student must file Form I–765 and pay the Form I–765 fee (or request a fee waiver). After receiving the DED-related EAD, an F–1 nonimmigrant student may request that the DSO make the required entry in SEVIS, issue an updated Form I–20, as described in this notice, and notate that the F–1 nonimmigrant student has been authorized to carry a reduced course load and is working pursuant to a DED-related EAD. So long as the F–1 nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate the student's nonimmigrant status, including as provided under 8 CFR 214.1(g), and remains covered under DED, then the student maintains F–1 nonimmigrant status and DED concurrently.[14]

When a student applies simultaneously for a DED-related EAD and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [15] unless or until the F–1 nonimmigrant student is granted employment authorization under this notice. DED-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for language students). Once approved for Special Student Relief employment authorization, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if the student is at the undergraduate level, or a minimum of three semester or quarter hours of instruction per academic term if the student is at the graduate level). *See* 8 CFR 214.2(f)(5)(v), 214.2(f)(6), 214.2(f)(9)(i) and (ii).

How does an F–1 student who has received a DED-related EAD then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a DED-related EAD. However, the F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of severe economic hardship as a direct result of the emergent circumstances in Hong Kong. The DSO will then verify and update the student's SEVIS record to enable the F–1 nonimmigrant student with DED to reduce their course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

Can a noncitizen who has been granted a DED-related EAD apply for reinstatement to F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?

Yes. Current regulations permit certain noncitizens who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision might apply to a noncitizen who worked on a DED-related EAD or dropped their course load before publication of this notice, and therefore fell out of F–1 nonimmigrant status. The noncitizen must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations. *See* 8 CFR 214.2(f)(16)

How long will this notice remain in effect?

This notice grants temporary relief until February 5, 2023 [16] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Hong Kong. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the emergent circumstances in Hong Kong must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2021–25732 Filed 11–24–21; 8:45 am]

BILLING CODE 9111–28–P

[14] ''Implementation of Employment Authorization for Individuals Covered by Deferred Enforced Departure for Hong Kong (Notice).'' **Federal Register** Vol. 86, No. 201 (October 21, 2021), p. 58296.

[15] *See* 8 CFR 214.2(f)(6).

[16] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of February 5, 2023, provided the student satisfies the minimum course load requirement in this notice. DHS also considers students who engage in online coursework pursuant to ICE coronavirus disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *available at https://www.ice.gov/coronavirus* [last visited September 2021].

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R6–ES–2021–N203; FXES11130600000–201–FF06E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments by December 27, 2021.

ADDRESSES: *Document availability and comment submission:* Use one of the following methods to request documents or submit comments. Requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* Smith, PER0123456 or ES056001):

- *Email: permitsR6ES@fws.gov.*
- *U.S. Mail:* Marjorie Nelson, Chief, Division of Ecological Services, U.S. Fish and Wildlife Service, 134 Union Blvd., Suite 670, Lakewood, CO 80228.

FOR FURTHER INFORMATION CONTACT: Robert Krijgsman, Recovery Permits Coordinator, Ecological Services, 303–236–4347 (phone), or *permitsR6ES@fws.gov* (email). Individuals who are hearing or speech impaired may call the Federal Relay Service at 1–800–877–8339 for TTY assistance.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered or threatened under the ESA.

Background

The Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, and Federal agencies; Tribes; and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant	Species	Location	Take activity	Permit action
ES056001	East Dakota Water Development District, Brookings, SD.	• Topeka shiner (*Notropis topeka*)	SD	• Capture, electrofish, handle, and release.	Renew.
ES13024B	Bureau of Land Management, Lakewood, CO.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	CO	• Play taped vocalizations.	Renew.
ES85057B	George Cunningham, Omaha, NE.	• Topeka shiner (*Notropis topeka*)	MO, NE, KS, MN, IA, SD	• Capture, electrofish, handle, and release.	Renew.
PER0012679 ...	University of Northern Colorado, Greeley CO.	• Penland beardtongue (*Penstemon penlandii*) • Osterhout milkvetch (*Astragalus osterhoutii*) • North Park phacelia (*Phacelia formosula*) .... • Clay-loving wild buckwheat (*Eriogonum pelinophilum*).	CO, NM	• Remove and reduce to possession from lands under Federal jurisdiction, collect tissue.	New.
ES047808	National Park Service, Moab, UT.	• Southwestern willow flycatcher (*Empidonax traillii extimus*).	UT	• Play taped vocalizations.	Renew.
ES047288	National Park Service, Heartland Network, Republic, MO.	• Topeka shiner (*Notropis topeka*)	KS, MN	• Capture, electrofish, handle, and release.	Renew.
ES051828	Smithsonian National Zoo and Conservation Biology Institute, Washington, DC.	• Black-footed ferret (*Mustela nigripes*)	DC	• Captively propagate, general husbandry, transport, and transfer.	Renew.
ES06447C	Montana Department of Fish, Wildlife, and Parks.	• Pallid sturgeon (*Scaphirhynchus albus*)	MT	• Capture, handle, propagate, display for educational purposes, and release.	Renew.

Public Availability of Comments

Written comments we receive become part of the administrative record. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions

from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Small,

Assistant Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 2021–25793 Filed 11–24–21; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–671–672 and 731–TA–1571–1573 (Preliminary)]

Oil Country Tubular Goods From Argentina, Mexico, Russia, and South Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of oil country tubular goods from Argentina, Mexico, Russia, and South Korea, provided for in subheadings 7304.29, 7305.20, and 7306.29 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and to be subsidized by the governments of Russia and South Korea.[2]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Background

On October 6, 2021, Borusan Mannesmann Pipe U.S., Inc., Baytown, Texas; PTC Liberty Tubulars LLC, Liberty, Texas; U.S. Steel Tubular Products, Inc., Pittsburgh, Pennsylvania; Welded Tube USA, Inc., Lackawanna, New York; and the United States Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC, Pittsburgh, Pennsylvania, filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of oil country tubular goods from Russia and South Korea and LTFV imports of oil country tubular goods from Argentina, Mexico, and Russia. Accordingly, effective October 6, 2021, the Commission instituted countervailing duty investigation Nos. 701–TA–671–672 and antidumping duty investigation Nos. 731–TA–1571–1573 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 13, 2021 (86 FR 56983). In light of the restrictions on access to the Commission building due to the COVID–19 pandemic, the Commission conducted its conference through written testimony and video conference on October 27, 2021. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on November 22, 2021. The views of the Commission are contained in USITC Publication 5248 (November 2021), entitled *Oil Country Tubular Goods from Argentina, Mexico, Russia, and South Korea: Investigation Nos. 701–TA–671–672 and 731–TA–1571–1573 (Preliminary).*

By order of the Commission.

Issued: November 22, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–25801 Filed 11–24–21; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1191]

Certain Audio Players and Controllers, Components Thereof, and Products Containing the Same; Commission Determination To Review In Part a Final Initial Determination Finding a Violation of Section 337; Schedule for Filing Written Submissions on Remedy, the Public Interest, and Bonding; Extension of the Target Date

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that, on August 13, 2021, the presiding chief administrative law judge (''CALJ'') issued a combined final initial determination (''ID'') finding a violation of section 337 and a recommended determination (''RD'') on remedy and bonding in the above-captioned investigation. The Commission has determined to review the final ID in part. The Commission requests briefing from the parties, interested government agencies, and interested persons on the issues of remedy, the public interest, and bonding. The Commission has also determined to extend the target date for completion of the investigation to January 6, 2022.

FOR FURTHER INFORMATION CONTACT: Richard P. Hadorn, 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)

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 86 FR 60205 and 86 FR 60210 (November 1, 2021).

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 11, 2020, the Commission instituted this investigation based on a complaint filed by Sonos, Inc. (''Sonos'') of Santa Barbara, California. 85 FR 7783 (Feb. 11, 2020). The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337) (''section 337''), based on the importation into the United States, the sale for importation, or the sale within the United States after importation of certain audio players and controllers, components thereof, and products containing the same by reason of infringement of certain claims of U.S. Patent Nos. 9,195,258 (''the '258 patent''); 10,209,953 (''the '953 patent''); 8,588,949 (''the '949 patent''); 9,219,959 (''the '959 patent''); and 10,439,896 (''the '896 patent''). *Id.* The complaint further alleges that a domestic industry exists. *Id.* The notice of investigation named as respondents Google LLC (''Google'') and Alphabet Inc. (''Alphabet''), both of Mountain View, California. *Id.* The Office of Unfair Import Investigations (''OUII'') is also named as a party. *Id.*

On September 21, 2020, the Commission terminated the investigation as to Alphabet based on withdrawal of the allegations in the complaint directed to Alphabet. Order No. 18 (Sept. 1, 2020), *unreviewed by* Comm'n Notice (Sept. 21, 2020). On November 24, 2020, the Commission determined that the importation requirement has been satisfied. Order No. 27 (Oct. 27, 2020), *unreviewed by* Comm'n Notice (Nov. 24, 2020). On February 2, 2021, the Commission determined that the technical prong of the domestic industry requirement has been satisfied as to the '949 patent. Order No. 32 (Jan. 4, 2021), *unreviewed by* Comm'n Notice (Feb. 2, 2021). On February 16, 2021, the Commission determined that the economic prong of the domestic industry requirement has been satisfied as to all asserted patents. Order No. 35 (Jan. 14, 2021), *reviewed and aff'd by* Comm'n Notice (Feb. 16, 2021).

On March 12, 2021, the Commission partially terminated the investigation based on withdrawal of the allegations in the complaint as to the following asserted claims: Claims 22 and 23 of the '258 patent; claims 12 and 13 of the '953 patent; claims 5, 9, 29, and 35 of the '959 patent; and claim 3 of the '896 patent. Order No. 58 (Feb. 23, 2021), *unreviewed by* Comm'n Notice (Mar. 12, 2021).

The following claims remain at issue: Claims 17, 21, 24, and 26 of the '258 patent; claims 7, 14, and 22–24 of the '953 patent; claim 10 of the '959 patent; Claims 1, 2, 4, and 5 of the '949 patent; and claims 1, 5, 6, and 12 of the '896 patent.

On August 13, 2021, the CALJ issued the subject final ID on violation and RD on remedy and bonding. The ID finds violations of section 337 with respect to certain claims of each asserted patent. The RD recommends that, should the Commission determine that violations of section 337 occurred, then the Commission should: (i) Issue a limited exclusion order against Google's infringing products; (ii) issue a cease and desist order against Google; and (iii) set a bond of 100 percent for any importations of infringing products during the period of Presidential review.

On August 27, 2021, Sonos and Google each filed a petition for review of certain findings in the final ID. On September 7, 2021, the private parties filed responses to each other's petitions, and OUII filed a combined response to both petitions.

On September 13, 2021, the Commission received eight submissions on the public interest in response to the Commission's **Federal Register** notice. *See* 86 FR 46715 (Aug. 19, 2021). The Commission did not receive any submissions on the public interest from the parties pursuant to Commission Rule 210.50(a)(4) (19 CFR 210.50(a)(4)).

The Commission has determined to review the ID in part with respect to the ID's analysis of whether the products accused of infringing the '258 and '953 patent are articles that infringe at the time of importation. The Commission has also determined to correct two typographical errors on pages 24 and 84 of the ID. The Commission has determined not to review the remaining findings in the ID.

The Commission has also determined to extend the target date for completion of the investigation to January 6, 2022.

In connection with the final disposition of this investigation, the statute authorizes issuance of: (1) An exclusion order that could result in the exclusion of the subject articles from entry into the United States, and/or (2) a cease and desist order that could result in the respondent being required to cease and desist from engaging in unfair acts in the importation and sale of such articles. Accordingly, the Commission is interested in receiving written submissions that address the form of remedy, if any, that should be ordered. If a party seeks exclusion of an article from entry into the United States for purposes other than entry for consumption, the party should so indicate and provide information establishing that activities involving other types of entry either are adversely affecting it or likely to do so. For background, see *Certain Devices for Connecting Computers via Telephone Lines,* Inv. No. 337–TA–360, USITC Pub. No. 2843, Comm'n Op. at 7–10 (December 1994).

The statute requires the Commission to consider the effects of any remedy upon the public interest. The public interest factors the Commission will consider include the effect that an exclusion order and/or cease and desist order would have on: (1) The public health and welfare; (2) competitive conditions in the U.S. economy; (3) U.S. production of articles that are like or directly competitive with those that are subject to investigation; and (4) U.S. consumers. The Commission is therefore interested in receiving written submissions that address the aforementioned public interest factors in the context of this investigation.

If the Commission orders some form of remedy, the U.S. Trade Representative, as delegated by the President, has 60 days to approve, disapprove, or take no action on the Commission's determination. *See* Presidential Memorandum of July 21, 2005. 70 FR 43251 (July 26, 2005). During this period, the subject articles would be entitled to enter the United States under bond, in an amount determined by the Commission and prescribed by the Secretary of the Treasury. The Commission is therefore interested in receiving submissions concerning the amount of the bond that should be imposed if a remedy is ordered.

Written Submissions: The parties, interested government agencies, and any other interested parties are invited to file written submissions on the issues of remedy, the public interest, and bonding. Such submissions should include views on the recommended determination by the CALJ on remedy and bonding.

In their initial written submissions, Sonos and OUII are requested to submit proposed remedial orders for the Commission's consideration. Sonos is further requested to identify the dates the Asserted Patents expire, to provide the HTSUS subheadings under which

the subject articles are imported, and to supply identification information for all known importers of the subject articles. Sonos is additionally requested to identify and explain, from the record, articles that are ''components of'' and ''products containing'' the subject articles, and thus covered by the proposed remedial orders, if imported separately from the subject articles.

Initial written submissions, including proposed remedial orders, must be filed no later than close of business on December 2, 2021. Reply submissions must be filed no later than the close of business on December 10, 2021. No further submissions on any of these issues will be permitted unless otherwise ordered by the Commission.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (Inv. No. 337–TA–1191) in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) By the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel,[1] solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

The Commission vote for this determination took place on November 19, 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: November 19, 2021.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2021–25761 Filed 11–24–21; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium Americas

Notice is hereby given that, on October 29, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Southwest Research Institute—Cooperative Research Group on ROS-Industrial Consortium-Americas (''RIC-Americas'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Process Champ, LLC, Troy, MI, has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and RIC-Americas intends to file additional written notifications disclosing all changes in membership.

On April 30, 2014, RIC-Americas filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 9, 2014 (79 FR 32999).

The last notification was filed with the Department on August 23, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on October 5, 2021 (86 FR 55002).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25834 Filed 11–24–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—UHD Alliance, Inc.

Notice is hereby given that, on November 2, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), UHD Alliance, Inc. (''UHD Alliance'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Beijing Xiaomi Mobile Software Co., Ltd., Beijing, PEOPLE'S REPUBLIC OF CHINA been added as a party to this venture.

Also, Pixelworks, Inc, San Jose, CA; and Fraunhofer Gesellschaft, Fraunhofer IIS, Erlangen, GERMANY have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and UHD Alliance intends to file additional written notifications disclosing all changes in membership.

On June 17, 2015, UHD Alliance filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on July 17, 2015 (80 FR 42537).

The last notification was filed with the Department on August 18, 2021. A notice was published in the **Federal**

[1] All contract personnel will sign appropriate nondisclosure agreements.

Register pursuant to Section 6(b) of the Act on October 5, 2021 (86 FR 55002).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25704 Filed 11–24–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consortium for Execution of Rendezvous and Servicing Operations

Notice is hereby given that, on Oct 1, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consortium for Execution of Rendezvous and Servicing Operations (''CONFERS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Dawn Aerospace New Zealand Limited, Christchurch, NEW ZEALAND; Kall Morris, Inc., Marquette, MI; SpaceLink Corporation, McLean, VA; and Turion Space Corporation, Irvine, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CONFERS intends to file additional written notifications disclosing all changes in membership.

On September 10, 2018, CONFERS filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on October 19, 2018 (77 FR 36292).

The last notification was filed with the Department on July 2, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47155).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25835 Filed 11–24–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—the National Advanced Mobility Consortium (NAMC) (Formerly the Robotics Technologies Consortium)

Notice is hereby given that, on November 5, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The National Advanced Mobility Consortium (''NAMC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, American Engineering & Manufacturing Inc, Elyria, OH; American Material Handling, Inc., Watkinsville, GA; Ametek | Spectro Scientific, Chelmsford, MA; Ametrine, Inc, Rockville, MD; AOM Engineering Solutions LLC, Dearborn Heights, MI; Array of Engineers, Grand Rapids, Mil; ATAP Inc, Eastaboga, AL; B&H International LLC, Bakersfield, CA; Beacon Interactive Systems, LLC, Waltham, MA; BH Technology LLC, Pomona, NY; Bokam Engineering Inc, Santa Ana, CA; Bounce Imaging, Buffalo, NY; Compass Instruments, Inc., Sugar Grove, IL; Compusult Systems Inc., Chantilly, VA; DataRobot, Boston, MA; Decisive Edge LLC, Bradenton, FL; Dynamic Software Solutions, Niceville, FL; Enginuity Power Systems, Alexandria, VA; Falex Corporation, Sugar Grove, IL; FIDELIUM, LLC, Virginia Beach, VA; Future Tense LLC dba CalypsoAI Labs, Richmond, VA; GaN Corporation, Huntsville, AL; GC Associates USA LLC, Arlington, VA; GTA Containers, South Bend, IN; Hypergiant Galactic Systems, Inc., Austin, TX; Indiana Mills & Manufacturing, Inc. (IMMI), Westfield, IN; Insight International Technology LLC, Huntsville, AL; Intelligent Fusion Technology, Inc., Germantown, MD; Iten Defense LLC, Ashtabula, OH; Kevin Diaz, Niceville, FL; Kongsberg Protech Systems USA Corporation, Johnstown, PA; krtkl inc., San Francisco, CA; L3Harris Technologies | Link Training & Simulation, Arlington, TX; L3 Technologies Inc. Communication Systems West Operating, Salt Lake City, UT; Leading Technology Composites, Wichita, KS; Logistic Services International, Inc., Jacksonville, FL; Merrill Aviation & Defense, Saginaw, MI; Northrop Grumman Systems Corporation, Linthicum Heights, MD; O'Gara-Hess & Eisenhardt Armoring Company LLC, Fairfield, OH; Patriot Products Inc, Franklin, IN; QinetiQ, Inc., Lorton, VA; Qualtech Systems, Inc., Rocky Hill, CT; Rajant Corporation, Malvern, PA; Real-Time Analyzers, Inc., Middletown, CT; Red Berry Innovations, Inc., Springfield, NE; Robotire, Inc., Canton, MI; Secmation, LLC, Raleigh, NC; Sekai Electronics, Inc., Irvine, CA; ServiceNow, Santa Clara, CA; Siemens Government Technologies, Inc., Reston, VA; Silicon Forest Electronics, Vancouver, WA; Solar Stik Inc., Saint Augustine, FL; SparkCognition Government Systems, Inc., Austin, TX; Tangram Flex, Dayton, OH; Telefactor Robotics, West Conshohocken, PA; The Will-Burt Company, Orrville, OH; Ultra Electronics ICE, Inc., Manhattan, KS; Vertex Aerospace LLC, Madison, MS; VISIMO, Coraopolis, PA; Wescam USA, Inc, Santa Rosa, CA, and ZMicro Inc, San Diego, CA have been added as parties to this venture.

Also, Acellent Technologies Inc., Sunnyvale, CA; Advanced Ground Information Systems (AGIS), Inc., Jupiter, FL; Aeryon Defense USA, Inc., Denver, CO; Agility Robotics Inc., Pittsburgh, PA; ANSYS, Inc. (formerly DfR Solutions LLC), Canonsburg, PA; Aquabotix Technology Corporation, Jamestown, RI; Arconic Defense Inc. (formerly Alcoa Defense Inc.), Canonsburg, PA; Ascent Vision Technologies, LLC, Belgrade, MT; Auctus Blue LLC, Saint Petersburg, FL; Aurora Flight Sciences Corporation, Manassas, VA; Automotive Insight, LLC, Troy, MI; Autonomous Solutions, Inc., Mendon, UT; Baker Engineering, LLC, Nunica, MI; Ball Aerospace, Fairborn, OH; Battelle Energy Alliance LLC, Idaho Falls, ID; Battelle Memorial Institute, Columbus, OH; Black Diamond Structures, LLC, Austin, TX; Blue Force Technologies, Inc., Morrisville, NC; Chemring Sensors & Electronic Systems (formerly NIITEK, Inc.), Charlotte, NC; CIGNYS, Saginaw, MI; Coda Octopus Colmek, Inc., Murray, UT; CogniTech Corporation, Salt Lake City, UT; Continental Mapping, Sun Prairie, WI; Continuous Solutions LLC, Portland, OR; Convergent3D, LLC, Mount Pleasant, SC; Danlaw Inc., Novi, MI; Defense Acquisition & Contracting Solutions LLC (DACS), Southport, NC; Design Automation Associates, Inc., Windsor Locks, CT; Dynamic Software Solutions, Inc. (DS2), Niceville, FL; Eckhart, Deerfield, IL; Envision Technology, LLC, Manchester, NH; Flex

Force Enterprises Inc., Portland, OR; Flugauto Inc., Brighton, MI; Gentex Corporation, Boston, MA; Geodetics, Inc., San Diego, CA; GLX Power Systems Inc., Chargin Falls, OH; Great Lakes Waterjet and Laser, Albion, MI; Hippo Power LLC, Riverside, MO; Honeybee Robotics, New York, NY; Honeycomb Networks, Inc., Grant, AL; HORIBA Instruments, Inc., Ann Arbor, MI; Iguana Technology LLC, Tillamook, OR; Innovative Manufacturing Engineering LLC (I:ME), Livonia, MI; Intevac Photonics, Inc., Santa Clara, CA; JTEK Data Solutions, LLC, Bethesda, MD; Kairos Autonomi, Inc., Sandy, UT; L3 Technologies, Inc. (Communication Systems-West), Salt Lake City, UT; LINE–X LLC, Houston, TX; MAHLE Industrial Thermal Systems America LP, Belmont, MI; Manufacturing Techinques, Inc. MTEQ, Lorton, VA; Maritime Applied Physics Corporation, Baltimore, MD; Martin Defense Group LLC (formerly Navatek, LLC), Honolulu, HI; Mattracks, Inc., Karlstad, MN; Mawashi Science & Technology, Cape Coral, FL; MBD Prop, Farmington, MI; McLaughlin Body Company, Moline, IL; MGS Incorporated, Denver, PA; Morgan 6 LLC, Charleston, SC; Motiv Space Systems, Inc., Pasadena, CA; MRIGlobal Kansas City, MO; New Frontier Aerospace, Livermore, CA; NewSoTech, Inc., Ashburn, VA; Parsons Government Services, Inc., Pasadena, CA; Parts Life Inc., Moorestown, NJ; Peregrine Technical Solutions, LLC, Yorktown, VA; Phoenix Integration Inc., Novi, MI; Polymule, Inc., Lehi, UT; Protective Technologies Group, Inc., Fallbrook, CA; Ravn, San Francisco, CA; Rhoman Aerospace Corporation, Los Angeles, CA; Riptide Software, Oviedo, FL; Rose-A-Lee Technologies, Inc., Sterling Heights, MI; Sciaky, Chicago, IL; Sea Machine Robotics, East Boston, MA; SEA, Ltd., Columbus, OH; Secord Solutions LLC, Grosse Ile, MI; Seiler Instrument, St. Louis, MO; Shift5, Inc., Rosslyn, VA; Sixgen, Inc., Annapolis, MD; South Dakota School of Mines and Technology, Rapid City, SD; ST Engineering North America Government, Huntsville, AL; Stark Aerospace, Columbus, MS; STS International, Inc., Berkeley Springs, WV; Subsystem Technologies Inc., Arlington, VA; Supreme Gear Company, Inc., Fraser, MI; Tactonomy, Huntsville, AL; Teledyne Brown Engineering, Inc., Huntsville, AL; Telefactor Robotics LLC, West Conshohocken, PA; The Advent Group, LLC (TAG), Pontiac, MI; The Spectrum Group LLC, Alexandria, VA; Tribalco, LLC, Bethesda, MD; Troika Solutions, LLC, Reston, VA; Tuskegee University, Tuskegee, AL; UHV Technologies, Inc., Lexington, KY; United CNC Machining, Auburn Hills, MI; University of Arkansas, College of Engineering, Fayetteville, AR; University of Iowa, Iowa City, IA; University of Wisconsin-Milwaukee, Milwaukee, WI; Vecna Technologies, Inc., Cambridge, MA; Womack Machine Supply Company, Farmers Branch, TX; Wyle Laboratories, Inc., Huntsville, AL; xCraft Enterprises, Inc., Coeur d/Alene, ID; Yates Industries, Inc., St Clair Shores, MI have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAMC intends to file additional written notifications disclosing all changes in membership.

On October 15, 2009, NAMC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on November 30, 2009 (74 FR 62599).

The last notification was filed with the Department on March 18, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 8, 2021 (86 FR 18323).

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25837 Filed 11–24–21; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Armaments Consortium

Notice is hereby given that, on October 12, 2021, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Armaments Consortium (''NAC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically Aegis Systems Inc., New York, NY; Applied Energy Tech Corp (AETC), Burton, TX; ARCHEM, LLC, SHREVEPORT, LA; BlackSky Geospatial Solutions, Inc, Herndon, VA; Bowhead Avionics Manufacturing, LLC, Plano, TX; Breault Research Organization, Tucson, AZ; DAGER Technology, LLC, Fairfax, VA; FGC Plasma Solutions LLC, Weston, FL; Genesis Consulting Solutions LLC, Waldorf, MD; Hanley Industries, Inc., Alton, IL; JAAW Group LLC, The, Cottonwood Heights, UT; Johns Hopkins University Whiting School of Engineering, Baltimore, MD; L&C PROTEC, INC., DBA COCOON, INC., North Hampton, NH; Leading Technology Composites, Wichita, KS; Marine Electric Systems, Inc., South Hackensack, NJ; Next Offset Solutions, Inc., West Lafayette, IN; Oklahoma State University, Stillwater, OK; Onyx Aerospace, Inc., Huntsville, AL; Palomar Display Products, Inc, Carlsbad, CA; Perikin Enterprise LLC, Albuquerque, NM; PRIME Test and Technical Services LLC, Huntsville, AL; Prudent American Technologies, Inc., Lexington, KY; Resource Management Concepts, Inc, Lexington Park, MD; The Boeing Company—AZ, Mesa, AZ; Trillium Engineering LLC, Hood River, OR; Triton Systems, Inc., Chelmsford, MA; Troika Solutions, LLC, Reston, VA; United States Bomb Technician Association, Englewood, CO; University of Alabama at Birmingham, Birmingham, AL; Werco Manufacturing, Inc., Broken Arrow, OK; Williams International Co., LLC, Pontiac, MI have been added as parties to this venture. Aegis Systems, Inc., New York, NY; Agile Defense, Inc, Reston, VA; BAE Systems IAP Research, Inc., Dayton, OH; Barber-Nichols Inc., Arvada, CO; CoorsTek, Inc., Golden, CO; Fibertek, Inc., Herndon, VA; G2 Ops, Inc., Virginia Beach, VA; Government Energy Solutions, Inc., Huntsville, AL; Hardwire LLC, Pocomoke City, MD; iXblue Defense Systems, Inc., Lincoln, RI; Major Tool and Machine Inc., Indianapolis, IN; Mid-Continent Instrument Co., Inc., Wichita, KS; optX imaging systems LLC, Lorton, VA; OSS Suppressors LLC, Murray, UT; SciTech Services, Inc., Havre de Grace, MD; Steelhead Composites LLC, Golden, CO; Terma North America, Inc., Warner Robins, GA; The Intelligence & Security Academy LLC (ISA), Arlington, VA; Tiburon Associates, Inc., Grand Rapids, MI; Wyle Laboratories, Inc., Huntsville, AL; Zmicro, San Diego, CA have withdrawn as parties to this venture. No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and NAC intends to file additional written notifications disclosing all changes in membership.

On May 2, 2000, NAC filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 30, 2000 (65 FR 40693).

The last notification was filed with the Department on July 14, 2021. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 23, 2021 (86 FR 47154.)

Suzanne Morris,

Chief, Premerger and Division Statistics, Antitrust Division.

[FR Doc. 2021–25709 Filed 11–24–21; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0012]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 27, 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.

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Education, Training and Enhanced Services to End Violence Against and Abuse of Women with Disabilities Grant Program (Disability Grant Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1122–0012. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 18 grantees of the Disability Grant Program. Grantees include states, units of local government, Indian tribal governments or tribal organizations and non-governmental private organizations. The goal of this program is to build the capacity of such jurisdictions to address such violence against individuals with disabilities through the creation of multi-disciplinary teams. Disability Grant Program recipients will provide training, consultation, and information on domestic violence, dating violence, stalking, and sexual assault against individuals with disabilities and enhance direct services to such individuals.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 18 respondents (Disability Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. A Disability Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 36 hours, that is 18 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Melody Braswell.

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2021–25741 Filed 11–24–21; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0020]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Department of Justice, Office on Violence Against Women (OVW) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 27, 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.

SUPPLEMENTARY INFORMATION:

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* OVW Solicitation Template.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0020. U.S. Department of Justice, OVW.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* The affected public includes applicants to OVW grant programs authorized under the Violence Against Women Act of 1994, as amended. These include States, territories, Tribes or units of local government, institutions of higher education including colleges and universities, tribal organizations, Federal, State, tribal, territorial or local courts or court-based programs, State sexual assault coalitions, State domestic violence coalitions; territorial domestic violence or sexual assault coalitions, tribal coalitions, community-based organizations, and non-profit, nongovernmental organizations. The purpose of the solicitation template is to provide a framework to develop program-specific announcements soliciting applications for funding. A program solicitation outlines the specifics of the funding program; describes the requirements for eligibility; instructs an applicant on the necessary components of an application under a specific program (*e.g.* project activities and timeline, proposed budget): And provides registration dates, due dates, and instructions on how to apply within the designated application system. OVW is proposing revisions to the current OMB-approved solicitation template to reduce duplicative language, employ plain language, ensure consistency, outline all requirements clearly, and conform with 2 CFR part 200, Uniform Administrative Requirements, Cost Requirements, Cost Principles, and Audit Requirements for Federal Awards.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that information will be collect annually from the approximately 1800 respondents (applicants to the OVW grant programs). The public reporting burden for this collection of information is estimated at up to 30 hours per application. The 30-hour estimate is based on the amount of time to prepare a narrative, budget and other materials for the application and, if required, to coordinate with and develop a memorandum of understanding with requisite project partners.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The estimated public burden associated with this collection is 54,000 hours.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Dated: November 19, 2021

Melody Braswell,

Department Clearance Officer, PRA U.S. Department of Justice.

[FR Doc. 2021–25742 Filed 11–24–21; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

[OMB Number 1122–0008]

Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection

AGENCY: Office on Violence Against Women, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Office on Violence Against Women (OVW), Department of Justice, will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

DATES: Comments are encouraged and will be accepted for 30 days until December 27, 2021.

FOR FURTHER INFORMATION CONTACT: 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.

SUPPLEMENTARY INFORMATION:

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Semi-Annual Progress Report for Grantees from the Enhanced Training and Services to End Violence Against and Abuse of Women Later in Life Program (Elder Abuse Program).

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* 1122–0008. U.S. Department of Justice, Office on Violence Against Women.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The affected public includes the approximately 18 grantees of the Elder Abuse Program. Elder Abuse Program grants may be used for training programs to assist law enforcement officers, prosecutors, and relevant officers of Federal, State, tribal, and local courts in recognizing, addressing,

investigating, and prosecuting instances of elder abuse, neglect, and exploitation and violence against individuals with disabilities, including domestic violence and sexual assault, against older or disabled individuals. Grantees fund projects that focus on providing training for criminal justice professionals to enhance their ability to address elder abuse, neglect and exploitation in their communities and enhanced services to address these crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that it will take the approximately 18 respondents (Elder Abuse Program grantees) approximately one hour to complete a semi-annual progress report. The semi-annual progress report is divided into sections that pertain to the different types of activities in which grantees may engage. An Elder Abuse Program grantee will only be required to complete the sections of the form that pertain to its own specific activities.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 36 hours, that is 18 grantees completing a form twice a year with an estimated completion time for the form being one hour.

If additional information is required contact: Melody Braswell, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 3E, 405B, Washington, DC 20530.

Melody Braswell,

Department Clearance Officer, PRA, U.S. Department of Justice.

[FR Doc. 2021–25743 Filed 11–24–21; 8:45 am]

BILLING CODE 4410–FX–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed First Amendment to Consent Decree

On November 19, 2021, the Department of Justice lodged a proposed First Amendment to Consent Decree with the United States District Court for the Western District of Louisiana in the lawsuit entitled *United States et al.* v. *Columbian Chemical Company,* (W.D. La.), Civil Case. No. 6:17–cv–01661.

The Consent Decree, entered by the Court on August 14, 2018, resolved claims by the United States, the State of Kansas, and the State of Louisiana alleging violations of certain Clean Air Act provisions at two carbon black manufacturing facilities owned and operated by Columbian Chemicals (now ''Birla''). The Consent Decree requires Defendant to reduce harmful SO_2, NO_X, and PM emissions through the installation and operation of pollution controls at its North Bend, Louisiana and Hickok, Kansas facilities. Defendant also agreed to spend $375,000 to fund environmental mitigation projects that will further reduce emissions and benefit communities adversely affected by the pollution from the facilities, and pay a civil penalty of $650,000.

The proposed First Amendment to Consent Decree would, if entered by the Court, make modifications to the Consent Decree to address and resolve claims by Defendant that force majeure events caused delays in meeting certain compliance deadlines at Defendant's Borger, Texas facility. The modifications extend certain deadlines in the Consent Decree, while maintaining Defendant's ultimate obligation to install and operate pollution controls at its facilities.

The publication of this notice opens a period for public comment on the proposed First Amendment to Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States et al.* v. *Columbian Chemicals Company,* (W.D. La.), D.J. Ref. No. 90–5–2–1–10943. 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:

To submit comments:	*Send them to:*
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the proposed First Amendment to 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 First Amendment to 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 $5.25 (25 cents per page reproduction cost) payable to the United States Treasury.

Thomas Carroll,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2021–25867 Filed 11–24–21; 8:45 am]

BILLING CODE 4410–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–21–0019; NARA–2022–014]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on regulations.gov for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: NARA must receive responses on the schedules listed in this notice by January 10, 2022.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-21-0019/document.* This is a direct link to the schedules posted in the docket for this notice on regulations.gov. You may submit comments by the following method:

- *Federal eRulemaking Portal: http://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on regulations.gov and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

Due to COVID–19 building closures, we are currently temporarily not accepting comments by mail. However, if you are unable to comment via regulations.gov, you may email us at *request.schedule@nara.gov* for instructions on submitting your

comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Keravuori, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov.* For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov* or by phone at 301–837–1799.

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the regulations.gov docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the regulations.gov portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we will post on regulations.gov a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we have made to the proposed records schedule. We will then send the schedule for final approval by the Archivist of the United States. You may elect at regulations.gov to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

SCHEDULES PENDING:

1. Department of Defense, Defense Information Systems Agency, Records of the Enterprise Mission Assurance Support Service (DAA–0371–2021–0001).

2. Department of Defense, Office of the Secretary of Defense, Records of the Trusted Capital Digital Marketplace (DAA–0330–2021–0007).

3. Department of Defense, Office of the Secretary of Defense, SMART Information Management System (DAA–0330–2021–0009).

4. Department of State, Bureau of Oceans and International Environmental and Science Affairs, Consolidated Schedule (DAA–0059–2019–0006).

5. Department of State, Office of Management, Consolidated Schedule for the Records of the Office of Foreign Missions (DAA–0059–2020–0024).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2021–25762 Filed 11–24–21; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2022–015]

Freedom of Information Act (FOIA) Advisory Committee Meeting

AGENCY: Office of Government Information Services (OGIS), National Archives and Records Administration (NARA).

ACTION: Notice of Federal advisory committee meeting.

SUMMARY: We are announcing an upcoming Freedom of Information Act (FOIA) Advisory Committee meeting in accordance with the Federal Advisory Committee Act and the second United States Open Government National Action Plan.

DATES: The meeting will be on December 9, 2021, from 10:00 a.m. to 1:00 p.m. ET. You must register by 11:59 p.m. ET December 7, 2021, to attend the meeting.

ADDRESSES: This meeting will be a virtual meeting. We will send access instructions to those who register according to the instructions below.

FOR FURTHER INFORMATION CONTACT: Kirsten Mitchell, Designated Federal Officer for this committee, by email at *foia-advisory-committee@nara.gov,* or by telephone at 202.741.5775.

SUPPLEMENTARY INFORMATION: *Agenda and meeting materials:* We will post all meeting materials at *https://www.archives.gov/ogis/foia-advisory-committee/2020-2022-term.* This will be the sixth meeting of the 2020–2022

committee term. The purpose of this meeting will be to hear updates and consider any draft recommendations from the four Subcommittees: Classification, Legislation, Process, and Technology.

Procedures: This virtual meeting is open to the public in accordance with the Federal Advisory Committee Act (5 U.S.C. app. 2). You must register in advance through this Eventbrite link *https://foiaac-mtg-dec-9-2021.eventbrite.com* if you wish to attend. Registration opens November 29, 2021. You must provide an email address so that we can provide you with information to access the meeting online. To request additional accommodations (*e.g.,* a transcript), email *foia-advisory-committee@nara.gov* or call 202.741.5775.

Tasha Ford,

Committee Management Officer.

[FR Doc. 2021–25855 Filed 11–24–21; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Submission for OMB Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice.

SUMMARY: The National Credit Union Administration (NCUA) will submit the following information collection 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.

DATES: Comments should be received on or before December 27, 2021 to be assured of consideration.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Copies of the submission may be obtained by contacting Dawn Wolfgang at (703) 548–2279, emailing *PRAComments@ncua.gov,* or viewing the entire information collection request at *www.reginfo.gov.*

SUPPLEMENTARY INFORMATION:

OMB Number: 3133–0121.

Type of Review: Extension of a currently approved collection.

Title: Notice of Change of Officials and Senior Executive Officers.

Forms: NCUA Forms 4063 and 4063a.

Abstract: In order to comply with statutory requirements, the agency must obtain sufficient information from new officials or senior executive officers of troubled or newly chartered credit unions to determine their fitness for the position. This is established by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Public Law 101–73. The forms provide a standardize format to collect the information needed.

Affected Public: Private Sector: Not-for-profit institutions; Individual or household.

Estimated Total Annual Burden Hours: 759.

OMB Number: 3133–0169.

Type of Review: Extension of a currently approved collection.

Title: Purchase of Assets and Assumptions of Liabilities.

Abstract: In accordance with § 741.8, federally insured credit unions (FICUs) must request approval from the NCUA prior to purchasing assets or assuming liabilities of a privately insured credit union, other financial institution, or their successor interest. A FICU seeking approval must submit a letter to the appropriate NCUA Regional Director stating the nature of the transaction and include copies of relevant transaction documents. Relevant transaction documents may include but are not limited to: The credit union's financial statements, strategic plan, and budget, inventory of the assets and liabilities to be transferred, and any relevant contracts or agreements regarding the transfer. NCUA uses the information to determine the safety and soundness of the transaction and risk to the National Credit Union Share Insurance Fund (NCUSIF).

Affected Public: Private Sector: Not-for-profit institutions.

Estimated Total Annual Burden Hours: 1,920.

By Melane Conyers-Ausbrooks, Secretary of the Board, the National Credit Union Administration, on November 22, 2021.

Dated: November 22, 2021.

Dawn D. Wolfgang,

NCUA PRA Clearance Officer.

[FR Doc. 2021–25809 Filed 11–24–21; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

National Artificial Intelligence Research Resource Task Force; 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: National Artificial Intelligence Research Resource Task Force (84629).

Date and Time: February 16, 2022, 11:00 a.m. to 5:00 p.m. EDT.

Place: Virtual meeting attendance only; to attend the virtual meeting, please send your request for the virtual meeting link to the following email: *cmessam@nsf.gov.*

Type of Meeting: Open.

Contact Person: Brenda Williams, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; telephone: 703–292–8900; email: *bwilliam@nsf.gov.*

Purpose of Meeting: The Task Force shall investigate the feasibility and advisability of establishing and sustaining a National Artificial Intelligence Research Resource; and propose a roadmap detailing how such resource should be established and sustained.

Agenda: In this meeting, the Task Force will receive readouts from working-group discussions held on the topics of user access controls and useable security; privacy, civil rights, and civil liberties requirements; and technical integration of desired capabilities. The Task Force will discuss options for public-private partnerships and sustainment within the design of a NAIRR and deliberate on an outline for the Task Force's interim report.

Dated: November 22, 2021.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2021–25779 Filed 11–24–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering; 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: Committee on Equal Opportunities in Science and Engineering (CEOSE) #1173.

Date and Time: February 17–18, 2022; 1:00 p.m.–5:30 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 (Virtual).

Meeting Registration: Virtual attendance information will be forthcoming on the CEOSE website at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Type of Meeting: Open.

Contact Person: Dr. Bernice Anderson, Senior Advisor and CEOSE Executive Secretary, Office of Integrative Activities (OIA), National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314. Contact Information: 703–292–8040/*banderso@nsf.gov.*

Minutes: Meeting minutes and other information may be obtained from the CEOSE Executive Secretary at the above address or the website at *http://www.nsf.gov/od/oia/activities/ceose/index.jsp.*

Purpose of Meeting: To study data, programs, policies, and other information pertinent to the National Science Foundation and to provide advice and recommendations concerning broadening participation in science and engineering.

Agenda

February 17, 2022

- Welcome and Introductions/Meeting Overview
- NSF Executive Liaison Report
- Presentation: CEOSE Subcommittee's Interim Report on the Future of EPSCoR
- Break
- Presentation: Geography of Innovation
- Discussion: Data Questions for the Intersectionality Hackathon
- Discussion: CEOSE Liaison Reports

February 18, 2022

- Opening Remarks
- Working Lunch Session: BP Data Hackathon
- CEOSE Discussion: Topics/Ideas to Share with Leadership
- Break
- Discussion with NSF Leadership
- STEM Identify and Intersectionality: Part II
- Announcements and Final Remarks

Dated: November 22, 2021.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2021–25775 Filed 11–24–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; 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: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: February 22, 2022; 12:00 p.m.–4:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314 via Zoom.

Attendance information for the meeting will be forthcoming on the committee's website: *http://www.nsf.gov/mps/ast/aaac.jsp.*

Type of Meeting: Open.

Contact Person: Dr. Martin Still, Program Director, Division of Astronomical Sciences, Suite W 9188, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–4290.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To provide updates on Agency activities and to discuss the Committee's draft annual report due 15 March 2022.

Dated: November 22, 2021.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2021–25778 Filed 11–24–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 27, 2021. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; or *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2018–015) to Polar Latitudes Inc. on November 2, 2017. The issued permit allows the applicant to conduct waste management activities associated with coastal camping and operating remotely piloted aircraft systems (RPAS) In the Antarctic Peninsula region.

On October 5, 2021, NSF issued a permit modification authorizing waste management activities associated with planned operations for the 2021–2022 field season. This modification included slight changes in operation. For the 2021–2022 season, Polar Latitudes plans to operate the MS SEAVENTURE, which will carry 149 passengers and 15–20 expedition staff. Polar Latitudes requested that the number of individuals permitted for coastal camping activities be increased from 30 participants to 40 participants and four expedition guides, with increased equipment brought onshore to support a larger group. Polar Latitudes also updated their RPAS policies, which are still in accordance with standards put forth by IATTO and the ATCM.

Now the applicant proposes a modification to this permit to authorize waste management activities associated with newly proposed onshore activities to be conducted in the the 2021–2022 Antarctic season. The applicant proposes conducting multiple one-day reconnaissance expeditions led by a

two-person reconnaissance team at ATS-approved visitor sites in Antarctica. The purpose of these expeditions is to identify, map and photograph suitable routes to be used in future commercial land-based expeditions. Materials to be brought ashore including food and supplies to support activities as well as emergency supplies, including cooking fuel for emergency use only. All solid, hazardous, and biological wastes will be removed from the continent and returned to the operator's vessel, MS SEAVENTURE, following all expeditions.

Location: Antarctic peninsula region.

Dates: January 1, 2022–March 30, 2022.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–25730 Filed 11–24–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received and permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of a requested permit modification issued.

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–7420; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF), as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2022–005) to Leidos Innovations Group, Antarctic Support Contract on September 2, 2021. The issued permit allows the applicant to introduce non-indigenous species into Antarctica. This permit authorizes the import and use of commercially available proprietary bacterial supplements for use in the Marine Sanitation Device aboard relevant support vessels deployed in support of the Palmer Pier Replacement Project.

The applicant proposes a modification to this permit regarding the microbial agents used in marine sanitation devices on board support vessels. Specifically, the permit holder requests altering the language of the permit to accurately reflect specific additives being used in marine sanitation devices.

The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

DATES: October 1, 2021–April 30, 2023.

The permit modification was issued on November 16, 2021.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–25728 Filed 11–24–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–8030; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: On October 19, 2021, and October 20, 2021, the National Science Foundation published notices in the **Federal Register** of permit applications received. The permits were issued on November 18, 2021, and November 19, 2021, to:

1. Nikola Bajo, Grand Circle Corporation Permit No. 2022—015
2. Prash Karnik, Lindblad Expeditions Permit No. 2022—016
3. Dr. Heather Lynch Permit No. 2022—017
4. Dr. Heather Lynch Permit No. 2022—018

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–25727 Filed 11–24–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 27, 2021. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, at the above address, 703–292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2022025

1. Applicant: Dr. Kim Bernard, College of Earth, Ocean and Atmospheric Sciences, Oregon State University.

Activity for Which Permit Is Requested: Introduce Non-Indigenous

Species into Antarctica, Export From USA. The applicant proposes uses American-grown cultures of Antarctic diatom species *Corethron Hystrix* to support research activities at Palmer Station, Antarctica. The diatoms will be added to two large circular aquarium tanks as a food source for juvenile Antarctic krill. During feeding, flow-through of seawater in tanks will be closed off to prevent outflow of diatoms. Additionally, outflow pipes will be covered in mesh screens fine enough to trap *Corethron Hystrix* and prevent release. These screens will be sanitized regularly, and outflow of seawater will be regularly sampled and tested for presence of diatoms prior to discharge to the natural environment.

Location: Palmer Station, Antarctica.

Dates of Permitted Activities: April 1, 2022—October 01, 2022.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2021–25731 Filed 11–24–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee; 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: Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: January 25, 2022; 9:00 a.m.—5:00 p.m.

January 26, 2022; 9:00 a.m.—5:00 p.m.

Place: National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314, via Zoom

Type of Meeting: Open.

Attendance information for the meeting will be forthcoming on the website: *https://www.nsf.gov/mps/ast/aaac.jsp.*

Contact Person: Dr. Martin Still, Program Director, Division of Astronomical Sciences, Suite W 9188, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; Telephone: 703–292–4290.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them. Discuss the Committee's draft annual report due 15 March 2022.

Dated: November 22, 2021.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2021–25777 Filed 11–24–21; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Committee Management; Renewal

The NSF management officials having responsibility for the advisory committee listed below have determined that renewing this committee for another two years is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Committee: President's Committee on the National Medal of Science, #1182.

Effective date for renewal is November 22, 2021. For more information, please contact Crystal Robinson, NSF, at (703) 292–8687.

Dated: November 22, 2021.

Crystal Robinson,

Committee Management Officer.

[FR Doc. 2021–25828 Filed 11–24–21; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255; NRC–2021–0206]

Holtec Decommissioning International, LLC, Palisades Nuclear Plant

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption in response to the December 23, 2020, request from Holtec Decommissioning International, LLC (HDI) related Palisades Nuclear Plant (PNP), located in Van Buren County, Michigan. The exemption would permit HDI to use funds from the PNP nuclear decommissioning trust (NDT) for spent fuel management and site restoration activities for PNP. The exemption would also allow such withdrawals without prior notification to the NRC. The NRC staff is issuing an environmental assessment (EA) and finding of no significant impact (FONSI) associated with the proposed exemption.

DATES: The EA and FONSI referenced in this document are available on November 26, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0206 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0206. Address questions about Dockets 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.
- *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.* For the convenience of the reader, the ADAMS accession numbers are provided in a table in the AVAILABILITY OF DOCUMENTS section of this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scott P. Wall, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2855; email: *Scott.Wall@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of an exemption from sections 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv) of title 10 of the *Code of Federal Regulations* (10 CFR) to HDI for Renewed Facility Operating License No. DPR–20 for PNP, located in Van Buren County, Michigan. HDI requested the exemption by letter dated December 23, 2020. The exemption would permit HDI to use funds from the PNP NDT for spent fuel management and site restoration activities for PNP in the same manner that funds from the NDT are used under 10 CFR 50.82(a)(8) for decommissioning activities. HDI submitted the exemption request based on its analysis of the expected PNP decommissioning costs, spent fuel management costs, and site restoration costs, as provided in the PNP Post-Shutdown Decommissioning Activities Report (PSDAR) submitted by HDI to the NRC on December 23, 2020.

By letter dated December 23, 2020, Entergy Nuclear Operations, Inc. (ENOI), on behalf of itself, Entergy Nuclear Palisades, LLC (ENP), Holtec International (Holtec), and HDI, requested that the NRC consent to (1) the indirect transfer of control of Renewed Facility Operating License No. DPR–20 for PNP, the general license for the PNP Independent Spent Fuel Storage Installation (ISFSI), Facility Operating License No. DPR–6 for Big Rock Point Plant (Big Rock Point), and the general license for the Big Rock Point ISFSI (referred to collectively as the Sites and the licenses) to Holtec; and (2) the transfer of ENOI's operating authority (*i.e.,* its authority to conduct licensed activities at the Sites) to HDI. The requested exemption from 10 CFR 50.82(a)(8)(i)(A) and 50.75(h)(1)(iv) would only apply following an NRC approval of this license transfer application and the consummation of the transfer transaction.

In accordance with 10 CFR 51.21, the NRC prepared the following EA that analyzes the environmental impacts of the proposed action. Based on the results of this EA, which are provided in Section II of this document, and in accordance with 10 CFR 51.31(a), the NRC has determined not to prepare an environmental impact statement for the proposed action and is issuing a FONSI.

II. Environmental Assessment

Description of the Proposed Action

The proposed action would partially exempt HDI from the requirements set forth in 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv). Specifically, the proposed action would allow HDI to use funds from the PNP NDT for spent fuel management and site restoration activities not associated with radiological decommissioning activities and would exempt HDI from the requirement for prior notification to the NRC for these withdrawals.

The proposed action is in accordance with HDI's application dated December 23, 2020.

Need for the Proposed Action

By letter dated January 4, 2017, as supplemented by letters dated September 28, 2017, and October 19, 2017, ENOI submitted notification to the NRC indicating that it would permanently cease power operations at PNP no later than May 31, 2022.

As required by 10 CFR 50.82(a)(8)(i)(A), decommissioning trust funds may be used by the licensee if the withdrawals are for legitimate decommissioning activity expenses, consistent with the definition of decommissioning in 10 CFR 50.2. This definition addresses radiological decommissioning and does not include activities associated with spent fuel management or site restoration. Similarly, the requirements of 10 CFR 50.75(h)(1)(iv) restrict the use of decommissioning trust fund disbursements (other than for ordinary and incidental expenses) to decommissioning expenses until final decommissioning has been completed. Therefore, exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) is needed to allow HDI to use funds from the PNP NDT for spent fuel management and site restoration activities for PNP.

HDI stated that Table 1 of the exemption request demonstrates that the PNP NDT contains the funds needed to cover the estimated costs of PNP radiological decommissioning, as well as spent fuel management and site restoration activities. The adequacy of funds in the PNP NDT to cover the costs of activities associated with spent fuel management, site restoration, and radiological decommissioning through license termination is supported by the HDI PNP PSDAR. HDI stated that it needs access to the funds in the PNP NDT in excess of those needed for radiological decommissioning to support spent fuel management and site restoration activities not associated with radiological decommissioning.

The requirements of 10 CFR 50.75(h)(1)(iv) further provide that, except for withdrawals being made under 10 CFR 50.82(a)(8) or for payments of ordinary administrative costs and other incidental expenses of the NDT in connection with the operation of the NDT, no disbursement may be made from the NDT without written notice to the NRC at least 30 working days in advance. Therefore, an exemption from 10 CFR 50.75(h)(1)(iv) is also needed to allow HDI to use funds from the PNP NDT for spent fuel management and site restoration activities without prior NRC notification.

In summary, by letter dated December 23, 2020, HDI requested an exemption to allow PNP NDT withdrawals, without prior written notification to the NRC, for spent fuel management and site restoration activities for PNP.

Environmental Impacts of the Proposed Action

The proposed action involves an exemption from regulatory requirements that are of a financial or administrative nature and that do not have an impact on the environment. Before the NRC could approve the proposed action, it would have to conclude that there is reasonable assurance that adequate funds are available in the NDT to complete all activities associated with radiological decommissioning as well as spent fuel management and site restoration. Therefore, there would be no decrease in safety associated with the use of the NDT to also fund activities associated with spent fuel management and site restoration. Section 50.82(a)(8)(v) of 10 CFR requires a licensee to submit a financial assurance status report annually between the time of submitting its site-specific decommissioning cost estimate and submitting its final radiation survey and demonstrating that residual radioactivity has been reduced to a level that permits termination of its license. Section 50.82(a)(8)(vi) of 10 CFR requires that if the sum of the balance of any remaining decommissioning funds, plus expected rate of return, plus any other financial surety mechanism does not cover the estimated cost to complete radiological decommissioning, additional financial assurance must be provided to cover the cost of completion. These annual reports provide a means for the NRC to continually monitor the adequacy of available funding. Since the exemption would allow HDI to use funds from the PNP NDT that are in excess of those required for radiological decommissioning, the adequacy of the funds dedicated for radiological decommissioning would not be affected by the proposed exemption. Therefore, there is reasonable assurance that there would be no environmental impact due to lack of adequate funding for radiological decommissioning.

The proposed action would not significantly increase the probability or consequences of radiological accidents. The proposed action has no direct radiological impacts. There would be no change to the types or amounts of radiological effluents that may be released; therefore, there would be no change in occupational or public radiation exposure from the proposed action. There are no materials or chemicals introduced into the plant that could affect the characteristics or types of effluents released offsite. In addition, the method of operation of waste processing systems would not be affected by the exemption. The proposed action would not result in changes to the design basis requirements of structures, systems, and components (SSCs) that function to limit or monitor the release of effluents. All the SSCs associated with limiting the release of effluents would continue to be able to perform their functions. Moreover, no changes would be made to plant buildings or the site property from the proposed action. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action would have no direct impacts on land use or water resources, including terrestrial and aquatic biota, as it involves no new construction or modification of plant operational systems. There would be no changes to the quality or quantity of non-radiological effluents and no changes to the plant's National Pollutant Discharge Elimination System permits would be needed. In addition, there would be no noticeable effect on socioeconomic conditions in the region, no environment justice impacts, no air quality impacts, and no impacts to historic and cultural resources from the proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (*i.e.,* the ''no-action'' alternative). Denial of the proposed action would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

There are no unresolved conflicts concerning alternative uses of available resources under the proposed action.

Agencies and Persons Consulted

No additional agencies or persons were consulted regarding the environmental impact of the proposed action. On November 5, 2021, the NRC notified the State of Michigan representative of the EA and FONSI. The representative had no comments.

III. Finding of No Significant Impact

The requested exemption from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) would allow HDI to use funds from the PNP NDT for spent fuel management and site restoration activities for PNP, without prior written notification to the NRC. The proposed action would not significantly affect plant safety, would not have a significant adverse effect on the probability of an accident occurring, and would not have any significant radiological or non-radiological impacts. The proposed action involves an exemption from requirements that are of a financial or administrative nature and that would not have an impact on the human environment. Consistent with 10 CFR 51.21, the NRC conducted the EA for the proposed action, and this FONSI incorporates by reference the EA included in Section II of this document. Therefore, the NRC concludes that the proposed action will not have significant effects on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

Other than HDI's letter dated December 23, 2020, there are no other environmental documents associated with this review.

Previous considerations regarding the environmental impacts of operating PNP are described in NUREG–1437, Supplement 27, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 27 Regarding Palisades Nuclear Plant—Final Report,'' dated October 2006.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS, as indicated.

Document description	ADAMS Accession No.
Letter from ENOI to NRC, ''Certification of Permanent Cessation of Power Operations,'' dated January 4, 2017	ML17004A062
Letter from ENOI to NRC, ''Certification of Permanent Cessation of Power Operations,'' dated September 28, 2017	ML17271A233
Letter from ENOI to NRC, ''Supplement to Certification of Permanent Cessation of Power Operations,'' dated October 19, 2017	ML17292A032
Letter from HDI to NRC, ''Request for Exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv),'' dated December 23, 2020	ML20358A239
Letter from HDI to NRC, ''Post Shutdown Decommissioning Activities Report including Site-Specific Decommissioning Cost Estimate for Palisades Nuclear Plant,'' dated December 23, 2020	ML20358A232
Letter from ENOI to NRC, ''Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments,'' dated December 23, 2020	ML20358A075
NUREG–1437, Supplement 27, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants: Supplement 27 Regarding Palisades Nuclear Plant—Final Report,'' dated October 2006	ML062710300

Dated: November 22, 2021. For the Nuclear Regulatory Commission.

Scott P. Wall,

Senior Project Manager, Plant Licensing Branch III, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2021–25830 Filed 11–24–21; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2021–0147]

Evaluations of Explosions Postulated To Occur at Nearby Facilities and on Transportation Routes Near Nuclear Power Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 3 to Regulatory Guide (RG)1.91, ''Evaluations of Explosions Postulated to Occur at Nearby Facilities and on Transportation Routes Near Nuclear Power Plants.'' The revision of RG 1.91 describes methods that the NRC finds acceptable for applicants and licensees of nuclear power reactors to use in evaluating postulated accidental explosions at nearby facilities and transportation routes.

DATES: Revision 3 of RG 1.91 is available on November 26, 2021.

ADDRESSES: Please refer to Docket ID NRC–2021–0147 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2021–0147. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* Revision 3 of RG 1.91 and the regulatory analysis may be found in ADAMS under Accession Nos. ML21260A242 and ML21105A438, respectively.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. (ET), Monday through Friday, except Federal holidays.

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FOR FURTHER INFORMATION CONTACT: Michael Eudy, Office of Nuclear Regulatory Research, telephone: 301–415–3104, email: *Michael.Eudy@nrc.gov,* Ronaldo Jenkins, Office of Nuclear Regulatory Research, telephone: 301–415–6978, email: *Ronaldo.Jenkins@nrc.gov,* and Kenneth See, Office of Nuclear Reactor Regulation, telephone: 301–415–1508, email: *Kenneth.See@nrc.gov.* They are all staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

II. Additional Information

Revision 3 of RG 1.91 was issued with a temporary identification of Draft Regulatory Guide (DG)-1388. The NRC published a notice of the availability of DG–1388 in the **Federal Register** on August 2, 2021, (86 FR 41525) for a 30-day public comment period. The public comment period closed on September 1, 2021. Public comments on DG–1388 and the staff responses to the public comments are available in ADAMS under Accession No. ML21260A167.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting and Issue Finality

Revision 3 of RG 1.91 does not constitute backfitting as defined in section 50.109 of title 10 of the *Code of Federal Regulations,* ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests;'' does not constitute forward fitting as that term is defined and described in MD 8.4; and does not affect the issue finality of any approval issued under 10 CFR part 52. As explained in Revision 3 of RG 1.91, applicants and licensees would not be required to comply with the positions set forth in the RG.

For the Nuclear Regulatory Commission.

Dated: November 22, 2021.

Edward F. O'Donnell,

Acting Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2021–25836 Filed 11–24–21; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2022–21 and CP2022–23]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* November 30, 2021.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Docketed Proceeding(s)

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related

to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2022–21 and CP2022–23; *Filing Title:* USPS Request to Add Priority Mail & First-Class Package Service Contract 209 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* November 19, 2021; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* November 30, 2021.

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2021–25831 Filed 11–24–21; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34421; 812–15258]

Bow River Capital Evergreen Fund, et al.

November 19, 2021.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice.

Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(a)(2), 18(c) and 18(i) of the Act, under sections 6(c) and 23(c) of the Act for an exemption from rule 23c–3 under the Act, for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares and to impose asset-based distribution and/or service fees and early withdrawal charges (''EWCs'').

Applicants: Bow River Capital Evergreen Fund (the ''Initial Fund''), and Bow River Asset Management LLC (the ''Adviser'').

Filing Dates: The application was filed on August 25, 2021, and amended on October 12, 2021, and November 5, 2021.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the relevant applicant with a copy of the request by email, if an email address is listed for the relevant applicant below, or personally or by mail, if a physical address is listed for the relevant applicant below.

Hearing requests should be received by the Commission by 5:30 p.m. on December 14, 2021, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090; Applicants: 205 Detroit Street, Suite 800, Denver, CO 80206.

FOR FURTHER INFORMATION CONTACT: Lisa Reid Ragen, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and condition, please refer to Applicants' application, dated November 5, 2021, which may be obtained via the Commission's website by searching for the file number, using the Company name box, at *http://www.sec.gov/search/search.htm,* or by calling (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25722 Filed 11–24–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93629; File No. SR–NYSE–2021–53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Order Approving of a Proposed Rule Change To Amend the Shareholder Voting Requirement Set Forth in Section 312.07 of the NYSE Listed Company Manual

November 19, 2021.

I. Introduction

On September 15, 2021, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') 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 amend Section 312.07 of the NYSE Listed Company Manual (''Manual'') to address the calculation of votes cast where shareholder approval is required. The proposed rule change was published for comment in the **Federal**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Register on October 5, 2021.[3] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend Section 312.07 of the Manual to address the calculation of ''votes cast'' when a matter requires shareholder approval, particularly as the calculation relates to abstention votes.[4] Section 312.07 of the Manual currently provides that where shareholder approval is a prerequisite to the listing of any additional or new securities of a listed company, or where any matter requires shareholder approval, the minimum vote which will constitute shareholder approval for such purposes is defined as approval by a majority of votes cast on a proposal in a proxy bearing on the particular matter.[5] The Exchanges states that the text of Section 312.07 of the Manual does not specifically address a listed company's treatment of abstentions in the company's calculation of votes cast by shareholders.[6] However, the Exchange states that it has historically advised companies that abstentions should be treated as votes cast for purposes of Section 312.07 of the Manual.[7] According to the Exchange, under that approach a proposal is deemed approved under Section 312.07 of the Manual only if the votes in favor of the proposal exceed the aggregate of the votes cast against the proposal plus abstentions.[8] The Exchange states that its current treatment of abstentions has caused confusion among listed companies because the corporate laws of many states, including Delaware, allow companies to include in their governing documents that votes cast for purposes of a shareholder vote includes yes and no votes—but not abstentions—such that a proposal succeeds if the votes in favor exceed the votes cast against.[9]

To avoid further confusion, the Exchange proposes to amend Section 312.07 to provide that with respect to a matter that requires shareholder approval subject to the minimum vote required for such shareholder approval under Section 312.07, a company must calculate the votes cast in accordance with its own governing documents and any applicable state law.[10] The Exchange believes that this treatment of abstentions will avoid any complications engendered among issuers and shareholders when different voting standards are applied under the Exchange rule, a company's governing documents, and/or applicable state laws.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[13] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange is proposing to amend Section 312.07 of the Manual to make clear how to calculate the votes cast when any matter requires shareholder approval to be approved by a majority of votes cast under Section 312.07, particularly to address the calculation as it relates to abstention votes. As described above, the Exchange is proposing to amend Section 312.07 of the Manual to provide that for purposes of calculating shareholder approval, a company must calculate the votes cast in accordance with its governing documents and any applicable state law.[14] The Exchange's proposal, as it states in its filing, does not prescribe a particular way to calculate votes cast under Section 312.07 of the Manual but rather allows a listed company to rely on its governing documents and state law and is a change from the Exchange's historical interpretation on how to calculate abstentions for purposes of votes cast under Section 312.07 of the Manual. While the proposed amendment to Section 312.07 of the Manual does not address the treatment of abstentions explicitly, the Commission believes the proposed changes to Section 312.07 of the Manual provides clear guidance to a listed company that the company's own governing documents and the state law applicable to such listed company must govern the way that a company calculates votes cast on a matter for purposes of meeting the minimum vote requirements under the Exchange's rule. As such, the proposed rule language will make clear that the listed company's own governing documents and applicable state law also will govern how a listed company should count abstentions. As a result, the Commission believes that the proposed amendment is consistent with Section 6(b)(5) of the Act because it will add clarity to the Exchange's rules and help eliminate any confusion about what authority governs the treatment of votes cast in general and abstentions in particular, including the possibility that the Exchange's own guidance about the treatment of abstentions might conflict with the treatment of abstentions under the listed company's governing documents or state law applicable to such listed company.

Finally, by setting forth in the Exchange's rules that corporate documents and applicable state law should be relied on by all listed companies and shareholders in determining how votes cast are calculated, including the treatment of abstentions, for purposes of determining whether a matter meets the minimum vote requirements (*i.e.,* ''a majority of votes cast'') of Section 312.07, the proposal should provide transparency to

[3] *See* Securities Exchange Act Release No. 93192 (September 29, 2021), 86 FR 55071 (''Notice'').

[4] *See* Notice, *supra* note 3, 86 FR 55072.

[5] According to the Exchange, shareholder approval is required for equity compensation plans under Sections 303A.08 of the Manual (''Shareholder Approval of Equity Compensation Plans'') and in the specific situations set out in 312.03 of the Manual (''Shareholder Approval''). *See Id.* The Exchange also notes that Item 21(b) of Schedule 14A requires companies soliciting proxies to disclose the method by which votes will be counted, including the treatment and effect of abstentions and broker non-votes under applicable state law as well as the company's charter and bylaw provisions. *See Id.*

[6] *See* Notice, *supra* note 3, at 55072.

[7] *See Id.*

[8] *See Id.*

[9] *See Id.* The Exchange added that, consistent with those state laws, many public companies have bylaws indicating that abstentions are not treated as votes cast. *See Id.*

[10] *See Id.* The Exchange notes that while Nasdaq is silent on the treatment of abstentions in its rules, Nasdaq published a FAQ stating that companies must calculate voting in accordance with their own governing documents and applicable state law. *See Id.*

[11] *See Id.*

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(5).

[14] The Exchange noted that Nasdaq has an FAQ that is also consistent with this approach. *See supra* note 10.

market participants consistent with the Act.[15]

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NYSE–2021–53) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25755 Filed 11–24–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93633; File No. SR–EMERALD–2021–41]

Self-Regulatory Organizations; MIAX Emerald, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 19, 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 November 8, 2021, MIAX Emerald, LLC (''MIAX Emerald'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Emerald Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *https://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 proposes to (i) amend the Fee Schedule to amend the exchange groupings of options exchanges within the routing fee table in Section 1(b) of the Fee Schedule, Fees for Customer Orders Routed to another Options Exchange; and (ii) make a minor, non-substantive edit to correct a typographical error. The Exchange initially filed this proposal on October 27, 2021 (SR–EMERALD–2021–35) and withdrew such filing on November 8, 2021. The Exchange proposes to implement the fee change effective November 8, 2021.

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order, (ii) whether or not it is an order for standard option classes in the Penny Interval Program [3] (''Penny classes'') or an order for standard option classes which are not in the Penny Interval Program (''Non-Penny classes'') (or other explicitly identified classes), and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX PEARL, LLC (''MIAX Pearl''). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (''Cboe BZX Options''), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category, dependent upon the order's origin type and whether it is a Penny or Non-Penny class.[4]

As a result of conducting a periodic review of the current transaction fees and rebates charged by away markets, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table to better reflect the associated costs of routing customer orders to those options exchanges for execution.[5] In particular, the Exchange proposes to amend the exchange groupings in the first row of the table identified as, ''Routed, Priority Customer, Penny Program,'' to relocate Nasdaq BX Options from the first row of the table to the second, also identified as, ''Routed, Priority Customer, Penny Program.'' The impact of this proposed change will be that the routing fee for Priority Customer orders in the Penny Program that are routed to Nasdaq BX Options will increase from $0.15 to $0.65. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the third row of the table, identified as ''Routed, Priority Customer, Non-Penny Program,'' to relocate Nasdaq BX Options from the third row of the table to the fourth, also identified as, ''Routed, Priority Customer, Non-Penny Program.'' The impact of this proposed change will be that the routing fee for Priority Customer orders in the Non-Penny Program that are routed to Nasdaq BX Options will increase from $0.15 to $1.00. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the sixth row of the table identified as, ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program,'' to relocate Nasdaq ISE from

[15] Shareholders should have access to a company's governing documents that indicate how abstentions are treated under the applicable voting standard, such as articles of incorporation and bylaws, as they are required to be filed as exhibits under Item 601 of Regulation S–K for domestic issuers and under Form 20–F for foreign private issuers. *See* also *supra* note 5 and Item 21 of Schedule 14A that applies to domestic issuers.

[16] *Id.*

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88993 (June 2, 2020), 85 FR 35145 (June 8, 2020) (SR–EMERALD–2020–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rule to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options).

[4] *See* Cboe U.S. Options Fee Schedules, BZX Options, effective August 2, 2021, ''Fee Codes and Associated Fees,'' at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[5] Nasdaq BX established a Customer Taker fee of $0.46 in Penny Classes and $0.65 in Non-Penny Classes. *See* Securities Exchange Act Release No. 91473 (April 5, 2021), 86 FR 18562 (April 9, 2021) (SR–BX–2021–009). Nasdaq BX recently increased the Customer Taker fee in Non-Penny Classes from $0.65 to $0.79. *See* Securities Exchange Act Release No. 93121 (September 24, 2021), 86 FR 54259 (September 30, 2021) (SR–BX–2021–040).

the exchange groupings in the sixth row of the table to the seventh row of the table, also identified as ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program.'' The impact of this proposed change will be that the Exchange routing fee for Public Customer orders in the Non-Penny Program that are routed to Nasdaq ISE will increase from $1.00 to $1.15. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq ISE to reflect the associated costs for that routed execution.

Additionally, the Exchange proposes to amend the exchange groupings in the seventh row of the table, identified as ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program,'' to relocate Nasdaq BX Options and MIAX Pearl to the eighth row of the table, also identified as, ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program.'' The impact of this proposed change will be that the routing fee for Public Customer orders that are not Priority Customer orders in the Non-Penny Program that are routed to Nasdaq BX Options or MIAX Pearl will increase from $1.15 to $1.25. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options or MIAX Pearl to reflect the associated costs for that routed execution. The Exchange notes that no options exchanges were removed from the routing fee table entirely, with the only change being the change in categorization.

Accordingly, with the proposed change, the routing fee table will be as follows:

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX, Nasdaq MRX, Nasdaq PHLX (except SPY)	$0.15
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Pearl, Nasdaq BX Options	0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, MIAX, Nasdaq ISE, Nasdaq MRX, Nasdaq PHLX	0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, MIAX Pearl, Nasdaq GEMX, NOM, Nasdaq BX Options	1.00
Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX, MIAX Pearl, NOM, Nasdaq PHLX, Nasdaq BX Options	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: MIAX, NYSE American, Cboe, Nasdaq PHLX, Cboe EDGX Options	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, BOX, NOM, Nasdaq ISE	1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, Nasdaq BX Options, MIAX Pearl	1.25

In determining to amend its routing fees the Exchange took into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fees structure is not only similar to the Exchange's affiliates, MIAX and MIAX Pearl, but is also comparable to the structure in place on at least one other competing options exchange, such as Cboe BZX Options.[6] The Exchange's routing fee structure approximates the Exchange's costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount)[7] to execute that corresponding contract at that corresponding exchange. The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees and rebates assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX and MIAX Pearl, the Exchange's Members[8] will be assessed routing fees in a similar manner. The Exchange believes that this structure will minimize any confusion as to the method of assessing routing fees between the three exchanges. The Exchange notes that its affiliates, MIAX and MIAX Pearl, will file to make the same proposed routing fee changes contained herein.

Finally, the Exchange proposes to make a minor non-substantive change to the title of the table in section 1(b) of the Fee Schedule, to capitalize the ''a'' in the word ''another'' such that the title of the table will be ''Fees for Customer Orders Routed to Another Options Exchange.'' This proposed change harmonizes the title of the table to that of the Exchange's affiliate, MIAX Pearl.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[11] in that it is

[6] *See supra* note 4. The Cboe BZX Options fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order's Origin type and whether it is a Penny or Non-Penny class. For example, Cboe BZX Options fee code RR covers routed customer orders in Non-Penny classes to NYSE Arca, Cboe C2, Nasdaq ISE, Nasdaq Gemini, MIAX Emerald, MIAX Pearl, or NOM, with a single fee of $1.25 per contract.

[7] This amount is to cover de minimis differences/changes to away market fees (*i.e.,* minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange's target regarding routing fees and expenses is to be as close as possible to net neutral.

[8] 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.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to the routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that are incurred by the Exchange when routing customer orders to away markets on behalf of Members and does so in the same manner to all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings would enable the Exchange to recover the costs it incurs to route orders to Nasdaq BX Options, Nasdaq ISE, and MIAX Pearl. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute the corresponding contract at the corresponding exchange.

The Exchange believes the proposed change to correct a typographical error in the title of the table in section 1(b) of the Fee Schedule, promotes just and equitable principles of trade and removes impediments to and perfects the mechanism of a free and open market and a national market system because the proposed change promotes clarity and consistency within the Fee Schedules of MIAX Emerald and its affiliate Exchange, MIAX Pearl. The Exchange believes this change will provide greater clarity to Members and the public regarding the Exchange's Fee Schedule and it is in the public interest for the Fee Schedule to be accurate and consistent so as to eliminate the potential for confusion.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposed re-categorization of certain exchange groupings is intended to enable the Exchange to recover the costs it incurs to route orders to away markets, particularly Nasdaq BX Options and Nasdaq ISE. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to recoup costs incurred by the Exchange when routing orders to away markets on behalf of Members and at least one other options exchange has a similar routing fees structure.[12]

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 is effective upon filing pursuant to Section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EMERALD–2021–41 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–2021–41. 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–2021–41 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25759 Filed 11–24–21; 8:45 am]

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[12] *See supra* note 4.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93622; File No. SR–NASDAQ–2021–092]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt Alternative Initial and Continued Listing Requirements for Acquisition Companies Listing on the Nasdaq Global Market

November 19, 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 November 12, 2021, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt alternative initial and continued listing requirements for Acquisition Companies listing on the Nasdaq Global Market.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

Nasdaq is proposing to adopt alternative initial and continued listing requirements for companies whose business plan is to complete one or more acquisitions, as described in Listing Rule IM–5101–2 (an ''Acquisition Company''). As described below, such alternative listing requirements do not replace the requirements of Listing Rule IM–5101–2, which will continue to apply to all Acquisition Companies.

An Acquisition Company is a special purpose company formed for the purpose of completing an initial public offering and engaging in a merger or acquisition (a business combination) with one or more unidentified companies within a specific period of time.[3] The securities sold by the Acquisition Companies in its initial public offering (''IPO'') are typically units, consisting of one share of common stock and one or more warrants (or a fraction of a warrant) to purchase common stock, that are separable at some point after the IPO. Management generally is granted a percentage of the Acquisition Company's equity and may be required to purchase additional shares in a private placement at the time of the Acquisition Company's IPO. Due to their different structure, Acquisition Companies do not have any prior financial history, at the time of their listing, like operating companies.

Historically, Acquisition Companies chose to list on the Nasdaq Capital Market instead of the Nasdaq Global Market, in part, because it had lower fees[4] and lower initial distribution requirements.[5] However, nothing in NASDAQ's rules prohibits an Acquisition Company from listing on the Global Market.[6] More recently, certain Acquisition Companies have sought to list on the Nasdaq Global Market. In particular, Nasdaq notes that a recent SEC statement about accounting treatment by Acquisition Companies[7] and subsequent and more recent accounting comments to Acquisition Companies has resulted in some Acquisition Companies adopting different accounting practices and, as a result, having insufficient equity to qualify for initial listing on the Nasdaq Capital Market. However, these companies could list on the Nasdaq Global Market or on competing marketplaces, which permit listing without any minimum equity requirement.[8]

Listing Rules 5405 and 5450 require all companies, including Acquisition Companies, listing on the Nasdaq Global Market to have at least 400 Round Lot Holders for initial listing and 400 Total Holders for continued listing, respectively.[9]

[3] Pursuant to Listing Rule IM–5101–2 an Acquisition Company is required, among other things, to keep at least 90% of the proceeds from its IPO in an escrow account and, until the company has completed one or more business combinations having an aggregate fair market value of at least 80% of the value of the escrow account, must meet the requirements for initial listing following each business combination. If a shareholder vote on the business combination is held, public shareholders voting against a business combination must have the right to convert their shares of common stock into a pro rata share of the aggregate amount then in the escrow account (net of taxes payable and amounts distributed to management for working capital purposes) if the business combination is approved and consummated. If a shareholder vote on the business combination is not held, the company must provide all shareholders with the opportunity to redeem all their shares for cash equal to their pro rata share of the aggregate amount then in the deposit account.

[4] Recently, Nasdaq amended the rules to make the listing fees and the timing of paying such fees for Acquisition Companies listing on the Nasdaq Capital and Global Markets the same. *See* Securities Exchange Act Release No. 92345 (July 7, 2021), 86 FR 36807 (July 13, 2021).

[5] Listing Rules 5505(a)(2) and 5505(a)(3) require a Company to have one million Unrestricted Publicly Held Shares and at least 300 Round Lot Holders in connection with the initial listing on the Nasdaq Capital Market. *See also* Listing Rules 5505(a) and (b), which generally require minimum bid price of at least $4 per share; at least three registered and active Market Makers; and Market Value of Unrestricted Publicly Held Shares of $15 million, Stockholders' equity of at least $4 million, and Market Value of Listed Securities of $50 million under the Market Value Standard.

[6] Nasdaq Listing Rule 5310(i) provides that an Acquisition Company is not eligible to list on the Nasdaq Global Select Market.

[7] *Staff Statement on Accounting and Reporting Considerations for Warrants Issued by Special Purpose Acquisition Companies (SPACs),* by John Coates, Acting Director of the Division of Corporation Finance, and Paul Munter, Acting Chief Accountant (April 12, 2021), available at: *https://www.sec.gov/news/public-statement/accounting-reporting-warrants-issued-spacs.*

[8] Nasdaq Rule 5405(b)(3) allows a company to list on the Nasdaq Global Market with no equity if it has a Market Value of Listed Securities of $75 million and a Market Value of Unrestricted Publicly Held Shares of $20 million, along with satisfying price, unrestricted publicly held shares, round lot holder and market maker requirements. *See also* Section 102.06 of the NYSE Listed Company Manual.

[9] Round Lot Holder means a holder of a Normal Unit of Trading of Unrestricted Securities. *See* Listing Rule 5005(a)(40). ''Round Lot'' or ''Normal Unit of Trading'' means 100 shares of a security unless, with respect to a particular security, Nasdaq determines that a normal unit of trading shall constitute other than 100 shares. If a normal unit of trading is other than 100 shares, a special identifier shall be appended to the Company's Nasdaq symbol. *See* Listing Rule 5005(a)(39). ''Total Holders'' means holders of a security that includes

Given Nasdaq's long experience listing Acquisition Companies on the Nasdaq Capital Market, and to facilitate capital formation, Nasdaq proposes to adopt alternative listing requirements that would allow Acquisition Companies to initially list their Primary Equity Security (other than an ADR) on the Nasdaq Global Market with at least 300 Round Lot Holders, and remain listed if they have at least 300 public stockholders,[10] provided that they meet certain additional requirements for initial and continued listing described below. These proposed requirements would be substantially similar to the NYSE listing standards for Acquisition Companies.[11]

Initial Listing Requirements

As proposed, the new, alternative, listing requirements for Acquisition Companies, including the distribution requirements would be included in Listing Rule 5406. Under the proposal, Acquisition Companies would have to have at least 1.1 million Publicly Held Shares[12] and at least 300 Round Lot Holders when listing in conjunction with an IPO (rather than 400 Round Lot Holders as is the case currently). Acquisition Companies transferring from other exchanges or listing in connection with a quotation listing would be allowed to list based on the distribution requirements of 1.1 million publicly held shares[13] at the time of initial listing on Nasdaq and

(i) 300 Round Lot Holders;

(ii) 2,200 total stockholders together with average monthly trading volume of 100,000 shares (for the most recent six months); or

(iii) 500 total stockholders together with average monthly trading volume of one million shares (for the most recent twelve months).

To rely on these distribution requirements, Nasdaq proposes to adopt market capitalization and the publicly-held shares quantitative requirements that are more stringent than the current requirements applicable to Acquisition Companies listing on the Nasdaq Global Market.[14]

Under the proposed rule, an Acquisition Company must have Market Value of Listed Securities of at least $100 million and Market Value of Publicly Held Shares of at least $80 million at the time of initial listing. Nasdaq notes that there are a number of Acquisition Companies listed currently on other markets that would have met these revised requirements and, in Nasdaq's view, there is no evidence that these companies are unfit for exchange trading. The Exchange also notes that its revised quantitative requirements would be the same as those of the NYSE for Acquisition Companies.[15]

In addition to the proposed requirements described above, Nasdaq proposes to require an Acquisition Company to satisfy all additional requirements described in Listing Rule IM–5101–2; have at least four registered and active Market Makers; and have a closing price or, if listing in connection with an IPO, an IPO price of at least $4 per share.[16]

Finally, under the proposed rule, if the Acquisition Company lists units, the components of the units (other than Primary Equity Security, which must satisfy the requirements described above) must satisfy the initial listing requirements for the Nasdaq Global Market applicable to the component. If a component of a unit is a warrant, it must meet the following additional requirements (in addition to the requirements of Listing Rule 5410[17]):[18]

- At least 1,000,000 warrants outstanding;
- At least $4 million aggregate market value;
- Warrants should have a minimum life of one year; and
- The Exchange will not list warrant issues containing provisions which give the company the right, at its discretion, to reduce the exercise price of the warrants for periods of time, or from time to time, during the life of the warrants unless (i) the company undertakes to comply with any applicable tender offer regulatory provisions under the federal securities laws, including a minimum period of 20 business days within which such price reduction will be in effect (or such longer period as may be required under the SEC's tender offer rules) and (ii) the company promptly gives public notice of the reduction in exercise price in a manner consistent with the Exchange's immediate release policy set forth in Rules 5250(b)(1) and IM–5250–1. The Exchange will apply the requirements in the immediately preceding sentence to the taking of any other action which has the same economic effect as a reduction in the exercise price of a listed warrant. This policy will not preclude the listing of warrant issues for which regularly scheduled and specified changes in the

both beneficial holders and holders of record. *See* Listing Rule 5005(a)(45).

[10] ''Public stockholders'' exclude holders that are directors, officers, or their immediate families and holders of other concentrated holdings of 10% or more. *See also* Listing Rule 5005(a)(36) defining ''Public Holders'' as holders of a security that includes both beneficial holders and holders of record, but does not include any holder who is, either directly or indirectly, an Executive Officer, director, or the beneficial holder of more than 10% of the total shares outstanding.

[11] Sections 102.06 and 802.01 of the NYSE Listed Company Manual. Although these rules provide the NYSE with certain discretion in determining the suitability for listing of an Acquisition Company, under Listing Rule 5101, Nasdaq has broad discretionary authority ''over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.'' Nasdaq further notes that while ''Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.'' Listing Rule IM–5101–1.

[12] ''Publicly Held Shares'' means shares not held directly or indirectly by an officer, director or any person who is the beneficial owner of more than 10 percent of the total shares outstanding. *See* Listing Rule 5005(a)(35).

[13] For Acquisition Companies that list at the time of their IPOs, the rule will require that the offering be on a firm commitment basis. If necessary, Nasdaq will rely on a written commitment from the underwriter to represent the anticipated value of the Acquisition Company's offering in order to determine an Acquisition Company's compliance with certain listing standards, including the number of Publicly Held Shares.

[14] *See* footnote 8 above.

[15] Nasdaq notes that Acquisition Companies could list on the NYSE under Section 102.06 on the basis of an aggregate market value of least $100 million and market value of publicly-held shares of at least $80 million. Nasdaq's understanding is that the NYSE calculates the aggregate market value by multiplying the total shares outstanding by the public offering price per share, which is also how Nasdaq calculates the Market Value of Listed Securities.

[16] The Market Maker requirement is the same as the requirement applicable to an Acquisition Company listing on the Nasdaq Global Market under the Market Value Standard. *See* Listing Rule 5405(b)(3). The minimum price requirement is similar to the bid price requirement for an Acquisition Company listing on the Nasdaq Global Market under the Market Value Standard, but is revised to reflect that an Acquisition Company listing in connection with an IPO will not have a bid price and to parallel the language used in the NYSE rule. *See* Nasdaq Listing Rule 5405(a) and NYSE Listed Company Manual Section 102.06.

[17] Among other things, Listing Rule 5410 requires that the underlying security must be listed on the Global Market or be a Covered Security.

[18] Although Section 713.12 of the NYSE Listed Company Manual provides the NYSE with certain discretion in reviewing the eligibility for listing of warrants, under Listing Rule 5101, Nasdaq has broad discretionary authority ''over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.'' Nasdaq further notes that while ''Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.'' Listing Rule IM–5101–1.

exercise price have been previously established at the time of issuance of the warrants.

Continued Listing Requirements

Nasdaq also proposes to adopt continued listing standards for Acquisition Companies that initially listed under the proposed alternative standard and align them with the proposed initial listing standards. The requirements of Listing Rule IM–5101–2 also would continue to apply to Acquisition Companies that initially listed under the proposed alternative standard.

Under the proposed Rule 5452, until an Acquisition Company has satisfied the condition of consummating its business combination described in Rule IM–5101–2(b), Nasdaq will promptly initiate suspension and delisting procedures if:

• The Acquisition Company's average Market Value of Listed Securities is below $50 million or the average Market Value of Publicly Held Shares is below $40 million, in each case over 30 consecutive trading days. An Acquisition Company will not be eligible to follow the procedures outlined in Rule 5810(c)(2) with respect to this criterion, and will be subject to the procedures in proposed Rule 5810(c)(1), which will provide that Nasdaq Staff will issue a Staff Delisting Determination to such Acquisition Company informing the Company that its securities are immediately subject to suspension and delisting. Nasdaq will notify the Acquisition Company if its average Market Value of Listed Securities falls below $75 million or the average Market Value of Publicly Held Shares falls below $60 million and will advise the Acquisition Company of the delisting standard;

• the Acquisition Company's securities initially listed (either common equity securities or units, as the case may be), fall below the following distribution criteria:

(1) At least 300 public stockholders (if a component of a unit is a warrant, at least 100 warrant holders);

(2) at least 1,200 total stockholders and average monthly trading volume of 100,000 shares (for most recent 12 months); or

(3) at least 600,000 Publicly Held Shares; [19] or

• the Acquisition Company fails to consummate its business combination, required by Rule IM–5101–2(b), within the time period specified by its constitutive documents or required by contract, or as provided by Rule IM–5101–2(b), whichever is shorter.

Nasdaq also proposes to adopt Rule IM–5452–1 to explain the treatment of Acquisition Company units, and unit components, for purposes of the distribution requirements. In the case of Acquisition Company securities traded as a unit, such securities will be subject to suspension and delisting if any of the component parts do not meet the applicable continued listing standards. However, if one or more of the components is otherwise qualified for listing, such component(s) may remain listed.

For the purposes of determining whether an individual component satisfies the applicable distribution criteria, the units that are intact and freely separable into their component parts shall be counted toward the total numbers required for continued listing of the component. If a component is a warrant, (in addition to the distribution requirement of 100 holders) the warrants will be subject to the continued listing standards for warrants set forth in Rule 5455.

Under the proposed rule, if the Acquisition Company lists warrants, the warrants must meet the following continued listing requirements (in addition to the requirements of Listing Rule 5455): [20]

• The number of publicly-held warrants is at least 100,000;

• The number of warrant holders is at least 100; and

• Aggregate market value of warrants outstanding is at least $1,000,000.

Notwithstanding the foregoing, Nasdaq will consider the suspension of trading in, or removal from listing of, any individual component or unit when, in the opinion of Nasdaq, it appears that the extent of public distribution or the aggregate market value of such component or unit has become so reduced as to make continued listing on the Exchange inadvisable. In its review of the advisability of the continued listing of an individual component or unit, Nasdaq will consider the trading characteristics of such component or unit and whether it would be in the public interest for trading to continue.

Nasdaq also proposes to amend Rule 5810(c)(1) to align it with the proposed rule by providing that if an Acquisition Company, which qualified for listing pursuant to the alternative initial listing requirements in Rule 5406, fails to comply with the additional continued listing requirements in Rule 5452(a)(1), such failure will constitute a deficiency that will immediately result in Nasdaq issuing a Staff Delisting Determination with regard to the Acquisition Company's Primary Equity Security and the securities will be subject to immediate suspension and delisting.

Nasdaq also proposes to amend Rule 5815(a)(1)(B)(ii) to provide that notwithstanding the provision that a timely request for a hearing shall ordinarily stay the suspension and delisting action pending the issuance of a written panel decision, a request made by an Acquisition Company (which qualified for listing pursuant to the alternative initial listing requirements in proposed Rule 5406) shall not stay the suspension of the securities from trading if such company fails to meet (i) the continued listing requirement in Rule 5452(a)(1); or (ii) the requirements for initial listing immediately following a business combination as required by Rule IM–5101–2.[21] In each case, the company's securities will be immediately suspended from trading and will remain suspended unless the panel decision, if any, issued after the hearing determines to reinstate the securities. If the Acquisition Company does not request a hearing, then its securities will remain suspended from trading until they are delisted following the deadline to request such a hearing.

Nasdaq believes that the proposed modification to the distribution requirements for Acquisition Companies is appropriate because of the unique characteristics of the Acquisition Company structure. Specifically, pending the completion of a business combination, each share of an Acquisition Company represents a right to a pro rata share of the Acquisition Company's assets held in trust, and, in

[19] *See* footnote 12 above.

[20] Although Section 802.01D of the NYSE Listed Company Manual provides the NYSE with certain discretion in the appraisal of the suitability for continued listing of warrants, under Listing Rule 5101, Nasdaq has broad discretionary authority ''over the initial and continued listing of securities in Nasdaq in order to maintain the quality of and public confidence in its market, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and to protect investors and the public interest.'' Nasdaq further notes that while ''Nasdaq has broad discretion under Rule 5101 to impose additional or more stringent criteria, the Rule does not provide a basis for Nasdaq to grant exemptions or exceptions from the enumerated criteria for initial or continued listing, which may be granted solely pursuant to rules explicitly providing such authority.'' Listing Rule IM–5101–1.

[21] IM–5101–2 provides that if an Acquisition Company ''does not meet the requirements for initial listing following a business combination . . . Nasdaq will issue a Staff Delisting Determination under Rule 5810 to delist the Company's securities.'' Rule 5810 further provides that ''Staff Delisting Determinations . . . unless appealed, subject the Company to immediate suspension and delisting.''

Nasdaq's view, as a result Acquisition Company shares typically have a trading price close to their liquidation value. Therefore, Nasdaq believes that the liquidity and market efficiency concerns relevant to listed operating companies do not arise to the same degree with Acquisition Companies, and, in Nasdaq's view, there is less need to ensure that there are a large number of shareholders of an Acquisition Company, as compared to a typical operating company, to create an active market that generates appropriate pricing. Nasdaq also believes that the proposed distribution requirements for Acquisition Companies are appropriate because the proposed alternative listing requirements for Acquisition Companies under Rule 5406 are generally equal to or higher than the requirements otherwise applicable to Acquisition Companies listing on the Nasdaq Capital Market.[22] Nasdaq also notes that Acquisition Companies have been listing on the NYSE for a number of years subject to initial and continued requirements substantially identical to those included in this proposal and that the proposed amendments will enable Nasdaq to compete more effectively for Acquisition Companies listings.

Finally, Nasdaq believes that the proposed rule change would not affect the status of Nasdaq listed securities under Rule 3a51–1 of the Act.[23]

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[24] in general, and furthers the objectives of Section 6(b)(5) of the Act,[25] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Nasdaq also believes that the proposal to adopt an alternative set of listing requirements for Acquisition Companies is designed to promote just and equitable principles of trade, and to remove impediments to and perfect the mechanism of a free and open market because the proposed standards would permit Nasdaq to list securities of Acquisition Companies that meet specified criteria, including market value, distribution, and price requirements, which should help to ensure that the securities have sufficient public float, investor base, and liquidity to promote fair and orderly markets. In addition, Acquisition Companies would have to meet other existing investor protection criteria, such as the escrow account requirement, public shareholder approval requirement, public shareholder redemption rights, and public shareholder liquidation preferences, which should further the ability of investors to protect and monitor their investment pending a business combination. Finally, Acquisition Companies that list securities on Nasdaq would have to comply with all Nasdaq corporate governance requirements applicable to operating companies. Nasdaq also notes that Acquisition Companies have been listing on the NYSE for a number of years subject to initial and continued requirements nearly identical to those included in this proposal and that the Commission previously found these initial listing standards to be consistent with the requirements of the Act.[26]

The proposal is also designed to protect investors and the public interest because, prior to a business combination, an Acquisition Company would need to maintain average aggregate market value of listed securities of at least $50 million and average market value of publicly held shares of at least $40 million, in each case over 30 consecutive trading days. Nasdaq would issue a Staff Delisting Determination under Rule 5810 to delist the securities of Acquisition Companies that fall below such requirements immediately and the Acquisition Companies could not use the time period to cure deficiencies afforded to other operating companies. In addition, the proposal is designed to protect investors and the public interest because securities of Acquisition Companies will be immediately suspended from trading, notwithstanding a timely request for a hearing, in connection with a Staff Delisting Determination under Rule 5810 based on the proposed market value of listed securities and market value of publicly held shares requirements. In these cases, the company's securities will be immediately suspended and will remain suspended unless the panel decision, if any, issued after the hearing determines to reinstate the securities.

Nasdaq also believes that the proposed amendments to its rules to adopt an alternative set of listing requirements containing lower distribution requirements for Acquisition Companies are consistent with the protection of investors because, in Nasdaq's view, Acquisition Company shares typically have a trading price close to their liquidation value. The Exchange's distribution standards are important because the existence of a significant number of holders can be an indicia of a liquid trading market, which supports an appropriate level of price discovery. Because Acquisition Company shares typically trade close to their liquidation value, in Nasdaq's view, price discovery is less important than it is with operating companies and therefore there is a reduced reliance on distribution requirements to assure appropriate price discovery. Nasdaq also believes that the proposed distribution requirements for Acquisition Companies are consistent with the protection of investors because the proposed alternative listing requirements for Acquisition Companies under Rule 5406 are generally equal to or higher than the requirements otherwise applicable to Acquisition Companies listing on the Nasdaq Capital Market.[27] In addition, a number of Acquisition Companies have listed on the NYSE subject to identical distribution requirements to those proposed by the Exchange and, in Nasdaq's view, there is no evidence that they have proven unfit for exchange trading. It is also important to note that any Acquisition Company that remains listed on the Nasdaq Global Market after completing a business combination will be required to meet the initial listing requirement of 400 round lot holders at the time of consummation of the transaction.

Nasdaq believes that the proposed amendments to require that an Acquisition Company, which qualified for listing under the proposed new rule, that failed to meet the requirements for initial listing immediately following a business combination may not stay the suspension of the securities from trading by a timely request for a hearing (following the issuance of a Staff Delisting Determination under Rule 5810 to delist the securities) is designed to protect investors and the public interest because it will help assure that the combined company that failed to meet the initial listing requirements will not trade on Nasdaq.

While the proposed alternative set of listing requirements for Acquisition Companies is different from the requirements applicable to operating companies and contains distribution

[22] *See* footnote 5 above.

[23] 17 CFR 240.3a51–1.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] *See e.g.* Securities Exchange Act Release No. 80199 (March 10, 2017), 82 FR 13905 (March 15, 2017) (approving SR–NYSE–2016–72) and Securities Exchange Act Release No. 81079 (July 5, 2017), 82 FR 32022 (July 11, 2017) (approving SR–NYSE–2017–11).

[27] *See* footnote 5 above.

requirements for the listing of Acquisition Companies that would be lower than those for other applicants seeking to list on the Nasdaq Global Market, Nasdaq does not believe that this difference is unfairly discriminatory because market value-based listing standards are largely adopted to ensure adequate trading liquidity and, consequently, efficient market pricing of a company's securities. As an investment in an Acquisition Company prior to its business combination represents a right to a pro rata share of the Acquisition Company's assets held in trust, Acquisition Company shares typically have a trading price close to their liquidation value and, in Nasdaq's view, the liquidity and market efficiency concerns relevant to listed operating companies do not arise to the same degree. As such, the Exchange does not believe it is unfairly discriminatory to apply different distribution requirements to Acquisition Companies than to other listing applicants.

Nasdaq also notes that Acquisition Companies listing under the proposed rule will be subject to the existing requirements in Listing Rule IM–5101–2 which requires that until the Company completes a business combination within 36 months of the effectiveness of its IPO registration statement, or such shorter period that the company specifies in its registration statement (the Company must complete one or more business combinations having an aggregate fair market value of at least 80% of the value of the deposit account at the time of the agreement to enter into the initial combination) the Acquisition Company must notify Nasdaq on the appropriate form about each proposed business combination. Following each business combination, the combined Company must meet the requirements for initial listing. If the Company does not meet the requirements for initial listing immediately following a business combination or does not comply with one of the requirements in Listing Rule IM–5101–2, Nasdaq will delist the Company's securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enable Nasdaq to better compete with the NYSE, given the Commission's recent guidance regarding accounting considerations for Acquisition Companies, as described above, by adopting an alternative set of listing requirements for Acquisition Companies that a greater number of these companies will be able to meet at the time of their IPOs. As such, it is intended to promote competition for the listing of Acquisition Companies.

Nasdaq also does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule change will be available to all Acquisition Companies listing on Nasdaq and all such companies will be able to choose which standards to list under.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[28] and Rule 19b–4(f)(6) thereunder.[29]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act[30] normally does not become operative for 30 days after the date of its filing. However, pursuant to Rule 19b–4(f)(6)(iii),[31] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has requested that the Commission waive the 30-day operative delay so that the Exchange can allow Acquisition Companies meeting the proposed requirements to immediately list on the Nasdaq Global Market. The Exchange states that such waiver would be consistent with the protection of investors and the public interest because Acquisition Companies are currently allowed to list on another national securities exchange subject to initial and continued listing requirements that are nearly identical to those included in this proposal.

The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change is substantially similar to the rules of another national securities exchange that were previously approved by the Commission.[32] Therefore, the Commission hereby waives the operative delay and designates the proposed rule change operative upon filing.[33]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2021–092 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–NASDAQ–2021–092. 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

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[30] 17 CFR 240.19b–4(f)(6).

[31] 17 CFR 240.19b–4(f)(6)(iii).

[32] *See supra* notes 11 and 26, and accompanying text.

[33] For purposes only of waiving the 30-day operative delay, the Commission also has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

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–NASDAQ–2021–092, and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[34]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25750 Filed 11–24–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93625; File No. SR–CTA/CQ–2021–03]

Consolidated Tape Association; Notice of Filing of the Twenty-Fifth Charges Amendment to the Second Restatement of the CTA Plan and Sixteenth Charges Amendment to the Restated CQ Plan

November 19, 2021.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on November 5, 2021,[3] certain participants in the Second Restatement of the Consolidated Tape Association (''CTA'') Plan and Restated Consolidated Quotation (''CQ'') Plan (collectively ''CTA/CQ Plans'' or ''Plans'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposal to amend the Plans.[4] These amendments represent the Twenty-Fifth Charges Amendment to the CTA Plan and Sixteenth Charges Amendment to the CQ Plan (''Amendments''). Under the Amendments, the Participants propose to amend the Plans to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's Market Data Infrastructure Rules (''MDI Rules'').[5] The Participants have submitted a separate amendment to implement the non-fee-related aspects of the MDI Rules.

The proposed Amendments have been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.[6] The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments. Set forth in Sections I and II, which were prepared and submitted to the Commission by the Participants, is the statement of the purpose and summary of the Amendments, along with information pursuant to Rules 608(a) and 601(a) under the Act. A copy of the Schedule of Market Data Charges for the Plans, marked to show the proposed Amendments, is Attachment A to this notice.

I. Rule 608(a)

A. Purpose of the Amendments

On December 9, 2020, the Commission adopted amendments to Regulation NMS. The effective date of these final rules was June 8, 2021. As specified in the MDI Rules Release, the Participants must submit updated fees regarding the receipt and use of the expanded content of consolidated market data by November 5, 2021.[7] Consistent with that requirement, the Participants are submitting the above-captioned amendments to the Plans to propose such fees.[8]

The Participants are proposing a fee structure for the following three categories of data, which collectively comprise the amended definition of core data, as that term is defined in amended Rule 600(b)(21) of Regulation NMS:[9]

(1) Level 1 Core Data, which the Participants propose would include Top of Book Quotations, Last Sale Price Information, and odd-lot information (as defined in amended Rule 600(b)(59)). Plan fees to subscribers currently are for Top of Book Quotations and Last Sale Price Information, as well as what is now defined as administrative data (as defined in amended Rule 600(b)(2)), regulatory data (as defined in amended Rule 600(b)(78)), and self-regulatory organization-specific program data (as defined in amended Rule 600(b)(85)). The Participants propose that Level 1 Core Data would continue to include all information that subscribers receive for current fees and add odd- lot information;

(2) Depth of book data (as defined in amended Rule 600(b)(26)); and

(3) Auction information (as defined in amended Rule 600(b)(5)).[10]

Professional and Nonprofessional Fees

For each of the three categories of data described above, the Participants are

[34] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Robert Books, Chair, CTA/CQ Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[4] The amendments were approved and executed by more than the required two-thirds of the self-regulatory organizations (''SROs'') that are participants of the CTA/CQ Plans. The participants that approved and executed the amendments (the ''Participants'') are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.. The other SROs that are participants in the CTA/CQ Plans are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc. *See infra* Section I. G.

[5] Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7–03–20) (''MDI Rules Release'').

[6] 17 CFR 242.608(b)(2).

[7] MDI Rules Release at 18699.

[8] As the Commission is aware, some of the SROs (the ''Petitioners'') have challenged the MDI Rules Release in the D.C. Circuit. The Petitioners have joined in this submission, including the statement that the Plan amendments comply with the MDI Rules Release, solely to satisfy the requirements of the MDI Rules Release and Rule 608. Nothing in this submission should be construed as abandoning any arguments asserted in the D.C. Circuit, as an agreement by Petitioners with any analysis or conclusions set forth in the MDI Rules Release, or as a concession by Petitioners regarding the legality of the MDI Rules Release. Petitioners reserve all rights in connection with their pending challenge of the MDI Rules Release, including *inter alia,* the right to withdraw the proposed amendment or assert that any action relating to the proposed amendment has been rendered null and void, depending on the outcome of the pending challenge. Petitioners further reserve all rights with respect to this submission, including *inter alia,* the right to assert legal challenges regarding the Commission's disposition of this submission.

[9] 17 CFR 242.600(b)(26) (''Rule 600'').

[10] The Participants propose to price subsets of data that comprise core data separately so that data subscriber users have flexibility in how much consolidated market data content they wish to purchase. For example, the Participants understand that certain data subscribers may not wish to add depth of book data or auction information, or may want to add only depth of book information, but not auction information. Accordingly, Participants are proposing to price subsets of data to provide flexibility to data subscribers. However, the Participants expect that Competing Consolidators would be purchase all core data.

proposing a Professional Subscriber Charge and a Nonprofessional Subscriber Charge.

With respect to Level 1 Core Data, the Participants are not proposing to change the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the Plans. Access to odd-lot information would be made available to Level 1 Core Data Professional and Nonprofessional Subscribers at no additional charge.

With respect to depth of book data, Professional Subscribers would pay $99.00 per device per month for each Network's data. Nonprofessional Subscribers would pay $4.00 per subscriber per month for each Network's depth of book data. The Participants are not proposing per-quote packet charges or enterprise rates for either Professional Subscribers or Nonprofessional Subscribers use of depth of book data at this time.

Finally, with respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device/subscriber per month for each Network's auction information data.

Non-Display Use Fees

The Participants are proposing Non-Display Use Fees relating to the three categories of data described above: (1) Level 1 Core Data; (2) depth of book data; and (3) auction information.

With respect to Level 1 Core Data, the Participants are not proposing to change the Non-Display Use fees currently set forth in the Plans. Access to odd-lot information would be made available to Level 1 Core Data subscribers at no additional charge.

With respect to depth of book data, Subscribers would pay Non-Display Use Fees of $12,477.00 per month for each category of Non-Display Use per Network.

With respect to auction information, Subscribers would pay Non-Display Use fees of $1,248.00 per month for each category of Non-Display Use per Network. As is the case today, Subscribers would be charged for each category of use of depth of book data and auction information.

Access Fees

Finally, the Participants are proposing Access Fees regarding the use of the three categories of data: (1) Level 1 Core Data; (2) depth of book data; and (3) auction information.

With respect to Level 1 Core Data, the Participants are not proposing to change the Access Fees currently set forth in the Plans. Access to odd-lot information would be made available to Level 1 Core Data subscribers at no additional charge.

With respect to depth of book data, Subscribers would pay a monthly Access Fee of $9,850.00 per Network.

With respect to auction information, Subscribers would pay a monthly Access Fee of $985.00 per Network.

Clarifications Related to Expanded Content

In addition to the above fees, the Participants propose adding clarifying language regarding the applicability of various fees given the availability of the expanded market data content.

First, the Participants propose to clarify that the Per-Quote-Packet Charges and the Broker-Dealer Enterprise Cap are not applicable to the expanded content, and only apply to the receipt and use of Level 1 Core Data. Under the current Price List, the Per-Quote-Packet Charges and Enterprise Cap serve as alternative fee schedules to the normally applied Professional and Nonprofessional Subscriber Charges. The proposed changes are designed to clarify that these alternative fee schedules are only available with respect to the use of Level 1 Core Data, and the fees for the use of depth of book data and auction information must be determined pursuant to the Professional and Nonprofessional fees described above.

Second, the Participants propose to clarify that Level 1 Core Data would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data. This proposed amendment would use terms defined in amended Rule 600(b) to reflect both current data made available to data subscribers and the additional odd-lot information that would be included at no additional charge.

Third, the Participants are proposing to clarify that the existing Redistribution Fees would be applicable to all three categories of core data, including any subset thereof. Currently, Redistribution Fees are charged to any entity that makes last sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Participants propose to amend this description to make it applicable to core data, as that term is defined in amended Rule 600(b)(21). The Participants are not proposing to change the fee level for Redistribution Fees themselves.

Fourth, the Participants are proposing that the existing Redistribution Fees would be applicable to Competing Consolidators. In the MDI Rules approval order, the SEC stated that ''[t]he Commission believes imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model.'' [11] The Commission then compared Competing Consolidators to Self- Aggregators and noted that Self-Aggregators would not be subject to redistribution fees. The Participants believe that the comparison between Competing Consolidators and Self-Aggregators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory. The Participants also do not believe that the Commission's comparison is consistent with current long-standing practice that redistribution fees are charged to any entity that distributes data externally.[12] By definition, a Self-Aggregator would not be distributing data externally and therefore would not be subject to such fees, which is consistent with current practice that a Subscriber to consolidated data that only uses data for internal use is not charged a Redistribution Fee.

Instead, the more appropriate comparison would be between Competing Consolidators and downstream vendors, both of which would be selling consolidated market data directly to market data subscribers. Vendors are and still would be subject to Redistribution Fees when redistributing data to market data subscribers. It would be unreasonably discriminatory for Competing Consolidators, which would be competing with downstream market data vendors for the same data subscriber customers, to not be charged a Redistribution Fee for exactly the

[11] MDI Rules Release at 18685.

[12] The current exclusive securities information processor (''SIP'') is not charged a Redistribution Fee. However, unlike Competing Consolidators, the processor has been retained by the Plans to serve as an exclusive SIP, is subject to oversight by both the Plans and the Commission, and neither pays for the data nor engages with data subscriber customers. By contrast, under the Competing Consolidator model, the Plans would have no role in either oversight of or determining which entities choose to be a Competing Consolidator, a Competing Consolidator would need to purchase consolidated market data just as any other vendor would, and Competing Consolidators would be responsible for competing for data subscriber clients. Accordingly, Competing Consolidators would be more akin to vendors than the current exclusive SIPs. The Participants note that if any entity that is currently an exclusive SIP chooses to register as a Competing Consolidator, such entity would be subject to the Redistribution Fee.

same activity. Consequently, the Participants believe that it would be unreasonably discriminatory and impose a burden on competition to not charge Competing Consolidators the Redistribution Fee.[13]

Finally, the Participants are proposing to make non-substantive changes to language in the fee schedules to take into account the expanded content. For example, the Participants are proposing to add headings referencing Level 1 Core Data. Additionally, under Data Access Charges and Multiple Feed Charges, the Participants are proposing to amend ''Bid-Ask'' to refer to ''Top of Book and odd-lot information.''

Administrative Fees

The Participants do not propose any changes to the Multiple Feed Charges, Late/Clearly Erroneous Reporting Charges, and Consolidated Volume Data Non-Compliance Fee. These current fees are administrative fees and would continue to apply to any data usage.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendment

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

D. Development and Implementation Phases

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendments comply with the requirements of the MDI Rules, which have been approved by the Commission.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plans

Not applicable.

G. Approval by Sponsors in Accordance With Plans

Section XII (b)(iii) of the CTA Plan provides that ''[a]ny addition of any charge to . . . the charges set forth in Exhibit E . . . shall be effected by an amendment to this CTA Plan . . . that is approved by affirmative vote of not less than two-thirds of all of the then voting members of CTA. Any such amendment shall be executed on behalf of each Participant that appointed a voting member of CTA who approves such amendment and shall be filed with the SEC.'' Further, Section IX(b)(iii) of the CQ Plan provides that ''additions, deletions, or modifications to any charges under this CQ Plan shall be effected by an amendment . . . that is approved by affirmative vote of two-thirds of all the members of the Operating Committee.''

The Participants have executed this Amendment and represent not less than two-thirds of all of the parties to the Plans. That satisfies the Plans' Participant-approval requirements.[14]

H. Description of Operation of Facility Contemplated by the Proposed Amendments

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Fees established for consolidated market data must be fair and reasonable and not unreasonably discriminatory.[15] The Commission expressed that the Operating Committee of the Plans ''should continue to have an important role in the operation, development, and regulation of the national market system for the collection, consolidation, and dissemination of consolidated market data.'' [16] The Commission further stated that ''the fees for data content underlying consolidated market data, as now defined, are subject to the national market system process that has been established,'' and that the ''Operating Committee(s) have plenty of experience in developing fees for SIP data.'' [17]

The Operating Committee is bringing this experience to bear to determine the fees for the new core data elements and is proposing fees that are fair and reasonable and not unreasonably discriminatory. The Commission has stated that one way to demonstrate that fees for consolidated market data are fair and reasonable is to show that they are reasonably related to costs. However, the Exchange Act does not require a showing of costs, and historically, the Plans have not demonstrated that their fees are fair and reasonable on the basis of cost data.

Moreover, under the decentralized Competing Consolidator model, the Operating Committee has no knowledge of any of the costs associated with consolidated market data. Under the current exclusive SIP model, the Operating Committee (1) specifies the technology that each Participant must use to provide the SIPs with data, and (2) contracts directly with a SIP to collect, consolidate, and disseminate consolidated market data, and therefore has knowledge of a subset of costs associated with collecting and consolidating market data. By contrast, under the decentralized Competing Consolidator model, the Plans no longer have a role in either specifying the technology associated with exchanges providing data or contracting with a SIP. Rather, as specified in amended Rule 603(b), each national securities exchange will be responsible for determining the methods of access to and format of data necessary to generate consolidated market data. Moreover, Competing Consolidators will be responsible for connecting to the exchanges to obtain data directly from each exchange, without any involvement of the Operating Committee. Nor does the Operating Committee have access to information about how each exchange would generate the data that they each would be required to disseminate under amended Rule 603(b). Accordingly, under the decentralized Competing Consolidator model, the Operating Committee does not have access to any information about the cost of providing consolidated market data.

In the absence of cost information being available to the Operating Committee, the Participants believe instead that fees for consolidated market data are fair and reasonable and not unreasonably discriminatory if they are related to the value of the data to subscribers. The Participants believe

[13] The Participants believe it would be more appropriate to compare Competing Consolidators and Self-Aggregators with respect to the fees charged for *receipt* and use of market data from the Participants and address the fees for the usage of consolidated market data based on their actual usage, which is consistent with the statutory requirements of the Act that the data be provided on terms that are not unreasonably discriminatory. For instance, Participants have proposed to charge a data access fee to Competing Consolidators that would be the same fee to Self-Aggregators.

[14] FINRA, IEX, LTSE, MIAX, and MEMX have not joined in the decision to approve the filing of the proposed amendment, and Nasdaq BX is also withholding its vote at this time. Additionally, the Advisory Committee requested that the following statement be inserted into the filing: The Advisory Committee has actively participated in the rate setting process with the SROs and has provided the SROs with opinion and guidance on rate setting appropriate to the interests of consumers throughout the process. The Advisors collectively believe that SIP data content fees should be universally lower to align with the un-coupling of SIP data content from the SIP exclusive processor, a function to be performed by Competing Consolidators. The Advisors believe that while their input was important in the process, the core principle of fees being fair and reasonable was not achieved.

[15] 15 U.S.C. 78o(c)(1)(C) and (D) and Rule 603(a)(1) and (2).

[16] MDI Rules Release at 18682.

[17] MDI Rules Release at 18683.

that the value of depth of book data and auction information is well-established, as this content has been available to market participants directly from the exchanges for years, and in some cases, decades, at prices constrained by direct and platform competition. Exchanges have filed fees for this data pursuant to the standards specified in Section 6(b)(5) of the Act.

To determine the value of depth of book data, the Participants considered a number of methodologies to determine the appropriate level to set fees for the expanded data content that are based on the current fees charged for depth of book data by exchanges that have chosen to charge for their data. In particular, the Participants reviewed (1) an ISO Trade-Based Model; [18] a (2) Depth to Top-Of-Book Ratio Model (''Depth-to-TOB Model''); and (3) a Message-Based Model.[19] Ultimately, the Participants selected a Depth-to-TOB Model to determine the appropriate fees for the expanded data content.

In particular, the Participants reviewed the depth to top-of-book ratios of Professional device rates on Nasdaq (Nasdaq Basic/Nasdaq TotalView), Cboe (Cboe Full Depth) and NYSE (BQT/NYSE Integrated). In addition, IEX has recently proposed data access fees for its TOPS and DEEP data feeds, which are not proposed to be charged on a per individual basis. The Participants also reviewed the ratio proposed by IEX between its proposed fees for real-time top of book and depth feeds (TOPS/DEEP), as set forth below.

Exchange	Product	Prop level 1	Depth	Ratio %
Nasdaq	Nasdaq Basic/Nasdaq Total View	$26	$76	292
Cboe	Cboe ONE Summary/Cboe Full Depth	10	100	1000
NYSE	BQT/NYSE Integrated	18	70	89
IEX	TOPS/DEEP	500	2,500	500

The Participants noted that utilizing the ratios calculated for Nasdaq, NYSE, and IEX resulted in an average ratio of 3.94x and resulted in market data fees the Participants believe are fair and reasonable.

The Participants also conducted alternative calculations by including a broader range of products or those products offering more robust depth fees. These alternative calculations resulted in ratios greater than 3.94x and were not selected by the Participants. The Participants believe that the 3.94x ratio represents the difference in value between top-of-book and five levels of depth that would be required to be included in consolidated market data under amended Rule 603(b).

Because the alternate methodologies, which focused on only the top five levels of depth, resulted in higher ratios, the Participants believe that the more conservative 3.94x ratio would be a fair and reasonable ratio between the proposed fees for depth of book data required to be included in the consolidated market data and the current fees for the existing Top of Book Quotation information.

The Participants then applied the 3.94x ratio to the current fees charged for consolidated market data, as follows:

- The Participants applied the 3.94x ratio to the current fees charged to Professional Subscribers taking all three Networks ($75.00). This resulted in the total fee level for depth of book data for Professional Subscribers equaling $296.00 (*i.e.,* $75.00 × 3.94 = $295.50, rounded to $296.00). This fee was then split evenly among the three Networks (including Network C), resulting in a proposed Professional Subscriber fee of $99.00 per Network.
- The Participants applied the 3.94x ratio to the current fees charged for Nonprofessional Subscribers taking all three Networks ($3.00). This resulted in the total fee level for depth of book data for Nonprofessional Subscribers equaling $12.00 (*i.e.,* $3.00 × 3.94 = $11.82, rounded to $12.00). This fee was then split evenly among the three Networks (including Network C), resulting in a proposed Nonprofessional Subscriber fee of $4.00 per Network.
- The Participants applied the 3.94x ratio to the current fees charged for Non-Display Use for all three Networks ($9,500.00). This resulted in the total fee level for depth of book data for Non-Display Use equaling $37,430.00 (*i.e.,* $9,500.00 × 3.94 = $37,430.00). This fee was then split evenly among the three Networks (including Network C), resulting in a proposed Non-Display Use Fee of $12,477.00 per Network (including rounding).
- The Participants applied the 3.94x ratio to the current fees charged for direct Data Access for all three Networks ($7,500.00). This resulted in the total fee level for depth of book data for Non-Display Use equaling $29,550.00 (*i.e.,* $7,500.00 × 3.94 = $29,550.00). This fee was then split evenly among the three Networks (including Network C), resulting in a proposed Non-Display Use Fee of $9,850.00 per Network.

With respect to the fees for auction information, the Participants looked to the number of trades that occur during the auction process as compared to the trading day, and determined that roughly 10% of the trading volume is concentrated in auctions. Consequently, the Participants believed that charging a fee that was 10% of the fee charged for depth of book data was an appropriate proxy for determining the value of auction information. As a result, the Participants proposed a $10.00 fee per Network for auction information, which the Participants believe is fair and reasonable and not unreasonably discriminatory.

With respect to the fees for Level 1 Core Data, the Participants believe that it is fair and reasonable and not unreasonably discriminatory to include access to odd-lot information at no additional charge to the current fees, which the Participants are not proposing to change.

Finally, as detailed above, the Participants are proposing to specify that the existing Redistribution Fees would be applicable to the amended core data, and any subset thereof, and that such fees would also be applicable to Competing Consolidators. In the MDI Rules Release, the SEC stated that ''[t]he Commission believes imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new

[18] The ISO-Based model analyzed the number of intermarket sweep orders executing through the NBBO, looking at the number of ISOs executed in the first five levels of depth as compared to all ISOs executed.

[19] The Message-based model looked at the total number of orders displayable in the first five levels of depth as compared to all displayable orders.

decentralized model.'' [20] The Commission then compared Competing Consolidators to Self-Aggregators and noted that Self-Aggregators would not be subject to redistribution fees. The Participants believe that the comparison between Competing Consolidators and Self-Aggregators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory. Instead, the more appropriate comparison would be between Competing Consolidators and downstream vendors, both of which would be competing to sell consolidated market data directly to the same market data subscribers.

Vendors are and still will be subject to Redistribution Fees when redistributing data to market data subscribers. It would be incongruent and impose a burden on competition for Competing Consolidators to not be charged a redistribution fee for exactly the same activity. Consequently, the Participants believe that it would be unreasonably discriminatory to not charge Competing Consolidators the redistribution fee. To the contrary, based on the long-standing policy that Redistribution Fees are charged to *any* entity that distributes data externally, the Participants believe it would be a significant departure from established policy, a burden on competition, and unreasonably discriminatory *not* to charge a Redistribution Fee to Competing Consolidators.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a) (Solely With Respect to Amendments to the CTA Plan)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks comments on the Amendments. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments are consistent with the Act and the rules and regulations thereunder applicable to national market system plans. 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–CTA/CQ–2021–03 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–CTA/CQ–2021–03. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Amendments that are filed with the Commission, and all written communications relating to the proposed Amendments 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 will also be available for website viewing and printing at the principal office of the Plans. 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–CTA/CQ–2021–03 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Assistant Secretary.

Attachment A—Proposed Changes to Schedule of Market Data Charges

[20] MDI Rules Release at 18685.

[21] 17 CFR 200.30–3(a)(85).

Attachment A
Proposed Changes to the CTA Plan
(Additions are *italicized;* Deletions are [bracketed])

SCHEDULE OF MARKET DATA CHARGES

[Excluding applicable taxes]

A. Professional Subscriber Charges [1,] 2	
Level 1 Core Data 1	
Network A:	
Number of Display Devices	Monthly Rates per Device
1–2	$45.00
3–999	$27.00
1000–9,999	$23.00
10,000 +	$19.00
Network B:	$23.00
Depth of Book Data	
Network A:	*$99.00*
Network B:	*$99.00*
Auction Information	
Network A:	*$10.00*
Network B:	*$10.00*
B. Nonprofessional Subscriber Charges (per month per subscriber) [1,] 3	
Level 1 Core Data	
Network A:	$1.00
Network B:	$1.00
Depth of Book Data	
Network A:	*$4.00*
Network B:	*$4.00*
Auction Information	
Network A:	*$10.00*
Network B:	*$10.00*
C. Per-Quote-Packet Charges [1,] 4	
Level 1 Core Data	
Network A:	$0.0075
Network B:	$0.0075
Depth of Book Data and Auction Information	
Not Available	
D. Broker-Dealer Enterprise—Maximum Monthly Charges 5, 6	
Level 1 Core Data	
Network A:	$660,000
Network B:	$500,000
Depth of Book Data and Auction Information	
Not Available	
E. Redistribution Charges (per month) [1,] 7	
Network A:	$1,000
Network B:	$1,000
F. Non-Display Use Fees 8	
Level 1 Core Data	
Network A	
Last Sale Price Information	$2,000
Quotation Information	$2,000
Network B	
Last Sale Price Information	$1,000
Quotation Information	$1,000
Depth of Book Data	
Network A:	*$12,477*
Network B:	*$12,477*
Auction Information	
Network A:	*$1,248*
Network B:	*$1,248*
G. Television Broadcast Charges (per month per 1,000 households reached) 6, 9	
Network A:	$2.00
Network B:	
Number of Customer Households Reached	Monthly Price per 1,000 Customer Households Reached
1 through 5,000,000:	$1.50
5,000,001 through 10,000,000:	$1.25
10,000,001 through 20,000,000:	$1.00
20,000,001 through 40,000,000:	$0.80
40,000,001 through 60,000,000:	$0.60
More than 60,000,001:	$0.50
H. Data Access Charges 10 (per month)	
1. Direct—*Level 1 Core Data*	
a. Network A Output Feed	
i. Last Sale	$1,250.00
ii. [Bid-Ask]*Top of Book and Odd-Lot Quotations*	$1,750.00

SCHEDULE OF MARKET DATA CHARGES—Continued

[Excluding applicable taxes]

b. Network B Output Feed	
i. Last Sale	$750.00
ii. [Bid-Ask]*Top of Book and Odd-Lot Quotations*	$1,250.00
2. Indirect—*Level 1 Core Data*	
a. Network A Output Feed	
i. Last Sale	$750.00
ii. *Top of Book and Odd-Lot Quotations* [Bid-Ask]	$1,250.00
b. Network B Output Feed	
i. Last Sale	$400.00
ii. *Top of Book and Odd-Lot Quotations* [Bid-Ask]	$600.00
3. Direct—Depth of Book Data and Auction Information	
a. Network A Output Feed	
i. Depth of Book Data	*$9,850.00*
ii. *Auction Information*	*$985.00*
b. Network B Output Feed	
i. Depth of Book Data	*$9,850.00*
ii. Auction Information	*$985.00*
I. Multiple Feed Charges [11] (per month)	
Network A:	
i. Last Sale	$200.00
ii. *Top of Book and Odd-Lot Quotations* [Bid-Ask]	$200.00
Network B:	
i. Last Sale	$200.00
ii. *Top of Book and Odd-Lot Quotations* [Bid-Ask]	$200.00
J. Late/Clearly Erroneous Reporting Charges [12] (per month)	
Network A:	$2,500.00
Network B:	$2,500.00
K. Consolidated Volume Data Non-Compliance Fee [13] (per month)	
Network A:	$3,000.00
Network B:	$3,000.00

Notes to Schedule of Market Data Charges:

[1] *Level 1 Core Data includes top of book quotation information, last sale price information, odd-lot information, regulatory data, administrative data, and self-regulatory organization-specific program data.* [Charges include last sale price information and quotation information.]

[2] The Network A professional subscriber charge *for Level 1 Core Data* contains four tiers of display device charges. In determining which of the four tiers applies to a professional subscriber, the professional subscriber may only include within its tier the display devices that its own employees use (''Internal Distribution''). That is, in determining the appropriate tier, a professional subscriber may not include within its tier display devices used by (a) persons to whom it distributes data that are not employees of the professional subscriber (*e.g.,* independent contractors) or (b) employees of firms to which it distributes data (collectively, ''External Distribution''). Rather, if the professional subscriber redistributes data to other professional subscriber, each such other professional subscriber shall determine the tier applicable to it.

For example, if Firm ABC provides data to its own employees and also to the employees of three other firms, Firm ABC shall pay according to the pricing tier that reflects the number of display devices that its own employees use. (That is, Firm ABC's tier is determined solely according to its Internal Distribution.) Regarding Firm ABC's External Distribution, each of the three firms to which it redistributes data shall pay according to the pricing tier that reflects the number of display devices that its employees use.

Independent contractors associated with a firm are not considered to be employees of that firm. This means that the firm may not include independent contractors in the count of that firm's display devices for purposes of determining the applicable pricing tier. Rather, each independent contractor must determine the tier applicable to it, a tier that would be separate and apart from the tier applicable to the firm with which it is associated.

[3] Charges apply to vendor providing service to nonprofessional subscribers.

[4] Per-quote-packet charge is an alternative to monthly display charges and applies equally to professional and nonprofessional subscribers. A quote packet includes any data element or all data elements in respect of a single issue. Last, open, high, low, volume, net change, bid, offer, size, and best bid and offer with size are examples of data elements. ''IBM'' is an example of a single issue. An index value is deemed to be a single-issue data element. For each of Network A and Network B, Vendor may maximize at $1.00 that network's per-quote-packet charges payable for any month in respect of any customer that qualifies as a nonprofessional subscriber, regardless of how many quote-packets the customer may receive during that month.

As the Participant's form of ''Agreement for Receipt and Use of Market Data'' permits, the Participants require each data redistributor that wishes to redistribute data on a per-quote basis to periodically audit its quote-metering system. If a redistributor fails to provide NYSE with its audit results on or prior to December 31 of a year in which an audit is required, a late fee of $3,000 applies for each month the audit is past due.

[5] An entity that is registered as a broker/dealer under the Securities Exchange Act of 1934 is not required to pay more than the enterprise maximum for any month for the aggregate amount of (a) a network's display device charges for devices used for its Internal Distribution plus (b) that network's display device and per-quote-packet charges payable in respect of services that it provides to nonprofessional subscribers that are brokerage account customers of the broker/dealer. A broker/dealer may not include in the enterprise maximum charges for (y) devices used through External Distribution and (z) devices used by independent contractors associated with the broker/dealer. Rather, the professional subscriber charges applicable to External Distribution and to independent contractors are payable in addition to the enterprise maximum.

During 2013, the Network A monthly enterprise maximum became $686,400, and the Network B monthly enterprise maximum became $520,000. For each subsequent calendar year, a network's Participants may, by the affirmative vote of not less than two-thirds of all of the then voting members of CTA, determine to increase that network's monthly enterprise maximum; provided, however, that no such annual increase shall exceed four percent of the then current enterprise maximum amount for that network.

[6] The Participants will post the amount of each network's applicable monthly Broker-Dealer Enterprise Maximum and Television Ticker Maximum on the website that CTA maintains for the CTA Plan and its amendments.

[7] The Redistribution Charges apply to any entity that makes *core data, including any subset thereof,* [last sale information or quotation Information] available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. *The Redistribution Charges apply to Competing Consolidators.*

[8] Non-Display Use refers to accessing, processing or consuming data, whether delivered via direct and/or redistributor data feeds, for a purpose other than in support of the datafeed recipient's display or further internal or external redistribution. It does not apply to the creation and use of derived data.

The Participants recognize three categories of Non-Display Use. Category 1 applies when a datafeed recipient's Non-Display Use is on its own behalf. Category 2 applies when a datafeed recipient's Non-Display Use is on behalf of its clients. Category 3 applies when a datafeed recipient's Non-Display Use is for the purpose of internally matching buy and sell orders within an organization. Matching buy and sell orders includes matching customer orders on the data recipient's own behalf and/or on behalf of its clients. Category 3 includes, but is not limited to, use in trading platform(s), such as exchanges, alternative trading systems (''ATS''), broker crossing networks, broker crossing systems not filed as ATS's, dark pools, multilateral trading facilities, and systematic internalization systems.

For both Network A and Network B, the Non-Display Use charges apply separately for each of the three categories of Non-Display Use. One, two or three categories of Non-Display Use may apply to one organization.

An organization that uses data for Category 3 Non-Display Use must count each platform that uses data on a non-display basis. For example, an organization that uses Network A quotation information for the purposes of operating an ATS and also for operating a broker crossing system not registered as an ATS would be required to pay two Network A quotation information Non-Display Use fees.

[9] Television broadcast can be through cable, satellite, or traditional means. A $2,000 monthly minimum fee applies to Network A television broadcasts.

No entity is required to pay more than the ''Television Ticker Maximum'' for any calendar month. For months falling in calendar year 2012, the monthly Network A Television Ticker Maximum is $125,000. For months falling in calendar year 2012, the monthly Network B Television Ticker Maximum is $10,416.67. For each subsequent calendar year, the Network A Participants may increase the monthly Network A Television Ticker Maximum by the percentage increase in the annual composite share volume for the preceding calendar year, subject to a maximum annual increase of five percent. However, for any calendar year, the Network A Participants may determine to waive the Network A ''Annual Increase'' for the Network A Television Ticker Maximum.

Prorating is permitted for those who broadcast the data for less than the entire business day, based upon the number of minutes the real-time ticker is displayed, divided by the number of minutes the primary market is open for trading (currently 390 minutes). A vendor may simulcast over multiple channels and is not charged more than once for recipients that have access to multiple simulcasted channels. Billing amounts are based on the ''households-reached'' totals that are published periodically in the Nielsen Report. If a Nielsen Report does not provide the requisite information as to a vendor, the vendor must provide households-reached information, subject to audit. Households-reached totals published at the end of September are the basis for billing for the following January through June. Households-reached totals published at the end of March are the basis for billing for the following July through December.

[10] Access to data feeds through an extranet service subjects the data feed recipient to direct access charges. Subscriber is responsible for the telecommunications facilities necessary to access data.

[11] [For both last sale and bid-ask data feeds, t]*T*his charge applies to each data feed that a data recipient receives in excess of the data recipient's receipt of one primary data feed and one backup data feed.

[12] These charges will be assessed for each month in which there is a failure to provide a network's required data-usage report to the network's administrator, commencing with reporting failures lasting more than three months from the date on which the report is first due. By way of example, if a network's data-usage report is due on May 31, the charge would commence to apply as of September 1 and would appear on the market data invoice for September. The network administrator would assess the charge as of September 1, and would continue to assess the charge each month until the network administrator receives the complete and accurate data usage report.

A report is not considered to have been provided to a network's administrator if the report is clearly incomplete or inaccurate. This would include, but is not limited to, a report that fails to report all data products and a report for which the reporting party did not make a good faith effort to assure the accuracy of data usage and entitlements.

[13] The Participants allow data recipients to display real-time trading volume occurring on all Participants (''Consolidated Volume'') at no charge. However, if any such display appears on the same screen as [bid-asked]quotes or last-sale prices that are not consolidated quotes or prices under the CTA Plan or CQ Plan, then the screen must conspicuously display a clarifying statement (the ''Display Statement'') that reads ''Real-time quote and/or trade prices are not sourced from all markets.'' A vendor or other data redistributor (each, a ''Customer'') must provide the appropriate network administrator(s) with the form of Consolidated Volume screen print that it provides, as well as a copy of each Consolidated Volume screen print that persons included in the redistribution chain that starts with the Customer (each, a ''Subscriber'') provide. Each Customer must assure that it and its Subscribers also clearly incorporate the Display Statement into any advertisement, sales literature or other material that displays real-time Consolidated Volume alongside [bid-asked]quotes or last-sale prices that are not consolidated prices or quotes under the CTA Plan or the CQ Plan.

A Customer must submit its and its Subscribers' screen prints by July 1, 2015 or within thirty days of the Customer's entry into its market data agreement with the Participants. It must submit its and its Subscribers' screen prints (including previously provided, new, or changed screen prints) annually by the 31st day of each January thereafter.

These charges will be assessed against a Customer for each month in which the Customer or any of its Subscribers fails to provide the Display Statement when required or fails to provide to the appropriate network's administrator a copy of a Consolidated Volume screen print in a timely manner.

[FR Doc. 2021–25752 Filed 11–24–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93616; File No. SR–CboeBZX–2021–073]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend How the BZX Official Closing Price Is Determined for a BZX-Listed Security That Is Not a Corporate Security, Pursuant to Rule 11.23(c)(2)(B)(ii)(b)

November 19, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 2021, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend how the BZX Official Closing Price is determined for a BZX-listed security that is not a corporate security, pursuant to Rule 11.23(c)(2)(B)(ii)(b). The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend BZX Rule 11.23, Auctions, to modify how the BZX Official Closing Price,[3] which is the price disseminated to the consolidated tape as the market center closing trade, would be determined for any BZX-listed security that is not a corporate security (*i.e.,* an Exchange-Traded Product (''ETP'') as provided in Exchange Rule 14.11, also referred to as a ''Derivative Securities Product''), as set forth in Rule 11.23(c)(2)(B)(ii)(b). The proposal is substantively identical to the process described in Nasdaq Stock Market LLC (''Nasdaq'') Rule 4754(b)(4)(A)(ii)[4] and substantially similar to the process described in NYSE Arca, Inc. (''Arca'') Rule 1.11(ll) [sic].[5] Further, this provision of Rule 11.23(c)(2)(B)(ii)(b) is only used to determine the BZX Official Closing Price and does not impact any executions in the Closing Auction. Such provision also only applies where there is less than one round lot executed in the Closing Auction and where there has not been a trade that would qualify as a Final Last Sale Eligible Trade within the final five minutes before the end of Regular Trading Hours.

Rule 11.23(c)(2)(B)(i) through (iii) sets forth how the BZX Official Closing Price for Derivative Securities Products is determined. Paragraph (B)(i) provides that where at least one round lot is executed in the Closing Auction, the Closing Auction price will be the BZX Official Closing Price. Paragraph (B)(ii) provides that in the event that the BZX Official Closing Price cannot be determined under paragraph (B)(i), the BZX Official Closing Price for such security will depend on when the last consolidated last-sale trade occurs. Specifically, if a trade that would qualify as a Final Last Sale Eligible Trade[6] occurred (a) within the final five minutes before the end of Regular Trading Hours,[7] the Final Last Sale Eligible Trade will be the BZX Official Closing Price; or (b) prior to five minutes before the end of Regular Trading Hours, the time-weighted average price (''TWAP'') of the National Best Bid or Offer[8] (''NBBO'') midpoint measured over the last five minutes before the end of Regular Trading Hours will be the BZX Official Closing Price. Paragraph (B)(iii) provides that if the BZX Official Closing Price cannot be determined under paragraphs (B)(i) or (B)(ii), the Final Last Sale Eligible Trade will be the BZX Official Closing Price.

The Exchange proposes to amend Rule 11.23(c)(2)(B)(ii)(b) in order to change how the BZX Official Closing Price is calculated using the TWAP of the NBBO midpoint measured over the last five minutes before the end of Regular Trading Hours. Under current functionality, the Exchange uses all NBBO quotes during the last five minutes of Regular Trading Hours to determine the BZX Official Closing Price, which could result in setting a BZX Official Closing Price that is not necessarily reflective of a Derivative Securities Product's reasonable market value. Given this, the Exchange proposes to amend Rule 11.23(c)(2)(B)(ii)(b) to exclude from the TWAP calculation a midpoint that is based on an NBBO that is not reflective of the security's true and current value. As proposed, the Exchange would exclude a quote from the NBBO midpoint calculation if the spread of the quote is greater than 10% of the midpoint price. The Exchange would also exclude a crossed NBBO from the calculation.[9]

The proposed amendment to adopt an NBBO midpoint check is designed to validate whether an NBBO used in the calculation of the BZX Official Closing Price bears a relation to the value of the value of the Derivative Securities Product. Under the proposal, the Exchange would calculate the midpoint of the NBBO and then multiply the midpoint by ten percent (10%) and compare this value to the spread of the NBBO. If the value of the midpoint when multiplied by ten percent (10%) is less than the spread of that NBBO, the Exchange would exclude the quote from the NBBO midpoint calculation. The Exchange believes that if the NBBO spread is greater than the value of the midpoint when multiplied by ten percent (10%), it would indicate that the spread is too wide, and therefore not representative of the value of the security. For example: If the NBBO is $\$19.99 \times \$20.01$, and thus the NBBO midpoint is $20, validation logic would allow a maximum quote width up to $2 to be used as part of the calculation ($20.00*10% = $2). If the NBBO was $\$17.00 \times \$23.00$, and thus the NBBO midpoint is $20.00, the quote would not be used in the midpoint calculation because it violates the maximum quote width ($20.00*10% = $2). If there are no eligible quotes to determine a TWAP within the time period or if the ETP is halted, then Exchange will determine the BZX Official Closing Price as provided under existing Rule 11.23(c)(2)(B)(iii).

The Exchange plans to implement the proposed rule change during the fourth quarter of 2021, and will announce the implementation date via Trade Desk Notice.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system 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 because it is designed to provide for a BZX Official Closing Price that is more reflective of the current market value of an ETP on that trading day. Further, it will serve to remove impediments to and perfect the

[3] *See* Exchange Rule 11.23(a)(3).

[4] *Infra* note 12 and accompanying text.

[5] *Infra* note 13 and accompanying text.

[6] The term ''Final Last Sale Eligible Trade'' shall mean the last round lot trade occurring during Regular Trading Hours on the Exchange if the trade was executed within the last one second prior to either the Closing Auction or, for Halt Auctions, trading in the security being halted. Where the trade was not executed within the last one second, the last round lot trade reported to the consolidated tape received by the Exchange during Regular Trading Hours and, where applicable, prior to trading in the security being halted will be used. If there is no qualifying trade for the current day, the BZX Official Closing Price from the previous trading day will be used. *See* BZX Rule 11.23(a)(9).

[7] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BZX Rule 1.5(w).

[8] *See* BZX Rule 1.5(o).

[9] As provided in Rule 11.20(a)(2), the term crossing quotation shall mean the display of a bid for an NMS stock during regular trading hours at a price that is higher than the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock during regular trading hours at a price that is lower than the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

mechanism of a free and open market and a national market system because it will provide for a more robust mechanism to determine the value of an ETP for purposes of determining the BZX Official Closing Price.

The proposed functionality is substantively identical to functionality that has already been approved by the Commission and is operational on another Exchange. Specifically, Nasdaq Rule 4754(b)(4)(A)(ii) provides that where a time-weighted average midpoint (''T–WAM'') calculation is reflected as the Nasdaq official closing price, the T–WAM calculation will only use an ''eligible quote'', which is defined as a quote whose spread is no greater than a value of 10% of the midpoint price, and will exclude crossed NBBO markets.[12] The proposal is also substantially similar to Arca Rule 1.1(ll)(1)(B) except the Exchange proposes to exclude a quote when the spread is greater than a value of 10% of the midpoint price and Arca Rule 1.1(ll)(1)(B) excludes a midpoint. Specifically, Arca Rule 1.1(ll)(1)(B) provides that for the purpose of deriving the official closing price using a TWAP calculation, Arca will exclude (1) an NBBO midpoint from the calculation if that midpoint, when multiplied by 10%, is less than the spread of that NBBO, and (2) a crossed NBBO.[13] Therefore, the Exchange's proposal to exclude from the TWAP calculation provided under Rule 11.23(c)(2)(B)(ii)(b) a quote from the NBBO midpoint calculation if the spread of the quote is greater than 10% of the midpoint price, is substantively identical to existing functionality on Nasdaq and substantially similar to existing functionality on Arca and thus does not present any new or novel issues.

For the above reasons, the Exchange believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act.

[12] *See* Nasdaq Rule Nasdaq Rule 4754(b)(4)(A)(ii). *See also* Securities and Exchange Act No. 87486 (November 7, 2019) 84 FR 61952 (November 14, 2019) (SR–NASDAQ–2019–061) (Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Nasdaq Official Closing Price for Nasdaq-Listed Exchange-Traded Products).

[13] *See* Arca Rule 1.1(ll)(1)(B). *See also* Securities Exchange Act No. 84471 (October 23, 2018) 83 FR 54384 (October 29, 2018) (SR–NYSEArca–2018–63) (Order Approving a Proposed Rule Change To Amend NYSE Arca Rule 1.1(ll) To Modify the Formula for Establishing the Official Closing Price for a Derivative Securities Product When There Is No Closing Auction or if the Closing Auction Is Less Than One Round Lot, by Excluding the NBBO Midpoint if the Midpoint Multiplied by 10% Is Less Than the NBBO Spread or if the NBBO Is Crossed).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to ensure that the BZX Official Closing Price of BZX-listed Derivative Securities Products is calculated, pursuant to Rule 11.23(c)(2)(B)(ii)(b), at a price that is reasonably reflective of the market value of the security. The Exchange believes the proposed changes would improve the experience of market participants trading on the Exchange without imposing any significant burden on competition as the proposal would simply create a process to validate the NBBO midpoint used to determine the Official Closing Price by comparing the midpoint value to the spread of the NBBO, and if the NBBO midpoint is not within the proposed parameters, to exclude the quote from the calculation. The proposal would ensure that the NBBO is sufficiently tight to guarantee that the midpoint of the NBBO would be a meaningful and accurate basis for determining the Official Closing Price. Further, as the proposal is designed to ensure the BZX Official Closing Price calculated pursuant to Exchange Rule 11.23(c)(2)(B)(ii)(b) accurately reflects the supply and demand in the Derivative Securities Product, the Exchange believes the proposal will help it better compete as a listing venue.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[14] and subparagraph (f)(6) of Rule 19b–4 thereunder.[15]

[14] 15 U.S.C. 78s(b)(3)(A)(iii).

[15] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires the Exchange to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

A proposed rule change filed under Rule 19b–4(f)(6)[16] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[17] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay to allow the Exchange to implement the proposal as soon as possible. The Exchange states that the proposal is substantively identical to Nasdaq Rule 4754(b)(4)(A)(ii) and substantially similar to Arca Rule 1.1(ll). The Commission believes that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal does not raise any new or novel issues. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[18]

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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–CboeBZX–2021–073 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange

[16] 17 CFR 240.19b–4(f)(6).

[17] 17 CFR 240.19b–4(f)(6)(iii).

[18] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2021–073. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange.

All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–CboeBZX–2021–073 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25746 Filed 11–24–21; 8:45 am]

BILLING CODE 8011–01–P

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93624; File No. SR–CboeBZX–2021–056]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 2, To Allow the Invesco Focused Discovery Growth ETF and Invesco Select Growth ETF To Strike and Publish an Intra-Day Net Asset Value

November 19, 2021.

I. Introduction

On August 12, 2021, Cboe BZX Exchange, Inc. (''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to allow the Invesco Focused Discovery Growth ETF and Invesco Select Growth ETF (collectively, ''Funds''), the shares of which (collectively, ''Shares'') BZX currently lists and trades, to strike and publish an intra-day net asset value (''NAV'') and an end of-day NAV. The proposed rule change was published for comment in the **Federal Register** on August 24, 2021.[3]

On September 28, 2021, pursuant to Section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] On November 5, 2021, the Exchange filed Amendment No. 1, which replaced and superseded the proposed rule change as originally filed. On November 16, 2021, the Exchange filed Amendment No. 2, which replaced and superseded the proposed rule change as modified by Amendment No. 1.[6] The Commission has received no comments on the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 2, from interested persons and is approving the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 92701 (August 18, 2021), 86 FR 47359.

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 93144, 86 FR 54774 (October 4, 2021). The Commission designated November 22, 2021, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change.

[6] Amendments No. 1 and No. 2 are available on the Commission's website at *https://www.sec.gov/comments/sr-cboebzx-2021-056/srcboebzx2021056.htm*.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change, as Modified by Amendment No. 2

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, as Modified by Amendment No. 2

1. Purpose

This Amendment No. 2 to SR–CboeBZX–2021–056 amends and replaces in its entirety the proposal as amended November 5, 2021 and as originally submitted on August 12, 2021. The Exchange submits this Amendment No. 2 in order to clarify certain points and add additional details to the proposal.

The Exchange proposed and the Commission approved a rule to permit the listing and trading of the Shares of each Fund.[7] On December 22, 2020, the Exchange commenced trading in the Shares of each Fund. The Exchange now proposes to continue listing and trading the Shares of each Fund pursuant to Rule 14.11(m) and to permit the Funds to strike and publish a single intra-day NAV in addition to the current practice of striking and publishing an end-of-day NAV. This proposal is designed to assist market makers in assessing and managing their intra-day risk, provide greater flexibility in creating and redeeming shares and provide market participants with additional information about the Funds, all of which may assist market participants in hedging the Funds' shares and generally making a market in the Funds' shares.

[7] *See* Securities Exchange Act Release No. 90684 (December 16, 2020) 85 FR 83637 (December 22, 2020) (SR–CboeBZX–2020–091) (the ''Initial Filing'').

The NAV represents the value of a fund's assets minus its liabilities divided by the number of shares outstanding and is used in valuing exchange-traded products (''ETPs''), including Tracking Fund Shares. By way of background, an ETP issues shares that can be bought or sold throughout the day in the secondary market at a market-determined price. Authorized participants (entities that have contractual arrangements with the ETP and/or its distributor) purchase and redeem ETP shares directly from the ETP in blocks called creation units at a price equal to the next-calculated NAV, and may then purchase or sell individual ETP shares in the secondary market at market-determined prices. ETP shares trade at market prices, but the market price typically will be more or less than the fund's NAV per share due to a variety of factors, including the underlying prices of the ETP's assets and the demand for the ETP shares. Nonetheless, an ETP's market price is generally kept close to the ETP's end-of-day NAV because of the arbitrage function inherent to the structure of the ETP. An arbitrage opportunity is inherent in the ETP structure because the ETP share's intra-day market price fluctuates in response to standard supply/demand dynamics during the trading day. Due to this fluctuation, the ETP's intra-day market price may not equal the actual value of ETP's underlying holdings that would form the basis of the NAV calculation. Accordingly, authorized participants can arbitrage this difference (and make a profit) because they can trade directly with the ETP at NAV [8] as well as on the market at market-determined prices. The expected result of the arbitrage activity is that the market value of the ETP moves back in line with the ETP's NAV per share and investors are able to buy ETP shares on an exchange that is close to the ETP's NAV per share. The arbitrage mechanism is important because it provides a means to maintain a close tie between market price and NAV per share of the ETP throughout the day and on market close, thereby helping to ensure that ETP investors are treated equitably when buying and selling fund shares.

In order for the arbitrage mechanism described above to operate efficiently, market participants need to be able to hedge their intra-day risk effectively and estimate, with high accuracy, the value of the ETP's holdings, such that it can then observe instances when the value of such holdings, on a per-share basis, is higher or lower than the current trading price of the shares on an exchange. Principal aspects of the ETP structure that facilitate these two processes are: (i) Timing of the NAV strike and creation/redemption order window; and (ii) the volume of information available regarding the underlying holdings of the ETP, from which the authorized participant can estimate the ETP's NAV per share at any given time. With respect to the former, if an ETP can offer more than one opportunity to ''lock in'' the purchase price of the ETP (*i.e.,* shorten the duration of the market risk that the authorized participant is bearing), the Exchange believes that the arbitrage mechanism will operate more efficiently, resulting in tighter spreads for the trading of the ETP shares.

Additionally, with respect to information dissemination, in general, the more information that is available to assist the market participants in estimating the value of the fund's holdings, the better the arbitrage mechanism will operate with respect to the Tracking Fund Shares. In the case of Tracking Fund Shares, the applicable ETP disseminates various information to achieve that goal, while not publishing a full list of fund holdings daily. First, as noted in the Initial Filing, each Fund will disclose its respective Fund Portfolio [9] including the name, identifier, market value and weight of each security and instrument in the portfolio, at a minimum within at least 60 days following the end of every fiscal quarter.[10] Additionally, the Tracking Basket [11] (also referred to as the ''substitute basket'') for each Fund will be publicly disseminated at least once daily.[12] The Tracking Basket is designed to closely track the daily performance of the Fund, but is not fully-representative of the Fund Portfolio. The Tracking Basket often will include a significant percentage of the securities held in the Fund Portfolio, but it will exclude (or modify the weightings of) certain securities held in the Fund Portfolio, such as those securities that the Fund's portfolio managers are actively looking to purchase or sell, or securities which, if disclosed, could increase the risk of front-running or free-riding. The Tracking Basket may also include cash. Further, the issuer of the Funds represented that the NAV per share for each of the Funds is currently being calculated once daily along with certain metrics, including the premium or discount between NAV and final trading price of the Shares at the close of Regular Trading Hours [13] and information about how well the performance of the Tracking Basket has correlated with the performance of the Fund Portfolio on a day-over-day basis.[14] While nothing in the Initial Filing, the Exemptive Relief, or Rule 14.11(m) requires the Funds to disseminate an intraday indicative value (''IIV''), both Funds disseminate IIVs as such dissemination is not prohibited by the Initial Filing, Exemptive Relief or Rule 14.11(m).[15] The IIV refers to an intraday estimate of a fund's NAV per share, and is calculated based on the valuation of the Fund Portfolio that will form the basis for the next-calculated NAV (including any trades from the prior day that are accounted for on a T+1 basis), reflecting intra-day price movements for such holdings. For example, if a security were bought by a Fund during a trading session on a Monday, it would be not be part of the NAV calculation at the end of that day (Monday), but instead would be accounted for in the NAV (or NAVs if the Fund struck more than one) the next day (Tuesday, or T+1). Similarly, that security would be valued intraday and reflected in the IIV throughout the day in which it would form a part of the portfolio upon which the NAV is calculated (*e.g.,* Tuesday). As such, the portfolio securities upon which the IIV and the NAV are based on any given day are the same and, therefore, it is expected that the IIV disseminated at the same time that a NAV struck intra-day during the trading session (an ''Intra-Day NAV'') would be substantively the same (*e.g.* the 12:00 p.m. Eastern Time IIV and an Intra-Day NAV struck at 12:00 p.m. Eastern Time

[8] *See generally* Investment Company Act Release No. 33646.

[9] The term ''Fund Portfolio'' means the identities and quantities of the securities and other assets held by the Investment Company that will form the basis for the Investment Company's calculation of net asset value at the end of the business day. *See* Exchange Rule 14.11(m)(3)(B).

[10] *See* Exchange Rule 14.11(m)(4)(B)(ii).

[11] The term ''Tracking Basket'' means the identities and quantities of the securities and other assets included in a basket that is designed to closely track the daily performance of the Fund Portfolio, as provided in the exemptive relief under the Investment Company Act of 1940 applicable to a series of Tracking Fund Shares (the ''Exemptive Relief''). The website for each series of Tracking Fund Shares shall disclose the following information regarding the Tracking Basket as required under this Rule 14.11(m), to the extent applicable: (i) Ticker symbol; (ii) CUSIP or other identifier; (iii) Description of holding; (iv) Quantity of each security or other asset held; (v) and Percentage weight of the holding in the portfolio.

[12] *See* Exchange Rule 14.11(m)(4)(B)(i).

[13] *See* Exchange Rule 1.5(w).

[14] *See* Exchange Rule 14.11(m)(4)(A)(ii).

[15] As noted above, nothing in the Initial Filing, the Exemptive Relief, or Rule 14.11(m) requires the Funds to disseminate an IIV; therefore, the Fund is not representing that it will in the future continue to disseminate an IIV for either or both of the Funds.

would be substantially the same).[16] The IIV is disseminated by each Fund every second during Regular Trading Hours,[17] but, although the IIV provides a great deal of price transparency to the market, it is not an official NAV of the Funds derived using the processes and governance designed to ensure an accurate and reliable calculation before dissemination. Accordingly, an official Intra-Day NAV would, in concert with the IIV, provide a reliable verification and further clarity as to Fund portfolio pricing.[18]

In furtherance of the Funds' objectives of tightening spreads in the trading of their shares and increasing the efficiency of the arbitrage mechanism, the Funds will strike one NAV during normal trading (the Intra-Day NAV) and one NAV again at the close of trading at 4:00 p.m. ET (the ''End-of-Day NAV'' and collectively with Intra-Day NAV, the ''Published NAVs''). The Funds anticipate that the Intra-Day NAV will be struck at 12:00 p.m. ET; however, the Funds represent that the Intra-Day NAV may be struck at a pre-determined, and publicly disclosed, time between 11:00 a.m. ET and 2 p.m. ET. The timing of the calculation time of the Intra-Day NAV will be disclosed in each Fund's prospectus and will not change without prior notification to shareholders and the market in the form of a prospectus supplement. The Intra-Day NAV would be calculated based on the values of the securities in the Fund Portfolio (as well as any cash or other assets booked to the Fund) at the time the Intra-Day NAV is struck, which may differ from the values of the securities in the Fund Portfolio at the time the End-of-Day NAV is struck. However, as noted in the discussion of IIV above, the Fund Portfolio will not change between the Intra-Day NAV and End-of-Day NAV, since all trades occurring during the trading day will be reflected in the following day's Published NAVs (*i.e.,* T+1).

As noted in the Initial Filing, Shares of each of the Funds are offered by the Trust, which is registered with the Commission as an open-end investment company and has filed a registration statement on behalf of the Funds on Form N–1A with the Commission.[19] The Registration Statement provides that the Funds may calculate the NAV per Share more than once daily (*e.g.,* at 12 p.m. ET and 4:00 p.m. ET), however, the Initial Filing did not seek to allow the Funds to calculate more than one NAV per day. Now, the Exchange is seeking approval to explicitly allow the Funds to strike and publish an Intra-Day NAV daily in addition to the End-of-Day NAV.[20]

As noted above, the Intra-Day NAV for the Funds will be struck based on the Fund Portfolio at a pre-determined time between 11:00 a.m. and 2:00 p.m. Eastern Time on each day the Exchange is open. The Intra-Day NAV will be calculated based on the valuation of Fund Portfolio as of the NAV strike time, with the calculation of such NAV typically occurring within two hours of the time the NAV strike time (*e.g.,* if the Intra-Day NAV is struck as of 12:00 p.m. Eastern Time, dissemination of such Intra-Day NAV will typically occur prior to 2:00 p.m. Eastern Time), and will be disseminated to market participants shortly after calculation. Such dissemination will clearly indicate that such Intra-Day NAV is as of the specified time (*e.g.* NAV as of 12:00 p.m. Eastern Time) and not as of the time it is disseminated. Further, the Intra-Day NAV will be disseminated to all market participants at the same time through the Fund's website.[21]

Currently, all orders to purchase or redeem creation units must be received by the transfer agent and/or distributor no later than the order cut-off time designated in the participant agreement[22] on the relevant Business Day in order for the creation or redemption of creation units to be effected based on the NAV of Shares as determined on such date. With certain exceptions, the order cut-off time for the Funds, as set forth in the participant agreement, usually is one hour prior to the closing time of the regular trading session—*i.e.,* ordinarily 4:00 p.m. Eastern time. Additionally, on days when the Exchange closes earlier than normal, the Trust may require the creation orders to be placed earlier in the day.

As proposed, with certain exceptions the order cut-off time for the Intra-Day NAV will be one hour prior to the time at which the Intra-Day NAV is struck (*e.g.,* 11:00 a.m. Eastern time if the NAV is struck at 12:00 p.m. Eastern time). The Funds will issue and redeem Shares in creation units at the NAV per Share next determined after an order in proper form is received (which may be the Intra-Day NAV or the End-of-Day NAV depending on when the order is received). Specifically, if an order to purchase or redeem Shares of either of the Funds was received by the transfer agent prior to the order cut-off time for the Intra-Day NAV (generally one hour prior to the time at which the Intra-Day NAV is struck), the Fund would issue or redeem Shares in creation units at the Intra-Day NAV. Conversely, if an order to purchase or redeem Shares of either of the Funds was received by the transfer agent after that cut-off time but before the cut-off time for the End-of-Day NAV (generally 3:00 p.m. Eastern time), the Fund would issue or redeem Shares in creation units at the End-of-Day NAV.

The Exchange believes that providing authorized participants with the ability to create and redeem during the trading day, coupled with the price certainty of a second official Intra-Day NAV being available to market participants, will reduce the risk that market participants face intra-day related to the possible divergence between the Tracking Basket and the value of the Fund Portfolio. By having an option available to authorized participants by which they can ''lock in'' their creation and redemption transactions during the trading day at an Intra-Day NAV, as well as at the end of

[16] Although the portfolio of securities on which the Intra-Day NAV and the IIV would be based would be identical, it is possible that differences in pricing sources or data points used by the Funds compared to the IIV provider may create minor variances between the values. Such variances are expected to be immaterial and should not create investor confusion.

[17] ''Regular Trading Hours'' refers to the time between 9:30 a.m. and 4:00 p.m. Eastern time. *See* Exchange Rule 1.5(w).

[18] Further, in the rare instances where there may be a delay or error in calculating the IIV the dissemination of the official Intra-Day NAV would alert the market to any disparity. As discussed herein, the calculation of an official NAV takes more time to disseminate than the IIV, reflecting the robust verification and validation processes employed.

[19] The Trust is registered under the 1940 Act. On September 25, 2020, the Trust filed post-effective amendments to its registration statement on Form N–1A relating to each Fund (File No. 811–22148) (the ''Registration Statement''). The descriptions of the Funds and the Shares contained herein are based, in part, on information included in the Registration Statement. The Commission has issued an order granting certain exemptive relief to the Trust (the ''Exemptive Relief'') under the 1940 Act. *See* Investment Company Act of 1940 Release No. 34127 (December 2, 2020).

[20] The Exchange's proposal is similar to functionality offered for other ETPs. For example, the prospectus for the Invesco Treasury Collateral ETF provides that the Fund is calculated at 12 p.m. and 4 p.m. ET every day the New York Stock Exchange (''NYSE'') is open and the Goldman Sachs Access Treasury 0–1 Year ETF has similar practices. See *http://hosted.rightprospectus.com/Invesco/Fund.aspx?cu=46138G888&dt=P&ss=ETF* and *https://www.gsam.com/bin/gsam/servlets/LiteratureViewerServlet?pdflink=%2Fcontent%2Fdam%2Fgsam%2Fpdfs%2Fus%2Fen%2Fprospectus-and-regulatory%2Fprospectus%2Fetf-combined-access-prospectus.pdf&RequestURI=/content/gsam/us/en/advisors/fund-center/etf-fund-finder&sa=n.*

[21] Currently, the End-of-Day NAV is disseminated publicly via the Issuer's website at *www.invesco.com/ETFs.* Additionally, the End-of-Day NAV is captured by other data feeds, such as Bloomberg, Reuters and others.

[22] The ''participant agreement'' refers to the executed written agreement between an authorized participant and the Fund, or one of its service providers, that allows the authorized participant to place creation and redemption orders.

the trading day at the End-of-Day NAV,[23] the intra-day market risk experienced by authorized participants may be mitigated. Such optionality could thereby help authorized participants and market makers to reduce spreads on Shares.

As proposed, the Funds will continue to meet all listings standards provided in Rule 14.11(m). The only change to the Funds that the Exchange is proposing is to allow the Funds to strike an Intra-Day NAV. All other material representations contained within the Initial Filing remain true and will continue to constitute continued listing requirements for the Funds.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [24] in general and Section 6(b)(5) of the Act [25] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest in that the Shares of each Fund will meet each of the continued listing criteria in BZX Rule 14.11(m), as provided in the Initial Filing.

The proposal to allow the Funds to strike and publish an Intra-Day NAV will afford authorized participants with additional flexibility in the timing of creation and redemption activity and provide the marketplace with additional information, produced through rigorous controls and verification, related to each Fund's underlying holdings on an intra-day basis. The Exchange believes that this additional feature will allow market participants to better assess and manage their intra-day risk in making a market in the Funds' shares, and provide additional certainty around intra-day price and hedging for the Funds' shares. Further, the Exchange believes that the likely resulting tighter spreads and deeper liquidity will deter potential fraudulent or manipulative acts associated with the Funds' Share price. The only change to the Funds that the Exchange is proposing is to allow the Funds to strike an Intra-Day NAV. The website for the Funds will include additional quantitative information, including, on a per Share basis for each Fund, the prior business day's Intra-Day NAV and End-of-Day NAV. All other material representations contained within the Initial Filing remain true and will continue to constitute continued listing requirements for the Funds.

For the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change, rather, will provide additional information to market participants thereby reducing market participants risk and intra-day price uncertainty which will allow the Fund to better compete in the marketplace, thus enhancing competition among both market participants and listing venues, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[26] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,[27] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In addition to the End-of-Day NAV that currently is calculated and disseminated, the proposal permits the calculation and dissemination of an Intra-Day NAV for certain Tracking Fund Shares.[28] The Commission believes that the Exchange's proposal to permit Intra-Day NAV for the Shares is reasonably designed to assist market participants assess and manage their intra-day risk by providing greater flexibility in creation and redemption of the Shares while providing additional information about the Shares and not unduly creating investor confusion. Specifically, the Exchange represents that each Intra-Day NAV will be struck at a pre-determined time between 11:00 a.m. ET and 2:00 p.m. ET and that the timing of the calculation of the Intra-Day NAV will be disclosed in each Fund's prospectus and will not change without prior notification to shareholders and the market. Further, according to the Exchange, the portfolio securities upon which the IIV and the NAV are based on any given day are the same, and, therefore, it is expected that the IIV disseminated at the same time that an Intra-Day NAV is struck. Further, dissemination of Intra-Day NAV will clearly indicate that the value is as of the specified time when the Intra-Day NAV is struck, which will not be the time it is disseminated. Finally, the Intra-Day NAV will be disseminated to all market participants at the same time through the Fund's website.

For the foregoing reasons, the Commission finds that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress's finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for, and transactions in, securities.

IV. Solicitation of Comments on Amendment No. 2 to the Proposed Rule Change

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 2 is consistent with the

[23] The Exchange believes that the beneficial effect of having the ability to ''lock in'' the Intra-Day NAV will exist even if authorized participants do not regularly make use of the first creation/redemption window. By having the flexibility to place orders with less remaining time until the End-of-Day NAV is struck, authorized participants will be able to hedge risk with a shorter time horizon contemplated. Further, even in the unlikely event that the Intra-Day NAV is not disseminated until after markets close (which would only happen if the Intra-Day NAV were set at 2:00 p.m. ET and the Fund experienced delays in calculation), such risk management benefits would nonetheless be present with having the first creation/redemption window.

[24] 15 U.S.C. 78f(b).

[25] 15 U.S.C. 78f(b)(5).

[26] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[27] 15 U.S.C. 78f(b)(5).

[28] The portfolio holdings for Tracking Fund Shares are disclosed within at least 60 days following the end of every fiscal quarter. *See supra* text accompanying note 10.

Exchange Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2021–056 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2021–056. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeBZX–2021–056, and should be submitted on or before December 17, 2021.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 2

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 2, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 2 in the **Federal Register**. In Amendment No. 2, the Exchange provided additional information regarding: (a) The calculation and dissemination of the Funds' IIVs and Intra-Day NAVs; and (b) the creation and redemption order cut-off times applicable to the Shares; and (c) the posting of the prior business day's Intra-Day (in addition to the End-of-Day) NAVs for the Shares on the Funds' website.[29] The changes and additional information in Amendment No. 2 assist the Commission in finding that the proposal is consistent with the Exchange Act. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,[30] to approve the proposed rule change, as modified by Amendment No. 2, on an accelerated basis.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[31] that the proposed rule change (SR–CboeBZX–2021–056), as modified by Amendment No. 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[32]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25751 Filed 11–24–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93621; File No. SR–NYSEArca–2021–99]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Equities Fees and Charges

November 19, 2021.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on November 15, 2021, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges (''Fee Schedule'') to (1) amend the standard rates for adding and removing liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below $1.00; (2) consolidate the fee charged for PO Orders in Tape B and Tape C securities routed to auctions at away markets; (3) amend the application of the credits for Retail Orders that add liquidity; (4) amend the requirement applicable to the additional credit payable for Tape B securities; and (5) amend the requirement applicable to tiered credits payable for adding liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below $1.00. The Exchange proposes to implement the fee changes effective November 15, 2021. The proposed rule change is available on the Exchange's website at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) amend the standard rates for adding and removing liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below $1.00; (2) consolidate the fee charged for PO Orders in Tape B and Tape C securities routed to auctions at

[29] Amendment No. 2 also made certain clarifying changes. For example, the Exchange: (1) Confirms that the IIVs and the Intra-Day NAV for each Fund would be based on the same portfolio and therefore likely would be substantially the same; (2) clarifies its analysis of the market impact of its proposal; and (3) corrects a citation.

[30] 15 U.S.C. 78s(b)(2).

[31] *Id.*

[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

away markets; (3) amend the application of the credits for Retail Orders that add liquidity; (4) amend the requirement applicable to the additional credit payable for Tape B securities; and (5) amend the requirement applicable to tiered credits payable for adding liquidity in Round Lots and Odd Lots in Tapes A, B and C securities with a per share price below $1.00.

The Exchange proposes to implement the fee changes effective November 15, 2021.[4]

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. 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.'' [5]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [6] Indeed, equity trading is currently dispersed across 16 exchanges,[7] numerous alternative trading systems,[8] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 18% market share.[9] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 12% market share of executed volume of equities trading.[10]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

Proposed Rule Change

Standard Rate for Adding and Removing Liquidity in Round Lots and Odd Lots in Tapes A, B and C Securities With a per Share Price Below $1.00 (''Sub-Dollar Securities'')

The Exchange currently provides a base credit of $0.00004 per share for adding liquidity in Sub-Dollar Securities. The base credit of $0.00004 per share also applies to Retail Orders and MPL Orders that add liquidity in Sub-Dollar Securities. For orders in Sub-Dollar Securities that remove liquidity, the Exchange currently charges a fee of 0.295% of dollar value.

With this proposed rule change, the Exchange proposes to eliminate the credit for Sub-Dollar Securities that add liquidity, including for MPL Orders in Sub-Dollar Securities that add liquidity. For Retail Orders in Sub-Dollar Securities, the Exchange proposes to modify the credit, from $0.00004 per share to 0.05% of dollar value.[11] For orders in Sub-Dollar Securities that remove liquidity, the Exchange proposes to increase the fee, from 0.295% of dollar value to 0.30% of dollar value.

The purpose of reducing the standard rebate for orders, including MPL Orders, in Sub-Dollar Securities is for business and competitive reasons, as the Exchange believes the reduction of rebates would decrease the Exchange's expenditures with respect to transaction pricing and would also offset some of the costs associated with rebates paid to ETP Holders that qualify for the Sub-Dollar Step Up Tier and the rebates paid by the Exchange for Retail Orders in Sub-Dollar Securities, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity. The Exchange notes that the proposed standard rebate for orders, including MPL Orders, in Sub-Dollar Securities that add liquidity, and the proposed standard fee for orders in Sub-Dollar Securities that remove liquidity is comparable to, and competitive with, the standard rebate and fee provided by at least one other exchange for executions of orders in securities priced below $1.00 per share.[12] Additionally, the proposed standard rebate for Retail Orders in Sub-Dollar Securities that add liquidity is also comparable to, and competitive with, the standard rebate provided by at least one other exchange for execution of orders in securities priced below $1.00 per share.[13]

PO Orders

Currently, under Section V. Standard Rates—Routing, the Exchange charges a fee of $0.0030 per share for PO Orders [14] in Tape B securities routed for execution in the open or closing auction on Cboe BZX. The Exchange also currently charges a similar fee of $0.0030 per share for PO Orders in Tape C securities routed for execution in the open or closing auction on Nasdaq.

The Exchange proposes to streamline the Fee Schedule by deleting the column for the fee for PO Orders in Tape C securities routed to Nasdaq auction and merge it with the column

[4] The Exchange originally filed to amend the Fee Schedule on November 1, 2021 (SR–NYSEArca–2021–95). SR–NYSEArca–2021–95 was subsequently withdrawn and replaced by this filing.

[5] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[6] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[7] *See* Cboe U.S Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[8] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[9] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[10] *See id.*

[11] The Exchange notes that other exchanges provide credits for liquidity-adding transactions in securities priced below $1.00 that are denominated in a percentage of the total dollar amount of the transaction. *See e.g.,* the Members Exchange fee schedule on its public website (available at *https://info.memxtrading.com/fee-schedule/*), which reflects a rebate of 0.05% of total dollar value for Retail Orders that add displayed liquidity in securities priced below $1.00 per share.

[12] *See* the Nasdaq Stock Market equities trading fee schedule on its public website (available at *https://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2*), which reflects a standard rebate of $0.00 per share to add liquidity in securities priced below $1.00 per share and a standard fee of 0.30% of total dollar volume in securities priced below $1.00 per share.

[13] *See* note 11, *supra.*

[14] A PO Order is a Market or Limit Order that on arrival is routed directly to the primary listing market without being assigned a working time or interacting with interest on the NYSE Arca Book. *See* NYSE Arca Rule 7.31–E(f)(1).

for the fee for PO Orders in Tape B securities routed to Cboe BZX auction. The purpose of the proposed change is to simplify the Fee Schedule. The Exchange is not making any substantive change other than to streamline the Standard Rates—Routing table under Section V. by merging the per share fees for PO Orders routed to Cboe BZX and Nasdaq into a single column.

Retail Orders

The Exchange currently provides tiered credits for Retail Orders that provide liquidity on the Exchange. Specifically, Section VI. Tier Rates—Round Lots and Odd Lots (Per Share Price $1.00 or Above), provides a base Retail Order Tier credit of $0.0033 per share for Adding. Additionally, the Exchange has established Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 that provide a credit of $0.0038 per share, $0.0035 per share, and $0.0036 per share, respectively, for Adding.[15]

The Exchange proposes to eliminate the distinction with respect to the type of liquidity for which the Exchange provides credits under Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 by removing current footnote (f) from the Retail Tiers table. With the proposed elimination of footnote (f), all Retail Orders sent to the Exchange by ETP Holders that add liquidity would receive the credits payable under the Retail Order Tier, Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3. The Exchange is not proposing any substantive change to the requirement or the amount of the credit under each of the Retail Order tiers. The Exchange also proposes to renumber footnotes (g) and (h) as footnotes (f) and (g), respectively, in conjunction to the changes discussed herein.

The purpose of the proposed rule change is to adopt consistency within the Fee Schedule as to the type of activity for which the Exchange provides credits. The Exchange believes the proposed rule change will continue to encourage participation from ETP Holders to provide liquidity in Retail Orders on the Exchange to increase that order flow which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. The Exchange also believes that the proposed change would protect investors and the public interest because maintaining such consistency within the Fee Schedule would make the Fee Schedule more transparent and facilitate market participants' understanding of the credits provided by the Exchange.

Tape B Credits

Currently, ETP Holders that meet the requirement under Tape B Step Up Tier can earn the following incremental credits:

- An incremental credit of $0.0002 per share when an ETP Holder has Adding ADV of Tape B CADV of at least 0.50% and has an Adding Increase in Tape B of Tape B CADV of at least 20% in Q3 2019;
- An incremental credit of $0.0003 per share when an ETP Holder has Adding ADV of Tape B CADV of at least 0.50% and has an Adding Increase in Tape B of Tape B CADV of at least 30% in Q3 2019; and
- An incremental credit of $0.0004 per share when an ETP Holder has Adding ADV of Tape B CADV of at least 0.50% and has an Adding Increase in Tape B of Tape B CADV of at least 40% in Q3 2019.

The incremental credits are payable in addition to the ETP Holder's Tiered or Standard credit(s); provided, however, that such combined credit(s) in Tape B securities currently cannot exceed $0.0032 per share.

The Exchange also provides an increased cap applicable under the Tape B Step Up Tier pricing tier. Specifically, if an ETP Holder's providing ADV increases at least 150% over the ETP Holder's Adding ADV in Q3 2019, then the ETP Holder can receive a combined credit of up to:

- $0.0033 per share if the ETP Holder is registered as a Lead Market Maker or Market Maker in at least 150 Less Active ETPs in which it meets at least two Performance Metrics, and has Tape B Adding ADV equal to at least 0.65% of Tape B CADV, or
- $0.0034 per share if the ETP Holder or Market Maker is registered as a Lead Market Maker or Market Maker in at least 200 Less Active ETPs in which it meets at least two Performance Metrics, and has Tape B Adding ADV equal to at least 0.70% of Tape B CADV.

The Exchange proposes to amend the requirement to qualify for the increased cap applicable under the Tape B Step Up Tier pricing tier. The Exchange is not proposing any change to the level of the credits.

As proposed, if an ETP Holder is registered as a Lead Market Maker or Market Maker in at least 100 Less Active ETPs in which it meets at least two Performance Metrics, where the ETP Holder, together with any affiliates, has Adding Tape B ADV that is an increase of at least 60% over the ETP Holder's Adding ADV in Q3 2019, as a percentage of Tape B CADV, then such ETP Holder can receive a combined credit of up to:

- $0.0033 per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.65% of Tape B CADV, or
- $0.0034 per share if the ETP Holder, together with any affiliates, has Tape B Adding ADV equal to at least 0.70% of Tape B CADV.

The Exchange believes lowering the Adding Tape B ADV requirement from 150% over the ETP Holder's Adding ADV in Q3 2019 to 60% and lowering the number of Less Active ETPs in which an ETP Holder is required to register as a Lead Market Maker or Market Maker from 150 and 200 Less Active ETPs to 100 Less Active ETPs, would allow ETP Holders to more easily qualify for the additional credits. The Exchange believes the amended requirements would continue to provide an incentive to ETP Holders to register as Lead Market Makers or Market Makers and incentivize such liquidity providers to increase the number of orders sent to the Exchange.

Sub-Dollar Adding Step Up Tier

The Exchange currently provides tiered credits to ETP Holders that add liquidity in Sub-Dollar Securities. Specifically, an ETP Holder that has an Adding ADV of 1 million shares with a per share price below $1.00 (''Sub-Dollar Adding Orders''), and Adding Increase of CADV in Sub-Dollar Adding Orders over July 2020, as a percentage of CADV with a per share price below $1.00, receives a credit for Sub-Dollar Adding Orders, as follows:

- A credit equal to 0.050% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.20% over July 2020;
- A credit equal to 0.100% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.50% over July 2020;
- A credit equal to 0.125% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.75% over July 2020; and
- A credit equal to 0.150% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 1.00% over July 2020.

The Exchange proposes to eliminate the tier in the third bullet above because no ETP Holder has reached that tier in the last 6 months. Additionally, the Exchange proposes to modify the

[15] *See* Retail Tiers table under Section VI. Tier Rates—Round Lots and Odd Lots (Per Share Price $1.00 or Above). Footnote (f) provides that the credit payable under Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 applies for Adding displayed liquidity.

requirement for tiers in the first and second bullets above. The Exchange is not proposing any change to the level of the credits provided for adding liquidity in Sub-Dollar Securities.

Specifically, the Exchange proposes to modify the volume threshold that ETP Holders would have to meet to qualify for the credits in the tiers in the first and second bullets above. With the proposed modifications, the tiered credits payable to ETP Holders that liquidity in Sub-Dollar Securities would be as follows:

- A credit equal to 0.050% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.30% over July 2020;
- A credit equal to 0.100% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 0.60% over July 2020; and
- A credit equal to 0.150% of the total dollar value for Adding Increase of CADV in Sub-Dollar Adding Orders of at least 1.00% over July 2020.

The purpose of this proposed change is to continue to incentivize ETP Holders to increase the liquidity-providing orders in Sub-Dollar Securities they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. While the Exchange proposes to increase the volume threshold for two of the current tiers, the Exchange believes ETP Holders will continue to be able to meet the increased requirement given the increased trading in Sub-Dollar Securities in recent months. ETP Holders that trade in Sub-Dollar Securities would benefit by receiving enhanced credits if they choose to send such orders to the Exchange. The Exchange also believes that maintaining July 2020 as the baseline month would continue to allow ETP Holders to meet the increased volume requirement. Based on their current trading profile on the Exchange, a number of ETP Holders would already meet the increased volume threshold and would therefore continue to receive credits that they previously earned. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in other ETP Holders directing orders to the Exchange in order to qualify for the tiers. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The Exchange believes that eliminating a tier that has become underutilized will streamline the Fee Schedule. The Exchange further believes that the remaining tiers will continue to incentivize ETP Holders to submit liquidity providing orders in Sub-Dollar Securities to qualify for the credits. As noted above, the Exchange is not proposing any change to the level of credits payable under the remaining tiers for adding liquidity in Sub-Dollar Securities.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. With respect to non-marketable orders which provide liquidity on an Exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Given this competitive environment, the proposal represents a reasonable attempt to attract additional order flow to the Exchange. The Exchange believes that the proposal is also equitable and not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The proposal is also not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant.

Standard Rate for Adding and Removing Liquidity in Sub-Dollar Securities

The Exchange believes that the proposed changes to increase the standard fee for orders in Sub-Dollar Securities that remove liquidity and reduce the standard rebate for orders, including MPL Orders, in Sub-Dollar Securities that add liquidity are reasonable, equitable, and consistent with the Act because such changes are designed to generate additional revenue and decrease the Exchange's expenditures with respect to transaction pricing and also to offset some of the costs associated with the rebates paid to ETP Holders that qualify for the Sub-Dollar Step Up Tier and the higher rebates paid by the Exchange for Retail Orders in Sub-Dollar Securities, and the Exchange's operations generally, in a manner that is still consistent with the Exchange's overall pricing philosophy of encouraging added liquidity.

The Exchange also believes the proposed increased standard fee for orders in Sub-Dollar Securities is reasonable and appropriate because it represents a modest increase from the current standard fee and, as noted above, remains comparable to the fee to remove liquidity in securities below $1.00 charged by at least one other exchange.[19] Similarly, the Exchange believes the proposed reduced standard rebate for orders, including MPL Orders, in Sub-Dollar Securities that add liquidity, and modification, from a per share basis to total dollar value, of the standard rebate for Retail Orders in Sub-

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

[18] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[19] *See* note 12, *supra.*

Dollar Securities that add liquidity is reasonable and appropriate because the reduction represents a modest decrease from the current standard rebate and, as noted above, remains comparable to, and competitive with, the standard rebates provided by other exchanges for orders, including Retail Orders, that add liquidity in securities priced below $1.00 per share.[20] The Exchange further believes that the proposed changes to the standard fees and rebates for adding and removing liquidity in Sub-Dollar Securities are equitably allocated and not unfairly discriminatory because they would apply equally to all ETP Holders.

PO Orders

The Exchange believes that the proposed rule change to merge the fee columns for PO Orders routed to Cboe BZX and Nasdaq is reasonable because the resulting change will simplify the Fee Schedule. The Exchange believes the proposed change is also reasonable because the Exchange is not making any substantive change other than to streamline the Standard Rates—Routing table in Section V. by merging the per share fees for PO Orders routed to Cboe BZX and Nasdaq into a single column.

The Exchange believes that simplifying and streamlining the Fee Schedule is equitable and not unfairly discriminatory because all ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because a streamlined Fee Schedule would make it more accessible and transparent and facilitate market participants' understanding of the fees charged for services currently offered by the Exchange.

Retail Orders

The Exchange believes that the proposed rule change to eliminate the distinction between orders that provide liquidity and those that provide displayed liquidity under Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3 is reasonable because it will result in consistency on the Exchange with respect to the credits provided for liquidity-adding Retail Orders under the Retail Order tiers. With this proposed rule change, the Exchange would provide a credit to all liquidity-adding Retail Orders that qualify under the Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3, similar to liquidity-adding Retail Orders that qualify under the Retail Order Tier, which does not currently require that such orders provide displayed liquidity. The Exchange believes it is reasonable to provide credits for Retail Orders that provide liquidity without any distinction. At least one other exchange does not make a distinction when providing a credit for liquidity-adding Retail Orders.[21]

The Exchange believes the proposed change is also reasonable because the Exchange is not making any change other than to remove footnote (f) and therefore, adopt consistency in how credits would be payable for liquidity-adding Retail Orders; the Exchange is not proposing any change to the requirements or the level of credits under the Retail Order Tier, Retail Order Step-Up Tier 1, Retail Order Step-Up Tier 2 and Retail Order Step-Up Tier 3. As noted above, the purpose of the proposed rule change is to adopt consistency within the Fee Schedule as to the type of activity for which the Exchange provides credits. The Exchange believes the proposed rule change will continue to encourage participation from ETP Holders to provide liquidity in Retail Orders on the Exchange to increase that order flow which would benefit all ETP Holders by providing greater execution opportunities on the Exchange.

The Exchange believes that adopting consistent application in how credits are paid is equitable and not unfairly discriminatory because all ETP Holders would continue to be subject to the same fee structure, and access to the Exchange's market would continue to be offered on fair and non-discriminatory terms. The Exchange also believes that the proposed change would protect investors and the public interest because a simplified Fee Schedule would make it more transparent and facilitate market participants' understanding of the credits provided by the Exchange.

Tape B Credits

The Exchange believes the proposed rule change to modify the requirements to qualify for the additional Tape B credits is a reasonable means of attracting additional liquidity to the Exchange. The Exchange believes the modified requirements would continue to encourage ETP Holders to submit additional liquidity to a national securities exchange and receive the current level of credits, which are among the highest paid by the Exchange. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the increased credits, given the higher combined credit of $0.0033 per share and $0.0034 per share that the Exchange would pay if the tier criteria is met. The Exchange believes that submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. The Exchange also believes it is reasonable to require ETP Holders to register as a Lead Market Maker or Market Maker in a minimum number of Less Active ETPs and to meet at least two Performance Metrics in such securities as the Exchange believes this requirement would enhance market quality in Less Active ETPs and support the quality of price discovery in such securities. The Exchange also believes it is reasonable to lower the number of Less Active ETPs in which an ETP Holder is required to register as a Lead Market Maker or Market Maker because it would lead to greater participation by ETP Holders in Less Active ETPs.

The Exchange believes the proposed rule change to modify the requirements to qualify for the additional Tape B credits equitably allocates its fees and credits among market participants because it is reasonably related to the value of the Exchange's market quality associated with higher equities volume. As proposed, the Exchange would continue to provide qualifying ETP Holders with some of the highest credits payable by the Exchange provided they continue to participate as Lead Market Makers or Market Makers and continue to provide increased Tape B adding ADV. The more an ETP Holder participates, the greater the credit that ETP Holder would receive. The Exchange believes the modified requirements would encourage ETP Holders to continue to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which would benefit all market participants.

The Exchange believes it is not unfairly discriminatory to modify the requirements to qualify for the increased Tape B credits because the resulting requirements would be applied on an equal basis to all ETP Holders, who would all be subject to them on an equal basis. Additionally, the proposal neither targets nor will it have a disparate impact on any particular category of

[20] *See* notes 11 and 12, *supra*.

[21] *See* Cboe BZX U.S. Equities Exchange (''BZX'') Fee Schedule, Fee Code ZA, which provides a credit for Retail Orders that add liquidity, available at *https://www.cboe.com/us/equities/membership/fee_schedule/bzx/*.

market participant. The proposal does not permit unfair discrimination because the modified requirements would be applied to all ETP Holders, who would all be subject to the requirements on an equal basis.

Sub-Dollar Adding Step Up Tier

The Exchange believes the proposal to modify the volume requirement for ETP Holders to qualify for the Sub-Dollar Adding Step Up Tier is reasonable because, despite the increased volume requirement, ETP Holders would continue to be incentivized to send orders in Sub-Dollar Securities to qualify for the credits provided by the Exchange, which the Exchange is not changing. Additionally, despite the increased volume requirement, the Exchange believes that ETP Holders would continue to send orders in Sub-Dollar Securities to the Exchange because no competing market currently provides tier-based credits in Sub-Dollar Securities similar to those provided by the Exchange. To the extent that ETP Holders would be required to send increased orders in Sub-Dollar Securities to the Exchange to qualify for the credits, such increased participation would result in increased liquidity which in turn would support the quality of price discovery and would promote market transparency as such orders would be sent to a national securities exchange rather than to off-exchange venues. Moreover, the addition of liquidity would benefit market participants whose increased order flow would provide meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange.

The Exchange notes that volume-based incentives and discounts have been widely adopted by exchanges,[22] including the Exchange,[23] and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional credits that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity.

The Exchange believes that the proposed rule change to eliminate one of the tiers is reasonable because the tier proposed for deletion has been underutilized and has not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. In the last 6 months, no ETP Holder has availed itself of the tier's requirement. The Exchange believes it is reasonable to eliminate pricing tiers when they become underutilized. The Exchange believes eliminating underutilized tiers would also simplify the Fee Schedule. The Exchange further believes that removing reference to underutilized tiers that the Exchange proposes to eliminate from the Fee Schedule would also add clarity to the Fee Schedule.

The Exchange believes the proposal to modify the volume requirement for ETP Holders to qualify for the Sub-Dollar Adding Step Up Tier is equitable because, despite the increased volume requirement, ETP Holders would continue to be incentivized to send orders in Sub-Dollar Securities to qualify for the credits provided by the Exchange, which the Exchange is not changing. Moreover, any increased order flow would be to the benefit of all market participants because such increased order flow in Sub-Dollar Securities would provide meaningful added levels of liquidity thereby contributing to the depth and market quality on the Exchange.

As noted above, based on their current trading profile on the Exchange, a number of ETP Holders would already meet the increased volume threshold and would therefore continue to receive credits that they previously earned. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in other ETP Holders directing orders to the Exchange in order to qualify for the tiers. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The Exchange believes that offering credits for providing liquidity in Sub-Dollar Securities, which are some of the highest among the Exchange's competitors, if the step-up requirements are met, will continue to attract increased order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not qualify for the adding liquidity credits by increasing order flow and liquidity, the proposal will not adversely impact their existing pricing or their ability to qualify for other credits provided by the Exchange.

The Exchange believes that the proposed rule change to eliminate one of the tiers is an equitable allocation of its fees and credits. The Exchange believes that eliminating a tier from the Fee Schedule when such tier becomes underutilized is equitable because the tier would be eliminated in its entirety and would no longer be available to any ETP Holder.

The Exchange believes it is not unfairly discriminatory to modify the volume requirement for ETP Holders to qualify for the Sub-Dollar Adding Step Up Tier, as the modified requirement would be applicable on an equal basis to all ETP Holders that add liquidity under the pricing tier. The Exchange believes that, despite the increased volume requirement, the credits payable under the pricing tier, which the Exchange is not proposing to change, would continue to serve as an incentive to ETP Holders to increase the level of orders sent to the Exchange in order to qualify for such credits.

The Exchange believes that the proposed rule change is not unfairly discriminatory because maintaining or increasing the proportion of Sub-Dollar Securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection. Finally, the submission of orders in Sub-Dollar Securities to the Exchange is optional for ETP Holders in that they could choose whether to submit such orders to the Exchange and, if they do, the extent of its activity in this regard.

The Exchange believes that the proposed rule change to eliminate one of the tiers is not unfairly discriminatory. The Exchange believes that eliminating a tier from the Fee Schedule when such tier becomes underutilized is not unfairly discriminatory because the tier would be eliminated in its entirety and would no longer be available to any ETP Holder.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to

[22] *See, e.g.,* BZX Fee Schedule, Footnote 1, Add Volume Tiers which provide enhanced rebates between $0.0025 and $0.0031 per share for displayed orders where BZX members meet certain volume thresholds.

[23] *See, e.g.,* Fee Schedule, Step Up Tiers, which provide enhanced rebates between $0.0028 and $0.0033 per share in Tape A Securities, between $0.0022 and $0.0034 per share in Tape B Securities, and between $0.0028 and $0.0033 per share in Tape C Securities for orders that provide displayed liquidity where ETP Holders meet certain volume thresholds.

increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[24] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [25]

Intramarket Competition. The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed changes represent a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional order flow to the Exchange, and would continue to incentivize market participants to direct order flow to the Exchange, bringing with it additional execution opportunities for market participants. In particular, the proposed changes to the standard fees and rebates for Sub-Dollar Securities would be available to all similarly situated market participants, and as such, would not impose a disparate burden on competition among market participants on the Exchange. The Exchange's proposal to remove the distinction between Retail Orders that provide liquidity from those that provide displayed liquidity would also continue to incentivize ETP Holders to direct more of their Retail Orders to the Exchange as each Retail Order would be treated in a similar fashion for purposes of the credits offered by the Exchange. Additionally, the proposed volume requirement to qualify for the Tape B credits and to qualify for the Sub-Dollar Adding Step Up tier would continue to incentivize ETP Holders to direct order flow to the Exchange, and would apply to all ETP Holders equally in that all ETP Holders are eligible for these tiers, have a reasonable opportunity to meet the tiers' criteria and will receive credits on their qualifying orders if such criteria are met. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem. Moreover, the proposal to modify the Fee Schedule to consolidate the pricing applicable to PO Orders routed to away markets would add clarity and transparency to the Fee Schedule. The Exchange also does not believe the proposed rule change to eliminate underutilized tiers will impose any burden on intramarket competition because the proposed change would impact all ETP Holders uniformly (*i.e.,* the tier will not be available to any ETP Holder). The proposed changes would equally impact all similarly-situated market participants, and, as such, would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (*i.e.,* excluding auctions) is currently less than 12%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee changes imposes any burden on intermarket competition.

The Exchange believes that the proposed fee changes may promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [26] of the Act and subparagraph (f)(2) of Rule 19b–4 [27] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [28] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2021–99 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2021–99. 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/*

[24] 15 U.S.C. 78f(b)(8).

[25] *See* Regulation NMS, 70 FR 37498–99.

[26] 15 U.S.C. 78s(b)(3)(A).

[27] 17 CFR 240.19b–4(f)(2).

[28] 15 U.S.C. 78s(b)(2)(B).

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 offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2021–99, and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[29]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25749 Filed 11–24–21; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93632; File No. SR–MIAX–2021–57]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 19, 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 November 8, 2021, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *https://www.miaxoptions.com/rule-filings,* 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 proposes to amend the exchange grouping of options exchanges within the routing fee table in Section 1)c) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange, to adjust certain groupings of options exchanges. The Exchange initially filed this proposal on October 27, 2021 (SR–MIAX–2021–53) and withdrew such filing on November 8, 2021. The Exchange proposes to implement the fee change effective November 8, 2021.

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order, (ii) whether or not it is an order for standard option classes in the Penny Interval Program[3] (''Penny classes'') or an order for standard option classes which are not in the Penny Interval Program (''Non-Penny classes'') (or other explicitly identified classes), and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange's affiliates, MIAX PEARL, LLC (''MIAX Pearl'') and MIAX Emerald, LLC (''MIAX Emerald''). This is also similar to the methodology utilized by Cboe BZX Exchange, Inc. (''Cboe BZX Options''), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category dependent upon the order's origin type and whether it is a Penny or Non-Penny class.[4]

As a result of conducting a periodic review of the current transaction fees and rebates charged by away markets, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table to better reflect the associated costs of routing customer orders to those options exchanges for execution.[5] In particular, the Exchange proposes to amend the exchange groupings in the first row of the table identified as, ''Routed, Priority Customer, Penny Program,'' to relocate Nasdaq BX Options from the first row of the table to the second, also identified as ''Routed, Priority Customer, Penny Program.'' The impact of this proposed change will be that the routing fee for Priority Customer orders in the Penny Program that are routed to Nasdaq BX Options, will increase from $0.15 to $0.65. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the third row of the table, identified as ''Routed, Priority Customer, Non-Penny Program,'' to relocate Nasdaq BX Options from the third row of the table to the fourth, also identified as ''Routed, Priority Customer, Non-Penny Program.'' The impact of this proposed change will be that the routing fee for Priority Customer orders in the Non-

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 88988 (June 2, 2020), 85 FR 35153 (June 8, 2020) (SR–MIAX–2020–13) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading, Exchange Rule 510, Minimum Price Variations and Minimum Trading Increments, and Exchange Rule 516, Order Types Defined, To Conform the Rules to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options).

[4] *See* Cboe U.S. Options Fee Schedules, BZX Options, effective August 2, 2021, ''Fee Codes and Associated Fees,'' at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[5] Nasdaq BX established a Customer Taker fee of $0.46 in Penny Classes and $0.65 in Non-Penny Classes. *See* Securities Exchange Act Release No. 91473 (April 5, 2021), 86 FR 18562 (April 9, 2021) (SR–BX–2021–009). Nasdaq BX recently increased the Customer Taker fee in Non-Penny Classes from $0.65 to $0.79. *See* Securities Exchange Act Release No. 93121 (September 24, 2021), 86 FR 54259 (September 30, 2021) (SR–BX–2021–040).

Penny Program that are routed to Nasdaq BX Options will increase from $0.15 to $1.00. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the sixth row of the table, identified as, ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program,'' to relocate Nasdaq ISE from the exchange groupings in the sixth row of the table to the exchange groupings in the seventh row of the table, also identified as ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program.'' The impact of this proposed change will be that the Exchange routing fee for Public Customer orders, that are not Priority Customer orders, in the Non-Penny Program that are routed to Nasdaq ISE will increase from $1.00 to $1.15. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq ISE to reflect the associated costs for that routed execution.

Finally, the Exchange proposes to amend the exchange groupings in the seventh row of the table, identified as ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program,'' to relocate Nasdaq BX Options, MIAX Pearl, and MIAX Emerald, to the eighth row of the table, also identified as ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program.'' The impact of this proposed change will be that the routing fee for Public Customer orders that are not Priority Customer orders in the Non-Penny Program that are routed to Nasdaq BX Options, MIAX Pearl, or MIAX Emerald, will increase from $1.15 to $1.25. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options, MIAX Pearl, or MIAX Emerald, to reflect the associated costs for that routed execution. The Exchange notes that no options exchanges were removed from the routing fee table entirely, with the only change being the change in categorization.

Accordingly, with the proposed change, the routing fee table will be as follows:

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, Nasdaq MRX, Nasdaq PHLX (except SPY)	$0.15
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Emerald, MIAX Pearl, Nasdaq BX Options	0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, Nasdaq ISE, Nasdaq MRX, Nasdaq PHLX	0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, MIAX Pearl, MIAX Emerald, Nasdaq GEMX, NOM, Nasdaq BX Options	1.00
Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX Pearl, MIAX Emerald, NOM, Nasdaq PHLX, Nasdaq BX Options	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE American, Cboe, Nasdaq PHLX, Cboe EDGX Options	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, BOX, NOM, Nasdaq ISE	1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, MIAX Pearl, MIAX Emerald, Nasdaq BX Options	1.25

In determining to amend its routing fees the Exchange took into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services are included in the routing fees specified in the Fee Schedule. This routing fees structure is not only similar to the Exchange's affiliates, MIAX Pearl and MIAX Emerald, but is also comparable to the structure in place at Cboe BZX Options,[6] a competing options exchange. The Exchange's routing fee structure approximates the Exchange's costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount)[7] to execute that corresponding contract(s) at that corresponding exchange. The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees and rebates assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX Pearl and MIAX Emerald, the Exchange's Members[8] will be assessed routing fees in a similar manner. The Exchange believes that this structure will minimize any confusion as to the method of assessing routing fees between the three exchanges. The Exchange notes that its affiliates, MIAX Pearl and MIAX Emerald, will file to make the same proposed routing fee changes contained herein.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of

[6] *See supra* note 4. The Cboe BZX Options fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order's Origin type and whether it is a Penny or Non-Penny class. For example, Cboe BZX Options fee code RR covers routed customer orders in Non-Penny classes to NYSE Arca, Cboe C2, Nasdaq ISE, Nasdaq Gemini, MIAX Emerald, MIAX Pearl, or NOM, with a single fee of $1.25 per contract.

[7] This amount is to cover de minimis differences/changes to away market fees (*i.e.,* minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange's target regarding routing fees and expenses is to be as close as possible to net neutral.

[8] 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* Exchange Rule 100.

[9] 15 U.S.C. 78f(b).

Section 6(b)(4) of the Act [10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act [11] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to the routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that are incurred by the Exchange when routing customer orders to away markets on behalf of Members and does so in the same manner to all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings would enable the Exchange to recover the costs it incurs to route orders to Nasdaq BX Options, Nasdaq ISE, MIAX Pearl, and MIAX Emerald. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute the corresponding contract at the corresponding exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposed re-categorization of certain exchange groupings is intended to enable the Exchange to recover the costs it incurs to route orders to away markets, particularly Nasdaq BX Options and Nasdaq ISE. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to recoup costs incurred by the Exchange when routing orders to away markets on behalf of Members and notes that at least one other options exchange has a similar routing fee structure.[12]

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 is effective upon filing pursuant to Section 19(b)(3)(A) [13] of the Act and subparagraph (f)(2) of Rule 19b–4 [14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2021–57 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–MIAX–2021–57. 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–MIAX–2021–57 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

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[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 4.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93620; File No. S7–24–89]

Joint Industry Plan; Notice of Filing of the Fifty-First Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

November 19, 2021.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on November 5, 2021,[3] the Participants[4] in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the UTP Plan. The amendment represents the Fifty-First Amendment to the Plan (''Amendment''). Under the Amendment, the Participants propose to amend the UTP Plan to implement the non-fee-related aspects of the Commission's Market Data Infrastructure Rules (''MDI Rules'').[5] The Participants have submitted a separate amendment to the UTP Plan to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the MDI Rules.

The proposed Amendment has been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.[6] The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendment. Set forth in Sections I and II, which were prepared and submitted to the Commission by the Participants, is the statement of the purpose and summary of the Amendment, along with information pursuant to Rules 608(a) and 601(a) under the Act. A copy of the Plan marked to show the proposed Amendment is Attachment A to this notice.

I. Rule 608(a)

A. Purpose of the Amendments

On December 9, 2020, the Commission adopted amendments to Regulation NMS. The effective date of the final MDI Rules was June 8, 2021. New Rule 614(e) of Regulation NMS, as set forth in the MDI rules, provides that, ''[t]he participants to the effective national market system plan(s) for NMS stocks shall file with the Commission . . . an amendment that includes [the provisions specified in Rule 614(e)(1)–(5)] within 150 calendar days from June 8, 2021[,]'' which is November 5, 2021. The Participants are filing the above-captioned amendment to comply with Rule 614(e) requirements. As further specified in the MDI Rules Release, the Participants must also submit updated fees regarding the receipt and use of the expanded content of consolidated market data.[7] The Participants are submitting a separate amendment to the UTP Plan to propose such fees.

Below, the Participants summarize the proposed amendment to the UTP Plan to comply with Rule 614(e) of the MDI Rules.[8]

Section III

The Participants propose adding a statement that terms used in the UTP Plan will have the same meaning as such terms are defined in Rule 600(b) under the Securities Exchange Act of 1934 (the ''Exchange Act''). The Participants also propose adding a definition of ''Primary Listing Exchange'' to comply with the requirements of the MDI Rules. The definition of ''Primary Listing Exchange'' replaces the definition ''Listing Market'' previously in the UTP Plan.

The Participants also propose amending the definition of ''Quotation Information'' and ''Transaction Reports'' to track more closely the requirements of the MDI Rules.

Finally, the Participants proposing amending the definition of ''News Service'' and ''Vendor'' to reference Competing Consolidators as a potential source of Quotation Information or Transaction Reports.

Section IV

The Participants propose to amend Section IV.B to include references to Competing Consolidators and Self-Aggregators. Additionally, the Participants propose to add the requirements that the Operating Committee will publish on the UTP Plan's website: (1) The Primary Listing Exchange for each Eligible Security; and (2) on a monthly basis, the consolidated market data gross revenues for Eligible Securities. This addition is designed to comply with the requirements of Rule 614(e)(4) and (5)(ii).

Section VII

The Participants propose to amend Section VII by referring to the Administrator rather than the Processor since the Administrative Functions being described in that Section are more appropriately ascribed to the Administrator.

Section VIII

The Participants propose adding new Section VIII—and renumbering the remaining sections—to describe the process for evaluating Competing Consolidators. The proposed additions state that, on an annual basis, the Operating Committee will assess the performance of Competing Consolidators, prepare an annual report containing such assessment, and furnish the report to the Commission prior to the second quarterly meeting of the Operating Committee. These additions are designed to comply with the requirements of Rule 614(e)(3).

In addition, Rule 614(d)(5) requires Competing Consolidators to publish prominently on their websites monthly performance metrics, which are to be defined by the UTP Plan. Accordingly, the Participants propose to amend Section VIII to define such ''monthly performance metrics,'' in accordance

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[4] The Participants are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, Nasdaq BX, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc. (collectively, the ''Participants'').

[5] Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7–03–20) (''MDI Rules Release'').

[6] 17 CFR 242.608(b)(2).

[7] MDI Rules Release at 18699.

[8] As the Commission is aware, some of the SROs (the ''Petitioners'') have challenged the MDI Rules Release in the D.C. Circuit. The Petitioners have joined in this submission, including the statement that the Plan amendments comply with the MDI Rules Release, solely to satisfy the requirements of the MDI Rules Release and Rule 608. Nothing in this submission should be construed as abandoning any arguments asserted in the D.C. Circuit, as an agreement by Petitioners with any analysis or conclusions set forth in the MDI Rules Release, or as a concession by Petitioners regarding the legality of the MDI Rules Release. Petitioners reserve all rights in connection with their pending challenge of the MDI Rules Release, including *inter alia,* the right to withdraw the proposed amendment or assert that any action relating to the proposed amendment has been rendered null and void, depending on the outcome of the pending challenge. Petitioners further reserve all rights with respect to this submission, including *inter alia,* the right to assert legal challenges regarding the Commission's disposition of this submission.

with the requirements of Rule 614(d)(5) and sub-paragraphs (i)–(v) thereof.[9]

Section IX (Previously Section VIII)

The Participants propose to amend Section IX to reference Competing Consolidators and Self- Aggregators.

The Participants propose to amend Sections IX.A and IX.B to add the requirement that each Participant agrees to collect and transmit to Competing Consolidators and Self-Aggregators all quotation information and transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in Eligible Securities to any person. The Participants also propose amending Sections IX.A and IX.B to require that quotation information and transaction reports include the time that the Participant made such information available to Competing Consolidators and Self-Aggregators. These additions are designed to comply with the requirements of Rule 614(e)(1) and (2).

Section XI (Previously Section X)

The Participants propose revising Section XI to include references to notifying Competing Consolidators and Self-Aggregators in addition to the Processor in connection with Regulatory and Operational Halts. The Participants believe these additions are consistent with the requirements of Rule 614(e)(1) and are necessary to ensure that such entities are notified of information related to Regulatory and Operational Halts and, with respect to Competing Consolidators, can further disseminate such information to their customers.

The Participants also propose replacing the term ''Listing Market'' with ''Primary Listing Exchange'' to align with the terminology used in the MDI Rules.

Section XII (Previously Section XI)

The Participants propose amending Section XII to include references to Competing Consolidators and Self-Aggregators.

Section XIV (Previously Section XIII)

The Participants propose amending Section XIV.C by referring to the Administrator rather than the Processor since the responsibilities being described in that Section are more appropriately ascribed to the Administrator.

Section XV (Previously Section XIV)

The Participants propose amending Section XV to include references to Competing Consolidators and Self-Aggregators.

Section XVIII (Previously Section XVII)

The Participants propose amending Section XVIII to include references to Competing Consolidators and Self-Aggregators.

Section XIX (Previously Section XVIII)

The Participants propose amending Section XIX to include references to Competing Consolidators and Self-Aggregators.

Section XXI

The Participants propose deleting former Section XXI (Depth of Book Display). The Participants believe that this provision is obsolete given the MDI Rules.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendments

All of the Participants have manifested their approval of the proposed amendments by means of their execution of the UTP Plan Amendment. The UTP Plan Amendment would become operational upon approval by the Commission.

D. Development and Implementation Phases

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendments comply with the requirements of the MDI Rules, which have been approved by the Commission.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plans

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Section IV.C.1.a of the UTP Plan requires the Participants to unanimously approve the amendments proposed herein. They have so approved it.

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Not applicable.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

The Participants propose to amend Section IX.B to add the requirement that each Participant agrees to collect and transmit to Competing Consolidators and Self-Aggregators all transaction reports required to be made available pursuant to Rule 603(b) of Regulation NMS in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to transactions in Eligible Securities to any person. The Participants also propose amending Section IX.B to require that transaction reports include the time that the Participant made such information available to Competing Consolidators and Self-Aggregators. These additions are designed to comply with the requirements of the MDI Rules.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks comments on the Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendment is consistent with

[9] MDI Rules Release at 18673.

the Act and the rules and regulations thereunder applicable to national market system plans. 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 S7–24–89 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 S7–24–89. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Amendment that are filed with the Commission, and all written communications relating to the proposed Amendment 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 will also be available for website viewing and printing at the principal office of the Plan. 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 S7–24–89 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

J. Matthew DeLesDernier,

Assistant Secretary.

Attachment A—Proposed Changes to the UTP Plan

Attachment A

Proposed Amendments to the NASDAQ/UTP Plan

Marked To Show Changes From the Existing Plan

(Additions are *italicized;* Deletions are in [brackets])

I. Participants

The Participants include the following:

A. Participants

1. Cboe BYX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
2. Cboe BZX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
3. Cboe EDGA Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
4. Cboe EDGX Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
5. Cboe Exchange, Inc., 400 South LaSalle Street, Chicago, Illinois 60605
6. Financial Industry Regulatory Authority, Inc., 1735 K Street NW, Washington, DC 20006
7. Investors' Exchange LLC, 3 World Trade Center, 58th Floor, New York, New York 10007
8. Long-Term Stock Exchange, Inc., 300 Montgomery St., Ste. 790, San Francisco, CA 94104
9. MEMX LLC, 111 Town Square Place, Suite 520, Jersey City, New Jersey 07310
10. MIAX PEARL, LLC, 7 Roszel Road, Suite 1A, Princeton, New Jersey 08540
11. Nasdaq BX, Inc., One Liberty Plaza, 165 Broadway, New York, New York 10006
12. Nasdaq ISE, LLC, One Liberty Plaza, 165 Broadway, New York, New York 10006
13. Nasdaq PHLX LLC, FMC Tower, Level 8, 2929 Walnut Street, Philadelphia, Pennsylvania 19104
14. The Nasdaq Stock Market LLC, One Liberty Plaza, 165 Broadway, New York, NY 10006
15. New York Stock Exchange LLC, 11 Wall Street, New York, New York 10005
16. NYSE American LLC, 11 Wall Street, New York, New York 10005
17. NYSE Arca, Inc., 11 Wall Street, New York, New York 10005
18. NYSE Chicago, Inc., 11 Wall Street, New York, New York 10005
19. NYSE National, Inc., 101 Hudson, Suite 1200, Jersey City, NJ 07302

B. Additional Participants

Any other national securities association or national securities exchange, in whose market Eligible Securities become traded, may become a Participant, provided that said organization executes a copy of this Plan and pays its share of development costs as specified in Section XIII.

II. Purpose of Plan

The purpose of this Plan is to provide for the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities from the Participants in a manner consistent with the Exchange Act.

It is expressly understood that each Participant shall be responsible for the collection of Quotation Information and Transaction Reports within its market and that nothing in this Plan shall be deemed to govern or apply to the manner in which each Participant does so.

III. Definitions

Terms used in this plan have the same meaning as the terms defined in Rule 600(b) under the Act.

A. ''Current'' means, with respect to Transaction Reports or Quotation Information, such Transaction Reports or Quotation Information during the fifteen (15) minute period immediately following the initial transmission thereof by the Processor.

B. ''Eligible Security'' means any Nasdaq Global Market or Nasdaq Capital Market security, as defined in NASDAQ Rule 4200. Eligible Securities under this Nasdaq UTP Plan shall not include any security that is defined as an ''Eligible Security'' within Section VII of the Consolidated Tape Association Plan.

A security shall cease to be an Eligible Security for purposes of this Plan if: (i) The security does not substantially meet the requirements from time to time in effect for continued listing on Nasdaq, and thus is suspended from trading; or (ii) the security has been suspended from trading because the issuer thereof is in liquidation, bankruptcy or other similar type proceedings. The determination as to whether a security substantially meets the criteria of the definition of Eligible Security shall be made by the exchange on which such

[10] 17 CFR 200.30–3(a)(85).

security is listed provided, however, that if such security is listed on more than one exchange then such determination shall be made by the exchange on which, the greatest number of the transactions in such security were effected during the previous twelve-month period.

C. ''Commission'' and ''SEC'' shall mean the U.S. Securities and Exchange Commission.

D. ''Exchange Act'' means the Securities Exchange Act of 1934, as amended.

E. ''Market'' shall mean (i) when used with respect to Quotation Information, FINRA in the case of a FINRA Participant, or the Participant on whose floor or through whose facilities the quotation was disseminated; and (ii) when used with respect to Transaction Reports, the Participant through whose facilities the transaction took place or is reported, or the Participant to whose facilities the order was sent for execution.

F. ''FINRA'' means the Financial Industry Regulatory Authority, Inc.

G. ''FINRA Participant'' means a FINRA member that is registered as a market maker or an electronic communications network or otherwise utilizes the facilities of FINRA pursuant to applicable FINRA rules.

H. ''Transaction Reporting System'' means the System provided for in the Transaction Reporting Plan filed with and approved by the Commission pursuant to SEC Rule 11Aa3–1, subsequently re-designated as Rule 601 of Regulation NMS, governing the reporting of transactions in Nasdaq securities.

I. ''UTP Quote Data Feed'' means the service that provides Subscribers with the National Best Bid and Offer quotations, size and market center identifier, as well as the Best Bid and Offer quotations, size and market center identifier from each individual Participant in Eligible Securities and, in the case of FINRA, the FINRA Participant(s) that constitutes FINRA's Best Bid and Offer quotations.

J. ''Nasdaq System'' means the automated quotation system operated by Nasdaq.

K. ''UTP Trade Data Feed'' means the service that provides Vendors and Subscribers with Transaction Reports.

L. ''Nasdaq Security'' or ''Nasdaq-listed Security'' means any security listed on the Nasdaq Global Market or Nasdaq Capital Market.

M. ''News Service'' means a person who receives Transaction Reports or Quotation Information provided by the Systems or provided by a *Competing Consolidators or* Vendor, on a Current basis, in connection with such person's business of furnishing such information to newspapers, radio and television stations and other news media, for publication at least fifteen (15) minutes following the time when the information first has been published by the Processor *or Competing Consolidator.*

N. ''OTC Montage Data Feed'' means the data stream of information that provides Vendors and Subscribers with quotations and sizes from each FINRA Participant.

O. ''Participant'' means a registered national securities exchange or national securities association that is a signatory to this Plan.

P. ''Plan'' means this Nasdaq UTP Plan, as from time to time amended according to its provisions, governing the collection, consolidation and dissemination of Quotation Information and Transaction Reports in Eligible Securities.

Q. ''Primary Listing Exchange'' means the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Exchange means the exchange on which the security has been listed the longest.

[Q]*R.* ''Processor'' means the entity selected by the Participants to perform the processing functions set forth in the Plan.

[R]*S.* ''Quotation Information'' means all [bids, offers, displayed quotation sizes, the market center identifiers and, in the case of FINRA, the FINRA Participant that entered the quotation, withdrawals and other information pertaining to quotations]*information with respect to quotations for*[in] Eligible Securities required to be collected and made available to the Processor*, Competing Consolidators, and Self-Aggregators* pursuant to this Plan*, including all data necessary to generate consolidated market data.*

[S]*T.* ''Regulatory Halt'' means a trade suspension or halt called for the purpose of dissemination of material news, as described at Section X hereof or that is called for where there are regulatory problems relating to an Eligible Security that should be clarified before trading therein is permitted to continue, including a trading halt for extraordinary market activity due to system misuse or malfunction under Section X.E.1. of the Plan (''Extraordinary Market Regulatory Halt'').

[T]*U.* ''Subscriber'' means a person who receives Current Quotation Information or Transaction Reports provided by the Processor *or Competing Consolidator* or provided by a Vendor, for its own use or for distribution on a non-Current basis, other than in connection with its activities as a Vendor.

[U]*V.* ''Transaction Reports'' means *all information with respect to transactions in Eligible Securities required to be collected and made available to the Processor, Competing Consolidators, and Self-Aggregators pursuant to this Plan, including all data necessary to generate consolidated market data*[reports required to be collected and made available pursuant to this Plan containing the stock symbol, price, and size of the transaction executed, the Market in which the transaction was executed, and related information, including a buy/sell/cross indicator and trade modifiers, reflecting completed transactions in Eligible Securities].

[V]*W.* ''Upon Effectiveness of the Plan'' means July 12, 1993, the date on which the Participants commenced publication of Quotation Information and Transaction Reports on Eligible Securities as contemplated by this Plan.

[W]*X.* ''Vendor'' means a person who receives Current Quotation Information or Transaction Reports provided by the Processor*, Competing Consolidator,* or [provided by] a Vendor, in connection with such person's business of distributing, publishing, or otherwise furnishing such information on a Current basis to Subscribers, News Services or other Vendors.

IV. Administration of Plan

A. Operating Committee: Composition

The Plan shall be administered by the Participants through an operating committee (''Operating Committee''), which shall be composed of one representative designated by each Participant. Each Participant may designate an alternate representative or representatives who shall be authorized to act on behalf of the Participant in the absence of the designated representative. Within the areas of its responsibilities and authority, decisions made or actions taken by the Operating Committee, directly or by duly delegated individuals, committees as may be established from time to time, or others, shall be binding upon each Participant, without prejudice to the rights of any Participant to seek redress from the SEC pursuant to Rule 608 of Regulation NMS under the Exchange Act or in any other appropriate forum.

An Electronic Communications Network, Alternative Trading System, Broker-Dealer or other securities organization (''Organization'') which is

not a Participant, but has an actively pending Form 1 Application on file with the Commission to become a national securities exchange, will be permitted to appoint one representative and one alternate representative to attend regularly scheduled Operating Committee meetings in the capacity of an observer/advisor. If the Organization's Form 1 petition is withdrawn, returned, or is otherwise not actively pending with the Commission for any reason, then the Organization will no longer be eligible to be represented in the Operating Committee meetings. The Operating Committee shall have the discretion, in limited instances, to deviate from this policy if, as indicated by majority vote, the Operating Committee agrees that circumstances so warrant.

Nothing in this section or elsewhere within the Plan shall authorize any person or organization other than Participants, their representatives, and members of the Advisory Committee to participate on the Operating Committee in any manner other than as an advisor or observer. Only the Participants and their representatives as well as Commission staff may participate in Executive Sessions of the Operating Committee.

B. Operating Committee: Authority

The Operating Committee shall be responsible for:

1. Overseeing the consolidation of Quotation Information and Transaction Reports in Eligible Securities from the Participants for dissemination to *Competing Consolidators, Self-Aggregators,* Vendors, Subscribers, News Services and others in accordance with the provisions of the Plan;

2. Periodically evaluating the Processor *and Competing Consolidators;*

3. Setting the level of fees to be paid by *Competing Consolidators, Self-Aggregators,* Vendors, Subscribers, News Services or others for services relating to Quotation Information or Transaction Reports in Eligible Securities, and taking action in respect thereto in accordance with the provisions of the Plan;

4. Determining matters involving the interpretation of the provisions of the Plan;

5. Determining matters relating to the Plan's provisions for cost allocation and revenue-sharing; [and]

6. *Publishing on the Plan's website the Primary Listing Exchange for each Eligible Security;*

7. Calculating and publishing on a monthly basis consolidated market data gross revenues for Eligible Securities; and

8. Carrying out such other specific responsibilities as provided under the Plan.

C. Operating Committee: Voting

Each Participant shall have one vote on all matters considered by the Operating Committee.

1. The affirmative and unanimous vote of all Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Amendments to the Plan;

b. amendments to contracts between the Processor and Vendors, Subscribers, News Services and others receiving Quotation Information and Transaction Reports in Eligible Securities; and

c. termination of the Processor, except for termination for cause, which shall be governed by Section V(B) hereof.

2. The affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to the establishment of new fees, the deletion of existing fees, or increases or reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities.

3. The affirmative vote of a majority of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to:

a. Requests for system changes;

b. interpretive matters and decisions of the Operating Committee arising under, or specifically required to be taken by, the provisions of the Plan as written;

c. interpretive matters arising under Rules 601 and 602 of Regulation NMS;

d. denials of access (other than for breach of contract, which shall be handled by the Processor); and

e. all other matters not specifically addressed by the Plan.

4. It is expressly agreed and understood that neither this Plan nor the Operating Committee shall have authority in any respect over any Participant's proprietary systems. Nor shall the Plan or the Operating Committee have any authority over the collection and dissemination of quotation or transaction information in Eligible Securities in any Participant's marketplace, or, in the case of FINRA, from FINRA Participants.

D. Operating Committee: Meetings

Regular meetings of the Operating Committee may be attended by each Participant's designated representative and/or its alternate representative(s), and may be attended by one or more other representatives of the parties. Meetings shall be held at such times and locations as shall from time to time be determined by the Operating Committee.

Quorum: Any action requiring a vote only can be taken at a meeting in which a quorum of all Participants is present. For actions requiring a simple majority vote of all Participants, a quorum of greater than 50% of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a 2/3rd majority vote of all Participants, a quorum of at least 2/3rd of all Participants entitled to vote must be present at the meeting before such a vote may be taken. For actions requiring a unanimous vote of all Participants, a quorum of all Participants entitled to vote must be present at the meeting before such a vote may be taken.

A Participant is considered present at a meeting only if a Participant's designated representative or alternate representative(s) is either in physical attendance at the meeting or is participating by conference telephone, or other acceptable electronic means.

Any action sought to be resolved at a meeting must be sent to each Participant entitled to vote on such matter at least one week prior to the meeting via electronic mail, regular U.S. or private mail, or facsimile transmission, provided however that this requirement may be waived by the vote of the percentage of the Committee required to vote on any particular matter, under Section C above.

Any action may be taken without a meeting if a consent in writing, setting forth the action so taken, is sent to and signed by all Participant representatives entitled to vote with respect to the subject matter thereof. All the approvals evidencing the consent shall be delivered to the Chairman of the Operating Committee to be filed in the Operating Committee records. The action taken shall be effective when the minimum number of Participants entitled to vote have approved the action, unless the consent specifies a different effective date.

The Chairman of the Operating Committee shall be elected annually by and from among the Participants by a majority vote of all Participants entitled to vote. The Chairman shall designate a person to act as Secretary to record the minutes of each meeting. The location of meetings shall be rotated among the locations of the principal offices of the Participants, or such other locations as may from time to time be determined by the Operating Committee.

Meetings may be held by conference telephone and action may be taken

without a meeting if the representatives of all Participants entitled to vote consent thereto in writing or other means the Operating Committee deems acceptable.

E. Advisory Committee

(a) Formation. Notwithstanding any other provision of this Plan, an Advisory Committee to the Plan shall be formed and shall function in accordance with the provisions set forth in this section.

(b) Composition. Members of the Advisory Committee shall be selected for two year terms as follows:

(1) Operating Committee Selections. By affirmative vote of a majority of the Participants entitled to vote, the Operating Committee shall select at least one representative from each of the following categories to be members of the Advisory Committee:

(i) A broker-dealer with a substantial retail investor customer base, ( ) a broker-dealer with a substantial institutional investor customer base, (iii) an alternative trade system, (iv) a data vendor, and (v) an investor.

(2) Participant Selections. Each Participant shall have the right to select one member of the Advisory Committee. A Participant shall not select any person employed by or affiliated with any participant or its affiliates or facilities.

(c) Function. Members of the Advisory Committee shall have the right to submit their views to the Operating Committee on Plan matters, prior to a decision by the Operating Committee on such matters. Such matters shall include, but not be limited to, any new or modified product, fee, contract, or pilot program that is offered or used pursuant to the Plan.

(d) Meetings and Information. Members of the Advisory Committee shall have the right to attend all meetings of the Operating Committee and to receive any information concerning Plan matters that is distributed to the Operating Committee; provided, however, that the Operating Committee may meet in executive session if, by affirmative vote of a majority of the Participants entitled to vote, the Operating Committee determines that an item of Plan business requires confidential treatment.

F. Potential Conflicts of Interests

1. Disclosure Requirements. The Participants, the Processor, the Plan Administrator, members of the Advisory Committee, and each service provider or subcontractor engaged in Plan business (including the audit of subscribers' data usage) that has access to Restricted or Highly Confidential Plan information (for purposes of this section, ''Disclosing Parties'') shall complete the applicable questionnaire to provide the required disclosures set forth below to disclose all material facts necessary to identify potential conflicts of interest. The Operating Committee, a Participant, Processor, or Administrator may not use a service provider or subcontractor on Plan business unless that service provider or subcontractor has agreed in writing to provide the disclosures required by this section and has submitted completed disclosures to the Administrator prior to starting work. If state laws, rules, or regulations, or applicable professional ethics rules or standards of conduct, would act to restrict or prohibit a Disclosing Party from making any particular required disclosure, a Disclosing Party shall refer to such law, rule, regulation, or professional ethics rule or standard and include in response to that disclosure the basis for its inability to provide a complete response. This does not relieve the Disclosing Party from disclosing any information it is not restricted from providing.

a. A potential conflict of interest may exist when personal, business, financial, or employment relationships could be perceived by a reasonable objective observer to affect the ability of a person to be impartial.

b. Updates to Disclosures. Following a material change in the information disclosed pursuant to subparagraph F.1, a Disclosing Party shall promptly update its disclosures. Additionally, a Disclosing Party shall update annually any inaccurate information prior to the Operating Committee's first quarterly meeting of a calendar year.

c. Public Dissemination of Disclosures. The Disclosing Parties shall provide the Administrator with its disclosures and any required updates. The Administrator shall ensure that the disclosures are promptly posted to the Plan's website.

2. Recusal.

a. A Disclosing Party may not appoint as its representative a person that is responsible for or involved with the development, modeling, pricing, licensing, or sale of proprietary data products offered to customers of a securities information processor if the person has a financial interest (including compensation) that is tied directly to the exchange's proprietary data business and if that compensation would cause a reasonable objective observer to expect the compensation to affect the impartiality of the representative.

b. A Disclosing Party (including its representative(s), employees, and agents) will be recused from participating in Plan activities if it has not submitted a required disclosure form or the Operating Committee votes that its disclosure form is materially deficient. The recusal will be in effect until the Disclosing Party submits a sufficiently complete disclosure form to the Administrator.

c. A Disclosing Party, including its representative(s), and its affiliates and their representative(s), are recused from voting on matters in which it or its affiliate (i) are seeking a position or contract with the Plan or (ii) have a position or contract with the Plan and whose performance is being evaluated by the Plan.

d. All recusals, including a person's determination of whether to voluntarily recuse himself or herself, shall be reflected in the meeting minutes.

* * * * *

Required Disclosures for the UTP Plan As part of the disclosure regime, the Participants, the Processors, the Administrators, members of the Advisory Committee, and service providers and subcontractors must respond to questions that are tailored to elicit responses that disclose the potential conflicts of interest.

The Participants must respond to the following questions and instructions:

- Is the Participant's firm for profit or not-for-profit? If the Participant's firm is for profit, is it publicly or privately owned? If privately owned, list any owner with an interest of 5% or more of the Participant, where to the Participant's knowledge, such owner, or any affiliate controlling, controlled by, or under common control with the owner, subscribes, directly or through a third-party vendor, to SIP and/or exchange Proprietary Market Data products.
- Does the Participant firm offer real-time proprietary equity market data that is filed with the SEC (''Proprietary Market Data'')? If yes, list each product, describe its content, and provide a link to where fees for each product are disclosed.
- Provide the names of the representative and any alternative representatives designated by the Participant who are authorized under the Plans to vote on behalf of the Participant. Also provide a narrative description of the representatives' roles within the Participant organization, including the title of each individual as well as any direct responsibilities related to the development, dissemination, sales, or marketing of the Participant's Proprietary Market Data, and the nature of those responsibilities

sufficient for the public to identify the nature of any potential conflict of interest that could be perceived by a reasonable objective observer as having an effect on the Plan. If the representative works in or with the Participant's Proprietary Market Data business, describe the representative's roles and describe how that business and the representative's Plan responsibilities impacts his or her compensation. In addition, describe how a representative's responsibilities with the Proprietary Market Data business may present a conflict of interest with his or her responsibilities to the Plan.

- Does the Participant, its representative, or its alternative representative, or any affiliate have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with their responsibilities to the Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.

The Processors must respond to the following questions and instructions:

- Is the Processor an affiliate of or affiliated with any Participant? If yes, disclose the Participant(s) and describe the nature of the affiliation. Include an entity-level organizational chart depicting the Processor and its affiliates.
- Provide a narrative description of the functions directly performed by senior staff, the manager employed by the Processor to provide Processor services to the Plans, and the staff that reports to that manager (collectively, the ''Plan Processor'').
- Does the Plan Processor provide any services for any Participant's Proprietary Market Data products or other Plans? If Yes, disclose the services the Plan Processor performs and identify which Plans. Does the Plan Processor have any profit or loss responsibility for a Participant's Proprietary Market Data products or any other professional involvement with persons the Processor knows are engaged in the Participant's Proprietary Market Data business? If so, describe.
- List the policies and procedures established to safeguard confidential Plan information that is applicable to the Plan Processor.
- Does the Processor, or its representatives, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with the representatives' responsibilities to the Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.

The Administrators must respond to the following questions and instructions:

- Is the Administrator an affiliate of or affiliated with any Participant? If yes, disclose the Participant(s) and describe the nature of the affiliation. Include an entity-level organizational chart depicting the Administrator and its affiliates.
- Provide a narrative description of the functions directly performed by senior staff, the administrative services manager, and the staff that reports to that manager (collectively, the ''Plan Administrator'').
- Does the Plan Administrator provide any services for any Participant's Proprietary Market Data products? If yes, what services? Does the Plan Administrator have any profit or loss responsibility, or licensing responsibility, for a Participant's Proprietary Market Data products or any other professional involvement with persons the Administrator knows are engaged in the Participant's Proprietary Market Data business? If so, describe.
- List the policies and procedures established to safeguard confidential Plan information that is applicable to the Plan Administrator.
- Does the Administrator, or its representatives, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with the representatives' responsibilities to the Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.

The Members of the Advisory Committee must respond to the following questions and instructions:

- Provide the Advisor's title and a brief description of the Advisor's role within the firm.
- Does the Advisor have responsibilities related to the firm's use or procurement of market data?
- Does the Advisor have responsibilities related to the firm's trading or brokerage services?
- Does the Advisor's firm use the SIP? Does the Advisor's firm use exchange Proprietary Market Data products?
- Does the Advisor's firm have an ownership interest of 5% or more in one or more Participants? If yes, list the Participant(s).
- Does the Advisor actively participate in any litigation against the Plans?
- Does the Advisor or the Advisor's firm have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with their responsibilities to the Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.
- Pursuant to Section IV.F.1. of the Plan, each service provider or subcontractor that has agreed in writing to provide required disclosures and be treated as a Disclosing Party pursuant to Section IV.F of the Plan shall respond to the following questions and instructions:
- Is the service provider or subcontractor affiliated with a Participant, Processor, Administrator, or member of the Advisory Committee? If yes, disclose with whom the person is affiliated and describe the nature of the affiliation.
- If the service provider's or subcontractor's compensation is on a commission basis or is tied to specific metrics, provide a detailed narrative summary of how compensation is determined for performing work on behalf of the Plan.
- Is the service provider or subcontractor subject to policies and procedures (including information barriers) concerning the protection of confidential information that includes affiliates? If so, describe. If not, explain their absence.
- Does the service provider or subcontractor, or its representative, have additional relationships or material economic interests that could be perceived by a reasonable objective observer to present a potential conflict of interest with its responsibilities to the Plan? If so, provide a detailed narrative discussion of all material facts necessary to identify the potential conflicts of interest and the effects they may have on the Plan.

The responses to these questions will be posted on the Plan's website. If a Disclosing Party has any material changes in its responses, the Disclosing Party must promptly update its disclosures. Additionally, the Disclosing Parties must update the disclosures on an annual basis to reflect any changes. This annual update must be made before the first quarterly session meeting of each calendar year, which is generally held in mid-February.

G. Confidentiality Policy

The Participants have adopted the confidentiality policy set forth in Exhibit 4 to the Plan.

V. Selection and Evaluation of the Processor

A. Generally

The Processor's performance of its functions under the Plan shall be subject to review by the Operating Committee at least every two years, or from time to time upon the request of any two Participants but not more frequently than once each year. Based on this review, the Operating Committee may choose to make a recommendation to the Participants with respect to the continuing operation of the Processor. The Operating Committee shall notify the SEC of any recommendations the Operating Committee shall make pursuant to the Operating Committee's review of the Processor and shall supply the Commission with a copy of any reports that may be prepared in connection therewith.

B. Termination of the Processor for Cause

If the Operating Committee determines that the Processor has failed to perform its functions in a reasonably acceptable manner in accordance with the provisions of the Plan or that its reimbursable expenses have become excessive and are not justified on a cost basis, the Processor may be terminated at such time as may be determined by a majority vote of the Operating Committee.

C. Factors To Be Considered in Termination for Cause

Among the factors to be considered in evaluating whether the Processor has performed its functions in a reasonably acceptable manner in accordance with the provisions of the Plan shall be the reasonableness of its response to requests from Participants for technological changes or enhancements pursuant to Section IV(C)(3) hereof. The reasonableness of the Processor's response to such requests shall be evaluated by the Operating Committee in terms of the cost to the Processor of purchasing the same service from a third party and integrating such service into the Processor's existing systems and operations as well as the extent to which the requested change would adversely impact the then current technical (as opposed to business or competitive) operations of the Processor.

D. Processor's Right To Appeal Termination for Cause

The Processor shall have the right to appeal to the SEC a determination of the Operating Committee terminating the Processor for cause and no action shall become final until the SEC has ruled on the matter and all legal appeals of right therefrom have been exhausted.

E. Process for Selecting New Processor

At any time following effectiveness of the Plan, but no later than upon the termination of the Processor, whether for cause pursuant to Section IV(C)(1)(c) or V(B) of the Plan or upon the Processor's resignation, the Operating Committee shall establish procedures for selecting a new Processor (the ''Selection Procedures''). The Operating Committee, as part of the process of establishing Selection Procedures, may solicit and consider the timely comment of any entity affected by the operation of this Plan. The Selection Procedures shall be established by a majority vote of the Plan Participants, and shall set forth, at a minimum:

1. The entity that will:

(a) Draft the Operating Committee's request for proposal for bids on a new processor;

(b) assist the Operating Committee in evaluating bids for the new processor; and

(c) otherwise provide assistance and guidance to the Operating Committee in the selection process.

2. the minimum technical and operational requirements to be fulfilled by the Processor;

3. the criteria to be considered in selecting the Processor; and

4. the entities (other than Plan Participants) that are eligible to comment on the selection of the Processor.

The affirmative vote of two-thirds of the Participants entitled to vote shall be required to select a new processor or to approve any agreement between the Participants and a processor or any amendment to any such agreement. Nothing in this provision shall be interpreted as limiting Participants' rights under Section IV or Section V of the Plan or other Commission order.

VI. Functions of the Processor

A. Generally

The Processor shall collect from the Participants, and consolidate and disseminate to Vendors, Subscribers and News Services, Quotation Information and Transaction Reports in Eligible Securities in a manner designed to assure the prompt, accurate and reliable collection, processing and dissemination of information with respect to all Eligible Securities in a fair and non-discriminatory manner. The Processor shall commence operations upon the Processor's notification to the Participants that it is ready and able to commence such operations.

B. Collection and Consolidation of Information

For as long as Nasdaq is the Processor, the Processor shall be capable of receiving Quotation Information and Transaction Reports in Eligible Securities from Participants by the Plan-approved, Processor sponsored interface, and shall consolidate and disseminate such information via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to Vendors, Subscribers and News Services.

C. Dissemination of Information

The Processor shall disseminate consolidated Quotation Information and Transaction Reports in Eligible Securities via the UTP Quote Data Feed, the UTP Trade Data Feed, and the OTC Montage Data Feed to authorized Vendors, Subscribers and News Services in a fair and non-discriminatory manner. The Processor shall specifically be permitted to enter into agreements with Vendors, Subscribers and News Services for the dissemination of quotation or transaction information on Eligible Securities to foreign (non-U.S.) marketplaces or in foreign countries.

The Processor shall, in such instance, disseminate consolidated quotation or transaction information on Eligible Securities from all Participants.

Nothing herein shall be construed so as to prohibit or restrict in any way the right of any Participant to distribute quotation, transaction or other information with respect to Eligible Securities quoted on or traded in its marketplace to a marketplace outside the United States solely for the purpose of supporting an intermarket linkage, or to distribute information within its own marketplace concerning Eligible Securities in accordance with its own format. If a Participant requests, the Processor shall make information about Eligible Securities in the Participant's marketplace available to a foreign marketplace on behalf of the requesting Participant, in which event the cost shall be borne by that Participant.

1. Best Bid and Offer

The Processor shall disseminate on the UTP Quote Data Feed the best bid and offer information supplied by each Participant, including the FINRA Participant(s) that constitutes FINRA's

single Best Bid and Offer quotations, and shall also calculate and disseminate on the UTP Quote Data Feed a national best bid and asked quotation with size based upon Quotation Information for Eligible Securities received from Participants. The Processor shall not calculate the best bid and offer for any individual Participant, including FINRA.

The Participant responsible for each side of the best bid and asked quotation making up the national best bid and offer shall be identified by an appropriate symbol. If the quotations of more than one Participant shall be the same best price, the largest displayed size among those shall be deemed to be the best. If the quotations of more than one Participant are the same best price and best displayed size, the earliest among those measured by the time reported shall be deemed to be the best. A reduction of only bid size and/or ask size will not change the time priority of a Participant's quote for the purposes of determining time reported, whereas an increase of the bid size and/or ask size will result in a new time reported. The consolidated size shall be the size of the Participant that is at the best.

If the best bid/best offer results in a locked or crossed quotation, the Processor shall forward that locked or crossed quote on the appropriate output lines (*i.e.,* a crossed quote of bid 12, ask 11.87 shall be disseminated). The Processor shall normally cease the calculation of the best bid/best offer after 6:30 p.m., Eastern Time.

2. Quotation Data Streams

The Processor shall disseminate on the UTP Quote Data Feed a data stream of all Quotation Information regarding Eligible Securities received from Participants. Each quotation shall be designated with a symbol identifying the Participant from which the quotation emanates and, in the case of FINRA, the FINRA Participant(s) that constitutes FINRA's Best Bid and Offer quotations. In addition, the Processor shall separately distribute on the OTC Montage Data Feed the Quotation Information regarding Eligible Securities from all FINRA Participants from which quotations emanate.

3. Transaction Reports

The Processor shall disseminate on the UTP Trade Data Feed a data stream of all Transaction Reports in Eligible Securities received from Participants. Each transaction report shall be designated with a symbol identifying the Participant in whose Market the transaction took place.

D. Closing Reports

At the conclusion of each trading day, the Processor shall disseminate a ''closing price'' for each Eligible Security. Such ''closing price'' shall be the price of the last Transaction Report in such security received prior to dissemination. The Processor shall also tabulate and disseminate at the conclusion of each trading day the aggregate volume reflected by all Transaction Reports in Eligible Securities reported by the Participants.

E. Statistics

The Processor shall maintain quarterly, semi-annual and annual transaction and volume statistical counts. The Processor shall, at cost to the user Participant(s), make such statistics available in a form agreed upon by the Operating Committee, such as a secure website.

VII. Administrative Functions *[of the Processor]*

Subject to the general direction of the Operating Committee, the [Processor] *Administrator* shall be responsible for carrying out all administrative functions necessary to the operation and maintenance of the consolidated information collection and dissemination system provided for in this Plan, including, but not limited to, record keeping, billing, contract administration, and the preparation of financial reports.

VIII. Evaluation of Competing Consolidators

On an annual basis, the Operating Committee shall assess the performance of Competing Consolidators, including an analysis with respect to speed, reliability, and cost of data provision. The Operating Committee shall prepare an annual report containing such assessment and furnish such report to the SEC prior to the second quarterly meeting of the Operating Committee. In conducting its analysis, the Operating Committee shall review the monthly performance metrics published by Competing Consolidators pursuant to Rule 614(d)(5). ''Monthly performance metrics'' shall include:

A. Capacity statistics, including system tested capacity, system output capacity, total transaction capacity, and total transaction peak capacity;

B. Message rate and total statistics, including peak output rates on the following bases: 1-millisecond, 10-millisecond, 100-millisecond, 500-millisecond, 1-second, and 5-second;

C. System availability statistics, including system up-time percentage and cumulative amount of outage time;

D. Network delay statistics, including quote and trade zero window size events, quote and trade retransmit events, and quote and trade message total; and

E. Latency statistics, including distribution statistics up to the 99.99th percentile, for the following:

1. When a Participant sends an inbound message to a Competing Consolidator and when the Competing Consolidator receives the inbound message;

2. When the Competing Consolidator receives the inbound message and when the Competing Consolidator sends the corresponding consolidated message to a customer of the Competing Consolidator; and

3. When a Participant sends an inbound message to a Competing Consolidator and when the Competing Consolidator sends the corresponding consolidated message to a customer of the Competing Consolidator.

[VIII.]*IX.* Transmission of Information to Processor, *Competing Consolidators, and Self-Aggregators* by Participants

A. Quotation Information

Each Participant shall, during the time it is open for trading be responsible promptly to collect and transmit to the Processor accurate Quotation Information in Eligible Securities through any means prescribed herein. *Each Participant further agrees to collect and transmit to Competing Consolidators and Self Aggregators all quotation information required to be made available by such Participant by Rule 603(b) of Regulation NMS, including all data necessary to generated consolidated market data. Each Participant agrees to make available quotation information, and changes in any such information, to the Competing Consolidator and Self-Aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.*

Quotation Information shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;

2. the price bid and offered, together with size;

3. the FINRA Participant along with the FINRA Participant's market participant identification or Participant from which the quotation emanates;

4. identification of quotations that are not firm; and

5. through appropriate codes and messages, withdrawals and similar matters.

In addition, Quotation Information shall include:

(A) In the case of a national securities exchange, the reporting Participant's matching engine publication timestamp (reported in microseconds); or

(B) in the case of FINRA, the quotation publication timestamp that FINRA's bidding or offering member reports to FINRA's quotation facility in accordance with FINRA rules.

Each bid and offer with respect to an Eligible Security furnished to Competing Consolidators and Self-Aggregators by any Participant pursuant to this Plan shall also be accompanied by the time the Participant made such bid and offer available to Competing Consolidators and Self Aggregators (reported in microseconds).

In addition, if FINRA's quotation facility provides a proprietary feed of its quotation information, then the quotation facility shall also furnish the Processor*, Competing Consolidators, and Self-Aggregators* with the time of the quotation as published on the quotation facility's proprietary feed.

FINRA shall convert any quotation times reported to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor*, Competing Consolidators, and Self-Aggregators* in microseconds.

B. Transaction Reports

Each Participant shall (i) transmit all Transaction Reports in Eligible Securities as soon as practicable, but not later than 10 seconds, after the time of execution, (ii) establish and maintain collection and reporting procedures and facilities reasonably designed to comply with this requirement, and (iii) designate as ''late'' any last sale price not collected and reported in accordance with the above-referenced procedures or as to which the Participant has knowledge that the time interval after the time of execution is significantly greater than the time period referred to above. *Each Participant agrees to make available Transaction Reports to the Competing Consolidators, and Self-Aggregators in the same manner and using the same methods, including all methods of access and the same format, as such Participant makes available any information with respect to quotations for and transactions in NMS stocks to any person.* [The Participants shall seek to reduce the time period for reporting last sale prices to the Processor as conditions warrant.]

With respect to orders sent by one Participant Market to another Participant Market for execution, each Participant shall adopt procedures governing the reporting of transactions in Eligible Securities specifying that the transaction will be reported by the Participant whose member sold the security. This provision shall apply only to transactions between Plan Participants.

Transaction Reports shall include:

1. Identification of the Eligible Security, using the Nasdaq Symbol;

2. the number of shares in the transaction;

3. the price at which the shares were purchased or sold;

4. the buy/sell/cross indicator;

5. the Market of execution; and,

6. through appropriate codes and messages, late or out-of-sequence trades, corrections and similar matters.

In addition, Transaction Reports shall include the time of the transaction (reported in microseconds) as identified in the Participant's matching engine publication timestamp *and, with respect to reports to Competing Consolidators and Self-Aggregators, the time that the Participant made such information available to Competing Consolidators and Self-Aggregators (reported in microseconds).* However, in the case of FINRA, the time of the transaction shall be the time of execution that a FINRA member reports to a FINRA trade reporting facility in accordance with FINRA rules. In addition, if the FINRA trade reporting facility provides a proprietary feed of trades reported by the trade reporting facility to the Processor*, Competing Consolidators, and Self-Aggregators,* then the FINRA trade reporting facility shall also furnish the Processor with the time of the transmission as published on the facility's proprietary feed.

FINRA shall convert times that its members report to it in seconds or milliseconds to microseconds and shall furnish such times to the Processor*, Competing Consolidators, and Self-Aggregators* in microseconds.

The following types of transactions are not required to be reported to the Processor*, Competing Consolidators, or Self-Aggregators* pursuant to the Plan:

1. Transactions that are part of a primary distribution by an issuer or of a registered secondary distribution or of an unregistered secondary distribution;

2. transactions made in reliance on Section 4(2) of the Securities Act of 1933;

3. transactions in which the buyer and the seller have agreed to trade at a price unrelated to the Current Market for the security, *e.g.,* to enable the seller to make a gift;

4. the acquisition of securities by a broker-dealer as principal in anticipation of making an immediate exchange distribution or exchange offering on an exchange;

5. purchases of securities pursuant to a tender offer; and

6. purchases or sales of securities effected upon the exercise of an option pursuant to the terms thereof or the exercise of any other right to acquire securities at a pre-established consideration unrelated to the Current Market.

C. Symbols for Market Identification for Quotation Information and Transaction Reports

The following symbols shall be used to denote the marketplaces:

Code	Participant
A	NYSE American LLC
Z	Cboe BZX Exchange, Inc.
Y	Cboe BYX Exchange, Inc.
B	Nasdaq BX, Inc.
W	Cboe Exchange, Inc.
M	NYSE Chicago, Inc.
J	Cboe EDGA Exchange, Inc.
K	Cboe EDGX Exchange, Inc.
I	Nasdaq ISE, LLC
V	Investors' Exchange LLC
D	Financial Industry Regulatory Authority, Inc.
Q	The Nasdaq Stock Market LLC
C	NYSE National, Inc.
N	New York Stock Exchange LLC
P	NYSE Arca, Inc.
X	Nasdaq PHLX LLC
L	Long-Term Stock Exchange Inc.
U	MEMX LLC
H	MIAX PEARL, LLC

D. Whenever a Participant determines that a level of trading activity or other unusual market conditions prevent it from collecting and transmitting Quotation Information or Transaction Reports to the Processor*, Competing Consolidators, and Self-Aggregators,* or where a trading halt or suspension in an Eligible Security is in effect in its Market, the Participant shall promptly notify the Processor*, Competing Consolidators, and Self-Aggregators* of such condition or event and shall resume collecting and transmitting Quotation Information and Transaction Reports to it as soon as the condition or event is terminated. In the event of a system malfunction resulting in the inability of a Participant or its members to transmit Quotation Information or Transaction Reports to the Processor*, Competing Consolidators, and Self-Aggregators,* the Participant shall promptly notify the Processor*, Competing Consolidators, and Self-Aggregators* of such event or condition.

Upon receiving such notification, the Processor shall take appropriate action, including either closing the quotation or purging the system of the affected quotations.

[IX]*X. Market Access*

Pursuant to the requirements of Rule 610 of Regulation NMS, a Participant that operates an SRO trading facility shall provide for fair and efficient order execution access to quotations in each Eligible Security displayed through its trading facility. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility must provide for fair and efficient order execution access to quotations in each Eligible Security displayed through the SRO display-only quotation facility. A Participant that operates an SRO trading facility may elect to allow such access to its quotations through the utilization of private electronic linkages between the Participant and other trading centers. In the case of a Participant that operates an SRO display-only quotation facility, trading centers posting quotations through such SRO display-only quotation facility may elect to allow such access to their quotations through the utilization of private electronic linkages between the trading center and SRO trading facilities of Participants and/or other trading centers.

In accordance with Regulation NMS, a Participant shall not impose, or permit to be imposed, any fee or fees for the execution of an order against a protected quotation of the Participant or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security or against any other quotation displayed by the Participant in an Eligible Security that is the Participant's displayed best bid or offer for that Eligible Security, where such fee or fees exceed the limits provided for in Rule 610(c) of Regulation NMS. As required under Regulation NMS, the terms of access to a Participant's quotations or of a trading center posting quotes through a Participant's SRO display-only quotation facility in an Eligible Security may not be unfairly discriminatory so as to prevent or inhibit any person from obtaining efficient access to such displayed quotations through a member of the Participant or a subscriber of a trading center.

If quotations in an Eligible Security are displayed by a Participant that operates an SRO trading facility (or are displayed by a trading center that posts quotations through an SRO display-only quotation facility) that complies with the fair and efficient access requirements of Regulation NMS (an ''NMS Compliant Facility''), including prior to the compliance date of such access requirements, that Participant (or trading center posting quotes through an SRO display-only quotation facility) shall no longer be required to permit each FINRA market participant to have direct telephone access to the specialist, trading post, market maker and supervisory center in such Eligible Security that trades on that NMS Compliant Facility. For quotations in Eligible Securities that are displayed by a Participant that operates an SRO trading facility that is not an NMS Compliant Facility, such telephone access requirement will continue to be applicable to the Participant.

[Section X]*XI.* Regulatory and Operational Halts

A. Definitions for Purposes of Section X*I.*

1. ''Extraordinary Market Activity'' means a disruption or malfunction of any electronic quotation, communication, reporting, or execution system operated by, or linked to, the Processor or a Trading Center or a member of such Trading Center that has a severe and continuing negative impact, on a market-wide basis, on quoting, order, or trading activity or on the availability of market information necessary to maintain a fair and orderly market. For purposes of this definition, a severe and continuing negative impact on quoting, order, or trading activity includes (i) a series of quotes, orders, or transactions at prices substantially unrelated to the current market for the security or securities; (ii) duplicative or erroneous quoting, order, trade reporting, or other related message traffic between one or more Trading Centers or their members; or (iii) the unavailability of quoting, order, transaction information, or regulatory messages for a sustained period.

2. ''Limit Up Limit Down'' means the Plan to Address Extraordinary Market Volatility pursuant to Rule 608 of Regulation NMS under the Exchange Act.

3. ''Market'' means (i) in respect of FINRA, the facilities through which FINRA members display quotations and report transactions in Eligible Securities to FINRA and (ii) in respect of each Participant other than FINRA, the marketplace for Eligible Securities that the Participant operates.

4. ''Market-Wide Circuit Breaker'' means a halt in trading in all stocks in all Markets under the rules of a [Primary Listing Market] Primary Listing Exchange.

5. ''Material SIP Latency'' means a delay of quotation or last sale price information in one or more securities between the time data is received by the Processor and the time the Processor disseminates the data over the Processor's vendor lines, which delay the [Primary Listing Market] *Primary Listing Exchange* determines, in consultation with, and in accordance with, publicly disclosed guidelines established by Operating Committee, to be (a) material and (b) unlikely to be resolved in the near future.

6. ''Member Firm'' means a member as that term is defined in Section 3(a)(3) of the Exchange Act.

7. ''Operational Halt'' means a halt in trading in one or more securities only on a Market declared by such Participant and is not a Regulatory Halt.

[8. ''Primary Listing Market'' means the national securities exchange on which an Eligible Security is listed. If an Eligible Security is listed on more than one national securities exchange, Primary Listing Market means the exchange on which the security has been listed the longest.]

[9]*8.* ''Regular Trading Hours'' has the meaning provided in Rule 600(b)(68) of Regulation NMS. Regular Trading Hours can end earlier than 4:00 p.m. ET in the case of an early scheduled close.

[10.]*9.* ''Regulatory Halt'' means a halt declared by the Primary Listing Market in trading in one or more securities on all Trading Centers for regulatory purposes, including for the dissemination of material news, news pending, suspensions, or where otherwise necessary to maintain a fair and orderly market. A Regulatory Halt includes a trading pause triggered by Limit Up Limit Down, a halt based on Extraordinary Market Activity, a trading halt triggered by a Market-Wide Circuit Breaker, and a SIP Halt.

[11.]*10.* ''SIP Halt'' means a Regulatory Halt to trading in one or more securities that a [Primary Listing Market] *Primary Listing Exchange* declares in the event of a SIP Outage or Material SIP Latency.

[12.]*11.* ''SIP Halt Resume Time'' means the time that the [Primary Listing Market] *Primary Listing Exchange* determines as the end of a SIP Halt.

[13.]*12.* ''SIP Outage'' means a situation in which the Processor has ceased, or anticipates being unable, to provide updated and/or accurate quotation or last sale price information in one or more securities for a material period that exceeds the time thresholds for an orderly failover to backup facilities established by mutual

agreement among the Processor, the [Primary Listing Market] *Primary Listing Exchange* for the affected securities, and the Operating Committee unless the [Primary Listing Market] *Primary Listing Exchange,* in consultation with the Processor and the Operating Committee, determines that resumption of accurate data is expected in the near future.

[14. ''Trading Center'' has the same meaning as that term is defined in Rule 600(b)(82) of Regulation NMS.]

B. Operational Halts. A Participant shall notify the Processor*, Competing Consolidators, and Self-Aggregators* if it has concerns about its ability to collect and transmit Quotation Information or Transaction Reports, or where it has declared an Operational Halt or suspension of trading in one or more Eligible Securities, pursuant to the procedures adopted by the Operating Committee.

C. Regulatory Halts.

1. The [Primary Listing Market] *Primary Listing Exchange* may declare a Regulatory Halt in trading for any security for which it is the [Primary Listing Market] *Primary Listing Exchange:*

(a) As provided for in the rules of the [Primary Listing Market] *Primary Listing Exchange;*

(b) if it determines there is a SIP Outage, Material SIP Latency, or Extraordinary Market Activity; or

(c) in the event of national, regional, or localized disruption that necessitates a Regulatory Halt to maintain a fair and orderly market.

2. In making a determination to declare a Regulatory Halt under subparagraph C.1, the [Primary Listing Market] *Primary Listing Exchange* will consider the totality of information available concerning the severity of the issue, its likely duration, and potential impact on Member Firms and other market participants and will make a good-faith determination that the criteria of subparagraph C.1 have been satisfied and that a Regulatory Halt is appropriate. The [Primary Listing Market] *Primary Listing Exchange* will consult, if feasible, with the affected Trading Center(s), other Participants, or the Processor, as applicable, regarding the scope of the issue and what steps are being taken to address the issue. Once a Regulatory Halt based under subparagraph C.1 has been declared, the [Primary Listing Market] *Primary Listing Exchange* will continue to evaluate the circumstances to determine when trading may resume in accordance with the rules of the [Primary Listing Market] *Primary Listing Exchange.*

D. Initiating a Regulatory Halt.

1. The start time of a Regulatory Halt is when the Primary Listing Market declares the halt, regardless of whether an issue with communications impacts the dissemination of the notice.

2. If the Processor is unable to disseminate notice of a Regulatory Halt or the [Primary Listing Market] *Primary Listing Exchange* is not open for trading, the [Primary Listing Market] *Primary Listing Exchange* will take reasonable steps to provide notice of a Regulatory Halt, which shall include both the type and start time of the Regulatory Halt, by dissemination through:

(a) Proprietary data feeds containing quotation and last sale price information that the [Primary Listing Market] *Primary Listing Exchange* also sends to the Processor;

(b) posting on a publicly-available Participant website; or

(c) system status messages.

3. Except in exigent circumstances, the [Primary Listing Market] *Primary Listing Exchange* will not declare a Regulatory Halt retroactive to a time earlier than the notice of such halt.

E. Resumption of Trading After Regulatory Halts Other Than SIP Halts.

1. The [Primary Listing Market] *Primary Listing Exchange* will declare a resumption of trading when it makes a good-faith determination that trading may resume in a fair and orderly manner and in accordance with its rules.

2. For a Regulatory Halt that is initiated by another Participant that is a [Primary Listing Market] *Primary Listing Exchange,* a Participant may resume trading after the Participant receives notification from the [Primary Listing Market] *Primary Listing Exchange* that the Regulatory Halt has been terminated.

F. Resumption of Trading After SIP Halt.

1. The [Primary Listing Market] *Primary Listing Exchange* will determine the SIP Halt Resume Time. In making such determination, the [Primary Listing Market] *Primary Listing Exchange* will make a good-faith determination and consider the totality of information to determine whether resuming trading would promote a fair and orderly market, including input from the Processor, the Operating Committee, or the operator of the system in question (as well as any Trading Center(s) to which such system is linked), regarding operational readiness to resume trading. The [Primary Listing Market] *Primary Listing Exchange* retains discretion to delay the SIP Halt Resume Time if it believes trading will not resume in a fair and orderly manner.

2. The [Primary Listing Market] *Primary Listing Exchange* will terminate a SIP Halt with a notification that specifies a SIP Halt Resume Time. The [Primary Listing Market] *Primary Listing Exchange* shall provide a minimum notice of a SIP Halt Resume Time, as specified by the rules of the [Primary Listing Market] *Primary Listing Exchange,* during which period market participants may enter quotes and orders in the affected securities. During Regular Trading Hours, the last SIP Halt Resume Time before the end of Regular Trading Hours shall be an amount of time as specified by the rules of the [Primary Listing Market] *Primary Listing Exchange.* The [Primary Listing Market] *Primary Listing Exchange* may stagger the SIP Halt Resume Times for multiple symbols in order to reopen in a fair and orderly manner.

3. During Regular Trading Hours, if the [Primary Listing Market] *Primary Listing Exchange* does not open a security within the amount of time as specified by the rules of the [Primary Listing Market] *Primary Listing Exchange* after the SIP Halt Resume Time, a Participant may resume trading in that security. Outside Regular Trading Hours, a Participant may resume trading immediately after the SIP Halt Resume Time.

G. Participant to Halt Trading During Regulatory Halt. A Participant will halt trading for any security traded on its Market if the [Primary Listing Market] *Primary Listing Exchange* declares a Regulatory Halt for the security.

H. Communications. Whenever, in the exercise of its regulatory functions, the [Primary Listing Market] *Primary Listing Exchange* for an Eligible Security determines it is appropriate to initiate a Regulatory Halt, the [Primary Listing Market] *Primary Listing Exchange* will notify all other Participants and the Processor*, Competing Consolidators, and Self-Aggregators* of such Regulatory Halt as well as provide notice that a Regulatory Halt has been lifted using such protocols and other emergency procedures as may be mutually agreed to between the Operating Committee and the [Primary Listing Market] *Primary Listing Exchange.* The Processor shall disseminate to Participants notice of the Regulatory Halt (as well as notice of the lifting of a Regulatory Halt) through (i) the Quote Data Feed and the Trade Data Feed, and (ii) any other means the Processor, in its sole discretion, considers appropriate. Each Participant shall be required to continuously monitor these communication protocols established by the Operating Committee and the Processor during market hours, and the

failure of a Participant to do so shall not prevent the [Primary Listing Market] *Primary Listing Exchange* from initiating a Regulatory Halt in accordance with the procedures specified herein.

[XI.]*XII.* Hours of Operation

A. Quotation Information may be entered by Participants as to all Eligible Securities in which they make a market between 9:30 a.m. and 4:00 p.m. Eastern Time (''ET'') on all days the Processor is in operation. Transaction Reports shall be entered between 9:30 a.m. and 4:01:30 p.m. ET by Participants as to all Eligible Securities in which they execute transactions between 9:30 a.m. and 4:00 p.m. ET on all days the Processor is in operation.

B. Participants that execute transactions in Eligible Securities outside the hours of 9:30 a.m. ET and 4:00 p.m., ET, shall be report such transactions as follows:

(i) Transactions in Eligible Securities executed between 4:00 a.m. and 9:29:59 a.m. ET and between 4:00:01 and 8:00 p.m. ET, shall be designated as ''.T'' trades to denote their execution outside normal market hours;

(ii) transactions in Eligible Securities executed after 8:00 p.m. and before 12:00 a.m. (midnight) shall be reported to the Processor*, Competing Consolidators, and Self-Aggregators* between the hours of 4:00 a.m. and 8:00 p.m. ET on the next business day (T+1), and shall be designated ''as/of'' trades to denote their execution on a prior day, and be accompanied by the time of execution;

(iii) transactions in Eligible Securities executed between 12:00 a.m. (midnight) and 4:00 a.m. ET shall be transmitted to the Processor*, Competing Consolidators, and Self-Aggregators* between 4:00 a.m. and 9:30 a.m. ET, on trade date, shall be designated as ''.T'' trades to denote their execution outside normal market hours, and shall be accompanied by the time of execution;

(iv) transactions reported pursuant to this provision of the Plan shall be included in the calculation of total trade volume for purposes of determining net distributable operating revenue, but shall not be included in the calculation of the daily high, low, or last sale.

C. Late trades shall be reported in accordance with the rules of the Participant in whose Market the transaction occurred and can be reported between the hours of 4:00 a.m. and 8:00 p.m.

D. The Processor shall collect, process and disseminate Quotation Information in Eligible Securities at other times between 4:00 a.m. and 9:30 a.m. ET, and after 4:00 p.m. ET, when any Participant or FINRA Participant is open for trading, until 8:00 p.m. ET (the ''Additional Period''); provided, however, that the national best bid and offer quotation will not be disseminated before 4:00 a.m. or after 8:00 p.m. ET. Participants that enter Quotation Information or submit Transaction Reports to the Processor*, Competing Consolidators, and Self-Aggregators* during the Additional Period shall do so for all Eligible Securities in which they enter quotations.

[XII.]*XIII.* Undertaking by All Participants

The filing with and approval by the Commission of this Plan shall obligate each Participant to enforce compliance by its members with the provisions thereof. In all other respects not inconsistent herewith, the rules of each Participant shall apply to the actions of its members in effecting, reporting, honoring and settling transactions executed through its facilities, and the entry, maintenance and firmness of quotations to ensure that such occurs in a manner consistent with just and equitable principles of trade.

[XIII.]*XIV.* Financial Matters

A. Development Costs

Any Participant becoming a signatory to this Plan after June 26, 1990, shall, as a condition to becoming a Participant, pay to the other Plan Participants a proportionate share of the aggregate development costs previously paid by Plan Participants to the Processor, which aggregate development costs totaled $439,530, with the result that each Participant's share of all development costs is the same.

Each Participant shall bear the cost of implementation of any technical enhancements to the Nasdaq system made at its request and solely for its use, subject to reapportionment should any other Participant subsequently make use of the enhancement, or the development thereof.

B. Cost Allocation, Revenue Sharing, and Fees

The provisions governing cost allocation and revenue sharing among the Participants are set forth in Exhibit 1 to the Plan.

C. Maintenance of Financial Records

The [Processor]*Administrator* shall maintain records of revenues generated and development and operating expenditures incurred in connection with the Plan. In addition, the [Processor]*Administrator* shall provide the Participants with: (a) A statement of financial and operational condition on a quarterly basis; and (b) an audited statement of financial and operational condition on an annual basis.

[XIV.]*XV.* Indemnification

Each Participant agrees, severally and not jointly, to indemnify and hold harmless each other Participant, Nasdaq, and each of its directors, officers, employees and agents (including the Operating Committee and its employees and agents) from and against any and all loss, liability, claim, damage and expense whatsoever incurred or threatened against such persons as a result of any Transaction Reports, Quotation Information or other information reported to the Processor*, Competing Consolidators, and Self-Aggregators* by such Participant and disseminated by the Processor*, Competing Consolidators, and Self-Aggregators*[to Vendors]. This indemnity agreement shall be in addition to any liability that the indemnifying Participant may otherwise have.

Promptly after receipt by an indemnified Participant of notice of the commencement of any action, such indemnified Participant will, if a claim in respect thereof is to be made against an indemnifying Participant, notify the indemnifying Participant in writing of the commencement thereof; but the omission to so notify the indemnifying Participant will not relieve the indemnifying Participant from any liability which it may have to any indemnified Participant. In case any such action is brought against any indemnified Participant and it promptly notifies an indemnifying Participant of the commencement thereof, the indemnifying Participant will be entitled to participate in, and, to the extent that it may wish, jointly with any other indemnifying Participant similarly notified, to assume and control the defense thereof with counsel chosen by it. After notice from the indemnifying Participant of its election to assume the defense thereof, the indemnifying Participant will not be liable to such indemnified Participant for any legal or other expenses subsequently incurred by such indemnified Participant in connection with the defense thereof but the indemnified Participant may, at its own expense, participate in such defense by counsel chosen by it without, however, impairing the indemnifying Participant's control of the defense. The indemnifying Participant may negotiate a compromise or settlement of any such action, provided that such compromise or settlement does not require a

contribution by the indemnified Participant.

[XV.]*XVI.* Withdrawal

Any Participant may withdraw from the Plan at any time on not less than 30 days prior written notice to each of the other Participants. Any Participant withdrawing from the Plan shall remain liable for, and shall pay upon demand, any fees for equipment or services being provided to such Participant pursuant to the contract executed by it or an agreement or schedule of fees covering such then in effect. A withdrawing Participant shall also remain liable for its proportionate share, without any right of recovery, of administrative and operating expenses, including startup costs and other sums for which it may be responsible pursuant to Section XIV hereof. Except as aforesaid, a withdrawing Participant shall have no further obligation under the Plan or to any of the other Participants with respect to the period following the effectiveness of its withdrawal.

[XVI.]*XVII.* Modifications to the Plan

Except as the Plan otherwise provides, the Plan may be modified from time to time when authorized by the agreement of all of the Participants, subject to the approval of the Commission or when such modification otherwise becomes effective pursuant to Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

In the case of a ''Ministerial Amendment,'' the Chairman of the Plan's Operating Committee may modify the Plan by submitting to the Commission an appropriate amendment that sets forth the modification, provided that the amendment is the subject of advance notice to the Participants of not less than 48 hours. Such an amendment shall only become effective in accordance with Section 11A of the Exchange Act and Rule 608 of Regulation NMS.

''Ministerial Amendment'' means an amendment to the Plan that pertains solely to any one or more of the following:

(1) Admitting a new Participant into the Plan;

(2) changing the name or address of a Participant;

(3) incorporating a change that the Commission has implemented by rule and that requires no conforming language to the text of the Plan (*e.g.,* the Commission rule establishing the Advisory Committee);

(4) incorporating a change (i) that the Commission has implemented by rule, (ii) that requires conforming language to the text of the Plan (*e.g.,* the Commission rule amending the revenue allocation formula), and (iii) that a majority of all Participants has voted to approve;

(5) incorporating a purely technical change, such as correcting an error or an inaccurate reference to a statutory provision, or removing language that has become obsolete (*e.g.,* language regarding ITS).

[XVII.]*XVIII.* Applicability of Securities Exchange Act of 1934

The rights and obligations of the Participants and of *Competing Consolidators, Self-Aggregators,* Vendors, News Services, Subscribers and other persons contracting with Participant in respect of the matters covered by the Plan shall at all times be subject to any applicable provisions of the Act, as amended, and any rules and regulations promulgated thereunder.

[XVIII.]*XIX.* Operational Issues

A. Each Participant shall be responsible for collecting and validating quotes and last sale reports within its own system prior to transmitting this data to the Processor, *Competing Consolidators, and Self-Aggregators.*

B. Each Participant may utilize a dedicated Participant line into the Processor to transmit trade and quote information in Eligible Securities to the Processor. The Processor shall accept from Exchange Participants input for only those issues that are deemed Eligible Securities.

C. The Processor shall consolidate trade and quote information from each Participant and disseminate this information on the Processor's existing vendor lines.

D. The Processor shall perform gross validation processing for quotes and last sale messages in addition to the collection and dissemination functions, as follows:

1. Basic Message Validation

(a) The Processor may validate format for each type of message, and reject nonconforming messages.

(b) Input must be for an Eligible Security.

2. Logging Function—The Processor shall return all Participant input messages that do not pass the validation checks (described above) to the inputting Participant, on the entering Participant line, with an appropriate reject notation. For all accepted Participant input messages (*i.e.,* those that pass the validation check), the information shall be retained in the Processor system.

[XIX.]*XX.* Headings

The section and other headings contained in this Plan are for reference purposes only and shall not be deemed to be a part of this Plan or to affect the meaning or interpretation of any provisions of this Plan.

[XX.]*XXI.* Counterparts

This Plan may be executed by the Participants in any number of counterparts, no one of which need contain the signature of all Participants. As many such counterparts as shall together contain all such signatures shall constitute one and the same instrument.

[XXI. Depth of Book Display

The Operating Committee has determined that the entity that succeeds Nasdaq as the Processor should have the ability to collect, consolidate, and disseminate quotations at multiple price levels beyond the best bid and best offer from any Participant that voluntarily chooses to submit such quotations while determining that no Participant shall be required to submit such information. The Operating Committee has further determined that the costs of developing, collecting, processing, and disseminating such depth of book data shall be borne exclusively by those Participants that choose to submit this information to the Processor, by whatever allocation those Participants may choose among themselves. The Operating Committee has determined further that the primary purpose of the Processor is the collection, processing and dissemination of best bid, best offer and last sale information (''core data''), and as such, the Participants will adopt procedures to ensure that such functionality in no way hinders the collecting, processing and dissemination of this core data.

Therefore, implementing the depth of book display functionality will require a plan amendment that addresses all pertinent issues, including:

(1) Procedures for ensuring that the fully-loaded cost of the collection, processing, and dissemination of depth-of-book information will be tracked and invoiced directly to those Plan Participants that voluntarily choose to send that data, voluntarily, to the Processor allocating in whatever manner those Participants might agree; and

(2) Necessary safeguards the Processor will take to ensure that its processing of depth-of-book data will not impede or hamper, in any way, its core Processor functionality of collecting, consolidating, and disseminating National Best Bid and Offer data,

exchange best bid and offer data, and consolidated last sale data.

Upon approval of a Plan amendment implementing depth of book display, this article of the Plan shall be automatically deleted.]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93628; File No. SR–Phlx–2021–56]

Self-Regulatory Organizations; Nasdaq PHLX LLC; Order Approving a Proposed Rule Change To Amend Options 4A, Section 12 Regarding the Calculation of the Closing Volume Weighted Average Price for Options on the Nasdaq-100® Volatility Index in Certain Circumstances

November 19, 2021.

I. Introduction

On September 23, 2021, Nasdaq PHLX LLC (''Exchange'' or ''Phlx'') 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 amend the process used to calculate the final settlement price for Nasdaq-100 Volatility Index (''Volatility Index'' or ''VOLQ'') options in certain circumstances. The proposed rule change was published for comment in the **Federal Register** on October 7, 2021.[3] The Commission received no comments on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposed Rule Change [4]

Overview

The Commission previously approved the listing and trading of VOLQ options.[5] VOLQ is an index that measures changes in 30-day implied volatility as expressed by options on the Nasdaq-100 Index (''NDX'').[6] The calculation of the final settlement price for VOLQ options, the Closing Volume Weighted Average Price or ''Closing VWAP,'' is based on one-second time observations of the NDX component options [7] over a 300 second period of time (the ''Closing Settlement Period'').[8] The Closing Settlement period commences at 9:32:010 a.m. on the expiration day, and continues each second for the next 300 seconds.[9] Now, the Exchange proposes to amend the process used to calculate the final settlement price for VOLQ options in the event any of the underlying NDX component options do not have a trade or quote during the Closing Settlement Period.

Closing VWAP Calculation in the Event One or More Component Option Series Do Not Have a Trade or Quote During Any One Second of the Observation Period

First, the Exchange proposes if, during any one second of the observation period, any of the thirty-two NDX option series used for the Closing VWAP during that second [10] does not have a trade or quote, the index calculator would look back and use the most recent published quote midpoint during that day for the One Second VWAP [11] for the option component that does not have a trade or quote.[12] If there is no One Second VWAP to utilize for any of the thirty-two NDX option series during the Closing Settlement Period, then the index calculator will consider that Closing Settlement Period invalid and will be unable to determine a Closing VWAP at that time.

Second, in the event the Closing Settlement Period is invalid and a Closing VWAP cannot be determined, the Exchange proposes that the index calculator will then roll the Closing Settlement Period forward by one second and determine if there is a One Second VWAP for each of the thirty-two NDX option series for all 300 consecutive seconds of the new Closing Settlement Period. If there is a One Second VWAP for all of the thirty-two NDX option series for all 300 consecutive seconds, a Closing VWAP will be calculated. If a One Second VWAP is not present for all of the thirty-two NDX option series during the new observation period, the index calculator will again roll the Closing Settlement Period forward by one second. The index calculator would continue to roll the Closing Settlement Period forward by one second until such time as it is able to capture a One Second VWAP for each of the thirty-two NDX option series for all 300 consecutive seconds. At that time, a Closing VWAP will be calculated.

The Exchange states that the proposal seeks to create an automated, non-discretionary process by which the Exchange would determine the Closing VWAP in the event any of the thirty-two underlying NDX component options do not have a trade or quote during the Closing Settlement Period.[13] The Exchange further states that it does not anticipate utilizing the alternative Closing VWAP calculation on a regular basis.[14] According to the Exchange, a review of 43 expiration dates from January 2018 through July 2021 revealed invalid values for only 2 expiration dates.[15]

Closing VWAP Calculation in the Event of a Trading Halt

The Exchange also proposes that, in the event of a trading halt in one or more options, excluding a trading halt in all Nasdaq-100 index options, prior to the completion of the Closing Settlement Period, the Exchange would continue to look back for a One Second VWAP prior to looking forward. In the event a trading halt caused market makers to not submit a valid width quote in certain components during the Opening Process, the alternative

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* Securities Exchange Act Release No. 93237 (October 1, 2021), 86 FR 55896 (''Notice'').

[4] Additional information regarding the proposal can be found in the Notice, *supra* note 3.

[5] *See* Securities Exchange Act Release No. 91781 (May 5, 2021), 86 FR 25918 (May 11, 2021) (SR–Phlx–2020–41) (Notice of Filing of Amendment Nos. 1 and 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To List and Trade Options on a Nasdaq-100 Volatility Index) (''Approval Order'').

[6] *See Id.* at 25919.

[7] The Closing VWAP is calculated using one-second time observations of the prices and sizes of executed orders or quotes in the underlying NDX component options. *See* Options 4A, Section 12(b)(6)(D)(II).

[8] *See* Options 4a93628A, Section 12(b)(6)(D)(II).

[9] *See* Options 4A, Section 12(b)(6)(D)(II).

[10] The thirty-two component Volatility Index option inputs may change each second depending upon the movement of the Nasdaq-100 Index. *See* Notice, *supra* note 3, n.5 at 55897.

[11] At the end of individual one-second time observations during the Closing Settlement Period, the number of contracts resulting from orders and quotes executed on Phlx, Nasdaq ISE, LLC, and Nasdaq GEMX, LLC at each price during the observation period is multiplied by that price to yield a reference number (''Reference Number''). *See* Options 4A, Section 12(b)(6)(D)(II). All Reference Numbers are then summed, and that sum is then divided by the total number of contracts traded during the observation period [Sum of (contracts traded at a price × price) ÷ total contracts traded)] to calculate a Volume Weighted Average Price for that observation period (a ''One Second VWAP'') for that component option. *See id.*

[12] The Exchange would utilize a quote from the Opening Process only in the event an options series was able to open. *See* Notice, *supra* note 3, at 55898. If the Opening Process did not complete for an options series, there would be no value to obtain for a component during a look back. *See id.*

[13] *See* Notice, *supra* note 3, at 55897.

[14] *See id.*

[15] *See* Notice, *supra* note 3, at 55897. The Exchange states that it reviewed the 9,660 NBBO inputs for the VOLS computation from 9:32.01 for the five minute Closing Settlement Period for each expiration date. *See id.* at 55897 n.11.

methodology would look forward to obtain a value.[16]

The Exchange also proposes to modify its existing rule text relating to trading halts. Currently, Options 4A, Section 12(b)(6)(D)(II) provides, ''If the Exchange is unable to publish a settlement value by 12:00 p.m. (New York time) due to a trading halt, the Exchange will commence the calculation of the settlement window beginning 2.00.001 minutes after the re-opening of trading and publish that value on its website.'' [17] The Exchange proposes to replace this rule text with language that provides, ''In the event of a trading halt in all Nasdaq-100 index options, the Exchange would commence the calculation of the settlement window beginning 2:00:01 [18] minutes after the re-opening of trading and publish that value on its website. In this scenario, the Exchange would not look back prior to the trading halt.'' The Exchange's proposal amends the current sentence to eliminate the reference to 12:00 p.m., as a re-opening could occur any time during the trading day. Further, the Exchange states that specifically indicating a trading halt of the Nasdaq-100 index options in the rule text is more precise and the proposed rule text more directly expands upon the manner in which the Closing VWAP will be handled in the event of trading halt.[19]

Amendment to Definition of ''Executed Orders''

Finally, the Exchange proposes to amend the term ''executed orders'' at Options 4A, Section 12(b)(6)(D)(II) which currently provides, ''Executed orders shall include simple orders and complex orders however, individual leg executions of a complex order will only be included if the executed price of the leg is at or within the NBBO.'' The Exchange proposes to exclude out-of-sequence and late trades. The Exchange states that excluding out-of-sequence and late trades would avoid potential stale data in the Closing VWAP calculation.[20]

Surveillance

The Exchange also states that because the thirty-two component Volatility Index option inputs are reviewed each second as the market changes to determine the at-the-money strikes (meaning that Volatility Index components could change 300 times during the Closing Settlement Period), market participants could manipulate the Closing VWAP only if they could replicate such value by guessing exact market moves over an extended period of 300 million microseconds.[21] Because the Exchange believes that the likelihood of replication is extremely low, the Exchange believes that it is unlikely the Closing VWAP could be manipulated.[22] Nonetheless, the Exchange states that, in its normal course of surveillance, it will monitor for any potential manipulation of the Volatility Index settlement value according to the Exchange's current procedures.[23] Additionally, the Exchange would monitor the integrity of the Volatility Index by analyzing trades, quotations, and orders that affect any of the 300 calculated reference prices for any of the NDX option series used for the Closing VWAP for potential manipulation on the Exchange.[24]

Implementation of VOLQ Options

The Exchange proposes to issue an Options Trader Alert announcing the day it will launch options on the Volatility Index. At this time, the Exchange proposes to launch VOLQ options on or before March 31, 2022.

III. Discussion and Commission Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[25] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[26] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

In support of its proposal, the Exchange states that its proposed alternate methodology may be utilized where there is no liquidity in any of the thirty-two NDX option series used for the Closing VWAP, which may be caused by, among other things, an Exchange system issue, market maker issue, or a halt in an underlying, and would ensure a Closing Settlement Period which has published liquidity for all of the thirty-two NDX option series used for the Closing VWAP.[27] The Exchange further states that its proposal would create an automated, non-discretionary process to ensure that the Closing VWAP is calculated consistently in these circumstances, which the Exchange believes would occur infrequently.[28] Because market participants could not predict which options components would be included in the Closing VWAP calculation since that would entail predicting where the NDX price level (a function of predicting the price of all one-hundred component stocks) will be at the end of each of the 300 individual one-second time periods, the Exchange believes that it is unlikely that the Volatility Index Closing VWAP could be manipulated.[29] The Exchange further states that, in its normal course of surveillance, it will monitor for any potential manipulation of the Volatility Index Closing VWAP and will monitor the integrity of the Volatility Index by analyzing trades, quotations, and orders that affect any of the 300 calculated reference prices for any of the NDX option series used for the Closing VWAP for potential manipulation on the Exchange.[30]

The Commission believes the Exchange's proposal would ensure a consistent and transparent process for calculating the Closing VWAP in situations where there is no liquidity in one or more of the thirty-two NDX option series used each second to calculate the Closing VWAP. This may occur, for example, if there is an Exchange system issue, a market maker issue, or a halt in an underlying. Further, the Exchange's proposal more specifically details the process for calculating the Closing VWAP in the event of a trading halt in all NDX options. According to the Exchange, the need for the alternate methodology would arise infrequently.[31] However, in those limited circumstances where there is no input for one or more component options during the primary Closing Settlement Period, the proposed settlement methodology would help to ensure there is sufficient liquidity in the

[16] *See id.* at 55898.

[17] *See* Phlx Options 4A, Section 12(b)(6)(D).

[18] The Exchange also proposes to correct the time when the Exchange will commence the calculation of the settlement window from 2.00.001 minutes to 2:00:01 minutes. The calculation begins on the second.

[19] *See* Notice, *supra* note 3, at 55898.

[20] *See id.*

[21] *See id.* at 55899.

[22] *See id.*

[23] *See id.*

[24] *See id.*

[25] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[26] 15 U.S.C. 78f(b)(5).

[27] *See* Notice, *supra* note 3, at 55899.

[28] *See id. See also, supra* note 14.

[29] *See id.*

[30] *See id.* at 55899–900.

[31] *See supra* note 14.

component options and provide a clear alternate process to allow the Exchange to calculate a Closing VWAP.

In addition, the Exchange states it will monitor for any potential manipulation of the Volatility Index settlement value in the normal course of its surveillance and will monitor the integrity the Volatility Index by analyzing trades, quotations, and orders that affect any of the 300 calculated reference prices for any of the NDX option series used for the Closing VWAP for potential manipulation on the Exchange.[32] Consistent with the original approval of the listing and trading of VOLQ options,[33] the Commission believes that the Exchange's surveillance of options on the Volatility Index and the component option series will allow it to adequately surveil for any potential manipulation in the trading of VOLQ and will help to ensure that the settlement value is not readily susceptible to manipulation.

Accordingly, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[34] and the rules and regulations thereunder applicable to a national securities exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[35] that the proposed rule change (SR–Phlx–2021–56) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[36]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25754 Filed 11–24–21; 8:45 am]

BILLING CODE 8011–01–P

[32] See Approval Order at *supra* note 5 for a more detailed description of the Exchange's planned surveillances.

[33] *See* Approval Order, *supra* note 5.

[34] 15 U.S.C. 78f(b)(5).

[35] *Id.*

[36] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93630; File No. SR–FINRA–2021–028]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036

November 19, 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 November 12, 2021, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. 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

FINRA is proposing to extend, to April 26, 2022, the implementation date of the amendments to FINRA Rule 4210 (Margin Requirements) pursuant to SR–FINRA–2015–036, other than the amendments pursuant to SR–FINRA–2015–036 that were implemented on December 15, 2016. The proposed rule change would not make any changes to the text of FINRA rules.

The text of the proposed rule change is available on FINRA's website at *http://www.finra.org,* at the principal office of FINRA 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, FINRA 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. FINRA 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

On October 6, 2015, FINRA filed with the Commission proposed rule change SR–FINRA–2015–036, which proposed to amend FINRA Rule 4210 to establish margin requirements for (1) To Be Announced (''TBA'') transactions, inclusive of adjustable rate mortgage (''ARM'') transactions; (2) Specified Pool Transactions; and (3) transactions in Collateralized Mortgage Obligations (''CMOs''), issued in conformity with a program of an agency or Government-Sponsored Enterprise (''GSE''), with forward settlement dates, as defined more fully in the filing (collectively, ''Covered Agency Transactions''). The Commission approved SR–FINRA–2015–036 on June 15, 2016 (the ''Approval Date'').[4]

Pursuant to Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA announced in *Regulatory Notice* 16–31 that the rule change would become effective on December 15, 2017, 18 months from the Approval Date, except that the risk limit determination requirements as set forth in paragraphs (e)(2)(F), (e)(2)(G) and (e)(2)(H) of Rule 4210 and in new Supplementary Material .05, each as respectively amended or established by SR–FINRA–2015–036 (collectively, the ''risk limit determination requirements''), would become effective on December 15, 2016, six months from the Approval Date.[5]

Industry participants sought clarification regarding the implementation of the requirements pursuant to SR–FINRA–2015–036. Industry participants also requested additional time to make system changes necessary to comply with the requirements, including time to test the system changes, and requested additional time to update or amend

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 78081 (June 15, 2016), 81 FR 40364 (June 21, 2016) (Notice of Filing of Amendment No. 3 and Order Granting Accelerated Approval to a Proposed Rule Change to Amend FINRA Rule 4210 (Margin Requirements) to Establish Margin Requirements for the TBA Market, as Modified by Amendment Nos. 1, 2, and 3; File No. SR–FINRA–2015–036).

[5] *See* Partial Amendment No. 3 to SR–FINRA–2015–036 and *Regulatory Notice* 16–31 (August 2016), both available at: *www.finra.org.*

margining agreements and related documentation. In response, FINRA made available a set of Frequently Asked Questions & Guidance [6] and, pursuant to SR–FINRA–2017–029,[7] extended the implementation date of the requirements of SR–FINRA–2015–036 to June 25, 2018, except for the risk limit determination requirements, which, as announced in *Regulatory Notice* 16–31, became effective on December 15, 2016.

Industry participants requested that FINRA reconsider the potential impact of certain requirements pursuant to SR–FINRA–2015–036 on smaller and mid-sized firms. Industry participants also requested that FINRA extend the implementation date pending such reconsideration to reduce potential uncertainty in the Covered Agency Transaction market. In response to these concerns, FINRA further extended the implementation date of the requirements of SR–FINRA–2015–036, other than the risk limit determination requirements, most recently to January 26, 2022 (the ''January 26, 2022 implementation date'').[8] FINRA noted that, as FINRA stated in Partial Amendment No. 3 to SR–FINRA–2015–036, FINRA would monitor the impact of the requirements pursuant to that rulemaking and, if the requirements prove overly onerous or otherwise are shown to negatively impact the market, FINRA would consider revisiting such requirements as may be necessary to mitigate the rule's impact.[9]

Informed by extensive dialogue, both with industry participants and other regulators, including the staff of the SEC and the Federal Reserve System, FINRA has proposed amendments to the requirements of SR–FINRA–2015–036 (the ''Proposed Amendments'').[10] This rulemaking is ongoing. FINRA believes it is appropriate, in the interest of regulatory clarity, to adjust the implementation of the requirements pursuant to SR–FINRA–2015–036 so as to permit time for the Commission to take action on the Proposed Amendments.[11] As such, FINRA is proposing to extend the January 26, 2022 implementation date to April 26, 2022, which date FINRA may propose to further adjust as appropriate in a separate rule filing pending any Commission action on the Proposed Amendments. FINRA notes that the risk limit determination requirements pursuant to SR–FINRA–2015–036 became effective on December 15, 2016 and, as such, the implementation of such requirements is not affected by the proposed rule change.

FINRA has filed the proposed rule change for immediate effectiveness and has requested that the Commission waive the requirement that the proposed rule change not become operative for 30 days after the date of the filing. The operative date will be the date of filing of the proposed rule change.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will help to reduce potential uncertainty in the Covered Agency Transaction market because, pending any Commission action on the Proposed Amendments, the proposed rule change will permit adjustment and alignment, as appropriate, of the implementation of the requirements pursuant to SR–FINRA–2015–036 with the effective date of the Proposed Amendments. FINRA believes that this will thereby protect investors and the public interest by helping to promote stability in the Covered Agency Transaction market.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA 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. FINRA believes that extending the January 26, 2022 implementation date to April 26, 2022, pending any Commission action on the Proposed Amendments, so as to permit adjustment and alignment of the implementation of the requirements pursuant to SR–FINRA–2015–036, as appropriate, with the effective date of the Proposed Amendments, will help to provide clarity to industry participants and to reduce any potential uncertainty in the Covered Agency Transaction market, thereby benefiting all parties.

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

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and Rule 19b–4(f)(6) thereunder.[14]

A proposed rule change filed under Rule 19b–4(f)(6) [15] normally does not become operative for 30 days after the date of filing. However, pursuant to Rule 19b–(f)(6)(iii),[16] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. FINRA has requested that the Commission waive the 30-day operative delay so that the proposal may become operative upon filing. FINRA has stated that the purpose of the proposed rule

[6] Available at: *www.finra.org/rules-guidance/guidance/faqs.* Further, staff of the SEC's Division of Trading and Markets made available a set of Frequently Asked Questions regarding Exchange Act Rule 15c3–1 and Rule 15c3–3 in connection with Covered Agency Transactions under FINRA Rule 4210, also available at: *www.finra.org/rules-guidance/guidance/faqs.*

[7] *See* Securities Exchange Act Release No. 81722 (September 26, 2017), 82 FR 45915 (October 2, 2017) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Delay the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2017–029); *see also Regulatory Notice* 17–28 (September 2017).

[8] *See* Securities Exchange Act Release No. 92897 (September 8, 2021), 86 FR 51207 (September 14, 2021) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Extend the Implementation Date of Certain Amendments to FINRA Rule 4210 Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2021–022).

[9] *See* Partial Amendment No. 3 to SR–FINRA–2015–036, available at: *www.finra.org.*

[10] *See* Securities Exchange Act Release No. 91937 (May 19, 2021), 86 FR 28161 (May 25, 2021) (Notice of Filing of a Proposed Rule Change to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2021–010). *See also* Partial Amendment No. 1 to SR–FINRA–2021–010, available at *www.finra.org.*

[11] *See* Securities Exchange Act Release No. 92713 (August 20, 2021) (Notice of Filing of Amendment No. 1 and Order Instituting Proceedings to Determine Whether to Approve or Disapprove a Proposed Rule Change, as Modified by Amendment No. 1, to Amend the Requirements for Covered Agency Transactions under FINRA Rule 4210 (Margin Requirements) as Approved Pursuant to SR–FINRA–2015–036; File No. SR–FINRA–2021–010).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6).

[16] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. FINRA has satisfied this requirement.

change is to help to avoid unnecessary disruption in the Covered Agency Transaction market pending any Commission action on the amendments that FINRA has proposed to the Covered Agency Transaction margin requirements. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposal to extend the implementation date of the requirements of Rule 4210 does not raise any new or novel issues and will reduce any potential uncertainty in the Covered Agency Transaction market. Therefore, the Commission hereby waives the 30-day operative delay requirement and designates the proposed rule change as operative upon filing.[17]

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–FINRA–2021–028 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–FINRA–2021–028. 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 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. 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–FINRA–2021–028 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25756 Filed 11–24–21; 8:45 am]

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[17] For purposes of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93631; File No. SR–PEARL–2021–56]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

November 19, 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 November 8, 2021, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 MIAX Pearl Options Fee Schedule (the ''Fee Schedule'').

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl'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 proposes to amend the Fee Schedule to amend the exchange groupings of options exchanges within the routing fee table in Section 1)b) of the Fee Schedule, Fees for Customer Orders Routed to Another Options Exchange. The Exchange initially filed this proposal on October 27, 2021 (SR–PEARL–2021–51) and withdrew such filing on November 8, 2021. The Exchange proposes to implement the fee change effective November 8, 2021.

Currently, the Exchange assesses routing fees based upon (i) the origin type of the order, (ii) whether or not it is an order for standard option classes in the Penny Interval Program [3] (''Penny classes'') or an order for standard option classes which are not in the Penny Interval Program (''Non-Penny classes'')

[3] *See* Securities Exchange Act Release No. 88992 (June 2, 2020), 85 FR 35142 (June 8, 2020) (SR–PEARL–2020–06) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Exchange Rule 404, Series of Option Contracts Open for Trading, and Rule 510, Minimum Price Variations and Minimum Trading Increments, To Conform the Rules to Section 3.1 of the Plan for the Purpose of Developing and Implementing Procedures Designed To Facilitate the Listing and Trading of Standardized Options).

(or other explicitly identified classes), and (iii) to which away market it is being routed. This assessment practice is identical to the routing fees assessment practice currently utilized by the Exchange's affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''). This is also similar to the methodology utilized by the Cboe BZX Exchange, Inc. (''Cboe BZX Options''), a competing options exchange, in assessing routing fees. Cboe BZX Options has exchange groupings in its fee schedule, similar to those of the Exchange, whereby several exchanges are grouped into the same category, dependent upon the order's origin type and whether it is a Penny or Non-Penny class.[4]

As a result of conducting a periodic review of the current transaction fees and rebates charged by away markets, the Exchange has determined to amend the exchange groupings of options exchanges within the routing fee table to better reflect the associated costs of routing customer orders to those options exchanges for execution.[5] In particular, the Exchange proposes to amend the exchange groupings in the first row of the table identified as, ''Routed, Priority Customer, Penny Program,'' to relocate Nasdaq BX Options from the first row of the table to the second, also identified as ''Routed, Priority Customer, Penny Program.'' The impact of this proposed change will be that the routing fee for Priority Customer orders in the Penny Program that are routed to Nasdaq BX Options will increase from $0.15 to $0.65. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the third row of the table, identified as ''Routed, Priority Customer, Non-Penny Program,'' to relocate Nasdaq BX Options from the third row of the table to the fourth, also identified as ''Routed, Priority Customer, Non-Penny Program.'' The impact of this proposed change will be that the routing fee for Priority Customer orders in the Non-Penny Program that are routed to Nasdaq BX Options will increase from $0.15 to $1.00. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options to reflect the associated costs for that routed execution.

Next, the Exchange proposes to amend the exchange groupings in the sixth row of the table, identified as ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program,'' to relocate Nasdaq ISE from the exchange groupings in the sixth row of the table to the exchange groupings in the seventh row of the table, also identified as ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program.'' The impact of this proposed change will be that the Exchange routing fee for Public Customer orders that are not Priority Customer orders in the Non-Penny Program that are routed to Nasdaq ISE will increase from $1.00 to $1.15. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq ISE to reflect the associated costs for that routed execution.

Finally, the Exchange proposes to amend the exchange groupings in the seventh row of the table, identified as ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program,'' to relocate Nasdaq BX Options and MIAX Emerald, to the eighth row of the table, also identified as, ''Routed, Public Customer that is not a Priority Customer, Non-Penny Program.'' The impact of this proposed change will be that the routing fee for Public Customer orders that are not Priority Customer orders in the Non-Penny Program that are routed to Nasdaq BX Options or MIAX Emerald will increase from $1.15 to $1.25. The purpose of the proposed rule change is to adjust the routing fee for certain orders routed to Nasdaq BX Options or MIAX Emerald to reflect the associated costs for that routed execution. The Exchange notes that no options exchanges were removed from the routing fee table entirely, with the only change being the change in categorization.

Accordingly, with the proposed change, the routing fee table will be as follows:

Description	Fees
Routed, Priority Customer, Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, Nasdaq MRX, MIAX, Nasdaq PHLX (except SPY)	$0.15
Routed, Priority Customer, Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, Nasdaq ISE, NOM, Nasdaq PHLX (SPY only), MIAX Emerald, Nasdaq BX Options	0.65
Routed, Priority Customer, Non-Penny Program, to: NYSE American, BOX, Cboe, Cboe EDGX Options, Nasdaq ISE, Nasdaq MRX, MIAX, Nasdaq PHLX	0.15
Routed, Priority Customer, Non-Penny Program, to: NYSE Arca Options, Cboe BZX Options, Cboe C2, Nasdaq GEMX, NOM, MIAX Emerald, Nasdaq BX Options	1.00
Routed, Public Customer that is not a Priority Customer, Penny Program, to: NYSE American, NYSE Arca Options, Cboe BZX Options, BOX, Cboe, Cboe C2, Cboe EDGX Options, Nasdaq GEMX, Nasdaq ISE, Nasdaq MRX, MIAX Emerald, MIAX, NOM, Nasdaq PHLX, Nasdaq BX Options	0.65
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: NYSE American, MIAX, Cboe, Nasdaq PHLX, Cboe EDGX Options	1.00
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe C2, NOM, BOX, Nasdaq ISE	1.15
Routed, Public Customer that is not a Priority Customer, Non-Penny Program, to: Cboe BZX Options, NYSE Arca Options, Nasdaq GEMX, Nasdaq MRX, Nasdaq BX Options, MIAX Emerald	1.25

In determining to amend its routing fees the Exchange took into account transaction fees and rebates assessed by the away markets to which the Exchange routes orders, as well as the Exchange's clearing costs, administrative, regulatory, and technical costs associated with routing orders to an away market. The Exchange uses unaffiliated routing brokers to route orders to the away markets; the costs associated with the use of these services

[4] *See* Cboe U.S. Options Fee Schedules, BZX Options, effective August 2, 2021, ''Fee Codes and Associated Fees,'' at *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.*

[5] Nasdaq BX established a Customer Taker fee of $0.46 in Penny Classes and $0.65 in Non-Penny Classes. *See* Securities Exchange Act Release No. 91473 (April 5, 2021), 86 FR 18562 (April 9, 2021) (SR–BX–2021–009). Nasdaq BX recently increased the Customer Taker fee in Non-Penny Classes from $0.65 to $0.79. *See* Securities Exchange Act Release No. 93121 (September 24, 2021), 86 FR 54259 (September 30, 2021) (SR–BX–2021–040).

are included in the routing fees specified in the Fee Schedule. This routing fees structure is not only similar to the Exchange's affiliates, MIAX and MIAX Emerald, but is also comparable to the structure in place on at least one other competing options exchange, such as Cboe BZX Options.[6] The Exchange's routing fee structure approximates the Exchange's costs associated with routing orders to away markets. The per-contract transaction fee amount associated with each grouping closely approximates the Exchange's all-in cost (plus an additional, non-material amount)[7] to execute that corresponding contract at that corresponding exchange. The Exchange notes that in determining whether to adjust certain groupings of options exchanges in the routing fee table, the Exchange considered the transaction fees and rebates assessed by away markets, and determined to amend the grouping of exchanges that assess transaction fees for routed orders within a similar range. This same logic and structure applies to all of the groupings in the routing fee table. By utilizing the same structure that is utilized by the Exchange's affiliates, MIAX and MIAX Emerald, the Exchange's Members[8] will be assessed routing fees in a similar manner. The Exchange believes that this structure will minimize any confusion as to the method of assessing routing fees between the three exchanges. The Exchange notes that its affiliates, MIAX and MIAX Emerald, will file to make the same proposed routing fee changes contained herein.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. The Exchange also believes the proposal furthers the objectives of Section 6(b)(5) of the Act[11] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

The Exchange believes the proposed change to the exchange groupings of options exchanges within the routing fee table furthers the objectives of Section 6(b)(4) of the Act and is reasonable, equitable and not unfairly discriminatory because the proposed change will continue to apply in the same manner to all Members that are subject to routing fees. The Exchange believes the proposed change to the routing fee table exchange groupings furthers the objectives of Section 6(b)(5) of the Act and is designed to promote just and equitable principles of trade and is not unfairly discriminatory because the proposed change seeks to recoup costs that are incurred by the Exchange when routing customer orders to away markets on behalf of Members and does so in the same manner to all Members that are subject to routing fees. The costs to the Exchange to route orders to away markets for execution primarily includes transaction fees and rebates assessed by the away markets to which the Exchange routes orders, in addition to the Exchange's clearing costs, administrative, regulatory and technical costs. The Exchange believes that the proposed re-categorization of certain exchange groupings would enable the Exchange to recover the costs it incurs to route orders to Nasdaq BX Options, Nasdaq ISE, and MIAX Emerald. The per-contract transaction fee amount associated with each grouping approximates the Exchange's all-in cost (plus an additional, non-material amount) to execute the corresponding contract at the corresponding exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes its proposed re-categorization of certain exchange groupings is intended to enable the Exchange to recover the costs it incurs to route orders to away markets, particularly Nasdaq BX Options and Nasdaq ISE. The Exchange does not believe that this proposal imposes any unnecessary burden on competition because it seeks to recoup costs incurred by the Exchange when routing orders to away markets on behalf of Members and at least one other options exchange has a similar routing fees structure.[12]

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 is effective upon filing pursuant to Section 19(b)(3)(A)[13] of the Act and subparagraph (f)(2) of Rule 19b–4[14] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[15] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–PEARL–2021–56 on the subject line.

[6] *See supra* note 4. The Cboe BZX Options fee schedule has exchange groupings, whereby several exchanges are grouped into the same category, dependent on the order's Origin type and whether it is a Penny or Non-Penny class. For example, Cboe BZX Options fee code RR covers routed customer orders in Non-Penny classes to NYSE Arca, Cboe C2, Nasdaq ISE, Nasdaq Gemini, MIAX Emerald, MIAX Pearl, or NOM, with a single fee of $1.25 per contract.

[7] This amount is to cover de minimis differences/changes to away market fees (*i.e.,* minor increases or decreases) that would not necessitate a fee filing by the Exchange to re-categorize the away exchange into a different grouping. Routing fees are not intended to be a profit center for the Exchange and the Exchange's target regarding routing fees and expenses is to be as close as possible to net neutral.

[8] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* the Definitions section of the Fee Schedule and Exchange Rule 100.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 15 U.S.C. 78f(b)(5).

[12] *See supra* note 6.

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(2).

[15] 15 U.S.C. 78s(b)(2)(B).

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–PEARL–2021–56. 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–PEARL–2021–56 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25757 Filed 11–24–21; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93618; File No. S7–24–89]

Joint Industry Plan; Notice of Filing of the Fifty-Second Amendment to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis

November 19, 2021.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 608 thereunder,[2] notice is hereby given that on November 5, 2021,[3] certain participants in the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan'' or ''Plan'') filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the UTP Plan.[4] The amendment represents the Fifty-Second Amendment to the Plan (''Amendment''). Under the Amendment, the Participants propose to amend the Plan to adopt fees for the receipt of the expanded content of consolidated market data pursuant to the Commission's Market Data Infrastructure Rules (''MDI Rules'').[5] The Participants have submitted a separate amendment to implement the non-fee-related aspects of the MDI Rules.

The proposed Amendment has been filed by the Participants pursuant to Rule 608(b)(2) under Regulation NMS.[6] The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendment. Set forth in Sections I and II, which were prepared and submitted to the Commission by the Participants, is the statement of the purpose and summary of the Amendment, along with information pursuant to Rules 608(a) and 601(a) under the Act. A copy of the Plan marked to show the proposed Amendment is Attachment A to this notice.

I. Rule 608(a)

A. Purpose of the Amendments

On December 9, 2020, the Commission adopted amendments to Regulation NMS. The effective date of these final rules was June 8, 2021. As specified in the MDI Rules Release, the Participants must submit updated fees regarding the receipt and use of the expanded content of consolidated market data by November 5, 2021.[7] Consistent with that requirement, the Participants are submitting the above-captioned amendments to the UTP Plan to propose such fees.[8]

The Participants are proposing a fee structure for the following three categories of data, which collectively comprise the amended definition of core data, as that term is defined in amended Rule 600(b)(21) of Regulation NMS:[9]

(1) Level 1 Service, which the Participants propose would include Top of Book Quotations, Last Sale Price Information, and odd-lot information (as defined in amended Rule 600(b)(59)). Plan fees to subscribers currently are for Top of Book Quotations and Last Sale Price Information, as well as what is now defined as administrative data (as defined in amended Rule 600(b)(2)), regulatory data (as defined in amended Rule 600(b)(78)), and self-regulatory

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] *See* Letter from Robert Books, Chair, UTP Operating Committee, to Vanessa Countryman, Secretary, Commission (Nov. 5, 2021).

[4] The amendment was approved and executed by more than the required two-thirds of the self-regulatory organizations (''SROs'') that are participants of the UTP Plan. The participants that approved and executed the amendment (the ''Participants'') are: Cboe BYX Exchange, Inc., Cboe BZX Exchange, Inc., Cboe EDGA Exchange, Inc., Cboe EDGX Exchange, Inc., Cboe Exchange, Inc., Nasdaq ISE, LLC, Nasdaq PHLX, Inc., The Nasdaq Stock Market LLC, New York Stock Exchange LLC, NYSE American LLC, NYSE Arca, Inc., NYSE Chicago, Inc., and NYSE National, Inc.. The other SROs that are participants in the UTP Plan are: Financial Industry Regulatory Authority, Inc., The Investors' Exchange LLC, Long-Term Stock Exchange, Inc., MEMX LLC, MIAX PEARL, LLC, and Nasdaq BX, Inc.. *See infra* Section I. G.

[5] Securities Exchange Act Release No. 90610, 86 FR 18596 (April 9, 2021) (File No. S7–03–20) (''MDI Rules Release'').

[6] 17 CFR 242.608(b)(2).

[7] MDI Rules Release at 18699.

[8] As the Commission is aware, some of the SROs (the ''Petitioners'') have challenged the MDI Rules Release in the D.C. Circuit. Certain of the Petitioners have joined in this submission, including the statement that the Plan amendments comply with the MDI Rules Release, solely to satisfy the requirements of the MDI Rules Release and Rule 608. Nothing in this submission should be construed as abandoning any arguments asserted in the D.C. Circuit, as an agreement by Petitioners with any analysis or conclusions set forth in the MDI Rules Release, or as a concession by Petitioners regarding the legality of the MDI Rules Release. Petitioners reserve all rights in connection with their pending challenge of the MDI Rules Release, including *inter alia,* the right to withdraw the proposed amendment or assert that any action relating to the proposed amendment has been rendered null and void, depending on the outcome of the pending challenge. Petitioners further reserve all rights with respect to this submission, including *inter alia,* the right to assert legal challenges regarding the Commission's disposition of this submission.

[9] 17 CFR 242.600(b)(26) (''Rule 600'').

organization-specific program data (as defined in amended Rule 600(b)(85)). The Participants propose that Level 1 Service would continue to include all information that subscribers receive for current fees and add odd-lot information;

(2) Depth of book data (as defined in amended Rule 600(b)(26)); and

(3) Auction information (as defined in amended Rule 600(b)(5)).[10]

Professional and Nonprofessional Fee Structure

For each of the three categories of data described above, the Participants are proposing a Professional Subscriber Charge and a Nonprofessional Subscriber Charge.

With respect to Level 1 Service, the Participants are not proposing to change the Professional Subscriber and Nonprofessional Subscriber fees currently set forth in the UTP Plan. Access to odd-lot information would be made available to Level 1 Service Professional and Nonprofessional Subscribers at no additional charge.

With respect to depth of book data, Professional Subscribers would pay $99.00 per device per month and Nonprofessional Subscribers would pay $4.00 per subscriber per device per month. The Participants are not proposing per-quote packet charges or enterprise rates for either Professional Subscribers or Nonprofessional Subscribers use of depth of book data at this time.

Finally, with respect to auction information, both Professional Subscribers and Nonprofessional Subscribers would pay $10.00 per device per month.

Non-Display Use Fees

The Participants are proposing Non-Display Use Fees relating to the three categories of data described above: (1) Level 1 Service; (2) depth of book data; and (3) auction information.

With respect to Level 1 Service, the Participants are not proposing to change the Non-Display Use fees currently set forth in the UTP Plan. Access to odd-lot information would be made available to Level 1 Service subscribers at no additional charge.

With respect to depth of book data, Subscribers would pay Non-Display Use Fees of $12,477.00 per month for each category of Non-Display Use.

With respect to auction information, Subscribers would pay Non-Display Use fees of $1,248.00 per month for each category of Non-Display Use. As is the case today, Subscribers would be charged for each category of use of depth of book data and auction information.

Access Fees

Finally, the Participants are proposing Access Fees regarding the use of the three categories of data: (1) Level 1 Service; (2) depth of book data; and (3) auction information.

With respect to Level 1 Service, the Participants are not proposing to change the Access Fees currently set forth in the UTP Plan. Access to odd-lot information would be made available to Level 1 Service subscribers at no additional charge.

With respect to depth of book data, Subscribers would pay a monthly Access Fee of $9,850.00

With respect to auction information, Subscribers would pay a monthly Access Fee of $985.00 per Network.

Clarifications Related to Expanded Content

In addition to the above fees, the Participants propose adding clarifying language regarding the applicability of various fees given the availability of the expanded market data content.

First, the Participants propose to clarify that the Per Query Fee is not applicable to the expanded content, and only applies to the receipt and use of Level 1 Service. Under the current Price List, the Per Query Fee serves as an alternative fee schedule to the normally applied Professional and Nonprofessional Subscriber Charges. The proposed changes are designed to clarify that Per Query Fee is only available with respect to the use of Level 1 Service, and the fees for the use of depth of book data and auction information must be determined pursuant to the Professional and Nonprofessional fees described above.

Second, the Participants propose to clarify that Level 1 Service would include Top of Book Quotation Information, Last Sale Price Information, odd-lot information, administrative data, regulatory data, and self-regulatory organization program data. This proposed amendment would use terms defined in amended Rule 600(b) to reflect both current data made available to data subscribers and the additional odd-lot information that would be included at no additional charge.

Third, the Participants are proposing to clarify that the existing Redistribution Fees would be applicable to all three categories of core data, including any subset thereof. Currently, Redistribution Fees are charged to any entity that makes last sale information or quotation information available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. The Participants propose to amend this description to make it applicable to core data, as that term is defined in amended Rule 600(b)(21). The Participants are not proposing to change the fee level for Redistribution Fees themselves.

Fourth, the Participants are proposing that the existing Redistribution Fees would be applicable to Competing Consolidators. In the MDI Rules approval order, the SEC stated that ''[t]he Commission believes imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model.'' [11] The Commission then compared Competing Consolidators to Self- Aggregators and noted that Self-Aggregators would not be subject to redistribution fees. The Participants believe that the comparison between Competing Consolidators and Self-Aggregators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory. The Participants also do not believe that the Commission's comparison is consistent with current long-standing practice that redistribution fees are charged to any entity that distributes data externally.[12] By definition, a Self-Aggregator would not be distributing data externally and therefore would not be subject to such

[10] The Participants propose to price subsets of data that comprise core data separately so that data subscriber users have flexibility in how much consolidated market data content they wish to purchase. For example, the Participants understand that certain data subscribers may not wish to add depth of book data or auction information, or may want to add only depth of book information, but not auction information. Accordingly, Participants are proposing to price subsets of data to provide flexibility to data subscribers. However, the Participants expect that Competing Consolidators would be purchase all core data.

[11] MDI Rules Release at 18685.

[12] The current exclusive securities information processor (''SIP'') is not charged a Redistribution Fee. However, unlike Competing Consolidators, the processor has been retained by the UTP Plan to serve as an exclusive SIP, is subject to oversight by both the UTP Plan and the Commission, and neither pays for the data nor engages with data subscriber customers. By contrast, under the Competing Consolidator model, the UTP Plan would have no role in either oversight of or determining which entities choose to be a Competing Consolidator, a Competing Consolidator would need to purchase consolidated market data just as any other vendor would, and Competing Consolidators would be responsible for competing for data subscriber clients. Accordingly, Competing Consolidators would be more akin to vendors than the current exclusive SIPs. The Participants note that if any entity that is currently an exclusive SIP chooses to register as a Competing Consolidator, such entity would be subject to the Redistribution Fee.

fees, which is consistent with current practice that a Subscriber to consolidated data that only uses data for internal use is not charged a Redistribution Fee.

Instead, the more appropriate comparison would be between Competing Consolidators and downstream vendors, both of which would be selling consolidated market data directly to market data subscribers. Vendors are and still would be subject to Redistribution Fees when redistributing data to market data subscribers. It would be unreasonably discriminatory for Competing Consolidators, which would be competing with downstream market data vendors for the same data subscriber customers, to not be charged a Redistribution Fee for exactly the same activity. Consequently, the Participants believe that it would be unreasonably discriminatory and impose a burden on competition to not charge Competing Consolidators the Redistribution Fee.[13]

Third, the UTP Plan fee schedule currently permits the redistribution of UTP Level 1 Service on a delayed basis for $250.00 per month. The Participants propose adding a statement that depth of book data and auction information may not be redistributed on a delayed basis.

Finally, the Participants are proposing to make non-substantive changes to language in the fee schedules to take into account the expanded content. For example, the Participants propose updating various fee descriptions to either add or remove a reference to UTP Level 1 Service. Additionally, while FINRA OTC Data will not be provided to Competing Consolidators, it is still being provided to the UTP Processor for inclusion in the consolidated market data made available by the UTP Processor. The Participants propose adding clarifying language to make clear that UTP Level 1 Service obtained from the Processor will include FINRA OTC Data but will not include Odd-lot information.

B. Governing or Constituent Documents

Not applicable.

C. Implementation of Amendments

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

D. Development and Implementation Phases

The amendments proposed herein would be implemented to coincide with the phased implementation of the MDI Rules as required by the Commission.

E. Analysis of Impact on Competition

The Participants believe that the proposed amendments comply with the requirements of the MDI Rules, which have been approved by the Commission.

F. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plans

Not applicable.

G. Approval by Sponsors in Accordance With Plan

Section IV.C.2 of the UTP Plan provides that ''[t]he affirmative vote of two-thirds of the Participants entitled to vote shall be necessary to constitute the action of the Operating Committee with respect to the establishment of new fees, the deletion of existing fees, or increases or reductions in existing fees relating to Quotation Information and Transaction Reports in Eligible Securities.''

The Participants have executed this Amendment and represent not less than two-thirds of all of the parties to the UTP Plan. That satisfies the UTP Plan's Participant-approval requirements.[14]

H. Description of Operation of Facility Contemplated by the Proposed Amendment

Not applicable.

I. Terms and Conditions of Access

Not applicable.

J. Method of Determination and Imposition, and Amount of, Fees and Charges

Fees established for consolidated market data must be fair and reasonable and not unreasonably discriminatory.[15] The Commission expressed that the Operating Committee of the UTP Plan ''should continue to have an important role in the operation, development, and regulation of the national market system for the collection, consolidation, and dissemination of consolidated market data.'' [16] The Commission further stated that ''the fees for data content underlying consolidated market data, as now defined, are subject to the national market system process that has been established,'' and that the ''Operating Committee(s) have plenty of experience in developing fees for SIP data.'' [17]

The Operating Committee is bringing this experience to bear to determine the fees for the new core data elements and is proposing fees that are fair and reasonable and not unreasonably discriminatory. The Commission has stated that one way to demonstrate that fees for consolidated market data are fair and reasonable is to show that they are reasonably related to costs. However, the Exchange Act does not require a showing of costs, and historically, the UTP Plan has not demonstrated that their fees are fair and reasonable on the basis of cost data.

Moreover, under the decentralized Competing Consolidator model, the Operating Committee has no knowledge of any of the costs associated with consolidated market data. Under the current exclusive SIP model, the Operating Committee (1) specifies the technology that each Participant must use to provide the SIPs with data, and (2) contracts directly with a SIP to collect, consolidate, and disseminate consolidated market data, and therefore has knowledge of a subset of costs associated with collecting and consolidating market data. By contrast, under the decentralized Competing Consolidator model, the UTP Plan no longer has a role in either specifying the technology associated with exchanges providing data or contracting with a SIP. Rather, as specified in amended Rule 603(b), each national securities exchange will be responsible for determining the methods of access to and format of data necessary to generate consolidated market data. Moreover, Competing Consolidators will be responsible for connecting to the

[13] The Participants believe it would be more appropriate to compare Competing Consolidators and Self-Aggregators with respect to the fees charged for *receipt* and use of market data from the Participants and address the fees for the usage of consolidated market data based on their actual usage, which is consistent with the statutory requirements of the Act that the data be provided on terms that are not unreasonably discriminatory. For instance, Participants have proposed to charge a data access fee to Competing Consolidators that would be the same fee to Self-Aggregators.

[14] FINRA, IEX, LTSE, MIAX, and MEMX have not joined in the decision to approve the filing of the proposed amendment, and Nasdaq BX is also withholding its vote at the time. Additionally, the Advisory Committee requested that the following statement be inserted into the filing: The Advisory Committee has actively participated in the rate setting process with the SROs and has provided the SROs with opinion and guidance on rate setting appropriate to the interests of consumers throughout the process. The Advisors collectively believe that SIP data content fees should be universally lower to align with the un-coupling of SIP data content from the SIP exclusive processor, a function to be performed by Competing Consolidators. The Advisors believe that while their input was important in the process, the core principle of fees being fair and reasonable was not achieved.

[15] 15 U.S.C. 78o(c)(1)(C) and (D) and Rule 603(a)(1) and (2).

[16] MDI Rules Release at 18682.

[17] MDI Rules Release at 18683.

exchanges to obtain data directly from each exchange, without any involvement of the Operating Committee. Nor does the Operating Committee have access to information about how each exchange would generate the data that they each would be required to disseminate under amended Rule 603(b). Accordingly, under the decentralized Competing Consolidator model, the Operating Committee does not have access to any information about the cost of providing consolidated market data.

In the absence of cost information being available to the Operating Committee, the Participants believe instead that fees for consolidated market data are fair and reasonable and not unreasonably discriminatory if they are related to the value of the data to subscribers. The Participants believe that the value of depth of book data and auction information is well-established, as this content has been available to market participants directly from the exchanges for years, and in some cases, decades, at prices constrained by direct and platform competition. Exchanges have filed fees for this data pursuant to the standards specified in Section 6(b)(5) of the Act.

To determine the value of depth of book data, the Participants considered a number of methodologies to determine the appropriate level to set fees for the expanded data content that are based on the current fees charged for depth of book data by exchanges that have chosen to charge for their data. In particular, the Participants reviewed (1) an ISO Trade-Based Model [18]; (2) a Depth to Top-Of-Book Ratio Model (''Depth-to-TOB Model''); and (3) a Message-Based Model.[19] Ultimately, the Participants selected a Depth-to-TOB Model to determine the appropriate fees for the expanded data content.

In particular, the Participants reviewed the depth to top-of-book ratios of Professional device rates on Nasdaq (Nasdaq Basic/Nasdaq TotalView), Cboe (Cboe Full Depth) and NYSE (BQT/NYSE Integrated). In addition, IEX has recently proposed data access fees for its TOPS and DEEP data feeds, which are not proposed to be charged on a per individual basis. The Participants also reviewed the ratio proposed by IEX between its proposed fees for real-time top of book and depth feeds (TOPS/DEEP), as set forth below:

Exchange	Product	Prop Level 1	Depth	Ratio (%)
Nasdaq	Nasdaq Basic/Nasdaq Total View	$26	$76	292
Cboe	Cboe ONE Summary/Cboe Full Depth	10	100	1000
NYSE	BQT/NYSE Integrated	18	70	389
IEX	TOPS/DEEP	500	2,500	500

The Participants noted that utilizing the ratios calculated for Nasdaq, NYSE, and IEX resulted in an average ratio of 3.94x and resulted in market data fees the Participants believe are fair and reasonable.

The Participants also conducted alternative calculations by including a broader range of products or those products offering more robust depth fees. These alternative calculations resulted in ratios greater than 3.94x and were not selected by the Participants. The Participants believe that the 3.94x ratio represents the difference in value between top-of-book and five levels of depth that would be required to be included in consolidated market data under amended Rule 603(b). Because the alternate methodologies, which focused on only the top five levels of depth, resulted in higher ratios, the Participants believe that the more conservative 3.94x ratio would be a fair and reasonable ratio between the proposed fees for depth of book data required to be included in the consolidated market data and the current fees for the existing Top of Book Quotation information.

The Participants then applied the 3.94x ratio to the current fees charged for consolidated market data, as follows:

• The Participants applied the 3.94x ratio to the current fees charged to Professional Subscribers taking all three Networks ($75.00). This resulted in the total fee level for depth of book data for Professional Subscribers equaling $296.00 (*i.e.,* $75.00 × 3.94 = $295.50, rounded to $296.00). This fee was then split evenly among the three Networks resulting in a proposed Professional Subscriber fee of $99.00 per Network.

• The Participants applied the 3.94x ratio to the current fees charged for Nonprofessional Subscribers taking all three Networks ($3.00). This resulted in the total fee level for depth of book data for Nonprofessional Subscribers equaling $12.00 (*i.e.,* $3.00 × 3.94 = $11.82, rounded to $12.00). This fee was then split evenly among the three Networks, resulting in a proposed Nonprofessional Subscriber fee of $4.00 per Network.

• The Participants applied the 3.94x ratio to the current fees charged for Non-Display Use for all three Networks ($9,500.00). This resulted in the total fee level for depth of book data for Non-Display Use equaling $37,430.00 (*i.e.,* $9,500.00 × 3.94 = $37,430.00). This fee was then split evenly among the three Networks, resulting in a proposed Non-Display Use Fee of $12,477.00 per Network (including rounding).

• The Participants applied the 3.94x ratio to the current fees charged for direct Data Access for all three Networks ($7,500.00). This resulted in the total fee level for depth of book data for Non-Display Use equaling $29,550.00 (*i.e.,* $7,500.00 × 3.94 = $29,550.00). This fee was then split evenly among the three Networks (including Network C), resulting in a proposed Non-Display Use Fee of $9,850.00 per Network.

With respect to the fees for auction information, the Participants looked to the number of trades that occur during the auction process as compared to the trading day, and determined that roughly 10% of the trading volume is concentrated in auctions. Consequently, the Participants believed that charging a fee that was 10% of the fee charged for depth of book data was an appropriate proxy for determining the value of auction information. As a result, the Participants proposed a $10.00 fee per Network for auction information, which the Participants believe is fair and reasonable and not unreasonably discriminatory.

With respect to the fees for Level 1 Service, the Participants believe that it is fair and reasonable and not unreasonably discriminatory to include access to odd-lot information at no additional charge to the current fees, which the Participants are not proposing to change.

[18] The ISO-Based model analyzed the number of intermarket sweep orders executing through the NBBO, looking at the number of ISOs executed in the first five levels of depth as compared to all ISOs executed.

[19] The Message-based model looked at the total number of orders displayable in the first five levels of depth as compared to all displayable orders.

Finally, as detailed above, the Participants are proposing to specify that the existing Redistribution Fees would be applicable to the amended core data, and that such fees would also be applicable to Competing Consolidators. In the MDI Rules Release, the SEC stated that ''[t]he Commission believes imposing redistribution fees on data content underlying consolidated market data that will be disseminated by competing consolidators would be difficult to reconcile with statutory standards of being fair and reasonable and not unreasonably discriminatory in the new decentralized model.'' The Commission then compared Competing Consolidators to Self- Aggregators and noted that Self-Aggregators would not be subject to redistribution fees. The Participants believe that the comparison between Competing Consolidators and Self-Aggregators is not appropriate in determining whether a redistribution fee is not unreasonably discriminatory. Instead, the more appropriate comparison would be between Competing Consolidators and downstream vendors, both of which would be competing to sell consolidated market data directly to the same market data subscribers. Vendors are and still will be subject to Redistribution Fees when redistributing data to market data subscribers. It would be incongruent and impose a burden on competition for Competing Consolidators to not be charged a redistribution fee for exactly the same activity. Consequently, the Participants believe that it would be unreasonably discriminatory to not charge Competing Consolidators the redistribution fee. To the contrary, based on the long-standing policy that Redistribution Fees are charged to *any* entity that distributes data externally, the Participants believe it would be a significant departure from established policy, a burden on competition, and unreasonably discriminatory *not* to charge a Redistribution Fee to Competing Consolidators.

K. Method and Frequency of Processor Evaluation

Not applicable.

L. Dispute Resolution

Not applicable.

II. Rule 601(a)

A. Reporting Requirements

Not applicable.

B. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

C. Manner of Consolidation

Not applicable.

D. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

E. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

F. Terms of Access to Transaction Reports

Not applicable.

G. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

The Commission seeks comments on the Amendment. Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendment is consistent with the Act and the rules and regulations thereunder applicable to national market system plans. 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 S7–24–89 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 S7–24–89. 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 website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all written statements with respect to the proposed Amendment that are filed with the Commission, and all written communications relating to the proposed Amendment 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 3:00p.m. Copies of the filing will also be available for website viewing and printing at the principal office of the Plan.

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 S7–24–89 and should be submitted on or before December 17, 2021.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Assistant Secretary.

Attachment A—Proposed Changes to the UTP Plan

Attachment A

Proposed Changes to the UTP Plan

(Additions are *italicized;* Deletions are in [brackets].)

Exhibit 2

Fees for UTP Services

(a) [UTP Level 1 Service] *Professional Services.*

The charge for each interrogation device receiving UTP Level 1 Service is $24.00 per month. This Service includes the following data:

(1) Inside bid/ask quotations calculated for securities listed in The Nasdaq Stock Market;

(2) last sale information on Nasdaq-listed securities;

(3) Odd-lot information; and

(4) Administrative data, regulatory data, and self-regulatory organization-specific program data.

UTP Level 1 Service *obtained from the Processor* [also] includes FINRA OTC Data *but will not include Odd-lot information.*

The charge for each interrogation device receiving depth of book data is $99.00 per month. The charge for each interrogation device receiving auction information is $10.00 per month.

Vendors with employees that are [UTP Level 1] Professional Subscribers may opt to join the ''Multiple Instance, Single User'' (''MISU'') Program. The MISU Program allows such Vendors to pay a single device fee for an individual employee's use of [UTP Level 1 Service] *data* when the individual employee receives [UTP Level 1 Service] *data* on

[20] 17 CFR 200.30–3(a)(85).

multiple devices. The MISU Program permits a single device fee for an individual on multiple devices regardless of whether the individual employee uses an internally-controlled devices or vendor-controlled terminals.

To join the MISU Program, Vendors must be party to a vendor agreement, submit a MISU application form, and a sample MISU Report to demonstrate that the Vendor can comply with the reporting requirements of the MISU Program. Additionally, Vendors must demonstrate adequate internal controls for entitlements, monitoring, and usage reporting requirements.

Vendors must submit a MISU Report in a format and include the details requested by the UTP Administrator by the 20th day of the month for which they are requesting credit. Failure to submit a MISU Report by the deadline will result in credit being forfeited for that particular month.

(b) Non-Professional Services.

(1) The charge for distribution of UTP Level 1 Service to a nonprofessional subscriber shall be $1.00 per interrogation device per month.

(2) The charge for distribution of depth of book data to a non-professional subscriber shall be $4 per interrogation device per month.

(3) The charge for distribution of auction information to a non-professional subscriber shall be $10 per interrogation device per month.

[(2)]*(4)* A ''non-professional'' is a natural person who is neither:

(A) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association or any commodities or futures contract market or association;

(B) engaged as an ''investment adviser'' as that term is defined in Section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor

(C) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

(c) Automated Voice Response Service Fee.

The monthly charge for distribution of UTP Level 1 Service through automated voice response services shall be $21.25 for each voice port.

(d) Per Query Fee:

The charge for distribution of UTP Level 1 Service through a per query system shall be $.0075 per query. *The Per Query Fee is not available for depth of book data and auction information.*

(e) Nonprofessional Subscriber Enterprise Cap

An entity that is registered as a broker/dealer under the Securities Exchange Act of 1934 is not required to pay more than the ''Enterprise Maximum'' for any month for each entitlement system. The ''Enterprise Maximum'' equals the aggregate amount of fees payable for distribution of UTP Level 1 Service to nonprofessional subscribers that are brokerage account customers of the broker/dealer under paragraphs (b)(1) and (d) of this Exhibit 2.

For calendar year 2016, the monthly Enterprise Maximum is $648,000 per entitlement system. For each subsequent calendar year, the Participants may, by the affirmative vote of not less than two-thirds of all of the then voting members of the Operating Committee, determine to increase the monthly Enterprise Maximum; provided, however, that no such annual increase shall exceed four percent of the then current Enterprise Maximum amount.

(f) Cable Television Ticker Fee.

The monthly charge for distribution of UTP Level 1 Service through a cable television distribution system shall be as set forth below:

First 10 million Subscriber Households—$2.00 per 1,000 households

Next 10 million Subscriber Households—$1.00 per 1,000 households

For Subsequent Subscriber Households—$0.50 per 1,000 households

(g) Data Access Charges.[1]

The monthly fee for direct access to UTP Level 1 real-time data feeds shall be $2,500 for direct access and $500 for indirect access.

The monthly fee for access to depth of book data shall be $9,850. The monthly fee for access to auction information shall be $985.

(h) Redistribution Charge

The charge for redistributing real-time [UTP Level 1 Service] *core data, or any subset thereof,* is $1,000 per month. The charge for redistributing delayed UTP Level 1 Service is $250 per month. *Depth of book data and auction information may not be redistributed on a delayed basis.* The charge applies to any entity that makes [UTP Level 1 Service] *data* available to any other entity or to any person other than its employees, irrespective of the means of transmission or access. *The charge applies to Competing Consolidators.*

(i) Non-Display Use Fees

The monthly charge for Non-Display Use *of UTP Level 1 Service* is $3,500 for each of three types of Non-Display Use. The charge entitles the data recipient to use both quotation information and last sale information.

The monthly charge for Non-Display Use of depth of book data is $12,477 for each of three types of Non-Display Use. The monthly charge for Non-Display Use of auction information is $1,248 for each of three types of Non-Display Use.

Non-Display Use refers to accessing, processing or consuming data, whether received via direct and/or redistributor data feeds, for a purpose other than (a) in support of the datafeed recipient's display or (b) for the purpose of further internally or externally redistributing the data. Further redistribution of the data includes, but is not limited to, the transportation or dissemination to another server, location or device or the aggregation of data with other data sources. Non-Display Use fees do not apply to the use of the data in Non-Display to create derived data and use the derived data for the purposes of solely displaying the derived data, but the data may be fee liable under the regular fee schedule.

The Non-Display Use fees apply separately for each use type and a single organization may be liable for multiple Non-Display Uses.

The Participants recognize three types of Non-Display Uses as follows:

(a) The Non-Display Use fee for Electronic Trading Systems applies when a datafeed recipient makes a Non-Display Use of data in an electronic trading system, whether the system trades on the datafeed recipient's own behalf or on behalf of its customers. This fee includes, but is not limited to, use of data in any trading platform(s), such as exchanges, alternative trading systems (''ATS's''), broker crossing networks, broker crossing systems not filed as ATS's, dark pools, multilateral trading facilities, and systematic internalization systems.

An organization that uses data in electronic trading systems must count each platform that uses data on a non-display basis. For example, an organization that uses quotation information for the purposes of operating an ATS and also for operating a broker crossing system not registered as an ATS would be required to pay two Electronic Trading System fees.

(b) Non-Display Enterprise Licenses:

(i) The Non-Display Use fee for Internal Use applies when a datafeed recipient's Non-Display Use is on its

[1] The data recipient is responsible for the telecommunications facilities necessary to access data.

own behalf (other than for purposes of an electronic trading system).

(ii) The Non-Display Use fee for Internal Use applies when a datafeed recipient's Non-Display Use is on behalf of its customers (other than for purposes of an electronic trading system).

The two types of Non-Display Enterprise Licenses include, but are not limited to, use of data for automated order or quote generation and/or order pegging, price referencing for algorithmic trading, price referencing for smart order routing, operations control programs, investment analysis, order verification, surveillance programs, risk management, compliance or portfolio valuation.

(j) Annual Administrative Fees.

The annual administrative fee to be paid by distributor for access to UTP Level 1 Service shall be as set forth below:

Delayed distributor—$250

[FR Doc. 2021–25747 Filed 11–24–21; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–93627; File No. SR–IEX–2021–16]

Self-Regulatory Organizations: Investors Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify the Definition of a Retail Order for the Retail Price Improvement Program

November 19, 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 November 12, 2021, the Investors Exchange LLC (''IEX'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, 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

Pursuant to the provisions of Section 19(b)(1) under the Act,[3] and Rule 19b–4 thereunder,[4] the Exchange is filing with the Commission a proposed rule change to modify the definition of a Retail order set forth in IEX Rule 11.190(b)(15) to encourage the submission of more Retail orders. The Exchange has designated this rule change as ''non-controversial'' under Section 19(b)(3)(A) of the Act[5] and provided the Commission with the notice required by Rule 19b–4(f)(6) thereunder.[6]

The text of the proposed rule change is available at the Exchange's website at *www.iextrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statement 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 proposes to modify the definition of a Retail order[7] set forth in IEX Rule 11.190(b)(15) for the benefit of retail investors. Specifically, IEX is proposing to revert a recent change to IEX Rule 11.190(b)(15), so that Retail orders can once again be submitted on behalf of all retail customers without the requirements that the retail customer submits no more than 390 orders per day on average (the ''390-order threshold''). The Exchange proposes to make this change to offer the benefits of IEX's Retail Price Improvement Program (''Retail Program'') to as many retail investors as possible.

Background

In 2019 the Commission approved the Retail Program,[8] which is designed to provide retail investors with meaningful price improvement opportunities through trading at the Midpoint Price[9] or better.[10] The Exchange launched the Retail Program on October 1, 2019.[11]

Under IEX's Retail Program, Members[12] that qualify as Retail Member Organizations (''RMOs'')[13] are eligible to submit Retail orders[14] to the Exchange. Any Member is able to provide price improvement to Retail orders through orders priced to execute at the Midpoint Price or better, including Retail Liquidity Provider (''RLP'') orders[15] that are only eligible to execute against a Retail order at the Midpoint Price and execute in price-time priority with other orders resting on the Order Book priced to trade at the Midpoint Price.

On July 13, 2021, the Commission approved an IEX rule change proposal that revised its Retail Program (the ''Retail Program Update Filing'').[16] The Retail Program Update Filing was designed to further support and enhance the ability of non-professional retail investors to obtain meaningful price improvement by incentivizing market participants to compete to provide such price improvement.[17] Specifically, the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(1).

[4] 17 CFR 240.19b–4.

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4.

[7] *See* IEX Rule 11.190(b)(15).

[8] *See* Securities Exchange Act Release No. 86619 (August 9, 2019), 84 FR 41769 (August 15, 2019) (SR–IEX–2019–05) (SEC order approving IEX's Retail Program).

[9] The term ''Midpoint Price'' means the midpoint of the NBBO. *See* IEX Rule 1.160(t). The term ''NBBO'' means the national best bid or offer, as set forth in Rule 600(b) of Regulation NMS under the Act, determined as set forth in IEX Rule 11.410(b).

[10] On March 1, 2021, IEX filed an immediately effective rule change proposal to provide that, in addition to executing at the Midpoint Price, a Retail order can execute against a displayed unprotected odd lot order that is resting on the Order Book at a price more aggressive than the Midpoint Price (*i.e.,* above the Midpoint Price in the case of an odd lot buy order and below the Midpoint Price in the case of an odd lot sell order). Executing against such an odd lot order thus provides more price improvement to the Retail order than executing at the Midpoint Price. *See* Securities Exchange Act Release No. 91324 (March 15, 2021), 86 FR 15015 (March 19, 2021) (SR–IEX–2021–03).

[11] *See* Trading Alert #2019–026, available at *https://iextrading.com/alerts/#/82.*

[12] *See* IEX Rule 1.160(s).

[13] *See* IEX Rule 11.232(a)(1).

[14] A Retail order is currently defined as an order submitted by an RMO and designated with a ''Retail order'' modifier. A Retail order must be an agency order, or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, and must reflect trading interest of a natural person with no change made to the terms of the underlying order of the natural person with respect to price (except in the case of a market order that is changed to a marketable limit order) or side of market and that does not originate from a trading algorithm or any other computerized methodology (a ''retail customer''). An order from a retail customer can include orders submitted on behalf of accounts that are held in a corporate legal form that have been established for the benefit of an individual or group of related family members, provided that the order is submitted by an individual. A Retail order may only be submitted on behalf of a retail customer that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). *See* IEX Rule 11.190(b)(15).

[15] *See* IEX Rule 11.190(b)(14).

[16] *See* Securities Exchange Act Release No. 92398 (July 13, 2021), 86 FR 38166 (July 19, 2021) (approving SR–IEX–2021–06).

[17] *See supra* note 17.

Retail Program Update Filing contained the following four enhancements to the Retail Program: (i) Revised the definition of Retail order in IEX Rule 11.190(b)(15) to apply only to the trading interest of a natural person that does not place more than 390 equity orders per day on average during a calendar month for its own beneficial account(s); (ii) modified RLP orders from Discretionary Peg [18] to midpoint peg [19] orders; (iii) modified RLP order priority so that they execute in time priority with other orders priced to trade at the Midpoint Price; and (iv) introduced a ''Retail Liquidity Identifier'' that is disseminated through the Exchange's proprietary market data feeds and the appropriate securities information processor when RLP order interest aggregated to form at least one round lot for a particular security is available in the System,[20] provided that the RLP order interest is resting at the Midpoint Price and is priced at least $0.001 better than the NBB [21] or NBO.[22]

IEX implemented the Retail Program Update Filing on October 13, 2021.[23] Subsequently, and notwithstanding prior informal feedback from Members and market participants, IEX became aware that several existing and potential RMOs have not implemented a counting methodology to determine the number of equities orders submitted by each of their retail customers, as well as by the customers of broker-dealers that route Retail orders through the RMO. As a result, such RMOs cannot submit Retail orders to IEX because they are unable to reasonably assure that such orders would be in compliance with the recent changes to IEX Rule 11.190(b)(15) which specifies that Retail orders may only be submitted on behalf of a natural person who submits no more than 390 equity orders per day on average during a calendar month for its own beneficial account(s). Thus, while the 390-order threshold was intended to limit the use of Retail orders to retail investors who do not appear to be engaged in trading activity akin to that of a professional, it has had the unintended consequence of limiting the number of actual retail customers who are able to obtain the beneficial execution opportunities offered by the Exchange's Retail Program. As discussed more fully below, no other equities exchanges restrict retail orders in the same manner as IEX, and IEX believes that this factor may impact the willingness of Members representing retail orders to devote technology resources to implementing a counting methodology.

Accordingly, IEX proposes to revert the recent changes to the definition of a Retail order that limits Retail orders to customers who place no more than 390 equity orders per day on average during a calendar month for their own beneficial account(s). Thus, IEX proposes to delete the last sentence in IEX Rule 11.190(b)(15) which imposes the 390-order threshold, as well as Supplementary Materials .01 and .02 appended thereto that specify how RMOs should count orders for purposes of determining if a retail customer has placed no more than 390 orders per day and establish new compliance requirements for the RMOs with respect to the 390-order threshold.

IEX notes that no other exchange with a retail price improvement program restricts retail orders based upon the volume of trading of the retail customer, and that the proposed changes to IEX Rule 11.190(b)(15) will make it substantially similar to those exchanges' definitions of a retail order.[24] As noted in the Retail Program Update Filing, the 390-order threshold is also used by Cboe EDGX Exchange, Inc. (''EDGX'') with respect to its equity market, but EDGX only uses the 390-order threshold to delineate retail *priority* orders that receive execution priority over most other orders resting on its order book.[25] EDGX continues to allow its RMOs to submit regular priority retail orders for retail customers without any assurance that the retail customer submits no more than 390 orders per day on average.[26]

Furthermore, IEX notes that nothing in this proposed rule change will modify the pre-existing compliance obligations of RMOs to assure they are only submitting Retail orders on behalf of actual retail customers.[27] IEX believes these ongoing compliance obligations of RMOs will continue to assure that they only submit Retail orders to the Exchange that represent the trading interest of natural persons.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[28] in general, and furthers the objectives of Section 6(b)(5),[29] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission has consistently emphasized that the U.S. capital markets should be structured with the interests of retail investors in mind [30] and the proposed change to the Retail Program is explicitly designed with that goal in mind. Specifically, reversing the recent change to the definition of Retail orders at IEX is designed to benefit retail investors by providing enhanced opportunities for as many retail investors as possible to obtain meaningful price improvement. IEX believes that encouraging the submission of more Retail orders to the Exchange should attract increased contra-side liquidity seeking to trade against and provide meaningful price improvement to such Retail orders.

Additionally, the Exchange believes that the proposed rule change is consistent with the protection of investors because, as described in the Purpose section, it will align its definition of Retail orders with that of all other exchanges that offer a retail price improvement program, thereby reducing potential confusion to market participants and increasing the ability of all market participants to participate in IEX's Retail Program as well as those of its competitors.

The Exchange also believes that the proposed rule change is consistent with the protection of investors because it is designed to increase competition among execution venues by enhancing IEX's Retail Program which offers the potential for meaningful price improvement to orders of retail investors, including through incentivizing market participants to provide additional liquidity to execute against the orders of retail investors.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose

[18] *See* IEX Rule 11.190(b)(10).

[19] *See* IEX Rule 11.190(b)(9).

[20] *See* IEX Rule 1.160(nn).

[21] *See* IEX Rule 1.160(u).

[22] *See* IEX Rule 1.160(u).

[23] *See* Trading Alert # 2021–036, available at *https://iextrading.com/alerts/#/169.*

[24] *See* Cboe BYX Exchange, Inc. (''Cboe BYX'') Rule 11.24(a)(2); Nasdaq BX, Inc. (''Nasdaq BX'') Rule 4702(b)(6)(A); New York Stock Exchange LLC (''NYSE'') Rule 7.44(a)(3); NYSE Arca, Inc. (''NYSE Arca'') Rule 7.44–E(a)(3).

[25] *See* EDGX Rule 11.9 Interpretations and Policies .01 and .02. EDGX does not have a retail price improvement program, but does offer both retail orders and retail priority orders.

[26] *See* EDGX Rule 11.21(a)(2).

[27] *See* IEX Rule 11.232(b)(6).

[28] 15 U.S.C. 78f(b).

[29] 15 U.S.C. 78f(b)(5).

[30] *See* U.S. Securities and Exchange Commission, Strategic Plan, Fiscal Years 2018–2022, available at *https://www.sec.gov/files/SEC_Strategic_Plan_FY18-FY22_FINAL_0.pdf.*

any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, IEX believes that the proposed enhancements to our Retail Program would continue to enhance competition and execution quality for retail customers.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition since competing venues have and can continue to adopt similar retail programs, subject to the SEC rule change process. The Exchange operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues.

The Exchange also does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. While orders submitted by RMOs will be treated differently than orders submitted by other Members, as described in the Purpose section, those differences are not based on the type of Member entering orders but on whether the order is for a retail customer, and there is no restriction on whether a Member can handle retail customer orders. Further, any Member can enter an RLP order.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[31] and Rule 19b–4(f)(6) thereunder.[32] Because the proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[33] and Rule 19b–4(f)(6) thereunder.[34]

A proposed rule change filed under Rule 19b–4(f)(6)[35] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[36] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposed rule change may become operative immediately. As explained above, the Exchange believes that this proposal will allow a greater pool of retail investors that were once able to participate in IEX's Retail Program to again obtain the price improvement benefits thereunder. IEX also states that allowing RMOs to begin submitting a greater pool of Retail orders upon effectiveness of this rule change will benefit retail investors who may be able to obtain meaningful price improvement opportunities through IEX's Retail program. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the change is intended to offer immediate benefit to retail investors by expanding the pool of RMOs eligible to partake in IEX's Retail Program and thus, allow additional retail orders to benefit from price improvement opportunities. Further, by reverting to the previously-approved definition of Retail order, the proposal does not raise any new or novel issues. For these reasons, the Commission hereby waives the 30-day operative delay and designates the proposal operative upon filing.[37]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–IEX–2021–16 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–IEX–2021–16. 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 offices 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–IEX–2021–16, and should be submitted on or before December 17, 2021.

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[31] 15 U.S.C. 78s(b)(3)(A)(iii).

[32] 17 CFR 240.19b–4(f)(6).

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[35] 17 CFR 240.19b–4(f)(6).

[36] 17 CFR 240.19b–4(f)(6)(iii).

[37] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

J. Matthew DeLesDernier,

Assistant Secretary.

[FR Doc. 2021–25753 Filed 11–24–21; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Docket No.: SBA–2020–0048]

Termination of Nonmanufacturer Rule Class Waiver; Correction Notice

AGENCY: Small Business Administration.

ACTION: Correction of notice. Notification of intent to terminate the class waiver to the Nonmanufacturer Rule for radiology equipment.

SUMMARY: The U.S. Small Business Administration published a document in the **Federal Register** on November 16, 2021, concerning requests for comments on a proposed termination of a Nonmanufacturer Rule class waiver for radiology equipment. That notice did not include the closing date for submitting comments.

FOR FURTHER INFORMATION CONTACT: Carol Hulme, Attorney Advisor, by telephone at 202–205–6347 or by email at *Carol-Ann.Hulme@sba.gov.*

SUPPLEMENTARY INFORMATION:

Correction

Published in the **Federal Register** on November 16, 2021, in 86 FR 63436, in the second column, correct the **DATES** caption to read:

DATES: Comments and source information must be submitted on or before 12/31/2021.

Curtis Rich,

Management Analyst.

[FR Doc. 2021–25768 Filed 11–24–21; 8:45 am]

BILLING CODE 8026–03–P

[38] 17 CFR 200.30–3(a)(12), (59).

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36500]

Canadian Pacific Railway Limited; Canadian Pacific Railway Company; Soo Line Railroad Company; Central Maine & Quebec Railway US Inc.; Dakota, Minnesota & Eastern Railroad Corporation; and Delaware & Hudson Railway Company, Inc—Control—Kansas City Southern; The Kansas City Southern Railway Company; Gateway Eastern Railway Company; and The Texas Mexican Railway Company

AGENCY: Surface Transportation Board.

ACTION: Decision No. 11 in Docket No. FD 36500; Notice of Acceptance of Application; Issuance of Procedural Schedule.

SUMMARY: The Surface Transportation Board (Board) is accepting for consideration the application filed on October 29, 2021 (Application), by Canadian Pacific Railway Limited (Canadian Pacific), Canadian Pacific Railway Company (CPRC), and their U.S. rail carrier subsidiaries, Soo Line Railroad Company (Soo Line), Central Maine & Quebec Railway US Inc., Dakota, Minnesota & Eastern Railroad Corporation, and Delaware & Hudson Railway Company, Inc. (collectively, CP) and Kansas City Southern and its U.S. rail carrier subsidiaries, The Kansas City Southern Railway Company (KCSR), Gateway Eastern Railway Company, and The Texas Mexican Railway Company (Tex Mex) (collectively, KCS) (CP and KCS collectively, Applicants). The Application seeks Board approval for the acquisition of control by Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corporation (Cygnus Merger Sub 2 Corp.), of Kansas City Southern, and through it, of KCSR and its railroad affiliates, and for the resulting common control by Canadian Pacific of its U.S. railroad subsidiaries, and KCSR and its railroad affiliates. This proposal is referred to as the Transaction.

The Board finds that the Application is complete as it contains all information required by the Board's regulations. Accordingly, the Application is accepted. The Board adopts a procedural schedule for consideration of the Application.

DATES: The effective date of this decision is November 26, 2021. Any person who wishes to participate in this proceeding as a Party of Record must file, no later than December 13, 2021, a notice of intent to participate if they have not already done so. Applicants shall file a proposed Safety Integration Plan (SIP) with the Board's Office of Environmental Analysis (OEA) and the Federal Railroad Administration (FRA) by December 28, 2021. Descriptions of anticipated responsive applications, including inconsistent applications, are due by January 12, 2022. Petitions for waiver or clarification with respect to such applications are also due by January 12, 2022. Responsive environmental information and environmental verified statements for responsive, including inconsistent, applicants are due by February 22, 2022. Comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application are due by February 28, 2022. This includes any comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (USDOT). All responsive applications, including inconsistent applications, are also due by February 28, 2022. Responses to comments, protests, requests for conditions, and other opposition—including responses to DOJ and USDOT filings—are due by April 22, 2022. Rebuttal in support of the Application is also due by April 22, 2022. Responses to responsive applications, including inconsistent applications, are also due by April 22, 2022. Rebuttals in support of responsive applications, requests for conditions, and other opposition must be filed by May 23, 2022. Final briefs will be due by July 1, 2022. If a public hearing or oral argument is held, it will be held after the filing of final briefs on a date to be determined by the Board.

For further information regarding dates, see the Appendix to this decision.

ADDRESSES: Any filing submitted in this proceeding should be filed with the Board via e-filing on the Board's website. In addition, one copy of each filing must be sent (and may be sent by email only if service by email is acceptable to the recipient) to each of the following: (1) Secretary of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590; (2) Attorney General of the United States, c/o Assistant Attorney General, Antitrust Division, Room 3109, Department of Justice, Washington, DC 20530; (3) CP's representative, David L. Meyer, Law Office of David L. Meyer, 1105 S Street NW, Washington, DC 20009; (4) KCS's representative, William A. Mullins, Baker & Miller PLLC, Suite 300, 2401 Pennsylvania Avenue NW, Washington, DC 20037; (5) any other person designated as a Party of Record on the service list; and (6) the

administrative law judge assigned in this proceeding, the Hon. Thomas McCarthy, 1331 Pennsylvania Avenue NW, Washington, DC 20004–1710, and at *ctolbert@fmshrc.gov* and *zbyers@fmshrc.gov.*

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245–0283. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Applicants are seeking approval under 49 U.S.C. 11321–26 for a proposed transaction that involves the acquisition of control by Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corp., of Kansas City Southern, and through it, of KCSR and its railroad affiliates, and for the resulting common control by Canadian Pacific of its U.S. railroad subsidiaries, and KCSR and its railroad affiliates.

By decision served April 21, 2021, the Board found the Transaction to be a ''major'' transaction under 49 CFR 1180.2(a), as it is a control transaction involving two or more Class I railroads. Canadian Pacific presently controls Soo Line, a Class I railroad, and proposes to acquire common control of KCSR, also a Class I railroad. *See Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 3*), FD 36500, slip op. at 3 (STB served Apr. 21, 2021). By decision served April 23, 2021, following a public comment period, the Board found the proposed transaction to be subject to the regulations set forth at 49 CFR part 1180, subpart A, in effect before July 11, 2001, pursuant to the waiver for a merger transaction involving KCS and another Class I railroad under 49 CFR 1180.0(b). *See Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 4*), FD 36500, slip op. at 2–3 (STB served Apr. 23, 2021) (with Vice Chairman Primus dissenting).

The Transaction. As described in the Application, the Transaction involves all of the U.S. mainline and branch line mileage of the CP and KCS rail systems.[1] (App.1–31.)[2] The CP rail network spans Canada from the Pacific Ocean at Vancouver to the Atlantic Ocean at Saint John, N.B. In the United States, CP owns rail property in Michigan, Illinois, Minnesota, North Dakota, South Dakota, Wisconsin, Maine, Vermont, Iowa, Missouri, and New York, reaching into the U.S. industrial centers of Chicago, Ill., Detroit, Mich., Buffalo, N.Y., Albany, N.Y., Kansas City, Mo., and Minneapolis, Minn. (*Id.* at 1–20; *id.,* Ex. 13, Operating Plan 8.) CP's principal routes serving the United States extend from six Canada/United States border crossings: North Portal, Sask./Portal, N.D.; Emerson, Man./Noyes, Minn.; Windsor, Ont./Detroit; Buffalo; Rouses Point, N.Y.; and a point near Jackman, Me., on the Quebec/Maine border. CP also operates a short stretch of branch line trackage between Abercorn, Que., and Richford, Vt. (*Id.* at 1–22 to 1–23.)

The KCS rail network extends in a north-south corridor from Kansas City, south to the Pacific Ocean at the Port of Lazaro Cardenas, Mexico. (*Id.* at 1–24.) In the United States, KCS owns rail property in Alabama, Arkansas, Illinois, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas. (*Id.* at 1–20.) KCSR's network is centered on Shreveport, La., with lines radiating in five directions. (*Id.* at 1–24.) KCSR's north-south corridor extends from the Mexican border at Laredo, Tex., to Kansas City. (*Id.*) The ''Meridian Speedway'' line runs east-west through Shreveport, between the Dallas, Tex. area and a connection with Norfolk Southern Railway Company (NSR) at Meridian, Miss.[3] (*Id.* at 1–25.) KCSR operates a secondary line that extends southeast from Shreveport to New Orleans, La. (*Id.*) KCSR also operates the former ''Gateway Western'' lines extending east from Kansas City to Springfield, Ill., and East St. Louis, Ill., where it connects with the Terminal Railroad Association of St. Louis and other Class I railroads. (*Id.*) KCSR also operates several former ''MidSouth'' branch lines in Mississippi and Tennessee. (*Id.*)

As set forth in the September 15 Merger Agreement, Canadian Pacific, through its indirect, wholly owned subsidiary Cygnus Merger Sub 2 Corp., would acquire KCS. (*Id.* at 1–2.) Upon receipt of approval by the shareholders of Canadian Pacific and KCS and the satisfaction of other customary closing conditions, Cygnus Merger Sub 2 Corp. would merge with and into KCS (the Merger), with KCS surviving the Merger. (*Id.*) Upon completion of the Merger, holders of KCS's common stock would become entitled to receive a combination of Canadian Pacific common shares and cash in exchange for their common stock, and holders of KCS's preferred stock would become entitled to receive cash in exchange for their preferred shares. (*Id.*) Immediately following completion of the Merger, Canadian Pacific would conduct a series of internal transactions that would result in its voting interest in the successor to KCS being placed into a voting trust,[4] pending review and approval of the control Transaction by the Board.[5] (*Id.*) As a result of the internal transactions, KCS would legally be merged with and into Cygnus Merger Sub 1 Corporation, a wholly owned subsidiary of CP, with Cygnus Merger Sub 1 Corporation surviving. (*Id.*) However, the successor holding company of KCS would continue to own KCS's railroad and other affiliates, and would maintain the same name, governance structure, and other corporate-level attributes of KCS. (*Id.*)

Applicants state that, if and when the Board grants the Application, CP accepts any conditions imposed by the Board, and the Board's approval becomes administratively final, then the voting trust would be terminated and Canadian Pacific would assume control of KCS. (*Id.* at 1–3.)

By decision served May 6, 2021, the Board found that, subject to certain required modifications described in that decision, Applicants' proposed placement of KCS into a voting trust during the pendency of the control proceeding would comply with the guidelines at 49 CFR part 1013, comport

[1] A full description of CP's and KCS's principal routes, as well as maps of CP's and KCS's respective systems, is provided in the Application. (*See* Appl., 1–22 to 1–26; *id.,* Ex. 13, Operating Plan 8–23; *id.,* Ex. 1, Maps.)

[2] Citations to the Application refer to the internal page numbers of the referenced document, which appear on the bottom left-hand corner of each page. For example, ''Appl. 1–31'' refers to Application, Volume 1, page 31.

[3] Applicants state that the portion of line between Shreveport and Meridian is owned by KCS's affiliate Meridian Speedway, LLC, in which NSR has a 30 percent ownership interest, and is operated by KCSR. (Appl. 1–25.)

[4] Applicants state that the internal transactions involve a series of steps designed to address matters relating to tax and corporate law, and all of those steps, including the placement of Canadian Pacific's interest in KCS into a voting trust, would be completed within moments of the completion of the Merger and for practical purposes contemporaneously. Specifically, (a) KCS would merge with and into Cygnus Merger Sub 1 Corporation (Cygnus Merger Sub 1 Corp.), a direct, wholly owned subsidiary of Canadian Pacific, with Cygnus Merger Sub 1 Corp. surviving; (b) Canadian Pacific would contribute its shares in Cygnus Merger Sub 1 Corp. to CPRC, a direct, wholly owned subsidiary of Canadian Pacific; (c) CPRC would contribute its shares in Cygnus Merger Sub 1 Corp. to Cygnus Holding Corp., an indirect, wholly owned subsidiary of Canadian Pacific; (d) CPRC would transfer its shares in Cygnus Holding Corp. to Canadian Holdco, an indirect, wholly owned subsidiary of Canadian Pacific; and (e) Canadian Pacific would cause Cygnus Holding Corp. to contribute its entire interest in Cygnus Merger Sub 1 Corp., and thus in KCSR and its railroad affiliates, to the voting trust. (Appl. 1–3.)

[5] Applicants state that CP's acquisition of KCS's shares (and placement of those shares into a voting trust) is contingent on the approval of the Transaction by the shareholders of both CP and KCS—which is expected by the end of 2021—and the approval of Comisión Federal de Competencia Económica (the Mexican competition authority) and Instituto Federal de Telecomunicaciones (the Mexican communications regulatory authority), which is expected by the end of 2021 or at the latest during the first quarter of 2022. (Appl. 1–5.)

with past agency policy and practice, and sufficiently ensure that the day-to-day management and operation of KCS would not be controlled by Canadian Pacific or anyone affiliated with Canadian Pacific while KCS remains in trust. *See Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 5*), FD 36500, slip op. at 6 (STB served May 6, 2021); *see also Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 8*), FD 36500, slip op. at 3–5 (STB served Sept. 30, 2021) (with Vice Chairman Primus dissenting) (finding that the approval granted in *Decision No. 5* for Applicants to use a voting trust applied to the voting trust described in Applicants' amended prefiling notification filed on September 15, 2021).

Financial Arrangements. According to Applicants, CP would acquire all of the voting securities of KCS in a stock and cash transaction, as detailed in their September 15 Merger Agreement. (Appl. 1–8.) Applicants state that Canadian Pacific would fund the stock portion of the consideration through the issuance of up to 264,723,997 Canadian Pacific common shares, which would represent approximately 28 percent of the issued and outstanding shares of the combined entity. (*Id.*) Applicants state that the cash portion of the consideration, together with all related fees and expenses, is expected to total $8.5 billion, which Canadian Pacific would fund through a combination of cash on hand and new debt. (*Id.*) Applicants explain that the new debt would be raised by CPRC issuing senior unsecured notes on substantially similar terms to its outstanding unsecured notes, and that, in the event the entire amount of debt has not been raised before the acquisition of KCS shares, CP has obtained commitments to borrow up to $8.5 billion via a senior unsecured 364-day bridge loan from Bank of Montreal and Goldman Sachs Lending Partners LLC, among other financial institutions. (*Id.* at 1–8 to 1–9.)

Passenger Service Impacts. Applicants assert that the Transaction would ''not result in any detrimental impact'' on the operations of the National Railroad Passenger Corporation (Amtrak) or on commuter operations; rather, the Transaction ''should foster expansion in passenger operations'' on the combined CP–KCS system. (*Id.,* Ex. 13, Operating Plan 61.)

Amtrak Operations. Currently, as detailed in the Application, CP hosts Amtrak's daily Empire Builder long-distance train between Chicago and St. Paul, Minn., as well as seven pairs of Amtrak Hiawatha Service trains between Chicago and Milwaukee, Wis. (six pairs on weekends). (*Id.,* V.S. Creel 17–18.) In Upstate New York, CP hosts two daily pairs of Amtrak trains: The Adirondack (which operates between New York City and Montreal) between Schenectady, N.Y., and the U.S. border at Rouses Point, and the Ethan Allen Express (which operates between New York City and Rutland, Vt.) between Schenectady and Whitehall, N.Y. (*Id.,* V.S. Creel 18.) Applicants note that, ''[w]hile the segments on which Amtrak operates will see increases in freight train volumes, CP's infrastructure capacity over these routes[,] together with its scheduling of freight trains to avoid conflicts with passenger train schedules[,] will support the increased traffic without negatively affecting Amtrak service.'' (*Id.,* Ex. 13, Operating Plan 62.) Applicants further state that a combined CP–KCS system would ''facilitate Amtrak's planned expansion of its passenger rail network'' by enabling CP to offer Amtrak the opportunity to increase train frequencies on its Hiawatha Service and of its Empire Builder train, as some of the freight traffic CP would otherwise interchange in Chicago with Union Pacific Railroad Company (UP), BNSF Railway Company (BNSF), and Canadian National Railway Company (CN) would bypass Chicago entirely. (*Id.,* V.S. Creel 19.)

Applicants state that, while KCS does not host Amtrak in the United States, Amtrak operates over KCS-owned trackage to which other Amtrak host railroads have access under joint facility and/or trackage rights agreements, and that Amtrak also operates over trackage of other carriers to which KCS has access. (*Id.,* Ex. 13, Operating Plan 63–64.) For example, Amtrak's Sunset Limited operates between Beaumont, Tex., and Rosenberg, Tex., over UP trackage that KCS currently uses pursuant to trackage rights. (*Id.,* Ex. 13, Operating Plan 64.) At Beaumont, UP has operating rights across the KCS-owned Neches River bridge, and Amtrak operates using those rights. (*Id.*) While the Transaction is projected to increase KCS's train volumes between Beaumont and Rosenberg by 8.3 trains per day, Applicants state that they would schedule to avoid the time slot during which the Sunset Limited is scheduled to operate and anticipate that UP dispatchers would continue to afford Amtrak trains appropriate priority over freight operations. (*Id.*) Further, Applicants state that they would prioritize Amtrak over the Neches River bridge in coordination with UP to minimize any adverse impact on Amtrak's operations. (*Id.*) Moreover, Applicants note that CP has committed to working with Amtrak to facilitate establishing Amtrak passenger service on KCS's line between Baton Rouge, La., and New Orleans once CP acquires control of KCS. (*Id.,* V.S. Creel 20.)

Commuter Rail Operations. Applicants state that the operation of commuter trains on CP-owned lines and CP freight trains on commuter-owned lines—specifically, lines owned by the Northeast Illinois Regional Commuter Railroad Corporation (Metra), the Chicago-area commuter rail agency—are governed by joint facility agreements that restrict the times of day during which passenger and freight trains may operate. (*Id.,* Ex. 13, Operating Plan 65.) Currently, Metra's Milwaukee District North line provides commuter service between Chicago and Fox Lake, Ill., a route that includes 17 miles of CP-owned track between Rondout, Ill., and Fox Lake. (*Id.,* Ex. 13, Operating Plan 65–66.) CP's Elgin Subdivision includes 34.3 miles of trackage rights over Metra's Milwaukee District West Line, between Tower A5 in Chicago (also known as Pacific Junction) and Almora, Ill. (near Elgin, Ill.). (*Id.,* Ex. 13, Operating Plan 66.) Applicants assert that a combined CP–KCS system would avoid adverse impacts on commuter service by scheduling additional freight traffic outside of the time slots reserved for commuter operations and that ample capacity on the Elgin Subdivision would accommodate the projected increase in freight traffic so as not to adversely impact commuter operations.[6] (*Id.,* Ex. 13, Operating Plan 65–66.)

Discontinuances/Abandonments. Applicants state that no lines would be abandoned and that no facilities would be rationalized because of the Transaction. (Appl. 1–7.)

Public Interest Considerations. According to Applicants, the Transaction would improve the quality and availability of rail transportation services to the public, as a combined CP–KCS network would offer more efficient and reliable single-line rail transportation between points throughout CP's service territory in Canada and the Upper Midwest and points throughout KCS's service territory in the South Central United States and Mexico. (Appl. 1–14 to 1–15.) Applicants contend that avoiding an

[6] Applicants note that, while KCS does not currently host commuter trains on its network in the United States, Dallas Area Rapid Transit (DART) is constructing a new commuter line that would overlap with 15 miles of KCS trackage rights over DART-owned trackage west of Wylie, Tex., to Renner, Tex. (Appl., Ex. 13, Operating Plan 66.) Applicants assert that there would be no impact on DART's proposed operations, as KCS operations west of Wylie are not expected to see any increase in train activity. (*Id.*)

interchange at Kansas City, which is the only point where the CP and KCS networks connect, would reduce cost, improve transit times, boost reliability and predictability, and facilitate more aggressive competition against other Class I railroads. (*Id.* at 1–15 to 1–16.)

According to Applicants, the Transaction would allow for new and improved train services, including new intermodal services connecting Dallas with Chicago and points beyond, as well as single-line intermodal routes connecting Mexico with the Upper Midwest and Canada. (*Id.* at 1–15.) Applicants contend that the combined CP–KCS network would strengthen competition among rail carriers and would be more efficient and a more capable competitor with long-haul trucks, as Applicants' new intermodal rail services would annually divert more than 60,000 long-haul truck shipments to rail. (*Id.* at 1–11, 1–28; *id.,* V.S. Mutén 17–22.)

Applicants assert that the Transaction would also enable more efficient blocking patterns for manifest traffic moving between the KCS and CP systems. (Appl. 1–16.) According to Applicants, an integrated system would improve equipment utilization and allow for more efficient rail transportation with the same number of locomotives and railcars, which would improve cycle times for shippers who provide their own railcars and benefit all customers with the greater availability of railcars. (*Id.*) Applicants state that new rail traffic on the integrated system would support investment in additional capacity, service quality, and safety on a CP–KCS north-south rail artery, transforming a relatively underutilized route into a more efficient, higher capacity, and safer artery of north-south trade in North America capable of supporting improved service levels. (*Id.* at 1–17.) According to Applicants, the innovations and improvements enabled by CP's operating model, including improved asset utilization, reduction of costs, and improved on-time performance and service reliability, serve as ''the catalyst for enabling CP/KCS to serve customers better.'' (*Id.,* V.S. Brooks 11.)

Applicants assert that the Transaction would ''generate competitive benefits and cause no competitive harm.'' (Appl. 1–11.) Applicants contend that, because the CP and KCS networks do not overlap, connecting only at Kansas City, no shippers, stations, or corridors would ''suffer any diminished competition,'' and also assert that there would be no reduction in geographic or product competition. (*Id.*) Applicants further assert that shippers would not face any reduction in routing options or confront any new ''bottlenecks,'' as a combined CP–KCS system would have strong incentives to maintain all of the efficient interline routes in which they participate today. (*Id.*) Applicants state that, while they would compete against KCS's existing interline routes where new single-line routes offer advantages for customers, they would continue to support, both operationally and commercially, these existing interline routes, committing to keep all existing gateways open on commercially reasonable terms, including the Laredo Gateway.[7] (*Id.* at 1–7; *id.,* V.S. Ottensmeyer 6; *id.,* V.S. Brooks 18–22.) Applicants further commit to not creating any new regulatory ''bottlenecks,'' by waiving the right to refuse to quote a separately challengeable short-haul tariff rate to an existing interchange with another carrier, in light of their new ability to handle traffic in single-line service. (Appl. 1–7; *id.,* V.S. Brooks 23.)

Schedule for Consummation. Applicants state that CP would acquire the shares of KCS from the voting trust and thereby exercise control over KCS upon the effectiveness of a Board decision approving the Transaction. Applicants further note that integration of the two systems would begin as soon as possible and expect full integration to be completed within three years of the Board's decision approving the Transaction. (Appl. 1–5 to 1–6.)

Environmental Impacts. Applicants acknowledge that environmental review under the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4321–4370m–12, is necessary in this case. As discussed below, the increased traffic that would result from this transaction would exceed the Board's thresholds for environmental review. Due to the potentially significant impact that the Transaction may have on the environment and communities in the affected area, the Board will prepare a full Environmental Impact Statement (EIS). Applicants also have agreed to prepare a Safety Integration Plan (SIP), pursuant to the Board's regulations at 49 CFR 1106 and the FRA's regulations at 49 CFR part 244, which will be addressed in the EIS. In the SIP, Applicants will specify how they would ensure safe operations during the merger and implementation process.

Historic Impacts. As part of the approval process, the Board must evaluate the potential impacts of the Transaction on historic properties, in accordance with section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. 306108; the section 106 implementing regulations, 36 CFR part 800; and the Board's environmental regulations, 49 CFR part 1105. Applicants do not propose to construct any new rail lines subject to Board licensing or to abandon any rail lines as part of the Transaction. However, Applicants propose to make certain capital improvements within the existing rail right-of-way, including adding approximately four miles of double track on the KCS Pittsburg Subdivision, adding approximately five miles of facility working track adjacent to the International Freight Gateway intermodal terminal near Kansas City, and adding or extending 24 passing sidings along the combined network.

Labor Impacts. Applicants state that, given the projected traffic growth resulting from the Transaction, they anticipate that over 1,000 operating positions would be created across CP–KCS's North American network, with more than 800 of those positions in the United States, and with most of the anticipated job growth in union-represented positions. (Appl. 1–17; *id.* Ex. 13, Operating Plan 67; *id.,* V.S. Becker 3, 5.)[8] Applicants state that labor force changes would include the relocation of certain operating personnel (including Soo Line dispatchers) currently based at CP's U.S. headquarters in Minneapolis to the future CP–KCS U.S. headquarters in Kansas City. (*Id.,* Ex. 13, Operating Plan 67, *id.,* V.S. Becker 9–10.)

Applicants note that the Transaction would be subject to the employee conditions adopted in *New York Dock—Control—Brooklyn Eastern District Terminal,* 360 I.C.C. 60 (1979), and further note that Applicants would honor the obligations established in the ''cramdown'' agreements reached in 2000 and 2001 with certain labor organizations that represent certain classes of employees of CP and KCS. (Appl. 1–18; *id.,* V.S. Becker 14.)

Primary Application Accepted. The Board finds that Applicants have provided sufficient information to satisfy the requirements for a ''major''

[7] Applicants state that KCS is now, and the combined entity would continue to be, subject to the conditions related to traffic moving via Laredo previously imposed by the Board in *Kansas City Southern—Control—The Kansas City Southern Railway,* 7 S.T.B. 933 (2004), as well as terms related to the Laredo Gateway contained in the evergreen agreement that KCS entered into with the National Industrial Transportation League in conjunction with that transaction. (Appl., V.S. Ottensmeyer 6, 21; *id.,* V.S. Brooks 21.)

[8] In an erratum filed on November 5, 2021, Applicants corrected information submitted in the Application, including information contained in their labor impact analysis.

transaction application. The Board finds that the Application meets the requirements of 49 CFR 1180.4, 1180.6, 1180.7, 1180.8, and 1180.9 (2000) and is therefore complete.[9] *See* 49 CFR 1180.4(c)(7) (''A complete application contains all information for all applicant carriers required by these procedures, except as modified by advance waiver.'').

On November 19, 2021, UP filed a petition to reject the Application as incomplete, asserting that the Application does not include all the information needed to satisfy the market analyses and operational data requirements under 49 CFR 1180.7 & 1180.8. Specifically, UP argues that the rail-to-rail diversion analysis excludes 32% of potentially divertible traffic, which UP claims critically undermines the market analyses and operating plan, as well as environmental analysis under NEPA. (UP Pet. 4–8.) UP further contends that Applicants fail to support impacts on competition, passenger services, and freight service on tracks used jointly with other railroads. (*Id.* at 8–15.) Lastly, UP asserts that Applicants should be required to submit a Service Assurance Plan, as required for cases filed under the Board's current rules,[10] in light of representations made in filings to the Securities and Exchange Commission regarding possible service disruptions during the integration process. (*Id.* at 16–17.) On November 22, 2021, Applicants filed a reply to UP's petition, arguing that UP's petition was late-filed and that none of UP's arguments warrant rejection of the Application. Also on November 22, 2021, CN filed a comment in support of UP's petition.

The Board's regulations provide the ''greatest leeway to develop the best evidence on the impacts of each individual transaction.'' 49 CFR 1180.7. Here, Applicants chose a particular traffic dataset to be used in their diversion analysis model and explained those choices in the Application.[11] UP's arguments, submitted near the end of the Board's 30-day period to review the completeness of the Application, effectively express disagreement with Applicants' modeling choices and question the adequacy of certain supporting evidence underlying Applicants' analysis. But, given that Applicants have provided explanations and supporting data and workpapers regarding those choices, such concerns are more appropriately raised as a response to the merits of the Transaction. The Board finds that UP's arguments regarding the diversion analysis model do not provide a basis for rejecting the Application as incomplete. Applicants have presented a prima facie case, disclosing facts that, if construed in their most favorable light, are sufficient to support a finding that the proposed transaction is consistent with the public interest. 49 CFR 1180.4(c)(8). UP's arguments regarding a Service Assurance Plan also do not warrant rejection of the Application because such a plan is not required under the regulations governing this transaction. The Board notes that, while it finds the Application to be complete, it reserves the right it has exercised in the past to require the filing of supplemental information, as necessary. *See Soo Line Corp.—Control—Cent. Me. & Que. Ry. US,* FD 36368, slip op. at 3 (STB served May 4, 2020).

Accordingly, the Application is accepted and, as discussed below, the Board adopts a procedural schedule for consideration of the Application.

Procedural Schedule. On March 22, 2021, concurrently filed with their original notice of intent to file an application, CP and KCS jointly filed a petition to establish a procedural schedule. Applicants' proposed procedural schedule provides for a 10-month period between the date an application is filed and the date on which the Board would issue its final decision on the merits. (Pet. 1.) On November 2, 2021, the Board issued a decision that detailed the proposed procedural schedule, proposed its own modifications to the schedule, and requested public comments. *See Canadian Pac. Ry.—Control—Kan. City S.* (*Decision No. 9*), FD 36500 (STB served Nov. 2, 2021). The Board noted that, given the high level of interest in this proceeding, as well as the complexity and magnitude of issues that may potentially arise, the 10-month schedule proposed by Applicants did not provide sufficient time. *Id.* at 2. Instead, the Board proposed to conform the schedule to the time frames set forth in 49 U.S.C. 11325 and 49 CFR 1180.4. *Decision No. 9,* FD 36500, slip op. at 2.

Application Filing Date. In *Decision No. 3,* the Board provided notice of Applicants' intent to file an application seeking authority for the acquisition of control by CP of KCS, noting that Applicants had entered into an Agreement and Plan of Merger on March 21, 2021 (March 2021 Merger Agreement). *See Decision No. 3,* FD 36500, slip op. at 2. On May 21, 2021, KCS notified the Board that it had terminated the merger agreement with Canadian Pacific and had entered into a merger agreement with CN. (KCS Letter 1, May 21, 2021.) KCS stated that, accordingly, it was withdrawing as a co-applicant in this proceeding. (*Id.* at 2.) In an amended notice, filed on September 15, 2021 (Amended Notice), Applicants stated that KCS rejoins CP as a co-applicant in this proceeding, as KCS had since terminated its agreement to be acquired by CN. (Amended Notice 2.) Applicants stated that they had executed a definitive Agreement and Plan of Merger (September 2021 Merger Agreement), which ''contemplates the same transaction on terms identical in nearly every respect to those set forth'' in the March 2021 Merger Agreement. (Amended Notice 2–3.) In *Decision No. 8,* the Board provided notice of receipt of the Amended Notice. *See Decision No. 8,* FD 36500, slip op. at 2–3.

Some commenters assert that, under the Board's regulations, Applicants may not file their application before December 15, 2021, three months from the filing of Applicants' Amended Notice. (CN Comment 1, Nov. 10, 2021; BNSF Comment 12, Nov. 12, 2021; UP Comment 2, Nov. 12, 2021; CSXT Comment 6 n.23, Nov. 12, 2021.) Given that the March 2021 Merger Agreement had been terminated, some commenters contend that they had no reason to consider, or devote resources to considering, the implications of the Transaction. (CN Comment 2; UP Comment 3; *see also* CSXT Comment 2.) These commenters assert that Applicants' Amended Notice effectively restarted the procedural clock and requires a minimum three-month waiting period before their application may be filed and argue that the Board therefore should hold the Application in abeyance and/or treat the Application as filed on December 15, 2021, to provide a sufficient notice period. (CN Comment 5; BNSF Comment 12; UP Comment 4–5.) On November 16, 2021, Applicants filed a reply to these comments.

The Board finds that the Application was properly filed and finds no basis for holding the Application in abeyance. Under 49 CFR § 1180.4(b)(1), an applicant shall submit a prefiling notification to the Board, ''[b]etween 3 to 6 months prior to the proposed filing of an application in a major

[9] Hereinafter, all citations to 49 CFR part 1180, subpart A, refer to the regulations in effect before July 11, 2001, unless otherwise indicated. *See Decision No. 4,* FD 36500, slip op. at 2.

[10] 49 CFR 1180.10 (2020) requires applicants in major transactions to identify potential areas of merger-related service degradation and develop plans for mitigating instances of degraded service.

[11] *Cf. CSX Corp.—Control & Merger—Pan Am Sys., Inc.,* FD 36472, slip op. at 8–12 (STB served May 26, 2021) (rejecting a merger application as incomplete due to numerous deficiencies that prevented the Board from properly analyzing the competitive effects of the proposed transaction, including, in several areas, the absence of any supporting data).

transaction.'' To account for the possibility that six months would pass without the application being filed, the Board's regulations explicitly provide that this prefiling notification may be amended to indicate a change in the anticipated filing date of the application. 49 CFR 1180.4(b)(3); *see also R.R. Consolidation Procs.,* 360 I.C.C. 200, 207 (1980). Here, Applicants satisfied the 3-to-6-month notice requirement on March 22, 2021, when they submitted a prefiling notification that proposed to file an application on or about June 28, 2021. In their Amended Notice, Applicants informed the Board that they had revised the projected filing date of the Application, as contemplated by the Board's regulations, noting that they had executed the September 2021 Merger Agreement, which was nearly identical to the March 2021 Merger Agreement described in *Decision No. 3,* and proposed the same control transaction contemplated in the initial merger agreement. Nothing in the Board's regulations requires an additional notice period upon the filing of an amended notice. Further, CP did not withdraw its original notice or seek dismissal of this proceeding; rather, it indicated its intent to go forward with an application to acquire control of KCS, notwithstanding the termination of the March 2021 Merger Agreement. (*See, e.g.,* CP Pet. for Expedited Declaratory Relief 3–4, May 27, 2021 (seeking declaratory relief pertaining to discovery materials to enable CP to complete its application despite KCS's termination of the initial merger agreement with CP).) Therefore, the Board finds that Applicants appropriately filed their Application on October 29, 2021.

Evidentiary Record Deadlines. The Board has considered Applicants' request for an expedited procedural schedule, as well as the comments received. The Board received six comments regarding the proposed procedural schedule. Applicants agree with the Board's proposal to extend the evidentiary schedule by 40 days to allow sufficient time for interested parties to evaluate the Application and prepare comments. (CP/KCS Comment 1, Nov. 12, 2021.) However, Applicants request that the deadlines for submitting written comments and for submitting responsive applications be the same. (*Id.* at 4.) Applicants argue that synchronizing the deadlines for comments and responsive applications would create certain efficiencies for the interested parties. (*Id.* at 2–3.)

The Board also received separate comments on the proposed procedural schedule from four railroads: CN on November 10, 2021, and BNSF, CSX Transportation, Inc. (CSXT), and UP on November 12, 2021. In addition, the American Chemistry Council and The Fertilizer Institute (ACC/TFI) submitted joint comments on November 12, 2021. The four railroads and ACC/TFI request that the Board extend the time for filing written comments (and, in some instances, subsequent deadlines) by various periods.

BNSF requests that the Board extend all deadlines, starting with the deadline for submitting written comments, by 60 days. (BNSF Comment 2.) BNSF argues that because the Application lacks certain information, additional time would be required to develop the necessary record and analyze the impact of the transaction on domestic and transborder movements. (*Id.* at 3–9.) CN, CSXT, and UP argue that all deadlines should be extended so that the procedural schedule does not commence before December 15, 2021—three months after the amended notice of intent was filed. (*See* CN Comment 1; CSXT Comment 6 n.23; UP Comment 2.) CN otherwise expresses general support for the schedule as proposed by the Board. (CN Comment 6.)

CSXT advocates for additional time to develop and analyze the record before interested parties are required to respond to the application. (CSXT Comment 2.) CSXT includes a proposed procedural schedule with its comments, which provides for a written comment deadline of February 28, 2022—122 days after the date on which the Board received the application. (*Id.,* Ex. A.)

Similarly, UP requests that the Board set the deadline for written comments at 120 days after the filing date, consistent with the deadline to submit responsive applications. (UP Comment 6.) It states that the proposed schedule does not allow interested parties sufficient time to review the record and provide comments. (*Id.* at 5.) UP notes that the rationale that the Board applied to extending the deadline for submitting responsive applications applies equally to written comments because interested parties are as likely to raise concerns about the proposed transaction in written comments as they are in responsive applications. (*Id.* at 5–6.)

ACC/TFI request that the Board extend the comment period, and all other deadlines, by two weeks because the current period for written comments encompasses the holidays, when many people would be unavailable. (ACC/TFI Comment 2, Nov. 12, 2021.) According to ACC/TFI, a two-week extension would provide the necessary time to prepare comments without infringing upon holiday activities. (*Id.*) UP expresses similar concerns about the proposed schedule and the holidays. (*See* UP Comment 6.) In addition, ACC/TFI, BNSF, CSXT, and UP raise concerns that, under the proposed schedule, there is not sufficient time to resolve potential discovery disputes before the comment deadline. (ACC/TFI Comment 2; BNSF Comment 9 n.5; CSXT Comment 2–3; UP Comment 5 n.13.)

The Board declines to adopt the expedited procedural schedule proposed by Applicants and adopts a procedural schedule pursuant to which the Board will issue its final decision within 90 days of the close of the evidentiary record, consistent with 49 U.S.C. 11325(b)(3), provided that the environmental review process described below is complete. The Board's procedural schedule, which is longer than what was proposed by Applicants, will allow adequate time for comments regarding this important transaction. Additionally, in response to concerns raised by commenters, including Applicants, the Board will synchronize the deadlines for written comments and responsive applications. The Board will extend the deadline for submitting written comments to 120 days after the application filing date to coincide with the deadline for filing responsive applications and set the deadline for responses to written comments at 175 days after the application filing date. The Board's schedule also provides that any necessary oral argument or public hearing would be held on a date to be determined by the Board. The full procedural schedule (Procedural Schedule) adopted here is set out in the Appendix to this decision.

Notice of Intent to Participate. Any person who wishes to participate in this proceeding as a Party of Record must file with the Board, no later than December 13, 2021, a notice of intent to participate, accompanied by a certificate of service indicating that the notice has been properly served on the Secretary of Transportation, the Attorney General of the United States, Mr. Meyer (representing CP), and Mr. Mullins (representing KCS). Parties who have already submitted a notice of intent to participate are not required to resubmit an additional notice.

If a request is made in a notice of intent to participate to have more than one name added to the service list as a Party of Record representing a particular entity, the extra name(s) will be added to the service list as a ''Non-Party.'' Any person designated as a Non-Party will receive copies of Board decisions, orders, and notices but need not be

served with copies of filings submitted to the Board.

Service on Parties of Record. Each Party of Record will be required to serve upon all other Parties of Record, within 10 days of the service date of this decision, copies of all filings previously submitted by that party (to the extent such filings have not previously been served upon such other parties). Each Party of Record will also be required to file with the Board, within 10 days of the service date of this decision, a certificate of service indicating that the service required by the preceding sentence has been accomplished. Every filing made by a Party of Record after the service date of this decision must have its own certificate of service indicating that all Parties of Record on the service list have been served with a copy of the filing. Members of the United States Congress and Governors are not Parties of Record and need not be served with copies of filings, unless any Member or Governor has requested to be, and is designated as, a Party of Record.

Deadlines Applicable to Appeals and Replies. Consistent with prior major merger proceedings, any appeal to a decision issued by Judge McCarthy must be filed within three working days of the date of his decision; any response to such appeal must be filed within three working days of the date of filing of the appeal; and any reply to any motion filed with the Board itself in the first instance must be filed within three working days of the date of filing of the motion.

Environmental Matters. NEPA requires that the Board take environmental considerations into account in its decision making. Under both the regulations of the Council on Environmental Quality (CEQ) implementing NEPA, and the Board's own environmental regulations, actions are separated into three classes that prescribe the level of documentation required in the NEPA process. Actions that may significantly affect the environment generally require the Board to prepare an EIS. *See* 49 CFR 1105.4(f), 1105.6(a), 1105.10(a). Actions that may or may not have a significant environmental impact ordinarily require the Board to prepare a more limited Environmental Assessment (EA). *See* 49 CFR 1105.4(d), 1105.6(b), 1105.10(b). Actions with environmental effects that are ordinarily insignificant may be categorically excluded from NEPA review, without a case-by-case environmental review. *See* 49 CFR 1105.6(c). A merger transaction generally requires the preparation of an EA or EIS where certain thresholds would be exceeded. *See* 49 CFR 1105.7(e)(5).

The thresholds for assessing environmental impacts from increased rail traffic on rail lines in railroad merger proceedings are an increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains per day. 49 CFR 1105.7(e)(5). For air quality impacts, rail lines located in areas classified as being in ''nonattainment'' areas under the Clean Air Act (42 U.S.C. 7401–7671q) are also assessed if they would experience an increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains per day. 49 CFR 1105.7(e)(5)(ii). Based on the information provided by Applicants to date, OEA has identified rail lines in Illinois, Iowa, Missouri, Kansas, Oklahoma, Arkansas, Louisiana, and Texas that would experience increases in rail traffic that would exceed the analysis thresholds as a result of the Transaction.

The NEPA Process. Based on information provided by Applicants and in consultation with OEA, the Board has determined that the preparation of an EIS is appropriate. Under NEPA, an EIS is prepared for ''major federal actions significantly affecting the quality of the human environment.'' 42 U.S.C. 4332(2)(C). An EIS is usually not required in merger cases; a more limited EA generally is sufficient because there are not usually significant environmental impacts from the change in owners and operators of existing lines. 49 CFR 1105.6(b)(4). In this case, however, a full EIS is warranted in light of the magnitude of the projected traffic increases on certain line segments and the potential impacts of the proposed transaction on a number of communities that would likely result from the increased activity levels on rail line segments and at rail facilities. (*See* Appl. 1–29 to 1–31.)

The EIS process will ensure that the Board takes the hard look at potential environmental consequences that is required by NEPA. On November 12, 2021, OEA issued a Notice of Intent to prepare an EIS and requested comments on the scope of the EIS, including the alternatives and issues to be analyzed. After the close of the comment period on the scope of the EIS on December 17, 2021, OEA will review all comments received and issue a final scope of study for the EIS. Following the issuance of the final scope, OEA will prepare a Draft EIS that will analyze in detail the potential environmental impacts of the Transaction and make recommendations for environmental mitigation. OEA anticipates issuing the Draft EIS in the spring of 2022. The public will have at least 45 days to comment on the Draft EIS. A Final EIS will then be issued that will respond to all public comments received, present the results of any further environmental analysis, and incorporate final environmental mitigation recommendations. OEA anticipates issuing the Final EIS in the fall of 2022. The Board will consider the entire environmental record in deciding whether to authorize the Transaction as proposed, deny the application, or grant it with conditions, including environmental mitigation conditions.

Historic Review. In accordance with Section 106 of the NHPA, the Board is required to determine the effects of its licensing actions on cultural resources. The Board's environmental rules establish exceptions to the need for historic review in certain cases, including the sale of a rail line for the purpose of continued rail operations where further Board approval is required to abandon any service and there are no plans to dispose of or alter properties subject to the Board's jurisdiction that are 50 years old or older. 49 CFR 1105.8.(b)(1). Applicants do not propose to construct any new rail lines subject to Board licensing or to abandon any rail lines as part of the Transaction. Applicants also have no plans to alter or dispose of properties 50 or more years old, and any future line abandonment or construction activities by Applicants would be subject to the Board's jurisdiction. However, Applicants intend to make certain capital improvements within the rail right-of-way as part of the Transaction, including adding double track, adding facility working track, adding new passing sidings, and extending existing sidings. Consistent with past practice in merger cases, OEA will therefore focus any necessary Section 106 review on the capital improvement projects that Applicants would undertake as part of the Transaction because those projects are the only components of the Transaction that could have the potential to affect cultural resources.

Safety Integration Plan. Applicants state that they will work with the FRA to formulate a SIP to address the safe integration of their rail lines, equipment, personnel, and operating practices. (Appl., V.S. Creel 25.) A SIP is a comprehensive written plan, prepared in accordance with FRA guidelines or regulations, explaining the process by which Applicants intend to integrate the operation of the properties involved in a manner that would maintain safety at every step of the integration process, in the event the

Board approves the Transaction. 49 CFR 1106.2; 49 CFR 244.9. The proposed SIP will be submitted to the Board and to FRA and will be reviewed by OEA and made available for public review and comment during the EIS process, consistent with the Board's regulations at 49 CFR 1106 and with 49 CFR 244.17. If the Board authorizes the Transaction and adopts the SIP, the Board requires compliance with the SIP as a condition to its authorization. 49 CFR 1106.4(b)(4).

In its petition for a procedural schedule, Applicants proposed that the SIP be filed with OEA 30 days after the filing of the Application. However, the Board and FRA's regulations allow for Applicants to submit the proposed SIP up to 60 days after the application is filed, which would be December 28, 2021. Accordingly, the Board will also allow Applicants the full 60 days to submit the SIP.

Service of Decisions, Orders, and Notices. The Board will serve copies of its decisions, orders, and notices on those persons who are designated on the official service list as a Party of Record or Non-Party. All other interested persons are encouraged to secure copies of decisions, orders, and notices via the Board's website at *www.stb.gov.*

Access to Filings. Under the Board's rules, any document filed with the Board (including applications, pleadings, etc.) shall be promptly furnished to interested persons on request, unless subject to a protective order. 49 CFR 1180.4(a)(3). The Application and other filings in this proceeding will be furnished to interested persons upon request and will also be available on the Board's website at *www.stb.gov.* In addition, the Application may be obtained from Messrs. Meyer and Mullins at the addresses indicated above.

It is ordered:

1. The Application in Docket No. FD 36500 is accepted for consideration.

2. The parties to this proceeding must comply with the procedural schedule adopted by the Board in this proceeding as shown in the Appendix to this decision. The parties to this proceeding must comply with the procedural requirements described in this decision.

3. UP's petition to reject the Application is denied.

4. This decision will be published in the **Federal Register**.

5. This decision is effective on November 26, 2021.

Decided: November 23, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz.

Jeffrey Herzig,

Clearance Clerk.

APPENDIX—PROCEDURAL SCHEDULE

October 29, 2021	Application filed.
November 26, 2021	Board notice of acceptance of Application to be published in the **Federal Register**.
December 13, 2021	Notices of intent to participate in this proceeding due.
December 28, 2021	Proposed Safety Integration Plan (SIP) to be filed with OEA and FRA.
January 12, 2022	Descriptions of anticipated responsive, including inconsistent, applications due. Petitions for waiver or clarification with respect to such applications due.
February 22, 2022	Responsive environmental information and environmental verified statements for responsive, including inconsistent, applicants due.
February 28, 2022	Comments, protests, requests for conditions, and any other evidence and argument in opposition to the Application due. This includes any comments from the U.S. Department of Justice (DOJ) and U.S. Department of Transportation (USDOT). Responsive, including inconsistent, applications due.
March 30, 2022	Notice of acceptance of responsive, including inconsistent, applications, if any, published in the **Federal Register**.
April 22, 2022	Responses to comments, protests, requests for conditions, and other opposition due, including to DOJ and USDOT filings. Rebuttal in support of the Application due. Responses to responsive, including inconsistent, applications due.
May 23, 2022	Rebuttals in support of responsive, including inconsistent, applications due.
July 1, 2022	Final briefs due.[12]
TBD	Public hearing (if necessary).[13] (Close of the record.)
TBD	Service date of final decision.[14]

[FR Doc. 2021–25926 Filed 11–24–21; 8:45 am]

BILLING CODE 4915–01–P

[12] The Board will also determine the page limits for final briefs in a later decision after the record has been more fully developed.

[13] The Board will decide whether to conduct a public hearing in a later decision after the record has been more fully developed. *See* 49 U.S.C. 11324(a) (''The Board shall hold a public hearing unless the Board determines that a public hearing is not necessary in the public interest.'').

[14] 49 U.S.C. 11325(b)(3) provides that the Board must issue its final decision within 90 days of the close of the evidentiary record and that evidentiary proceedings be completed within one year of the date of publication of this notice in the **Federal Register**. However, under NEPA, the Board may not issue a final decision until after the required environmental review is complete. In the event the EIS process is not able to be concluded in sufficient time for the Board to meet the 90-day provision set forth in § 11325(b)(3), the Board will issue a final decision as soon as possible after that process is complete.

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36564]

BNSF Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company

BNSF Railway Company (BNSF), a Class I rail carrier, has filed a verified notice of exemption under 49 CFR 1180.2(d)(7) for overhead trackage rights over approximately 196 miles of rail line owned by Union Pacific Railroad Company (UP), between milepost 245.52 at Ft. Worth, Tex., and milepost 440.98 at Tecific, Tex. (the Line).

Pursuant to a written trackage rights agreement, UP has agreed to extend overhead trackage rights to BNSF over the Line. According to the verified notice, BNSF and its predecessors have operated over the Line since 1992 under trackage rights exempted in *The Atchison, Topeka & Santa Fe Railway Co.—Trackage Rights Exemption—Missouri Pacific Railroad Co.,* FD 32134 (ICC served Aug. 31, 1992), and the parties' 1992 agreement was amended on June 25, 2021, to extend the trackage rights terms.[1] The purpose of this transaction is to allow UP to continue its operations over the Line.

The transaction may be consummated on or after December 10, 2021, the effective date of the exemption (30 days after the verified notice was filed).

As a condition to this exemption, any employees affected by the acquisition of the trackage rights will be protected by

[1] Redacted versions of the 1992 agreement and the 2021 amendment were filed with the verified notice. Unredacted versions were submitted under seal concurrently with a motion for protective order, which is addressed in a separate decision.

the conditions imposed in *Norfolk & Western Railway—Trackage Rights—Burlington Northern, Inc.,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Railway—Lease & Operate—California Western Railroad,* 360 I.C.C. 653 (1980).

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 by December 3, 2021 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36564, 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 BNSF's representative, Peter W Denton, Steptoe & Johnson LLP, 1330 Connecticut Avenue NW, Washington, DC 20036.

According to BNSF, this action is categorically excluded from environmental review under 49 CFR 1105.6(c)(3) and from historic preservation reporting requirements under 49 CFR 1105.8(b)(3).

Board decisions and notices are available at *www.stb.gov.*

Decided: November 22, 2021.

By the Board, Scott M. Zimmerman, Acting Director, Office of Proceedings.

Kenyatta Clay,

Clearance Clerk.

[FR Doc. 2021–25810 Filed 11–24–21; 8:45 am]

BILLING CODE 4915–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of the Trade Agreements Act of 1979

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The U.S. Trade Representative has determined the U.S. dollar procurement thresholds to implement certain U.S. trade agreement obligations, as of January 1, 2022, for calendar years 2022 and 2023.

DATES: This notice is applicable on January 1, 2022, for calendar years 2022 and 2023.

FOR FURTHER INFORMATION CONTACT: Kate Psillos, Director of International Procurement Policy at (202) 395–9581 or *Kathryn.W.Psillos@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Executive Order 12260 requires the U.S. Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511 *et seq.*). These obligations apply to covered procurements valued at or above specified U.S. dollar thresholds. In conformity with the provisions of Executive Order 12260, and in order to carry out U.S. trade agreement obligations, the U.S. Trade Representative has determined the U.S. dollar procurement thresholds, effective on January 1, 2022, for calendar years 2022 and 2023 as follows:

I. World Trade Organization (WTO) Agreement on Government Procurement

A. *Central Government Entities listed in U.S. Annex 1:*

(1) Procurement of goods and services—$183,000; and

(2) Procurement of construction services—$7,032,000.

B. *Sub-Central Government Entities listed in U.S. Annex 2:*

(1) Procurement of goods and services—$499,000; and

(2) Procurement of construction services—$7,032,000.

C. *Other Entities listed in U.S. Annex 3:*

(1) Procurement of goods and services—$563,000; and

(2) Procurement of construction services—$7,032,000.

II. Chapter 15 of the United States-Australia Free Trade Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 15–A, Section 1:*

(1) Procurement of goods and services—$92,319; and

(2) Procurement of construction services—$7,032,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 15–A, Section 2:*

(1) Procurement of goods and services—$499,000; and

(2) Procurement of construction services—$7,032,000.

C. *Other Entities listed in the U.S. Schedule to Annex 15–A, Section 3:*

(1) Procurement of goods and services for List A Entities—$461,594;

(2) Procurement of goods and services for List B Entities—$563,000;

(3) Procurement of construction services—$7,032,000.

III. Chapter 9 of the United States-Bahrain Free Trade Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 9–A–1:*

(1) Procurement of goods and services—$183,000; and

(2) Procurement of construction services—$12,001,460.

B. *Other Entities listed in the U.S. Schedule to Annex 9–A–2:*

(1) Procurement of goods and services for List B entities—$563,000; and

(2) Procurement of construction services—$14,771,718.

IV. Chapter 9 of the United States–Chile Free Trade Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section A:*

(1) Procurement of goods and services—$92,319; and

(2) Procurement of construction services—$7,032,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section B:*

(1) Procurement of goods and services—$499,000; and

(2) Procurement of construction services—$7,032,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1, Section C:*

(1) Procurement of goods and services for List A Entities—$461,594;

(2) Procurement of goods and services for List B Entities—$563,000;

(3) Procurement of construction services—$7,032,000.

V. Chapter 9 of the United States-Colombia Trade Promotion Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section A:*

(1) Procurement of goods and services—$92,319; and

(2) Procurement of construction services—$7,032,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section B:*

(1) Procurement of goods and services—$499,000; and

(2) Procurement of construction services—$7,032,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1, Section C:*

(1) Procurement of goods and services for List B Entities—$563,000;

(2) Procurement of construction services—$7,032,000.

VI. Chapter 9 of the Dominican Republic-Central American-United States Free Trade Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1.2(b)(i), Section A:*

(1) Procurement of goods and services—$92,319; and

(2) Procurement of construction services—$7,032,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1.2(b)(i), Section B:*

(1) Procurement of goods and services—$499,000; and

(2) Procurement of construction services—$7,032,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1.2(b)(i), Section C:*

(1) Procurement of goods and services for List B Entities—$563,000;

(2) Procurement of construction services—$7,032,000.

VII. Chapter 17 of the United States-Korea Free Trade Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 17–A, Section A:*

(1) Procurement of construction services—$7,032,000.

VIII. Chapter 9 of the United States-Morocco Free Trade Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 9–A–1:*

(1) Procurement of goods and services—$183,000; and

(2) Procurement of construction services—$7,032,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9–A–2:*

(1) Procurement of goods and services—$499,000; and

(2) Procurement of construction services—$7,032,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9–A–3:*

(1) Procurement of goods and services for List B Entities—$563,000;

(2) Procurement of construction services—$7,032,000.

IX. Chapter 9 of the United States-Oman Free Trade Agreement

A. *Central Level Government Entities listed in the U.S. Schedule to Annex 9, Section A:*

(1) Procurement of goods and services—$183,000; and

(2) Procurement of construction services—$12,001,460.

B. *Other Covered Entities listed in the U.S. Schedule to Annex 9, Section B:*

(1) Procurement of goods and services for List B Entities—$563,000;

(2) Procurement of construction services—$14,771,718.

X. Chapter 9 of the United States-Panama Trade Promotion Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section A:*

(1) Procurement of goods and services—$183,000; and

(2) Procurement of construction services—$7,032,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section B:*

(1) Procurement of goods and services—$499,000; and

(2) Procurement of construction services—$7,032,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1, Section C:*

(1) Procurement of goods and services for List B Entities—$563,000;

(2) Procurement of construction services—$7,032,000.

D. *Autoridad del Canal de Panamá*

(1) Procurement of goods and services—$563,000.

XI. Chapter 9 of the United States-Peru Trade Promotion Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section A:*

(1) Procurement of goods and services—$183,000; and

(2) Procurement of construction services—$7,032,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 9.1, Section B:*

(1) Procurement of goods and services—$499,000; and

(2) Procurement of construction services—$7,032,000.

C. *Other Entities listed in the U.S. Schedule to Annex 9.1, Section C:*

(1) Procurement of goods and services for List B Entities—$563,000;

(2) Procurement of construction services—$7,032,000.

XII. Chapter 13 of the United States-Singapore Free Trade Agreement

A. *Central Government Entities listed in the U.S. Schedule to Annex 13A, Schedule 1, Section A:*

(1) Procurement of goods and services—$92,319; and

(2) Procurement of construction services—$7,032,000.

B. *Sub-Central Government Entities listed in the U.S. Schedule to Annex 13A, Schedule 1, Section B:*

(1) Procurement of goods and services—$499,000; and

(2) Procurement of construction services—$7,032,000.

C. *Other Entities listed in the U.S. Schedule to Annex 13A, Schedule 1, Section C:*

(1) Procurement of goods and services—$563,000;

(2) Procurement of construction services—$7,032,000.

XIII. Chapter 13 of the United States-Mexico-Canada Agreement (USMCA)*

A. *Central Government Entities listed in the U.S. Schedule to Annex 13–A, Section A:*

(1) Procurement of goods and services—$92,319; and

(2) Procurement of construction services—$12,001,460.

B. *Other Entities listed in the U.S. Schedule to Annex 13–A, Section B:*

(1) Procurement of goods and services—$461,594; and

(2) Procurement of construction services—$14,771,718.

* Procurement obligations in the USMCA are between the United States and Mexico only.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2021–25821 Filed 11–24–21; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2021–1094]

Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: Flight Engineers and Flight Navigators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection involves FAA Form 8400–3, Application for an Airman Certificate and/or Rating, (for flight engineer and flight navigator) and applications for approval of related training courses that are submitted to FAA for evaluation. The information collection is necessary to determine applicant eligibility for flight engineer or flight navigator certificates. This collection is also necessary to determine training course acceptability for those schools training flight engineers or navigators.

DATES: Written comments should be submitted by January 25, 2022.

ADDRESSES: Please send written comments:

By Electronic Docket: www.regulations.gov (Enter docket number into search field).

By mail: Sandra Ray, Federal Aviation Administration, Voluntary Programs and Rulemaking Section AFS–260, 1187 Thorn Run Road, Suite 200, Coraopolis, PA 15108.

By fax: 412–239–3063.

FOR FURTHER INFORMATION CONTACT: Sandra Ray by email at: *Sandra.ray@faa.gov;* phone: 412–329–3088.

SUPPLEMENTARY INFORMATION:

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

OMB Control Number: 2120–0007.

Title: Flight Engineers and Flight Navigators.

Form Numbers: 8400–3.

Type of Review: Renewal of an information collection.

Background: The information collection is necessary to determine applicant eligibility for flight engineer or flight navigator certificates. This collection is also necessary to determine training course acceptability for those schools training flight engineers or navigators. FAA Form 8400.3, Application for an Airman Certificate and/or Rating, (for flight engineer and flight navigator) and applications for approval of related training courses are available online and are submitted to FAA for evaluation. The information is reviewed to determine applicant eligibility and compliance with prescribed provisions of Title 14 CFR part 63, Certification: Flight Crewmembers Other Than Pilots. Form 8400–3 is multiple-use form also used for control tower operators and aircraft dispatchers.

Respondents: Airman Applicants and Training Schools.

Frequency: As needed.

Estimated Average Burden per Response: Varies per Requirement.

Estimated Total Annual Burden: 268 Hours.

Issued in Washington, DC, on November 22, 2021.

Sandra L. Ray,

Aviation Safety Inspector. AFS–260

[FR Doc. 2021–25763 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2021–0010]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt six individuals from the vision requirement in the Federal Motor Carrier Safety Regulations (FMCSRs) to operate a commercial motor vehicle (CMV) in interstate commerce. They are unable to meet the vision requirement in one eye for various reasons. The exemptions enable these individuals to operate CMVs in interstate commerce without meeting the vision requirement in one eye.

DATES: The exemptions were applicable on September 16, 2021. The exemptions expire on September 16, 2023.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, (202) 366–4001, *fmcsamedical@dot.gov,* FMCSA, DOT, 1200 New Jersey Avenue SE, Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., ET, Monday through Friday, except Federal holidays. If you have questions regarding viewing or submitting material to the docket, contact Dockets Operations, (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation

A. Viewing Comments

To view comments go to *www.regulations.gov.* Insert the docket number, FMCSA–2021–0010, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Background

On August 16, 2021, FMCSA published a notice announcing receipt of applications from seven individuals requesting an exemption from vision requirement in 49 CFR 391.41(b)(10) and requested comments from the public (86 FR 45800). The public comment period ended on September 15, 2021, and one comment was received.

FMCSA has evaluated the eligibility of these applicants and determined that granting the exemptions to six of these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with § 391.41(b)(10).

The physical qualification standard for drivers regarding vision found in § 391.41(b)(10) states that a person is physically qualified to drive a CMV if that person has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of a least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing red, green, and amber.

III. Discussion of Comments

FMCSA received one comment in this proceeding. The Minnesota Department of Public Safety submitted a comment pertaining to the qualifications of Mr. Dillon. FMCSA contacted State representatives for Minnesota to request additional information regarding the submitted comment. Based on the information provided, FMCSA has determined that Mr. Dillon is not eligible for a vision exemption at this time.

IV. Basis for Exemption Determination

Under 49 U.S.C. 31136(e) and 31315(b), FMCSA may grant an exemption from the FMCSRs for no longer than a 5-year period if it finds such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption. The statute also allows the Agency to renew exemptions at the end of the 5-year

period. FMCSA grants medical exemptions from the FMCSRs for a 2-year period to align with the maximum duration of a driver's medical certification.

The Agency's decision regarding these exemption applications is based on medical reports about the applicants' vision, as well as their driving records and experience driving with the vision deficiency. The qualifications, experience, and medical condition of each applicant were stated and discussed in detail in the August 16, 2021, **Federal Register** notice (86 FR 45800) and will not be repeated here.

FMCSA recognizes that some drivers do not meet the vision requirement but have adapted their driving to accommodate their limitation and demonstrated their ability to drive safely. The six exemption applicants listed in this notice are in this category. They are unable to meet the vision requirement in one eye for various reasons, including amblyopia, complete loss of vision, and optic atrophy. In all cases, their eye conditions did not develop recently. All of the applicants were either born with their vision impairments or have had them since childhood. Although each applicant has one eye that does not meet the vision requirement in § 391.41(b)(10), each has at least 20/40 corrected vision in the other eye, and, in a doctor's opinion, has sufficient vision to perform all the tasks necessary to operate a CMV.

Doctors' opinions are supported by the applicants' possession of a valid license to operate a CMV. By meeting State licensing requirements, the applicants demonstrated their ability to operate a CMV with their limited vision in intrastate commerce, even though their vision disqualified them from driving in interstate commerce. We believe that the applicants' intrastate driving experience and history provide an adequate basis for predicting their ability to drive safely in interstate commerce. Intrastate driving, like interstate operations, involves substantial driving on highways on the interstate system and on other roads built to interstate standards. Moreover, driving in congested urban areas exposes the driver to more pedestrian and vehicular traffic than exists on interstate highways. Faster reaction to traffic and traffic signals is generally required because distances between them are more compact. These conditions tax visual capacity and driver response just as intensely as interstate driving conditions.

The applicants in this notice have driven CMVs with their limited vision in careers ranging from 3 to 53 years. In the past 3 years, no drivers were involved in crashes, and one driver was convicted of a moving violation in a CMV. All the applicants achieved a record of safety while driving with their vision impairment that demonstrates the likelihood that they have adapted their driving skills to accommodate their condition. As the applicants' ample driving histories with their vision deficiencies are good predictors of future performance, FMCSA concludes their ability to drive safely can be projected into the future.

Consequently, FMCSA finds that in each case exempting these applicants from the vision requirement in § 391.41(b)(10) is likely to achieve a level of safety equal to that existing without the exemption.

V. Conditions and Requirements

The terms and conditions of the exemption are provided to the applicants in the exemption document and includes the following: (1) Each driver must be physically examined every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in § 391.41(b)(10) and (b) by a certified medical examiner (ME) who attests that the individual is otherwise physically qualified under § 391.41; (2) each driver must provide a copy of the ophthalmologist's or optometrist's report to the ME at the time of the annual medical examination; and (3) each driver must provide a copy of the annual medical certification to the employer for retention in the driver's qualification file, or keep a copy in his/her driver's qualification file if he/she is self-employed. The driver must also have a copy of the exemption when driving, for presentation to a duly authorized Federal, State, or local enforcement official.

VI. Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with this exemption with respect to a person operating under the exemption.

VII. Conclusion

Based upon its evaluation of the six exemption applications, FMCSA exempts the following drivers from the vision requirement, § 391.41(b)(10), subject to the requirements cited above:
Christopher W. Cochran (MO)
David L. Marsh (WA)
Jason A. Melo (NH)
Jeffrey S. Rockhill (KS)
Leonard J. VanVelkinburgh (CA)
Ananias E. Yoder (IA)

In accordance with 49 U.S.C. 31136(e) and 31315(b), each exemption will be valid for 2 years from the effective date unless revoked earlier by FMCSA. The exemption will be revoked if the following occurs: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained prior to being granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315(b).

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2021–25726 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2021–0100]

Draft General Conformity Determination for the California High-Speed Rail System San Jose to Merced Section

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice; request for comment.

SUMMARY: FRA is issuing this notice to advise the public that a draft General Conformity Determination for the San Jose to Merced Section of the California High-Speed Rail (HSR) System is available for public and agency review and comment.

DATES: Comments must be received on or before December 27, 2021.

ADDRESSES: Comments related to Docket No. FRA–2021–0100 may be submitted by going to *http://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number (FRA–2021–0100). All comments received will be posted without change to *https://www.regulations.gov;* this includes any personal information. Please see the *Privacy Act Statement* heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read the draft General Conformity Determination, background documents, or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Andréa Martin, Senior Environmental Protection Specialist, Office of Railroad Policy and Development (RPD), telephone: (202) 493–6201, email: *Andrea.Martin@dot.gov;* or Marlys Osterhues, Chief, Environment and Project Engineering, RPD, telephone: (202) 493–0413, email: *Marlys.Osterhues@dot.gov.*

SUPPLEMENTARY INFORMATION:

Privacy Act Statement: FRA will post comments it receives, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through *www.dot.gov/privacy.* To facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, inclusion of names is completely optional. Whether commenters identify themselves or not, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Background: The California High-Speed Rail Authority (CHSRA) is advancing the environmental review of the San Jose to Merced Section (Project) of the California HSR System pursuant to 23 U.S.C. 327, under which it has assumed FRA's environmental review responsibilities. However, under Section 327, FRA remains responsible for making General Conformity Determinations under the Clean Air Act. This draft General Conformity Determination documents FRA's evaluation of the Project, consistent with the relevant section of the Clean Air Act and its implementing regulations.

FRA conducted the analysis of the Project's potential emissions consistent with all regulatory criteria and procedures and following the Authority's coordination with the U.S. Environmental Protection Agency, Bay Area Air Quality Management District (BAAQMD), San Joaquin Valley Air Pollution Control District (SJVAPCD), Monterey Bay Air Resources District (MBARD) and the California Air Resources Board. The draft General Conformity Determination concludes that the Project, as designed, conforms to the approved SIP, based on a commitment from the CHSRA that construction-phase NO_X emissions will be offset consistent with the applicable federal regulations in the SFBAAB and SJVAB.

Next Steps

The draft General Conformity Determination for the Project is being issued for public review and comment for 30-days at Docket No. FRA–2021–0100. Comments related to Docket No. FRA–2021–0100 may be submitted by going to *http://www.regulations.gov* and following the online instructions for submitting comments. Although CHSRA is assisting FRA by disseminating notice of the availability of the draft General Conformity Determination through its usual outreach methods, CHSRA is not accepting comments on behalf of FRA. FRA cannot ensure consideration of any comment that is not submitted via *http://www.regulations.gov.* FRA will consider all relevant comments it receives before issuing a final General Conformity Determination.

Issued in Washington, DC.

Jamie P. Rennert,

Director, Office of Infrastructure Investment.

[FR Doc. 2021–25805 Filed 11–24–21; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 944, Form 944(SP), Form 944–X, and Form 944–X (SP)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning Form 944, Employer's Annual Employment Tax Return, Form 944(SP), Declaracion Federal Anual de Impuestos del Patrono o Empleador, Form 944–X, Adjusted Employer's Annual Federal Tax Return or Claim for Refund, and 944–X (SP), Ajuste a la Declaración Federal ANUAL del Patrono o Reclamación de Reembolso.

DATES: Written comments should be received on or before January 25, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224. You must reference the information collection's title, form number, reporting or record-keeping requirement number, and OMB number in your comment.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Jon Callahan, (737) 800–7639, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or through the internet at *jon.r.callahan@irs.gov.*

SUPPLEMENTARY INFORMATION: The IRS is currently seeking comments concerning the following information collection tools, reporting, and record-keeping requirements:

Title: Employer's Annual Employment Tax Return.

OMB Number: 1545–2007.

Form Number: Forms 944, 944(SP), 944–X, and 944–X(SP).

Abstract: The information on Form 944 will be collected to ensure the smallest nonagricultural and non-household employers are paying the correct amount of social security tax, Medicare tax, and withheld federal income tax. Information on line 13 will be used to determine if employers made any required deposits of these taxes. Form 944 (SP) is the Spanish version of the Form 944. Form 944–X and Form 944–X(SP) are used to correct errors made on Form 944.

Current Actions: There are changes to the existing collection: Lines were added to Form 944–X and Form 944–X (SP) to match the changes made in the last revision of Form 944 and Form 944 (SP). The new lines are for reporting corrections of the credits allowed by provisions of the American Rescue Plan Act of 2021, Public Law 117–2, claimed on Form 944 and Form 944 (SP).

Type of Review: Revision of a currently approved collection.

Affected Public: Individual or households, Businesses and other for-profit organizations, Not-for-profit institutions, and State, Local, and tribal Governments.

Estimated Number of Respondents: 135,884.

Estimated Time per Respondent: 23 hours 36 minutes.

Estimated Total Annual Burden Hours: 3,207,532.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection

of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: November 19, 2021.

Jon R. Callahan,

Tax Analyst.

[FR Doc. 2021–25729 Filed 11–24–21; 8:45 am]

BILLING CODE 4830–01–P

UNIFIED CARRIER REGISTRATION PLAN

Sunshine Act; Meeting

TIME AND DATE: December 2, 2021, 12:00 p.m. to 2:00 p.m., Eastern time.

PLACE: This meeting will be accessible via conference call and via Zoom Meeting and Screenshare. Any interested person may call (i) 1–929–205–6099 (US Toll) or 1–669–900–6833 (US Toll) or (ii) 1–877–853–5247 (US Toll Free) or 1–888–788–0099 (US Toll Free), Meeting ID: 924 8034 4706, to listen and participate in this meeting. The website to participate via Zoom Meeting and Screenshare is *https://kellen.zoom.us/j/92480344706.*

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Audit Subcommittee (the ''Subcommittee'') will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement. The subject matter of this meeting will include:

Proposed Agenda

I. Call to Order—Subcommittee Chair

The Subcommittee Chair will welcome attendees, call the meeting to order, call roll for the Subcommittee, confirm whether a quorum is present, and facilitate self-introductions.

II. Verification of Publication of Meeting Notice—UCR Executive Director

The UCR Executive Director will verify the publication of the meeting notice on the UCR website and distribution to the UCR contact list via email followed by the subsequent publication of the notice in the **Federal Register**.

III. Review and Approval of Subcommittee Agenda and Setting of Ground Rules—Subcommittee Chair

For Discussion and Possible Subcommittee Action: The Agenda will be reviewed, and the Subcommittee will consider adoption.

Ground Rules

➢ Subcommittee action only to be taken in designated areas on agenda.

IV. Review and Approval of Subcommittee Minutes from the October 21, 2021 Meeting—Subcommittee Chair

For Discussion and Possible Subcommittee Action: Draft minutes from the October 21, 2021 Subcommittee meeting via teleconference will be reviewed. The Subcommittee will consider action to approve.

V. Review Proposals Received for External Audit of the UCR Depository—UCR Executive Director and UCR Depository Manager

For Discussion and Possible Subcommittee Action: The UCR Executive Director and the UCR Depository Manager will discuss the proposals received from the respondents to the request-for-proposal (RFP) that was distributed to four selected firms in November. The purpose of the RFP was to begin a process to identify and engage a new independent auditing firm to conduct an assurance engagement of the UCR Depository's financial statements for the year ending December 31, 2021. The proposals received will be tabulated, ranked, and then presented to the Subcommittee. The Subcommittee may consider making a recommendation to the Board to engage a new auditing firm for the financial statements ending December 31, 2021.

VI. Discussion of the UCR Internal Controls Procedures Report Prepared by the Independent Audit Firm—UCR Executive Director and UCR Depository Manager

The UCR Executive Director and the UCR Depository Manager will lead a discussion of the report on the Internal Controls Review that was performed by Williams, Benator & Libby (WBL). The response to the report from Kellen will also be reviewed and discussed.

VII. Motor Carriers Selecting Option B for UCR Renewals—Subcommittee Chair, UCR Executive Director, and DSL Transportation, Inc. (DSL)

The Subcommittee Chair, UCR Executive Director, and DSL will discuss issues related to motor carriers who select Option B to renew UCR registration. The discussion will include consideration of the ''pros'' and ''cons'' regarding the potential requirement on motor carriers to upload a list of intrastate exempt vehicles to the National Registration System when registering in the portal.

VIII. Review 49 CFR 392.2 Violations—Subcommittee Chair and DSL

The Subcommittee Chair and DSL will review the 49 CFR 392.2 violations in the State of Kansas (Kansas) for the month of October 2021. The discussion will highlight the financial value to Kansas by vetting these companies for UCR compliance, commercial registration, IFTA, intrastate, and interstate operating authority. 49 CFR 392.2 requires commercial motor vehicles to operate in accordance with the laws, ordinances, and regulations of the jurisdiction in which they are operating within.

IX. Vetting the Shadow MCMIS Report—Subcommittee Chair, Verna Jackson, and DSL

The Subcommittee Chair, Verna Jackson, and DSL will update the Subcommittee on the value achieved by vetting the Shadow MCMIS report in Kansas. The discussion will highlight the financial value to Kansas by vetting these companies for UCR compliance, commercial registration, IFTA, intrastate, and interstate operating authority.

X. Review States' Audit Compliance Rates Compliance Percentages for Focused Anomaly Reviews (FARs) for Registration Years 2020, 2021, and 2022—Subcommittee Chair

The Subcommittee Chair will review audit compliance rates for the states for registration years 2020, 2021, and 2022 and included compliance percentages for FARs, retreat audits, and registration compliance percentages.

XI. Support States to Improve Registration Compliance—Subcommittee Chair and DSL

The Subcommittee Chair and DSL will lead a discussion regarding methods to help participating states improve registration compliance (percentages). Suggested methods might include educating various constituents such as state registration offices, state motor carrier association offices, state highway patrols, etc. New entrant audits are an additional suggestion. Input from the Subcommittee on other ideas is encouraged.

XII. Seeking Vice-Chair for the UCR Audit Subcommittee—Subcommittee Chair

The Subcommittee Chair will lead a discussion regarding interest in the vacant Subcommittee Vice-Chair position.

XIII. Other Business—Subcommittee Chair

The Subcommittee Chair will call for any other items Subcommittee members would like to discuss.

XIV. Adjournment—Subcommittee Chair

The Subcommittee Chair will adjourn the meeting.

The agenda will be available no later than 5:00 p.m. Eastern time, November 23, 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. 2021–25920 Filed 11–23–21; 11:15 am]

BILLING CODE 4910–YL–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0587]

Agency Information Collection Activity under OMB Review: VAAR 832.202–04, Security for Government Financing

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Office of Acquisition and Logistics (OAL), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–0587.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0587'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: Department of Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–70, Equipment Operation and Maintenance Manuals.

OMB Control Number: 2900–0587.

Type of Review: Extension of a currently approved collection.

Abstract: The information collection requirements from VAAR clause 852.211–70, Equipment Operation and Maintenance Manuals, is used when VA purchases technical medical equipment and devices or mechanical equipment. The clause requires the contractor to furnish both operator's manuals and maintenance/repair manuals with the equipment provided to the Government. This clause sets forth those requirements and sets forth the minimum standards those manuals must meet to be acceptable. Generally, this is the same operator's manual furnished with each piece of equipment sold to the general public and the same repair manual used by company technicians in repairing the company's equipment. The cost of the manuals is included in the contract price or listed as separately priced line items on the purchase order. The operator's manual will be used by the individual actually operating the equipment to ensure proper operation and cleaning. The repair manual will be used by VA equipment repair staff to repair the equipment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 86 FR 51451 on September 15, 2021, pages 51451 to 51452.

Affected Public: Business or other for profit.

Estimated Annual Burden: 621 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,725.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2021–25740 Filed 11–24–21; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 86 Friday,
No. 225 November 26, 2021

Part II

Surface Transportation Board

49 CFR Parts 1011, 1108, 1115, et al.
Joint Petition for Rulemaking To Establish a Voluntary Arbitration Program for Small Rate Disputes; Proposed Rule

SURFACE TRANSPORTATION BOARD

49 CFR Parts 1011, 1108, 1115 and 1244

[Docket No. EP 765]

Joint Petition for Rulemaking To Establish a Voluntary Arbitration Program for Small Rate Disputes

AGENCY: Surface Transportation Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: In response to a joint petition for rulemaking filed by five Class I rail carriers, the Surface Transportation Board (STB or Board) proposes to modify its regulations to establish a voluntary arbitration program for small rate disputes.

DATES: Comments on the proposed rule are due by January 14, 2022. Reply comments are due by March 15, 2022.

ADDRESSES: Comments and replies may be filed with the Board via e-filing on the Board's website at *www.stb.gov* and will be posted to the Board's website.

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: Pursuant to 49 U.S.C. 11708, the Board's regulations at 49 CFR part 1108 establish a voluntary arbitration program ''under which participating parties, including rail carriers and shippers, have agreed voluntarily in advance or on a case-by-case basis to resolve disputes about arbitration-program-eligible matters brought before the Board using the Board's arbitration procedures.'' 49 CFR 1108.1(c).

On July 31, 2020, five Class I rail carriers—Canadian National Railway Company (CN),[1] CSX Transportation, Inc. (CSXT), the Kansas City Southern Railway Company, Norfolk Southern Corp. (NSR), and Union Pacific Railroad Company (UP) (collectively, Petitioners)—filed a petition for rulemaking (the Petition) to add a small rate case arbitration program at 49 CFR part 1108a, which would function alongside the existing arbitration program at 49 CFR part 1108.[2] Petitioners pledge to consent to arbitrate disputes under their proposed program for a period of five years, provided the Board adopts the program according to the terms set forth in the Petition. These terms include the right of the carriers to withdraw from the program under certain circumstances, such as if the Board adopts a material change to its existing rate reasonableness methodologies or creates a new rate reasonableness methodology after a shipper or railroad has opted into the program. (Pet. 17.)

Replies to the Petition were filed on August 20, 2020, by the National Grain and Feed Association (NGFA); Olin Corporation (Olin); the American Fuel & Petrochemical Manufacturers (AFPM); the U.S. Department of Agriculture (USDA); [3] and (filing jointly) the American Chemistry Council, Corn Refiners Association, Institute of Scrap Recycling Industries, National Industrial Transportation League, The Chlorine Institute, and The Fertilizer Institute (collectively, Joint Shippers).

Supplemental pleadings were filed on September 10, 2020, and the Board instituted a rulemaking proceeding to consider the proposal on November 25, 2020.

After considering the Petition and the comments received, the Board will grant the Petition, as qualified below, and propose new regulations at 49 CFR part 1108, subpart B,[4] establishing a voluntary arbitration program for small rate cases.

Background

The Board established arbitration procedures at 49 CFR part 1108 in 1997. *See Arb. of Certain Disputes Subject to the Statutory Juris. of the STB,* 62 FR 46217 (Sept. 2, 1997), 2 S.T.B. 564 (1997). Under those procedures, as originally conceived, parties could agree voluntarily on a case-by-case basis to arbitrate any dispute involving the payment of money or involving rates or practices related to rail transportation or services subject to the Board's statutory jurisdiction. *Id.* at 565. The Board established those procedures pursuant to its authority at 49 U.S.C. 721 (now 49 U.S.C. 1321), which generally authorizes the Board to prescribe regulations in carrying out its statutory responsibilities. *Id.* at 582.

In 2013, the Board modified its arbitration procedures in *Assessment of Mediation & Arbitration Procedures,* 78 FR 29071 (May 17, 2013), EP 699 (STB served May 13, 2013) (revising and consolidating the Board's arbitration procedures). Among other things, the Board established a program under which a party could voluntarily agree in advance to arbitrate particular types of disputes with clearly defined limits of liability. *Id.* at 4. The revised regulations did not include rate disputes as an arbitration-program-eligible matter.[5] *Id.* at 7–9.

In section 13 of the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Congress required the Board to promulgate regulations establishing a voluntary and binding arbitration process to resolve rail rate and practice complaints under its jurisdiction. *See* Public Law 114–110, section 13, 129 Stat. 2228, 2235–38. Section 13, which is codified at 49 U.S.C. 11708, set forth certain requirements and procedures for the Board's arbitration process, such as listing categories of covered disputes and imposing timelines. *Id.*

In response to section 13 of the STB Reauthorization Act, the Board further adjusted its procedures at 49 CFR part 1108 to add rate disputes to the matters eligible for arbitration under its arbitration program and made other changes to conform to the requirements set forth in the statute. *See Revisions to Arb. Procs.* (*Revisions Final Rule*), 81 FR 69410 (Oct. 6, 2016), EP 730, slip op. at 1–2 (STB served Sept. 30, 2016) *corrected* (STB served Oct. 11, 2016). To date, three Class I carriers have opted into the Board's arbitration program for certain types of disputes (though not rate disputes),[6] but the program has never been used.

In January 2018, the Board established the Rate Reform Task Force (RRTF) with the objective of, among other things, determining how best to provide a rate review process for small cases.[7] After

[1] The petition lists one of the petitioners only as ''CN.'' A supplemental filing identifies this party as the ''U.S. operating subsidiaries of CN.'' Although not identified in either filing, the Board understands ''CN'' to mean Canadian National Railway Company.

[2] Although the Petition refers to Norfolk Southern Corp., a noncarrier, a subsequent supplement instead refers to that entity's operating affiliate, Norfolk Southern Railway Company. (Pet'rs Suppl. 2.) When referring to NSR in this decision, the Board is referring only to Norfolk Southern Railway Company.

[3] USDA structures its comment as individual letters to the three then-current Board Members. Aside from the headings, the content of each letter is identical.

[4] Petitioners proposed that the regulations establishing the new arbitration program at a new part (49 CFR part 1108a) but creating a new subpart within 49 CFR part 1108 is more consistent with Code of Federal Regulations formatting.

[5] The revised regulations permitted parties to agree on a case-by-case basis to arbitrate additional matters, provided that the matters were within the Board's statutory jurisdiction to resolve and that the dispute did not require the Board to grant, deny, stay or revoke a license or other regulatory approval or exemption, and did not involve labor protective conditions. *See Assessment of Mediation & Arb. Procs.,* EP 699, slip op. at 8–9.

[6] *See* UP Notice (June 21, 2013), CSXT Notice (June 28, 2019), and CN Notice (July 1, 2019), *Assessment of Mediation & Arb. Procs.,* EP 699.

[7] The RRTF Report stated that, for small disputes, the litigation costs required to bring a case under the Board's existing rate reasonableness methodologies can quickly exceed the value of the case. RRTF Report 5–8, 9, 14; *see also Expanding Access to Rate Relief,* 81 FR 61647 (Sept. 7, 2016), EP 665 (Sub–No. 2), slip op. at 10 (STB served Aug. 31, 2016).

holding informal meetings throughout 2018, the RRTF issued a report on April 25, 2019 (RRTF Report).[8] Two key recommendations of the report were legislation to permit mandatory arbitration of small rate disputes and that the Board establish a new rate reasonableness decision-making process under which a shipper and railroad would each submit a ''final offer'' of what it believes a reasonable rate to be, subject to short, non-flexible deadlines, with the Board selecting one party's offer without revision. RRTF Report 14–20.

In September 2019, the Board proposed a new procedure for challenging the reasonableness of railroad rates in smaller cases based on a final offer selection procedure, which it called Final Offer Rate Review (FORR). *See Final Offer Rate Rev.,* 84 FR 48872 (Sept. 17, 2019), EP 755 (STB served Sept. 12, 2019). All Class I carriers who commented in that proceeding opposed FORR on both legal and policy grounds. In its comments, CN argued that the Board should abandon consideration of FORR and suggested that the Board instead consider including within its existing arbitration program a targeted avenue for smaller rate disputes. *See* CN Comments 25–27, Nov. 12, 2019, *Final Offer Rate Rev.,* EP 755; *see also* CN Reply Comments 2–3, Jan. 10, 2020, *Final Offer Rate Rev.,* EP 755. CN stated that such a program should include the following features: Mandatory mediation, confidentiality, non-precedential decisions, more modest limits on relief than those authorized under 49 U.S.C. 11708, and voluntariness. *See* CN Comments 25–27, Nov. 12, 2019, *Final Offer Rate Rev.,* EP 755.[9]

In May 2020, the Board issued a decision that allowed for post-comment period ex parte discussions with stakeholders regarding FORR. *See Final Offer Rate Rev.,* EP 755 (STB served May 15, 2020). Noting that its arbitration program has gone unused, the Board expressed interest in exploring the issues raised in CN's comments, as well as whether and how its arbitration program at 49 CFR part 1108 could be modified to provide a practical and useful dispute resolution mechanism, particularly for stakeholders with smaller rate disputes. *Id.* at 2.

During ex parte discussions with the Board Members, certain Petitioners elaborated on the potential small rate case arbitration framework outlined in CN's comments. Some carriers argued that the Board should adopt changes to its existing arbitration process, such as allowing for a more flexible arbitrator selection process and for arbitration to have greater confidentiality protections. *See* CN, CSXT, NSR, & UP Ex Parte Meeting Mem. 1–2, July 8, 2020 (filing ID 300856) *Final Offer Rate Rev.,* EP 755; CN, CSXT, NSR, & UP Ex Parte Meeting Mem. 1–2, July 27, 2020 (filing ID 300928) *Final Offer Rate Rev.,* EP 755. Those carriers also suggested that the Board consider, among other things, creating an incentive for carriers to arbitrate by exempting them from FORR or other types of rate challenges if they agree to participate in arbitration. *See* CN, CSXT, NSR, & UP Ex Parte Meeting Mem. 2, July 10, 2020 (filing ID 300866) *Final Offer Rate Rev.,* EP 755. They indicated their intent to submit a proposal to the Board that could attract support from multiple stakeholders. *See* CN, CSXT, NSR, & UP Ex Parte Meeting Mem. 1–2, July 21, 2020 (filing ID 300901) *Final Offer Rate Rev.,* EP 755.

In their ex parte discussions with Board Members, shipper interests generally did not oppose an arbitration process provided it is fair, though most advocated in favor of the Board adopting FORR. *See, e.g.,* Olin Ex Parte Meeting Mem. 2, July 15, 2020 (filing ID 300883) *Final Offer Rate Rev.,* EP 755; American Chemistry Council Ex Parte Meeting Mem. 3, July 17, 2020 (filing ID 300897) *Final Offer Rate Rev.,* EP 755; Solvay America Inc. Ex Parte Meeting Mem. 1, July 22, 2020 (filing ID 300916) *Final Offer Rate Rev.,* EP 755.

On July 31, 2020, Petitioners filed the Petition, asking the Board to establish a new arbitration program for small rate cases. Petitioners argue that establishing a working arbitration program for small rate disputes may offer the best long-term way to resolve the recurring concern that even the Board's simplified rate review methodologies are insufficient in terms of flexibility, cost, and speed. (Pet. 1.) Petitioners propose certain changes from the Board's existing arbitration process at 49 CFR part 1108, which they assert would make their proposed arbitration program streamlined and more flexible than the existing process and thus incentivize both railroad and shipper participation. (*Id.* at 3.) Among these changes are delegating market dominance determinations to the arbitration panel, adding confidentiality protections, and allowing the use of arbitrators who are not on the Board-maintained roster. (*Id.* at 21.) Petitioners also claim that their proposed small rate case arbitration program is both low-cost and consistent with statutory and economic principles, which they claim distinguishes it from the FORR procedures proposed in Docket No. EP 755. (*Id.* at 4.)

On August 20, 2020, NGFA, Olin, AFPM, USDA, and Joint Shippers filed replies. NGFA and USDA state that they support the Board commencing a rulemaking proceeding on the Petition, subject to certain modifications and provided that the Board not delay implementation of FORR. (NGFA Reply 1; USDA Reply 1.)[10] Joint Shippers, Olin, and AFPM urge the Board to deny the Petition and focus on completing the proceeding in FORR. (Joint Shippers Reply 2–3; Olin Reply 1–2; AFPM Reply 5.) Though some reply commenters state that the Petitioners' proposal has elements worthy of consideration, (Joint Shippers Reply 3), and that a properly structured, efficient, and affordable arbitration approach could well be a preferred alternative to FORR in many circumstances, (USDA Reply 2), several reply commenters argue that Petitioners are attempting to either delay the Board's adoption of FORR or to avoid being subject to FORR if it is adopted. (Joint Shippers Reply 4–5; AFPM Reply 1, 4; Olin Reply 8–9; USDA 1; *see also* NGFA Reply 5 (objecting to allowing carriers to be exempt from the FORR process if they participate in the arbitration program).) Reply commenters also object to specific aspects of the proposal, such as the fact that shippers would be prohibited from challenging the rates under revenue adequacy principles, (*see* Joint Shippers Reply 4–5; Olin Reply 7–8), and that arbitration decisions would be confidential, (*see* USDA Reply 3; NGFA Reply 7–8).

NGFA stated that it would not object to allowing Petitioners an opportunity to reply and inform the Board whether the carriers would be amenable to NGFA's proposed modifications, ''as well as whether consideration and adoption of those changes would result in their electing not to participate in the [proposed program] if modified in certain respects.'' (NGFA Reply 3.) The Board issued a decision on August 26, 2020, permitting Petitioners to submit a

[8] The RRTF Report can be accessed on the Board's website at *https://prod.stb.gov/wp-content/uploads/Rate-Reform-Task-Force-Report-April-2019.pdf.*

[9] The Association of American Railroads (AAR) also called for the Board to investigate how to encourage parties to make greater use of its voluntary arbitration program in a separate proceeding. *See* AAR Comments 3, Feb. 13, 2020, *Hr'g on Revenue Adequacy,* 84 FR 48982 (Sept. 17, 2019), EP 761.

[10] NGFA explains that it had a series of initial discussions with representatives of the Petitioners prior to Petitioners' submission of the Petition and that, while those discussions were ''constructive and conducted in good faith,'' NGFA and the Petitioners were unable to reach a consensus on the proposal. (NGFA Reply 1–2.)

supplemental pleading regarding the proposed modifications to the arbitration program suggested by NGFA and other parties. Other interested parties were also permitted to respond.

On September 10, 2020, Petitioners submitted a supplemental filing, as did AFPM, the Joint Shippers, and the U.S. Wheat Associates Transportation Working Group (U.S. Wheat).[11] In their supplemental filing, Petitioners state that they are agreeable to several modifications to the proposed program, but not to the core features of confidentiality, exemption from FORR, and a prohibition on revenue adequacy considerations. The shipper groups largely renew their previously stated objections.

On January 25, 2021, Canadian Pacific (CP),[12] a Class I rail carrier, filed a letter stating that it supports the effort to find a ''workable, reasonable, accessible arbitration program for small rate cases, and would participate in such a pilot program.'' (CP Letter 1.)

The Proposed Rule

The Board has pursued different ways to improve its processes for rate relief, particularly for smaller cases. *See Final Offer Rate Rev.,* EP 755, slip op. at 3 (STB served Sept. 12, 2019); *Mkt. Dominance Streamlined Approach,* 84 FR 48882 (Sept. 17, 2019), EP 756, slip op. at 3 n.5 (citing *Expanding Access to Rate Relief,* EP 665 (Sub–No. 2), slip op. at 10 (STB served Aug. 31, 2016). Based on one of the RRTF's recommendations, the Board proposed the FORR process. Here, Petitioners urge the Board to adopt their proposed voluntary arbitration program and exempt those carriers that choose to participate in the program from having their rates challenged under the FORR process, if that process is adopted.

Petitioners argue that their proposed arbitration program is the best path forward to provide meaningful access to rate review for small rate cases and that, with Petitioners' pledge to commit to the program for five years, the program would provide an available avenue to resolve small rate disputes. (Pet. 28.) As noted, they claim that their proposed arbitration program is both low-cost and consistent with statutory and economic principles, which they argue makes the program different from FORR. (Pet. 4.)

As noted above, several shipper interests generally oppose Petitioners' proposed arbitration program. Among their objections is the idea that carriers participating in arbitration would be exempt from FORR. (Joint Shippers Reply 4–5; AFPM Reply 1, 4; Olin Reply 8–9; AFPM Suppl. 1, 2; U.S. Wheat Suppl. 7.) The Joint Shippers argue that this condition would allow ''a railroad to exempt itself from the FORR process simply by opting into the arbitration process and there would be nothing that a shipper who prefers FORR over arbitration could do about it.'' (Joint Shippers Reply 4.) The Joint Shippers also argue that, if carriers are exempt from FORR, they will have no incentive to seek improvements to the arbitration program to ensure it is effective. (Joint Shippers Suppl. 5.) Olin argues that the ''adequate justification'' required for the grant of a rulemaking petition under the Board's regulations has not been presented by Petitioners here. (Olin Reply 8.)

AFPM and U.S. Wheat argue that FORR presents far greater potential for reducing regulatory burdens and increasing the accessibility of a remedy for unreasonable rail rates than the arbitration process outlined in the Petition. (AFPM Reply 1; U.S. Wheat Suppl. 6.)[13] AFPM and U.S. Wheat also take issue with the fact that only five of the seven Class I railroads have indicated they would participate. AFPM argues that this ''would create a patchwork of inconsistent regulations.'' (AFPM Reply 4.) U.S. Wheat states that it has a serious concern that the process would be unfair if the other two Class I carriers, BNSF Railway Company (BNSF) and CP do not participate, particularly since a large amount of U.S. Wheat's stakeholders' rail traffic moves on BNSF. (U.S. Wheat Suppl. 6.) These filings pre-dated CP's letter, described above, concerning its potential participation in an arbitration program. (CP Letter 1.)

NGFA believes that FORR and arbitration can be constructed in a way to coexist and complement one another. (NGFA Reply 2.) Although NGFA generally objects to exempting railroads that participate in arbitration from the FORR process, it proposes several alternatives to Petitioners' proposal. These alternatives, which contemplate some limited form of a FORR exemption, include the Board: (1) Setting the duration for the proposed arbitration program at two to three years, after which time, the Board would be required to conduct an assessment to determine whether the program is working as intended and whether the FORR exemption should be removed; (2) requiring a shipper to pursue its initial rate case against a carrier through arbitration but allow the shipper to utilize either FORR or arbitration for any subsequent rate cases; or (3) allowing a railroad to voluntarily decline to be subject to the FORR exemption. (NGFA Reply 5–6.)

USDA states that while an arbitration process could be useful, an arbitration program should complement FORR (rather than be a substitute), and it urges the Board to move forward expeditiously to finalize FORR and not allow the Petition to interfere with or delay that effort. (USDA Reply 1–2; *see also* Olin Reply 2 (arguing that the Board should adopt FORR now and consider implementing a new arbitration process later).) USDA argues that carriers will have no incentive to arbitrate without an effective rate review mechanism as a backstop. (USDA Reply 1; *see also* Olin Reply 9.)

In their supplemental filing, Petitioners argue that the voluntary nature of arbitration, as well as the efficiency, speed, low cost, and flexibility of the proposed program would make it a superior option to FORR, which they contend has various legal and procedural infirmities. (Pet'rs Suppl. 13–14.) Petitioners contend that it would not be reasonable for them to consent to participate in the proposed arbitration program without being exempt from FORR, and such an exemption appears to be central to their proposal. (*Id.* at 14.) Petitioners argue that their proposed program solves the very problem that the Board seeks to remedy with FORR. (*Id.*)

After careful consideration, the Board has determined to defer final action in the FORR docket to provide for parallel consideration of the voluntary, small rate case arbitration program proposed in this docket. This approach will

[11] U.S. Wheat did not submit a reply to the Petition but filed a response to the Board's August 26, 2020 decision. In its supplement, U.S. Wheat argues that there are several differences between Petitioners' proposed arbitration program and the Board's FORR proposal that make FORR more favorable to wheat shippers, such as the fact that FORR would be a public process, that the proposed arbitration program would take longer because of a party's ability to appeal to the Board, and that the proposed arbitration program would exclude the ability to raise claims based on the revenue adequacy constraint. (U.S. Wheat Suppl. 6–7.)

[12] According to CP, ''Canadian Pacific'' is a trade name under which Canadian Pacific Railway Company and its United States subsidiaries—Soo Line Railroad Company; Dakota, Minnesota & Eastern Railroad Corporation; Delaware and Hudson Railway Company, Inc.; and Central Maine & Quebec Railway US Inc.—operate. (CP Letter 1.)

[13] APFM also objects to Petitioners submitting their Petition eight months after the comment period closed in *Final Offer Rate Review*. (APFM Reply 2–4.) However, the Board itself—prompted by comments filed in that proceeding by CN—stated that it was interested in exploring the possibility of modifying its arbitration procedures to increase their usefulness for stakeholders with smaller rate disputes and waived its prohibition on ex parte communications for that specific purpose. *Final Offer Rate Rev.,* EP 755, slip op. at 2–3 (STB served May 15, 2020). Moreover, the Board's regulations do not limit when petitions for rulemaking may be filed. 49 CFR 1110.2(b), (c).

enable the Board and stakeholders to consider a new proposal for an arbitration process simultaneously along with the proposed rulemaking in *Final Offer Rate Review,* Docket No. EP 755. In order to consider the pros and cons of enacting an arbitration process that would effectively exempt participating carriers from FORR challenges, as Petitioners request, or enacting FORR and making it available regardless of whether or not the Board adopts a new arbitration program, as many shipper interests have urged, the Board has concluded that both the voluntary, small rate case arbitration program and FORR should be considered concurrently by the Board and stakeholders before final action is taken on either.

The arbitration proposal in the notice of proposed rulemaking (NPRM) here is modeled on some (but not all) aspects of Petitioners' proposal.[14] Congress required rate disputes be included as eligible for arbitration. 49 U.S.C. 10708(b); *see also* S. Rep. No. 114–52 at 7, 13. The Board has frequently stated that it favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, ''whenever possible.'' *See* 49 CFR 1108.2(a); *Bos. & Me. Corp.—Appl. for Adverse Discontinuance of Operating Auth.—Milford-Bennington R.R.,* AB 1256, slip op. at 10 (STB served Oct. 12, 2018). The Board finds it would be premature to discard the possibility of a voluntary, small rate case arbitration program without further exploring whether such an approach might be workable and the interplay of that approach with FORR.

A voluntary arbitration program focused on the resolution of small rate disputes, as proposed below, could further the rail transportation policy of 49 U.S.C. 10101. Specifically, it could facilitate the expeditious handling and resolution of proceedings (49 U.S.C. 10101(15)); support fair and expeditious regulatory decisions when regulation is required (49 U.S.C. 10101(2)); and help to maintain reasonable rates where there is an absence of effective competition (49 U.S.C. 10101(6)). The proposed voluntary arbitration program could also complement congressional directives in the STB Reauthorization Act, which requires that the Board ''maintain 1 or more simplified and expedited methods for determining the reasonableness of challenged rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case,'' and that it ''maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates.'' 49 U.S.C. 10701(d)(3), 10704(d). A voluntary arbitration program for small rate disputes could provide an additional option beyond the Board's existing formal rate reasonableness processes designed for relatively small disputes (*i.e.,* Three-Benchmark and Simplified Stand-Alone Cost (Simplified-SAC) tests).

In order to allow stakeholders to fully compare the arbitration and FORR proposals, as emphasized above, the Board is simultaneously with this NPRM issuing a supplemental notice of proposed rulemaking (*FORR SNPRM*), published elsewhere in this issue of the **Federal Register**, reflecting modifications in the FORR rule proposed in *Final Offer Rate Review,* EP 755 (STB served Sept. 12, 2019). In addition to noticing those modifications, *FORR SNPRM* addresses comments received by the Board in response to the original notice of proposed rulemaking and the ex parte meetings conducted in the FORR docket. Whether to adopt any voluntary rate review arbitration program, how such a program might interact with the process proposed in the FORR docket, and whether to adopt the proposed FORR process will be guided by the parallel consideration of both proposals.

Because the arbitration of disputes before the Board is voluntary, fundamental to the Board's determination whether to enact the arbitration proposal in this docket will be a commitment of all Class I carriers to agree to arbitrate disputes submitted to the program for a term of no less than five years. This initial commitment would promote the goal that shippers have similar access to rate review procedures. The importance of this initial commitment is amplified by the carriers' opposition to FORR and the likelihood that they would seek to challenge adoption of that process. (*See* Pet'rs Suppl. 13 (stating that the FORR process would be ''subject to immediate legal challenges'').) If all Class I carriers consent to participate in this proposed arbitration program for five years, and the Board determines to adopt the program after stakeholder consideration and input, shippers served by Class I carriers would be afforded a new avenue for potential rate relief, and with the certainty of carrier engagement.[15]

Further, given the voluntary nature of the arbitration of rate disputes, any such program is not likely to succeed unless stakeholders find the program's important elements acceptable. Accordingly, the voluntary arbitration program being proposed here focuses on incentivizing railroad and shipper participation[16] and ensuring that the program is fair and balanced. To achieve this, the Board's proposal modifies aspects of the program proposed by Petitioners. Although Petitioners have ''reserve[d] their right'' not to participate in arbitration if any modifications are made to their proposal, (Pet. 21), certain elements of Petitioners' proposal would have made the program unbalanced or simply are not feasible. However, the program proposed here is based on law and sound policy and still includes features that carriers should find attractive. By the same token, the Board also views its proposed voluntary arbitration program as including features that shippers should find beneficial, particularly those shippers that consider the Board's current processes too expensive and time consuming given the size of their disputes.

The Board will consider all comments received on the proposal set forth in this decision and the information gathered during any requested ex parte meetings in this docket,[17] along with the comments filed and ex parte discussions that have taken place in the FORR docket, before deciding its next actions with respect to both proceedings.

The Board discusses below the significant features of the voluntary, small rate case arbitration program that it is proposing here. The proposed rule is set out below.

I. Authority for a Separate Small Rate Case Arbitration Program

The Petition calls for the Board to establish a new arbitration program under a new set of regulations at 49 CFR

[14] Due to the potential interrelationship between the small rate case arbitration program proposed by Petitioners and FORR, the Board will post notice of this decision in Docket No. EP 755.

[15] As stated in the FORR proceeding, rate cases filed to date indicate that complainants' rate concerns relate primarily to Class I carriers. *Final Offer Rate Rev.,* EP 755, slip op. at 16–17. While the Board views participation by the Class I carriers as particularly important, nothing in this proposal would prohibit Class II and Class III carriers from voluntarily participating in the arbitration process on a term basis. As explained below, Class II and Class III carriers would also be permitted to participate on a case-by-case basis.

[16] Although the Board uses the term ''shipper'' throughout the decision for convenience, the Board has made clear that parties other than shippers have standing to bring rate challenges. *See Publ'n Requirements for Agri. Prods.,* EP 526 et al., slip op. at 7–8 (STB served Dec. 29, 2016). For this reason, the Board uses the term ''shipper/complainant'' in the proposed regulations. *See* below.

[17] Pursuant to 49 CFR 1102.2(g), ex parte communications with Board Members in informal rulemaking proceedings are permitted after the issuance of a notice of proposed rulemaking and until 20 days before the deadline for reply comments.

part 1108a, which would function alongside the Board's existing regulations at 49 CFR part 1108. Petitioners argue that the Board may establish such a program pursuant to its general authority at 49 U.S.C. 1321, and that the program would therefore be ''separate and distinct'' from the requirements of 49 U.S.C. 11708. (Pet. 19, 22.) [18] Specifically, Petitioners contend that the Board has satisfied 49 U.S.C. 11708 through its most recent amendments to 49 CFR part 1108, and suggest that because the Board has one set of compliant procedures, it is now free to adopt procedures that ''differ from the requirements'' of 49 U.S.C. 11708. (*Id.* at 3, 19.) They argue that the specific elements of their proposed program will necessarily be legal so long as the parties voluntarily consent to the arbitration, and so long as the program ''is limited to deciding issues within the Board's jurisdiction to decide.'' (*Id.* at 19–20.)

Section 11708 requires that the Board promulgate regulations to establish a voluntary and binding arbitration process to resolve rail rate and practice complaints. 49 U.S.C. 11708(b)(1). Section 11708 specifically covers the subject of Board-sponsored rail rate arbitration, whereas 49 U.S.C. 1321 covers the Board's general rulemaking authority.[19] Thus, the Board finds that the most reasonable interpretation is that the authority for Board procedures for arbitrating rate cases derives from section 11708.[20]

However, there is no language in section 11708 prohibiting the Board from establishing more than one arbitration program that complies with the requirements of the statute. As relevant here, the statute merely requires that the Board establish a ''voluntary and binding arbitration process to resolve rail rate and practice complaints subject to the jurisdiction of the Board.'' 49 U.S.C. 11708(a). Accordingly, a dual-track arbitration program—*i.e.,* a program under 49 CFR part 1108, subpart A, and another under proposed 49 CFR part 1108, subpart B—is permissible. *Cf. Simplified Standards for Rail Rate Cases* (*Simplified Standards*), 72 FR 51375 (Sept. 7, 2007), EP 646 (Sub–No. 1), slip op. at 52 (STB served Sept. 5, 2007) (stating that a three-tiered system for rate review fulfilled the directive in 49 U.S.C. 10701(d)(3) to establish ''a simplified and expedited method'' for determining rate reasonableness), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir.), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009).

The Board concludes that the arbitration program proposed in this decision is consistent with section 11708. It is therefore not necessary to consider proposing rate case arbitration rules under other potential sources of authority.

II. Program Participation, Withdrawal Rights, and FORR Exemption

Petitioners have proposed an arbitration program, like that at 49 CFR part 1108, in which by agreeing to participate on a programmatic basis (*i.e.,* opting in) as opposed to a case-by-case basis, a carrier will be required to arbitrate eligible cases for so long as it is participating within the program. The Board has explained above the importance of all Class I railroads agreeing to participate in the arbitration program for a term of five years. Accordingly, the Board will not allow for at-will participation as Petitioners have proposed, and will only permit term participation, with the initial term due to expire five years from the effective date of the arbitration program.[21]

Petitioners also propose triggers that would allow a participating carrier to withdraw from the proposed arbitration program. Because the participation of all Class I railroads is an important aspect of the arbitration program, the Board proposes more narrow withdrawal rights that would allow withdrawal from the program only if there is a material change in law. However, the Board emphasizes the importance of a readily accessible small rate case review process as a backstop in the event a carrier is no longer participating in the arbitration program.[22] Indeed, in determining final action in this docket, the Board will continue to prioritize the aforementioned goal of enhancing shippers' access to rate relief. Accordingly, the Board seeks comment specifically on whether its consideration of carriers' withdrawal rights, as set forth in the following subsections, should take into account the availability of other readily accessible rate review processes, including whether any such mechanism is adopted concurrently with the adoption of any voluntary, small rate case arbitration program.

To account for the possibility that the Board might adopt FORR either concurrently with the adoption of a voluntary arbitration program or during the pendency of such a program, the Board will propose at this time—without deciding the ultimate outcome of that proceeding—that participation in arbitration exempts participating carriers from FORR, as explained further below.

A. Program Participation

Petitioners propose that parties would ''opt into'' the proposed program; however, unlike under the Board's existing arbitration program, carriers participating in the proposed program would not be allowed to limit their participation to only certain types of disputes or disputes meeting additional criteria (such as a lower monetary relief cap).[23] (Pet., App. A at 3–4.) Also, unlike 49 CFR 1108.3(a)(2), Petitioners propose that railroads would not be able to participate on a case-by-case basis but instead would be required to opt into the program in advance, either on an at-will or term basis. (*Id.* at App. A at 3.) Shippers would be allowed to opt into the proposed program on a case-by-case basis. (*Id.*) As in 49 CFR 1108.4(c), the Petition provides that the Board would maintain on its website a list of railroads that have opted into the program. (*Id.*)

As explained above, the Board will propose allowing carriers to opt into the proposed program only on a term basis of five years. To allow a shipper to potentially challenge rates for multi-carrier moves between a Class I and Class II or III carrier, the Board will also propose that Class II or III carriers can choose to voluntarily participate on a

[18] (*See also* Pet., App. A at 2–3 (relying on section 1321(a), 5 U.S.C. 571, 49 U.S.C. 10101(15), and section 10701(d)(3) as the authorities for the proposed program).)

[19] *See Norwest Bank Minn. Nat'l Ass'n* v. *FDIC,* 312 F.3d 447, 451 (D.C. Cir. 2002) (''When both specific and general provisions cover the same subject, the specific provision will control, especially if applying the general provision would render the specific provision superfluous . . . .'') (citing *Crawford Fitting Co.* v. *J.T. Gibbons, Inc.,* 482 U.S. 437, 445 (1987)).

[20] This is not to say that parties may not voluntarily consent to private arbitration of rail rate and related disputes on terms differing from the requirements in 49 U.S.C. 11708. Indeed, by its terms, section 11708 does not prevent ''parties from independently seeking or utilizing private arbitration services to resolve any disputes the parties may have.'' 49 U.S.C. 11708(b)(3).

[21] Participation on an ''at will'' basis means that the carrier reserves the right to withdraw from the proposed program at any time for any reason, while participation on a ''term'' basis means that the carrier agrees to participate in the program for a specific length of time and can only opt out under certain conditions. (*See* Pet. 16–17, App. A at 3.) Under Petitioners' proposal, upon expiration of any such ''term,'' a participating carrier remains within the program on an at-will basis. (*Id.,* App. A at 3, 4.)

[22] The Board notes that Petitioners themselves appear to have contemplated such a backstop by effectively conditioning carrier participation in the arbitration program on an exemption from FORR.

[23] Under the existing arbitration program, a party may limit its participation to certain types of disputes or certain monetary relief caps. *See* 49 CFR 1108.3(a)(1).

case-by-case basis. *See* proposed § 1108.23(a)(4). The Board will propose that shippers may opt in on a case-by-case basis, as Petitioners have suggested.

The Board's proposal that both carriers and shippers opt-in voluntarily complies with section 11708, which requires that the Board's rate case arbitration procedures be ''voluntary'' but does not specify a mechanism for participation. For cases in which a movement involves the participation of multiple railroads, arbitration could only be used if all carriers involved in the movement have opted in (which the Class I carriers will have already done) or consented to participate for a particular dispute (in the case of Class II or III carriers [24]).

To distinguish between parties that opt into the existing arbitration process created in Docket No. EP 699 (as modified in Docket No. EP 730), the Board will propose requiring that railroads opting into the proposed program file their opt-in notices under Docket No. EP 765, which will also be posted on the arbitration page of the Board's website. *See* proposed § 1108.23(a).

B. Withdrawal Rights

Petitioners propose that a carrier participating in the proposed arbitration program should be permitted to withdraw from the program if: (1) The Board adopts the FORR process but does not exempt carriers participating in arbitration from that process; (2) there is a change in the law regarding rate disputes or the arbitration program; or (3) the number of arbitrations exceeds a designated limit.[25] Each of these bases for withdrawal is discussed in turn.[26]

1. Adoption of FORR/FORR Exemption

Petitioners propose that a participating carrier be allowed to withdraw from the small rate case arbitration program if the Board adopts FORR in Docket No. EP 755 but does not exempt carriers participating in the program from the FORR process. (Pet. 17.) Petitioners state that, by agreeing to arbitrate under the program, they will be limiting their ability to appeal an adverse decision and, as such, it is essential that they have the right to exit the program if they become subject to what they describe as the ''untested'' FORR process. (*Id.* at 26.)

As noted above, several parties object to this aspect of the Petition. The Joint Shippers, USDA, and AFPM argue that a FORR exemption would allow railroads to force shippers to use arbitration regardless of whether the shippers prefer FORR, even though the Petitioners' proposed arbitration process cuts many of the elements of the FORR process that make it accessible. (Joint Shippers Reply 1; USDA Reply 2; AFPM Reply 4.) NGFA also objects, noting that an exemption from FORR would prevent its members from being able to ''test'' the reasonableness of rail rates under that process and proposes several alternatives (discussed above). (NGFA Reply 5.) NGFA and USDA suggest that the Board seek input on potential ways to resolve this particular issue. (*Id.* at 6–7; USDA Reply 2.)

In their supplemental filing, Petitioners assert that shippers opposed to this aspect of the proposed program overlook the fact that the RRTF identified arbitration as the ideal mechanism for resolving small rate cases, and argue that FORR was conceived as a workaround in the event that the Board did not obtain the statutory authority to require arbitration. (Pet'rs Suppl. 2.) As noted above, they also assert that the proposed arbitration program would be lawful and economically sound. (*Id.* at 2, 13.)

The Board will propose that any carrier that opts into the voluntary, small rate case arbitration program would be exempt from any final FORR rule adopted in Docket No. EP 755.[27] To be clear, inclusion of an exemption from FORR is not meant to indicate—one way or another—a commitment that the Board will adopt FORR at the same time as the small rate case arbitration program, or at some point thereafter, but instead simply accounts for the possibility of such an occurrence. Indeed, as explained above, the Board is seeking comments on the backstop issue and the circumstances under which it would be advisable to permit a carrier to withdraw from the arbitration program.

The Board understands the concern of the shippers who argue that allowing railroads to be exempt from FORR would eliminate shippers' ability to pursue resolution using FORR, if the Board were to adopt it. However, as explained above, the Board has long favored the resolution of disputes using alternative dispute resolution whenever possible and the RRTF found that arbitration would be an important means of providing shippers with access to potential rate relief, particularly in small cases. Creating a program in which carriers can obtain an exemption from any process adopted in the FORR docket in exchange for agreeing to arbitrate smaller rate disputes would incentivize railroads to participate, and, in turn, create a means for shippers to obtain resolution through arbitration.[28] As such, the Board will propose—as part of this proposed rule—that participation in the proposed voluntary arbitration program would exempt a participating carrier from any process adopted in the FORR docket while the carrier is participating in the new arbitration program. The exemption would thereby terminate, for example, upon the effective date of carrier withdrawal, per exercise of the rights described below (if such withdrawal rights are adopted), or upon the effective date of any Board termination of the arbitration program, following the assessment proposed at § 1108.32 (*see infra,* Section XIII). An express exemption along these lines obviates the need to include the carriers' proposed opt-out provision as described above.

2. Change in Law

Petitioners propose that both railroads and shippers [29] may withdraw their consent to arbitrate under the proposed program if there is a change in law; specifically, if the Board adopts a material change to its existing rate reasonableness methodologies, creates a new rate reasonableness methodology, or adopts a material change to the proposed arbitration program. (Pet. 17.) Petitioners contend that, because section 11708 requires that the arbitration panel consider the Board's methodologies for setting maximum

[24] As noted above, nothing in this proposal would prohibit Class II and Class III carriers from voluntarily participating in the arbitration process on a term basis.

[25] The Petition also proposes that carriers participating in the program on an at-will basis would be permitted to withdraw any time at the carriers' discretion. Because the Board does not propose at-will participation, it need not address the Petition's proposed at-will withdrawal right.

[26] As noted above, the Board seeks comment specifically on whether its consideration of carriers' withdrawal rights should take into account the availability of other rate review processes.

[27] Petitioners do not propose specific language for an exemption from FORR in their Petition. As noted, they instead propose this as a withdrawal option. Accordingly, the Board is proposing its own FORR exemption language. *See* proposed § 1108.33. In response to a concern from NGFA, (*see* NGFA Reply 13), the Board will propose language that makes clear that carriers would only be exempt from the FORR process and shippers could continue to seek rate relief using the Board's other methodologies.

[28] Although parties can use the Board's existing arbitration process under 49 CFR part 1108 to resolve rate disputes, no parties have voluntarily opted into that process for purposes of arbitrating a rate dispute.

[29] Even though shippers would only participate in the proposed program on a case-by-case basis, it appears that Petitioners propose allowing shippers this withdrawal right to afford them the same ability to terminate pending arbitrations due to a change in the law.

lawful rates and appellate review of the panel's decision (discussed below) would be limited, ''it is essential that parties have the right to opt out'' of the proposed program should the Board either change the rules of the program or add to, or materially change, its rate reasonableness methodologies. (*Id.*) Petitioners propose that a participating carrier would file a withdrawal notice no later than 30 days after the qualifying event and that the notice would result in the immediate dismissal of any pending small rate case arbitration in which the arbitration panel has not yet issued an arbitration decision. (*Id.* at 17–18.)

NGFA proposes several modifications. First, it notes that another new methodology (the Rate Increase Constraint) has been suggested to the Board,[30] and that if this methodology were adopted after the proposed small rate case arbitration program is established, it would likely trigger the carriers' right to withdraw. (NGFA Reply 10–11.) NGFA argues that carriers participating in the proposed program should not be permitted to withdraw if this methodology is ultimately adopted. (*Id.* at 10–11, 13.) Second, NGFA argues that the Board should provide an opportunity for either party to challenge the other's contention that there has been a ''material change'' to the proposed program or to the agency's existing rate reasonableness methodologies. (*Id.* at 12–13.) Third, NGFA argues that pending arbitrations should not be terminated under the ''change in law'' scenario. (*Id.* at 13.) Fourth, NGFA requests clarification that once a carrier has withdrawn, a shipper can challenge the rate under any methodology, including FORR. (*Id.* at 13–14; *see also* Joint Shippers Suppl. 15 (expressing support for NGFA's clarification).)

In their supplemental filing, Petitioners do not agree with NGFA's suggestion that pending arbitrations be allowed to continue if there is a withdrawal for a change in the law. (Pet'rs Suppl. 12.) However, they do not object to shippers being allowed to challenge whether a change in the law constitutes a ''material change,'' and do not object to clarifying that, once a carrier has withdrawn from the proposed program, a shipper would be allowed to challenge under any of the Board's then-available rate-challenge methodologies, including FORR, if the Board were to adopt that process. (Pet'rs Suppl. 6–7.) Petitioners propose that any party would have five business days to challenge the withdrawal, and the carrier would have 14 calendar days to file a reply. (*Id.,* App. A at 5.) The Chairman or an administrative law judge (ALJ) would have 14 calendar days to issue a decision, and any pending arbitrations would be stayed until the withdrawal issue is resolved. (*Id.*)

The Board will propose a provision allowing any party to withdraw due to a material change in the law. It would be reasonable for a carrier or shipper to withdraw from the proposed program, including any pending arbitration disputes, should the Board materially change the rules of that program or one of its methodologies, which could inform the arbitrators' decision.[31] *However,* the Board will propose that this withdrawal right would not apply to the adoption of a FORR process. In other words, carriers could not exercise the right to withdraw due to change in law if FORR is adopted at some point after the arbitration program has begun. Under the Board's proposal, carriers participating in the arbitration program would be exempt from FORR; as such, the potential subsequent adoption of FORR would not amount to such a regulatory change that would warrant allowing railroads the ability to reconsider their participation in the arbitration program.[32]

The Board disagrees with NGFA's suggestion that, if the Rate Increase Constraint is formally adopted by the Board as a rate review methodology, it should also not be considered a change in law allowing carriers to opt out. Adoption of this constraint would constitute a significant change in the regulatory scheme for railroad rates and, as such, the Board agrees that carriers should be given the opportunity to withdraw from the proposed small rate case arbitration program if the change were adopted. Similarly, the Board also will not propose NGFA's suggestion that all pending arbitrations continue if a carrier withdraws from the program due to a change in law. A change in the law that occurs after an arbitration has begun could impact how a party would have pleaded its case or whether it would have even participated in arbitration to begin with; accordingly, where there is a change in law falling under the applicable provision, pending arbitrations should be terminated if a party exercises its withdrawal right. However, parties are invited to comment on whether the Board should instead allow pending arbitrations to proceed, so long as the change in law is not applied to such pending arbitrations.

The Board will also propose that, if a party seeks to withdraw from the small rate case arbitration program based on a change in the law, other parties be permitted to challenge the withdrawal on the ground that the change is not material. *See* proposed § 1108.23(c)(2)(ii). There are many scenarios in which the materiality of a change in the law could be in dispute. Petitioners state that they have no objection to this proposed modification. (Pet'rs Suppl. 6.) However, the Board will make some adjustments to Petitioners' proposed procedures for challenging materiality. Instead of permitting a party 30 days to withdraw due to a change in law, the Board will propose a 10-day window.[33] Parties should be able to decide whether to continue participating in the proposed small rate case arbitration program fairly quickly after a change in law is adopted. So that other parties are aware of a party's withdrawal, the Board will propose that it post a copy of the notice on its website and that the carrier serve a copy on any party with which it is currently engaged in arbitration.

Additionally, the Board will clarify that an objection to a party's withdrawal should be filed as a petition to the Board in a formal docket. Instead of providing five days for an opposing party to challenge a carrier's withdrawal due to a change in the law, the Board will propose a 10-day window. The Board will also propose that the withdrawing

[30] The Rate Increase Constraint was proposed by the RRTF. *See* RRTF Report 36–39. The Board held a hearing on revenue adequacy issues raised in the RRTF Report on December 12–13, 2019, and asked parties to address the RRTF recommendations—including the Rate Increase Constraint—in their written testimony and at the hearing. *See Hr'g on Revenue Adequacy,* Docket No. EP 761 *et al.* (STB served Sept. 12, 2019).

[31] Although Petitioners propose the change-in-law opt-out right only for Board-enacted changes to the regulatory scheme, the Board sees no reason that the right should not also apply if there is a change in law resulting from Congressional or judicial action.

[32] Additionally, the proposed provision allowing for withdrawal where the Board materially changes an existing rate reasonableness methodology or creates a new rate reasonableness methodology would *not* be triggered where a litigant proposes and/or the arbitration panel adopts or applies any methodology—novel or otherwise—to resolve a particular arbitration brought under this proposed program. Nor would it be triggered where the arbitration panel adopts or applies such a methodology and its decision is affirmed by the Board under the limited grounds for appellate review described in Section XI, *infra.* As discussed in Section IX, *infra,* parties would be able to urge the arbitration panel to consider modified or entirely new rate review methodologies but, of course, would have to persuade the arbitrators that such methodologies comply with the statutory provisions governing both the panel's decision and reasonableness of rates.

[33] Unless otherwise specified, any reference to ''day'' in the decision or regulations refers to calendar days.

party have five days to reply to the petition (instead of the 14 days proposed by Petitioners) and that the petition shall be resolved by the Board within 14 days from the filing deadline for the withdrawing party's reply. These timeframes are all reasonable and will provide for expeditious resolution of the relevant issues. The Board will also propose that such petitions be decided by the Board, rather than the Chairman or an ALJ, as the impacts of a decision regarding materiality could be widespread. The Board invites parties to comment on whether additional modifications are needed.

3. Case Volume

Petitioners propose that a railroad that has opted into the proposed small rate case arbitration program on a term basis may also withdraw its consent to arbitrate under the program if it faces more than 25 arbitrations in a rolling 12-month period, or more than 10 simultaneous arbitrations. (Pet. 18.) Petitioners note that they do not expect that volume, but they want to be able to reassess their long-term commitment to the program should they face so many simultaneous arbitrations. (*Id.* at 26.) Under their proposal, withdrawal would not affect arbitration disputes under the proposed program in which the parties have at least started their first mediation session,[34] but would result in the discontinuance of all disputes that have not yet progressed to that stage. In response, NGFA argues that withdrawal should not result in the dismissal of any pending arbitrations.[35]

The Board will not propose a right to withdraw from the arbitration program based on case volume but will instead propose limiting the number of arbitrations that a carrier can be subject to during a rolling 12-month period. Because participation in Board-sponsored arbitration is voluntary, as required under 49 U.S.C. 11708, and because this program would be new, it is reasonable that a carrier who has agreed to participate for a term of years only be required to arbitrate a certain number of cases. However, rather than allowing carriers that reach such a limit to withdraw from the program, the Board believes that it would be more appropriate for carriers to remain in the program but without having to face additional arbitrations. Accordingly, the Board will propose that arbitrations that would exceed the 25-cases/12-month limit would be postponed until such time as they would not exceed the 25-case/12-month limit. In addition, under the Board's proposal, cases will only count towards the 25-arbitration/12-month limit discussed above upon commencement of the first mediation session or, where one or both parties elect to forgo mediation (as discussed below in Section IV.B), submission of the joint notice of intent to arbitrate to the Board. *See infra* Section IV.C. The Board sees no reason an arbitration should count toward the case limit if it is concluded before parties have expended much time or resources.

Regarding the Petitioners' proposal to allow carriers to withdraw after reaching 10 simultaneous arbitrations, this strikes the Board as a far lesser threshold and a more likely occurrence. Accordingly, the Board will not include a right to withdraw for instances in which there are 10 simultaneous arbitrations (or require that any additional arbitrations above this amount be postponed). The one-case per shipper restriction (discussed below in Section III) and the 25-case limit within a 12-month period should be sufficient to ensure that a carrier is not inundated with arbitrations, while also providing shippers access to an alternative dispute resolution process.

To implement the 25-case/12-month limit, the Board will propose that where a carrier receives a notice of intent to arbitrate from a shipper that would initiate an arbitration exceeding the limit, the carrier may inform the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), as well as inform the shipper who initiated the arbitration. Under the proposal, that arbitration (and any arbitrations that are subsequently initiated) would be postponed until the number of arbitrations is once again below the 25-case/12-month limit. OPAGAC would notify the shippers whose arbitrations are postponed.

III. One-Case Limit

Petitioners propose that a shipper not be permitted to bring more than one arbitration at a time against a participating railroad. (Pet. 11.) Petitioners contend that this limitation is needed to prevent shippers from avoiding the relief cap by splitting or ''disaggregating'' a case that could be brought as a single rate challenge into multiple cases. (*Id.* at 11, 27.) They propose that shippers would, however, be permitted to challenge rates for multiple traffic lanes in the same arbitration. (*Id.* at 11.) They propose that once the arbitration panel issues its decision, the shipper would be free to bring another small rate case arbitration against that same participating carrier. (*Id.* at App. A at 5.)

Olin and U.S. Wheat argue that the one-case limitation is one of several reasons why proceeding with FORR is preferable. (Olin Reply 11; U.S. Wheat Suppl. 7.) Olin notes that, because of this limitation, shippers would have to aggregate separate claims, yet the rate cap would apply regardless of whether a shipper is challenging a single rate or multiple rates, whereas the proposed FORR process includes no such limitations. (Olin Reply 11.) In their supplemental filing, Petitioners respond that shippers are not required to aggregate claims, and that the one-case limit is intended instead to prevent the improper disaggregation of large rate claims to take advantage of the arbitration process. (Pet'rs Suppl. 18–19.)[36]

The Board will propose a one-case limit as part of the proposed arbitration program. The Board has noted its concern about the possibility of shippers filing a number of small rate cases when it would be more appropriate for those rates to be challenged as part of one larger case. *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 32–33 (''The Board has ample discretion to protect the integrity of its processes from abuse, and we should be able to readily detect and remedy improper attempts by a shipper to disaggregate a large claim into a number of smaller claims, as the shipper must bring these numerous smaller cases to the Board.''); *see also E.I. DuPont de Nemours & Co.* v. *CSX Transp., Inc.,* Docket No. NOR 42099 et al., slip op. at 3 (STB served Jan. 22, 2008). In those cases, the Board indicated that it would monitor shipper filings to ensure that no such abuse of its processes occurs. In the arbitration context, however, this would not be possible. As discussed below (*see infra* Section XI), arbitrations would be kept confidential from the Board (at least until an appeal), so the Board would be

[34] *See infra* Section IV.B.

[35] In its reply, NGFA does not specify if its objects to the termination of pending arbitrations based on withdrawal due to a change in the law or case volume. The Board assumes that it opposes termination of pending arbitrations in both instances.

[36] NGFA states that the Board should clarify that the one-case limit prevents the filing of an additional case against the same carrier only up until the point at which the original arbitration decision in the first case is issued, regardless of whether that decision is appealed. (NGFA Reply 12; *see also* Joint Shippers Suppl. 10.) The text of Petitioners' proposed regulations (which the Board includes in its proposal) states that the limit resets ''when the arbitral panel issues its arbitration decision.'' (Pet., App. A at 5.) Accordingly, NGFA's request for further clarification does not appear to be necessary. However, the Board will propose language stating that the limit also resets when an arbitration is withdrawn or dismissed, including instances in which the parties reach a settlement. *See* proposed § 1108.24(c).

unaware of what rates a shipper has currently challenged. It would also be impractical to leave such oversight to arbitration panels. Again, arbitrations would be confidential and presumably handled by different arbitration panels, making it difficult for any given panel to assess aggregation issues.

Concerns over disaggregation of rate challenges aside, a one-case limit would be beneficial by ensuring that more shippers have the opportunity to participate in the arbitration program. For example, if a single shipper were to file 25 rate arbitrations against a carrier simultaneously and thus reach the volume cap (discussed above), that would delay other shippers from pursuing their own arbitrations against that carrier because those cases would be postponed. In general, limiting the number of cases brought would also allow the Board and stakeholders to develop familiarity with the arbitration process gradually.

The Board acknowledges that a one-case per-carrier-limit would affect the relief available to shippers (at any given time) that want to bring multiple cases against the same carrier simultaneously. However, the Board anticipates that the shippers most likely to use this arbitration process, including its limitations on relief, may be less likely to bring multiple cases against the same carrier. As the Joint Shippers state, ''many small shippers probably would not have enough qualifying captive lanes to bring multiple disputes.'' (Joint Shippers Suppl. 6.) Moreover, shippers would still be able to arbitrate multiple cases against different carriers at the same time. Finally, for those shippers that want to bring multiple cases for rates charged by the same carrier, the Board's formal rate reasonableness procedures remain available, including those designed for smaller disputes.

However, the Board invites parties to comment on the impact and appropriateness of the proposed one-case limit and whether there are other methods of dealing with the issue of disaggregation. For example, other possible approaches include allowing a shipper to bring two (or more) concurrent arbitrations so long as the lanes at issue do not share facilities, or permitting a second arbitration to be brought after the close of the evidentiary record—rather than awaiting the decision of the arbitration panel—in a pending arbitration (thereby allowing a second arbitration to be brought sooner).[37]

[37] The Board notes that although shippers would not be able to challenge rates in simultaneous arbitrations under the one-case limit, there would be no limit on the number of rates they could challenge within a single arbitration, though the $4 million/two-year relief cap would apply. The Board further notes that shippers are not prohibited from challenging multiple rates charged by the same carrier in sequential arbitrations.

IV. Pre-Arbitration Procedures and Timelines

A. Initial Notice

Petitioners propose that a shipper wishing to arbitrate a small rate dispute using the proposed program submit to the participating carrier a written notice of its intent to arbitrate, which must include information sufficient to indicate the dispute's eligibility for arbitration.

The Board agrees, and it will propose that the arbitration process be initiated by a shipper's submission of a written notice (referred to herein as the Initial Notice) to the participating carrier that includes information demonstrating that the dispute qualifies for the proposed small rate case arbitration program. The Initial Notice would serve as the formal initiation of the arbitration process and would also ensure that shippers are participating in arbitration voluntarily, consistent with section 11708. (Carriers' voluntary participation would be evidenced through their opt-in notice, *see supra* Section II.A.)

However, unlike Petitioners' proposal, the Board will propose that the shipper also submit a copy of the Initial Notice to OPAGAC. This would allow OPAGAC, which oversees the agency's alternative dispute resolution processes, to be informed when the arbitration process is being used as it happens (rather than learning about it after the fact). As noted above, this would also help OPAGAC monitor the number of pending arbitrations to determine if the 25-cases/12-month limit has been reached.[38] However, specific information regarding pending arbitrations, including the identity of the parties, would not be disseminated within the Board beyond the alternative dispute resolution functions within OPAGAC. The Board will propose that the Initial Notice be submitted by email to *rcpa@stb.gov.*

The Board also will propose that OPAGAC provide a letter to the parties confirming initiation of the process. As discussed in more detail below, the Board will further propose that the Initial Notice and the OPAGAC confirmation letter be kept confidential.

[38] As noted above, in instances where the Initial Notice initiates an arbitration exceeding the 25-case/12-month cap, the Board will propose that the carrier may notify OPAGAC, as well as the shipper who submitted the Initial Notice to the carrier. Under the Board's proposal, OPAGAC would then confirm that the cap has been reached and inform the shipper (and any other subsequent shippers) that the arbitration is being postponed, along with an approximation of when the arbitration can proceed and instructions for reactivating the arbitration once the carrier is again below the cap.

B. Mediation

Petitioners propose that, following the shipper's submission of the Initial Notice, the parties then engage in pre-arbitration mediation, conducted outside of any Board process and directed by a mediator designated by the parties. Under Petitioners' proposal, the mediation period would be 30 calendar days, beginning on the date of the first mediation session. (Pet., App. A at 5.) Olin responds that requiring mediation would only serve to establish another roadblock to timely rate relief, and notes that the Board only proposed requiring mediation under the FORR process if both parties consent. (Olin Reply 10.) NGFA proposes that parties be allowed to agree by mutual consent to waive mediation. (NGFA Reply 9.) It also proposes that mediation last no more than 30 days, whereas Petitioners suggest that it last a minimum of 30 days. (*Id.*) Lastly, NGFA proposes that the Board liberally grant requests to extend the mediation period if the parties agree. (*Id.*) In its supplement, Petitioners agree with NGFA's proposed changes, but note their belief that it would not be necessary for the parties to obtain extensions of the mediation period from the Board. (Pet'rs Suppl. 5.)

The Board observes that a mediation requirement may help facilitate settlement. If a dispute can be settled through mediation, it would allow parties to avoid the expense of arbitration. However, the Board also agrees with several shipper interests that, in some instances, the parties may have already engaged in extensive negotiations and therefore may wish to proceed directly to arbitration. (NGFA Reply 9; Olin Reply 10.) The Board will propose allowing parties to engage in mediation prior to the arbitration phase if they mutually agree, but they will not be required to do so. If one or both parties decide that they do not want to mediate, they may proceed directly to arbitration. The Board notes that this approach does not mirror the proposal in FORR, where the agency is proposing that mediation be mandatory, consistent with existing rate reasonableness procedures used in adjudications before the Board. *See FORR SNPRM,* EP 755, slip op. at 38 (STB served Nov. 15, 2021). However, arbitration, like mediation, is itself a form of alternative dispute resolution, and requiring parties to engage serially in two forms of alternative dispute resolution as an alternative to adjudication could

discourage parties from using the arbitration process in some instances. In addition, allowing parties the option of bypassing mediation would expedite the process, which is one of the central goals of arbitration. Parties are invited to comment on whether, alternatively, the mediation phase should be eliminated entirely.

The Board also agrees that, as a default, a 30-day mediation period would provide sufficient time for the parties to mediate while also ensuring that the overall arbitration process progresses. Accordingly, the Board will propose that the default mediation period shall be 30 days, measured from the date of the first mediation session, but that the parties may agree to a longer or shorter mediation period. As for timing, the Petition does not state how long after the Initial Notice is filed that mediation should begin. Accordingly, the Board will propose that the parties would be required to schedule their first mediation session ''promptly and in good faith'' after the Initial Notice is submitted to the participating carrier. *See* proposed § 1108.25(b). Parties are invited to comment on whether a more defined period should be adopted. As for extensions of the mediation phase, because the mediation would not be conducted by the Board, there would be no need for the parties to seek Board approval of an extension of the mediation period.

C. Joint Notice To Arbitrate

Petitioners propose that, if mediation is unsuccessful, the parties submit to OPAGAC a joint notice of their intent to arbitrate under the proposed program. (Pet., App. A at 5.) The Board will propose that the parties file a joint notice to arbitrate (referred to herein as the Joint Notice)—which would include the basis for the Board's jurisdiction over the dispute and the basis for the parties' eligibility to participate in the proposed small rate case arbitration program [39]—with the Board when mediation is unsuccessful or if the parties do not agree to mediate. As with the Initial Notice, specific information regarding pending arbitrations that is contained in the Joint Notice, including the identity of the parties, would not be disseminated within the Board beyond the alternative dispute resolution functions within OPAGAC. The Board will also propose that the Initial Notice be submitted by email to *rcpa@stb.gov.*

[39] Because the Board will propose that parties not be required to participate in mediation, the Board does not propose to require that the parties state in the Joint Notice that they have engaged in mediation.

Petitioners further propose that the Joint Notice include ''the parties' agreement to arbitrate under the rules of this part.'' (Pet., App. A at 6.) It is unclear if the Petitioners intended for this requirement to simply mean a general statement that they agree to arbitrate or a written arbitration agreement, as is required in the existing arbitration regulations. *See* 49 CFR 1108a.5(g). Regardless, the Board will not propose that either requirement be part of the Joint Notice, so as to maintain the confidentiality of the Joint Notice. (*See infra* Section XI–B.)

Petitioners also propose that the Joint Notice indicate the ''requested relief,'' which presumably would include whether the parties have agreed to a different relief cap than set forth in the regulations. (Pet., App. A at 5–6.) As discussed in Section IX below, the Board will propose a relief cap of $4 million per arbitration. The parties' decision on whether to agree to a different relief cap may not be known at the time they submit the Joint Notice. Accordingly, the Board will propose that any agreement to a different relief cap be noted in the confidential summary filed at the conclusion of the arbitration (*see infra* Section XI), rather than in the Joint Notice.

The Petition includes no deadline for filing the Joint Notice after mediation has concluded. The Board will propose that the Joint Notice be submitted not later than two business days following the end of mediation (even if mediation concludes before the end of the 30-day mediation period). *See* proposed § 1108.25(c)(1). This would ensure that the process under the arbitration program continues to move forward in a timely manner. The Board will propose that the Joint Notice be submitted by email to *rcpa@stb.gov.*

V. Arbitration Panel Selection and Commencement

The Petition proposes that arbitration under the proposed program be conducted by a panel of three arbitrators, the selection of which would not be limited to the arbitration roster established at 49 CFR 1108.6(b). (Pet. 12.) Petitioners acknowledge that the existing arbitration program at part 1108 requires selection of an arbitrator from the Board's arbitration roster, but contend that permitting parties to select arbitrators not on the Board's roster would allow them to select an arbitrator with particular expertise in the market for the relevant commodity, an arbitrator with whom the party had a good experience in a previous non-rate arbitration, or another qualified individual that a party believes would be qualified to arbitrate the case, regardless of that person's inclusion on the Board's arbitration roster. (*Id.* at 23–24.) Petitioners believe that such flexibility would remove a potential barrier to parties wishing to arbitrate their rate dispute. (*Id.* at 24.)

Under Petitioners' proposal, each party would select one arbitrator, and the two party-selected arbitrators would then select the third arbitrator from a list compiled jointly by the parties. (*Id.*) The Petition proposes that each party may object to the other's selected arbitrator ''for cause,'' including, among other things, a conflict of interest or actual or perceived bias toward the objecting party. (*Id.*) The arbitrator selected by the two party-selected arbitrators would serve as the panel's lead arbitrator, and would be responsible for establishing all rules deemed necessary for each arbitration proceeding—including those with regard to discovery, the submission of evidence, and the treatment of confidential information—as well as generally ensuring that the arbitration procedures are followed. (*Id.,* App. A at 6–7.) Any disputes over the selection of party-appointed arbitrators or the lead arbitrator would be resolved by the Chairman. (*Id.*) These processes would also be used to replace an arbitrator unable to serve due to incapacitation. (Pet., App. A at 6–7.) Each party would pay the cost of its selected arbitrator, and the parties would share the cost of the lead arbitrator. (*Id.*)

Olin responds that the fact that the parties would have to pay for the arbitrators and could object to each other's arbitrators on grounds not provided for under the existing arbitration rules (such as ''perceived bias or animosity'' and ''adverse business dealings'') make the proposed program inferior to FORR. (Olin Reply 11.) Similarly, U.S. Wheat argues that having to pay for arbitrators makes arbitration more costly than FORR. (U.S. Wheat Suppl. 6.)

A. Eligible Arbitrators

The Board agrees that permitting parties to select arbitrators who are not on the Board's arbitration roster may better incentivize parties to participate in the small rate case arbitration program, and so will propose allowing parties to select arbitrators not on the Board's roster. Although section 11708 provides for the selection of arbitrators possessing certain qualifications from the Board's arbitration roster as a default, that default applies only where the parties have not ''otherwise agreed'' to a different selection process. In other words, as Petitioners point out, section

11708 explicitly permits the use of non-roster arbitrators by mutual consent. The Board will propose requiring carriers and shippers to affirmatively state their agreement to potentially use non-roster arbitrators in their opt-in notice and the Initial Notice, respectively.

Under section 11708(f)(1), to be included on the Board's roster of arbitrators, a person must have ''rail transportation, economic regulation, professional or business experience, including agriculture, in the private sector.'' The Board's regulations further require that ''[p]ersons seeking to be included on the roster must have training in dispute resolution and/or experience in arbitration or other forms of dispute resolution.'' 49 CFR 1108.6(b). However, as discussed above, because parties would not have to select arbitrators from the Board's roster under the proposed program, these requirements would not necessarily apply to arbitrations under proposed 49 CFR part 1108, subpart B. Although the proposed regulations do not include specific qualification requirements for non-roster arbitrators, the Board invites comment on whether the 49 CFR 1108.6(b) qualifications (or others) should be required for arbitrators under the proposed program, particularly for the lead arbitrator in light of their responsibilities concerning discovery, evidence, and confidentiality.

B. Arbitrator Selection

The Board will propose allowing parties to object to the opposing side's selected arbitrator for cause. The bases for objection proposed by Petitioners would be consistent with section 11708. Moreover, because parties would not necessarily select arbitrators that have been approved by the Board via its roster, the parties should have the ability to seek to disqualify individuals where there are substantial and legitimate questions as to whether such persons can satisfy the independence requirements of section 11708(f)(2).[40] In response to Olin's concern, the Board will propose language that specifically ties for-cause objections to the independence requirements of section 11708(f)(2). *See* proposed § 1108.26(b)(1).

The Board will propose that any for-cause objections be ruled on by an ALJ rather than the Chairman.[41] This would help ensure that the Chairman does not become aware of the arbitration during its pendency. The ALJ would also be well-equipped to rule on this matter. The Board will propose that the hearing before the ALJ can still be held telephonically (or virtually) and under the same expedited timelines proposed by Petitioners. Parties raising objections would inform OPAGAC, which will then help arrange the hearing with the ALJ.

The Board will propose that the ALJ's ruling on the objections be issued in a short, written order rather than a ruling during the telephonic or virtual conference. As discussed in more detail in the section on confidentiality, *see infra* Section XI, the Board will propose that the ALJ's order be deemed confidential. The Board also invites parties to propose alternative means of addressing for-cause objections, such as having the objections ruled on by one of the agency's directors or if they would prefer such rulings to be made by the Chairman.

Additionally, the Board will not include Petitioners' proposal that the Chairman select the lead arbitrator if the party-appointed arbitrators are unable to agree. Such a determination is best left to the party-appointed arbitrators and would ensure that the Chairman does not become aware of the arbitration during its pendency, as mentioned above. Accordingly, the Board will propose that, if the party-appointed arbitrators cannot agree, they shall select from the Board's roster of arbitrators using the alternating strike method set forth in 49 CFR 1108.6(c). *See* proposed § 1108.26(c)(2). Parties may suggest alternative methods in their comments.

C. Cost of Arbitrators

Under section 11708(f)(4), ''[t]he parties shall share the costs incurred by the Board and arbitrators equally, with each party responsible for paying its own legal and other associated arbitration costs.'' As such, the Board will propose that parties pay the cost for their own arbitrator, consistent with the requirements of 49 U.S.C. 11708(f)(4). Olin and U.S. Wheat argue that this is a cost that shippers would not incur in a FORR case. However, the Board notes that parties are required to pay the costs for arbitration under section 11708(f)(4) and 49 CFR part 1108, subpart A. *See* 49 CFR 1108.12(b).[42]

The statute does not specify how ''shar[ing] the costs . . . equally'' would apply in arbitrations in which there are three or more parties. Under Petitioners' proposal, the shipper and defendant ''carrier(s)'' would each pay one-half of the cost of the lead arbitrator. This means that if a shipper challenges a multi-carrier rate, the shipper would bear 50% of the cost of the lead arbitrator while the defendant carriers would split the remaining 50% cost among themselves. However, this may be contrary to Congress' intent. For example, if a shipper challenges an interline rate by two carriers, ''shar[ing] the costs . . . equally'' could be interpreted as meaning that the parties should divide the costs three ways (with each party paying an equal third). Given the ambiguity in the statute, the Board will propose that parties to arbitration ''will share the cost of the lead arbitrator equally,'' mirroring the language from the statute.[43] *See* proposed § 1108.26(c)(4). This language would give the parties in an arbitration with three or more parties flexibility to negotiate each party's share of the lead arbitrator's cost on either a per-side or per-party basis.

D. Selection Period

The Board will propose adopting Petitioners' suggested deadlines for arbitrator selection. (*See* proposed § 1108.26.) The Board acknowledges that 49 U.S.C. 11708(e)(1) states that ''[a]n arbitrator or panel of arbitrators shall be selected not later than 14 days after the date of the Board's decision to initiate arbitration.'' Under the proposed program, arbitrator selection may not be complete within 14 days if the parties choose to engage in mediation. However, 49 U.S.C. 11708(e)(4) permits the Board to extend the timelines upon the agreement of all parties in the dispute. Accordingly, the Board will propose that, as part of its opt-in notice, a railroad provide the Board with a statement that it agrees to extend the 14-day deadline in any arbitration brought under the program. In addition, the

[40] The Board notes that Petitioners propose that parties may choose party-appointed arbitrators ''without limitation.'' (Pet., App. A at 7.) Theoretically, this would allow a party to select one of its own employees. However, if a party were to do so, the opposing party could object and seek to have that individual stricken for cause over concerns about the individual's ability to ''perform their duties with diligence, good faith, and in a manner consistent with the requirements of impartiality and independence.'' Section 11708(f)(2). Nonetheless, the Board expects that for-cause challenges would be invoked rarely, such as when an arbitrator has financial ties to a party.

[41] The Board has a Memorandum of Understanding with the Federal Mine Safety and Health Review Commission to employ the services of its ALJs on a case-by-case basis to perform discrete, Board-assigned functions such as adjudicating discovery disputes in pending Board cases.

[42] If the Board ultimately adopts this proposed arbitration program, it could consider the possibility of creating a system in which the agency pays the party-selected arbitrator's costs for parties that are able to demonstrate financial hardship.

[43] *See* 49 CFR 1108.12(b) (adopting the exact text of the statutory language regarding arbitration costs).

Board will propose that a shipper include, as part of the Initial Notice that is served on the participating carrier and OPAGAC, a statement that it likewise agrees to extend the arbitrator selection deadline. The letter from OPAGAC confirming initiation of the arbitration process (*see supra* Section IV–A) would include a confirmation of the parties' agreement to an extension (as well as their agreement to allow for the selection of non-roster arbitrators).

E. Arbitration Commencement

The Board will propose that, within two business days after the arbitration panel is selected, the lead arbitrator shall commence the arbitration process in writing, consistent with Petitioners' proposal. (Pet., App. A at 7.) The Board notes that 49 U.S.C. 11708(c)(1)(D) requires that arbitration commence not later than 40 days after the date on which a written complaint is filed ''or through other procedures adopted by the Board in a rulemaking proceeding.'' Under the Board's proposal, it is possible that the arbitration phase may not begin within 40 days from the submission of the Initial Notice, due to the presumptive 30-day mediation requirement (which, again, the parties can forgo if they do not mutually consent). However, the Board finds no inconsistency with the 40-day statutory requirement, as it considers the mediation phase to be part of the overall ''arbitration process.''

F. Arbitration Agreement

Petitioners propose a provision that would require that the rules of the Small Rate Case Arbitration Program be incorporated by reference into any arbitration agreement into which the parties enter. (Pet., App. A at 6 (proposed § 1108a.5(d)).) Petitioners' proposal appears to make the need for an arbitration agreement discretionary. However, an agreement signed by all participants to the arbitration helps ensure that the issues for the arbitration panel are clear and the participants take the time to familiarize themselves with the arbitration rules. Accordingly, the Board will propose a requirement that the parties, with the help of the arbitration panel, create a written arbitration agreement. *See* proposed § 1108.27(b). The Board has modeled this provision on the regulation from the existing arbitration process. *See* 49 CFR 1108.5(g).

VI. Record-Building Procedures

Petitioners propose that, once the arbitrators are selected, there would be a 45-day period for the parties to engage in limited discovery and that the arbitration panel has discretion to set the schedule and prescribe the format of the parties' evidence. (Pet. 13, 15.) They also propose that the Board's Office of Economics (OE) provide unmasked confidential Carload Waybill Sample data—subject to certain commodity and time limitations—to each party within seven days of filing the Joint Notice with OPAGAC. (*Id.* at 13.)

A. Procedural Schedule

There appear to be several inconsistencies between what Petitioners propose in the body of their Petition and the text of their proposed regulations in Appendix A of their Petition regarding the procedural schedule for arbitration. For example, with respect to the 45-day discovery process, the Petition is unclear as to when that 45-day period would commence. (*Compare* Pet. 13 (the date on which the Joint Notice is filed) *with* Pet., App. A at 7 (the arbitration commencement date, which is two business days after the arbitration panel is appointed). With respect to terminology, the Petition refers to a 45-day period for discovery, (Pet. 13), but the proposed regulations themselves refer not to a discovery period but a 45-day ''evidentiary phase,'' (Pet., App. A at 7), which could presumably encompass more than just discovery (*e.g.,* submission of pleadings and evidence). In addition, Petitioners state that the procedural schedule for the submission of pleadings or evidence will be set by the ''arbitration panel,'' (Pet. 15), even though they have indicated that the ''lead arbitrator'' shall establish all rules deemed necessary for arbitration, including with regard to ''the submission of evidence,'' (Pet., App. A at 6–7).

The Board will propose a procedural schedule, consistent with section 11708, beginning with a 90-day evidentiary phase comprised of 45 days for discovery and an additional 45 days for the submission of pleadings or evidence. Although the arbitration panel may extend the ''discovery sub-phase'' upon request, the Board will propose that this would not automatically extend the entire evidentiary phase beyond 90 days. *See* proposed § 1108.27(c). In other words, if the ''discovery sub-phase'' were extended, the ''submission sub-phase'' would be correspondingly shortened. However, the parties may agree to extend the entire evidentiary phase or a party may request an extension from the arbitration panel.[44] Furthermore, the discovery/evidentiary phase would run from commencement of the arbitration (*i.e.,* two business days after the arbitration panel is appointed), not from the submission of the Joint Notice. *See* proposed § 1108.27(c)(2). This would ensure that the days needed for arbitration panel selection are not counted as part of the discovery/evidentiary phase. Accordingly, because the Board's proposed procedural schedule may not conclude within the timeline set forth in section 11708 if the parties engage in mediation, the Board will require carriers and shippers that utilize the proposed small rate case arbitration process to provide their consent to extend these deadlines in their opt-in notice and Initial Notice, respectively.

Olin states in its reply that Petitioners ''seek to enable a defendant a fair opportunity to respond to the complainant shipper's case-in-chief, but fail to provide for shipper rebuttal and the right to be able to close the record,'' as provided for under the proposed FORR process. (Olin Reply 12.) It is the Board's view that the lead arbitrator should set the schedule and format of the parties' evidence, as is currently provided for in the existing arbitration regulations. *See* 49 CFR 1108.7(b). Arbitration is intended to be a flexible process, and the lead arbitrator will be able to set rules for the presentation that best suit the nature of the dispute, with the input of the parties. The lead arbitrator may, of course, confer with the other arbitrators on the panel regarding these matters.

B. Discovery Limits

The Board will propose limiting discovery to 20 written document requests, five interrogatories, and no depositions, as suggested by Petitioners. These limits would be broad enough to allow each party to obtain the information necessary to make its case to the arbitration panel, but not so broad as to place an extensive burden on the opposing party and necessitate a prolonged discovery phase.

Olin argues that discovery limitations are another instance where the proposed program would be inferior to the FORR

[44] Petitioners propose that the evidentiary phase only be extended upon mutual agreement of the parties. (Pet., App. A at 7.) This may have been an effort by Petitioners to subject arbitration to rigid deadlines comparable to those proposed in *Final Offer Rate Review,* EP 755 (STB served Sept. 12, 2019). However, section 11708(e)(2) permits parties to make, and for the arbitration panel to grant, unilateral requests for an extension. In keeping with the statute, the Board will permit unilateral requests for extension, but notes its expectation that the arbitration panel will grant such extensions only in extraordinary circumstances and should attempt to adhere to the 90-day default evidentiary period set forth in the statute to the greatest extent practicable.

process which, as proposed, includes no limitations on discovery. (Olin Reply 11.) However, arbitration is intended to be a streamlined process that reduces the costs and time often associated with adjudication. The Board invites parties to comment on these proposed limits; in particular, parties are invited to comment on whether broader discovery should be allowed in light of the fact that the Board is proposing that shippers may use a non-streamlined presentation to establish market dominance. *See infra* Section VII.B.

Again, the Board will propose that the lead arbitrator—not the arbitration panel—be responsible for managing discovery, the submission of evidence, and the treatment of confidential information, consistent with the requirements of the existing arbitration process. *See* 49 CFR 1108.7(b).

C. Waybill Data

Petitioners propose that each party in the arbitration automatically be given access to Waybill data that contains: (a) The most recent year, (b) movements with a revenue to variable cost (R/VC) ratio above 180%, (c) movements on the defendant carrier, and (d) movements with the same five-digit Standard Transportation Commodity Code (STCC) as the challenged movements. They propose that, should a party need more data than provided in this automatic release, it may ''seek broader release of the STB Waybill Sample pursuant to existing procedures'' or through discovery. (Pet. 13.)

The Joint Shippers respond that automatic release of Waybill data should not be limited to only one year. They note that the Board allows the release of up to four years of data in Three-Benchmark cases, as one year of data was deemed insufficient in those cases to provide a meaningful benchmark for comparison purposes. (Joint Shippers Suppl. 11.) The Joint Shippers also suggest that the Waybill data should not be limited to the same five-digit STCC as the commodity at issue. They note that some commodities, particularly chemicals, have similar characteristics and argue that guaranteeing access to Waybill Data at the two-digit STCC level will provide more relevant data for performing a comparative analysis. (*Id.* at 12.) The Joint Shippers further argue that the Waybill data should not be limited to only the defendant carrier but should be provided for all railroads, as limiting guaranteed access to only the defendant carrier's Waybill data could prevent shippers from relying on methodologies that consider movements on other railroads, including the ACC's proposed benchmarking methodology. (*Id.*) Finally, the Joint Shippers note that the carriers' suggestion that such Waybill data could be sought through the standard Waybill access procedures or discovery requests would ''defeat the advantages of arbitration by adding to the time and expense.'' (*Id.*)

In their supplemental filing, Petitioners state that they disagree that more Waybill data should be required as a matter of right. (Pet'rs Suppl. 18 n.27.)

1. Waybill Data: Time Period, Commodity, and Carrier

The Board will propose a provision that requires the automatic disclosure of confidential Waybill data to each party to an arbitration, but for the preceding four years rather than the one year proposed by Petitioners. *See* proposed § 1108.27(g). The Joint Shippers correctly point out that the Board allows parties in Three-Benchmark cases access to the unmasked Waybill Sample data of the defendant carrier for the four years that correspond with the most recently published Revenue Shortfall Allocation Methodology (RSAM) figures. *See Waybill Data Released in Three-Benchmark Rail Rate Procs.,* 77 FR 15969 (March 19, 2021), EP 646 (Sub–No. 3) (STB served Mar. 12, 2012). As noted above, the arbitration panel would be required to consider the Board's methodologies for setting maximum lawful rates. Parties may wish to present arguments to the panel on what a reasonable rate would be under the Three-Benchmark methodology,[45] which would require the same access to the Waybill sample as permitted in such proceedings. Moreover, the Board has previously indicated that there are additional benefits to providing four years of data. *Waybill Data,* EP 646 (Sub–No. 3), slip op. at 5, 9 (finding that more years of data would increase the number of observations of comparable traffic and allow for an assessment of changes in railroad pricing over a period of years).

The Board will not, however, propose that the Waybill data that is automatically disclosed include commodities at the two-digit STCC level or railroads that are not parties to the arbitration. While arbitration disputes may involve attempts by shippers to demonstrate rate unreasonableness based on a comparison of rates between the arbitrating carrier and other carriers, not all arbitrations will involve such arguments. Given the importance of maintaining the confidentiality of the Waybill Sample, it would be imprudent to require the release of data that may not needed in some cases. Instead, if a party desires access to the Waybill Sample for data regarding other years, other commodity traffic of the defendant carrier, or other carriers, the Board will propose that the party file a request pursuant to 49 CFR 1244.9(b)(4). As with requests for Waybill data in other contexts, *see* 49 CFR 1244.9(a), the Director of OE will determine if the request satisfies the requirements of § 1244.9(b)(4).[46]

Whether determinations by the Director of OE for Waybill data under § 1244.9(b)(4) would be considered an ''opinion'' or ''order'' that must be made available for public inspection under the Freedom of Information Act (FOIA) is unclear. *See* 5 U.S.C. 552(a)(2). The Board will propose that the Director's determinations would not be posted in a formal docket (as such determinations are for formal proceedings and ''other user'' requests), though parties are free to comment on whether or not publication is required under FOIA. It should be noted, however, that even if the Board were to conclude the Director's determinations do not need to be made public, such documents may nonetheless have to be made available in response to a FOIA request under 5 U.S.C. 552(a)(3). (*See infra* Section XI.B for further discussion of issues with confidentiality and FOIA in this proposed arbitration process.)

Lastly, the Board will not propose permitting shippers to obtain additional Waybill data through discovery, so that the Board can ensure that this data is properly protected.

2. Access to Waybill Data Under 49 CFR 1244.9

To effectuate both the automatic disclosure of confidential Waybill data and the potential release of additional Waybill data, the Board will propose

[45] *See Waybill Data,* EP 646 (Sub–No. 3), slip op. at 5 (''[A] party may, for example, select its comparison group from data across all four years and argue that a group selected from all four years is the most comparable to the movements at issue.'').

[46] The Board does not permit complainants in Three Benchmark proceedings to include non-defendant carrier traffic in its comparison group. *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 82–83. However, under the proposal here, shippers would be permitted to present new or modified rate reasonableness methodologies that consider additional market-based standards, among other factors. (*See infra* Section IX.A.1.) *See also Expanding Access to Rate Relief,* EP 665 (Sub–No. 2), slip op. at 14–15 (STB served Aug. 31, 2016) (seeking comment on whether to allow comparisons of non-defendant traffic). Accordingly, it is possible that requests for non-defendant carrier Waybill data could satisfy the criteria of 49 CFR 1244.9(b)(4), including that ''[t]he STB Waybill Sample is the only single source of the data or obtaining the data from other sources is burdensome or costly, and the data is relevant to issues pending before the Board'' or arbitration panel. 49 CFR 1244.9(b)(4)(i).

amending its existing Waybill access procedures. *See* below. The procedures, which are set forth at 49 CFR 1244.9, describe five categories of users that can request access to Waybill data and the procedures for each category of user to do so. While there is a category of user for ''transportation practitioners, consulting firms, and law firms'' to obtain access to Waybill data, they may only use this data ''in preparing verified statements to be submitted in formal proceedings before the STB.'' 49 CFR 1244.9(b)(4). The other available procedures similarly do not permit shippers to obtain such data for use in an arbitration.[47] Accordingly, the Board will propose modifying the language of § 1244.9(b)(4) to include parties to a small rate case arbitration as a category of user that may request and use such data in arbitrations under the proposed program.

3. Other Issues Related to Waybill Data Disclosure

Petitioners propose that the Joint Notice be submitted to the Director of OE to facilitate timely preparation of the Waybill data. (Pet. 13; *id.,* App. A at 6.) The Board will propose that the Joint Notice be submitted to the Director, along with a letter containing the five-digit STCC information necessary for OE to produce the confidential Waybill Sample data subject to automatic disclosure, and that OE would provide this data within seven days.

Petitioners also propose that the parties to the arbitration would enter into a Confidentiality Agreement covering the arbitration generally, including access to the Waybill Sample. (Pet., App. A at 8.)[48] However, the release of confidential data from the Waybill Sample requires an agreement with the Board. *See* 49 CFR 1244.9(b)(4)(v). Accordingly, the Board will propose that, as in formal proceedings and other waybill releases, OE provide to the parties a confidentiality agreement pursuant to 49 CFR 1244.9(b)(4)(v) that must be executed prior to release of any confidential Waybill data. Additionally, the Board will propose a requirement that the arbitrators sign their own agreement with the Board that would allow them to review confidential Waybill data that may be provided by the parties.

D. Admissible Evidence

As discussed below (*see infra* Section VII.B), the Board will propose that evidence pertaining to product and geographic competition would be inadmissible, consistent with Board precedent regarding market dominance determinations. *Mkt. Dominance Determinations—Prod. & Geographic Competition,* 3 S.T.B. 937, 948 (1998) *remanded sub nom. Ass'n of Am. R.Rs.* v. *STB,* 237 F.3d 676 (D.C. Cir. 2001), *pet. for review denied sub nom. Ass'n of Am. R.Rs.* v. *STB,* 306 F.3d 1108 (D.C. Cir. 2002). As noted below, (*see infra* Section XII), the Board will also propose that arbitration decisions be deemed non-precedential, and likewise inadmissible.[49] The Board will not, however, propose that evidence of revenue adequacy be inadmissible. As explained in detail below, (*see infra* Section VIII.A.2), the Board finds that section 11708 requires that shippers be allowed to submit, and arbitrators to consider, certain revenue adequacy evidence.

VII. Market Dominance

A. Determination by the Arbitration Panel

The Petition proposes that, under the proposed program, the arbitration panel would determine whether the railroad has market dominance. Petitioners contend that a ''significant drawback'' of the existing arbitration requirements is that they require the Board to determine market dominance prior to the arbitrator considering rate reasonableness. (*See* Pet. 21–22.) They argue that, with respect to small rate cases, ''having to put rate reasonableness on hold while the Board decides market dominance could cause a significant delay and creates a disincentive for shippers to arbitrate.'' (*Id.*)

Section 11708 provides that, ''with respect to rate disputes, [the Board] may make the voluntary and binding arbitration process available only to the relevant parties if the rail carrier has market dominance (as determined under section 10707).'' 49 U.S.C. 11708(c)(1)(C). Section 10707 provides that where a shipper challenges a rail transportation rate subject to the Board's jurisdiction as being unreasonably high, ''the Board shall determine whether the rail carrier proposing the rate has market dominance over the transportation to which the rate applies.'' 49 U.S.C. 10707(b).

Petitioners argue that the Board is not prohibited from permitting the arbitration panel to determine market dominance in the small rate case arbitration program. Petitioners argue that while section 11708 instructs the Board to make arbitration available only where the railroad has market dominance, it does not prohibit the Board from delegating the market dominance decision to the arbitration panel, provided the parties have voluntarily consented to that arrangement. (Pet. 22.) Petitioners also contend that, even if section 11708 forbids such delegation, the Board may use its exemption authority under 49 U.S.C. 10502(a) to exempt small rate case arbitrations from that provision, on the ground that any such requirement is not necessary to carry out the rail transportation policy or protect shippers from an abuse of market power. (*Id.*)[50]

Olin objects to this aspect of the Petition, arguing, among other things, that the Board should not ''create a whole new alternative arbitration rate relief program in conflict with, but separate from the rate arbitration rules established by the Board under § 11708.'' (Olin Reply 10.) It notes that this is another reason why the proposed program should not supplant FORR, which avoids this problem by having the Board determine market dominance. (*Id.*)

The Board is skeptical of Petitioners' argument that, to the extent 49 U.S.C. 11708 prohibits the arbitration panel from determining market dominance in a rate arbitration, the Board could simply exempt parties from that provision pursuant to 49 U.S.C. 10502(a). Section 10502(a) authorizes the Board to exempt ''person[s], class[es] of persons, or a transaction or service'' from the provisions of U.S. Code title 49, subtitle IV, part A, under certain circumstances. From a practical

[47] Under 49 CFR 1244.9(b)(1), a railroad may obtain access to Waybill data for any traffic in which the carrier participated. Under 49 CFR 1244.9(c), ''other users'' may request access to the Waybill Sample, but that process requires the filing of a written request, publication of notice of the request in the **Federal Register**, an opportunity for the carriers' whose data is being sought to file protests, a determination by the OE Director, and a right of parties to appeal the Director's decision. Even if such a request were processed on an expedited basis, it could take some months to reach a final resolution.

[48] The proposed Confidentiality Agreement provided by Petitioners appears to be modeled on a frequently used protective order issued by the Board in adjudication and rulemaking proceedings in which information is filed under seal. (*See* Pet., App. B.)

[49] Petitioners include proposed regulatory language stating that non-precedential decisions include ''non-precedential decisions of the Board or of prior arbitrations.'' (Pet., App. A at 8 (proposed § 1108.27(e)(2)(ii)).) It is unclear to what ''non-precedential decisions of the Board'' is referring and the Board's proposal does not include this language.

[50] Petitioners also contend that the Board is not constrained by section 11708 and may propose arbitration procedures that deviate from that statute under its general rulemaking authority at 49 U.S.C. 1321(a), (Pet. 22), but as noted earlier, the Board is proposing a small rate case arbitration program in this decision pursuant to the requirements of section 11708.

standpoint, Petitioners appear to suggest that the Board may eliminate altogether a jurisdictional requirement for rate cases that Congress carried over to the arbitration context. Regardless, the Board need not reach that argument, as it now concludes that section 11708 does not prohibit an arbitration panel from determining market dominance.

1. Arbitrators Can Determine Market Dominance.

As noted above, under 49 U.S.C. 11708(c)(1)(C), ''with respect to rate disputes, [the Board] may make the voluntary and binding arbitration process available only to the relevant parties if the rail carrier has market dominance (as determined under section 10707).'' In *Revisions Final Rule,* the Board adopted a final rule allowing parties to obtain the requisite market dominance determination by either requesting a ruling from the Board solely on the issue of market dominance or conceding market dominance and thereby ''forgoing the need for a determination by the Board.'' *Revisions Final Rule,* EP 730, slip op. at 6–7; *see also Revisions to Arbitration Procs.,* 81 FR 30229 (May 16, 2016), EP 730, slip op. at 2–3 (STB served May 12, 2016). While the Board's decisions in that proceeding did not undertake a detailed analysis of whether section 11708 permitted an arbitrator or arbitration panel to determine market dominance, the Board did state that ''the Board must determine if the rail carrier has market dominance before making the arbitration process available.'' *Revisions to Arbitration Procs.,* EP 730, slip op. at 6; *see also id.* at 3 (noting that, ''as required by the statute,'' arbitration may be ''available only after [the Board] determines that a rail carrier has market dominance'').

Here, the Board revisits this determination and now concludes that allowing arbitrators to determine market dominance is consistent with and permitted by the statutory language.[51] Although section 11708(c)(1)(c) requires that market dominance be determined under section 10707, and although section 10707 states that ''the Board shall determine whether the rail carrier . . . has market dominance over the transportation to which the rate applies,'' the overarching purpose of section 10707 is to *define market dominance* and set forth *methodological* requirements for its determination—*e.g.,* a finding of R/VC greater than 180%, directions for determining variable costs, and the prohibition against certain presumptions. It seems likely that section 10707 refers to ''the Board'' determining market dominance merely because the section otherwise governs determinations made in rate reasonableness proceedings before the Board. *See* 49 U.S.C. 10707(c) (''When the Board finds in any proceeding that a rail carrier proposing or defending a rate for transportation has market dominance over the transportation to which the rate applies, *it* may then determine that rate to be unreasonable if it exceeds a reasonable maximum for that transportation.'') (emphasis added)). It is reasonable, therefore, to conclude that the reference in section 11708(c)(1)(C)—a provision pertaining to rate reasonableness proceedings before an arbitrator, not the Board—to section 10707 is to the definitional and substantive, methodological requirements set forth in that section, not to any requirement that the Board itself determine the presence of market dominance.[52]

The Board's modified interpretation that section 11708(c)(1)(C) permits the arbitration panel to determine market dominance in regard to arbitrated rate disputes also comports with the statute's objective of providing a voluntary arbitration process and advances Congress's stated goal when passing section 11708 of ''increas[ing] the efficiency of dispute resolution'' by ''expand[ing] existing work at the STB to encourage and provide arbitration for dispute resolution.'' S. Rep. No. 114–52, at 7, 13 (2015). Nothing within section 11708's legislative history otherwise indicates that Congress expected that the Board itself would resolve market dominance before allowing the arbitration of rate disputes. The Board also recognizes, as it has in the past, that the arbitrators' inability to rule on market dominance is likely one hindrance to parties' willingness to use the arbitration process. *See Revisions Final Rule,* EP 730, slip op. at 6 (acknowledging that market dominance determinations being made by the Board ''may significantly delay the arbitration process''). These circumstances, and section 11708's objective of encouraging the use of arbitration to resolve disputes, support interpreting section 11708 to permit the arbitration panel to determine market dominance in rate disputes. *See, e.g., Rux* v. *Republic of Sudan,* 461 F.3d 461, 470 (4th Cir. 2006) (expressing the need to ''interpret statutory language in a manner that effectuates congressional intent''); *Teva Pharms., USA, Inc.* v. *FDA,* 182 F.3d 1003 (D.C. Cir. 1999) (same).[53]

2. Market Dominance Does Not Have To Be Determined Before the Arbitration Process Begins.

To the extent the Board's prior rulemaking can be read to suggest that section 10708(c)(1)(C) requires that *any aspect* of the ''arbitration process'' be made available to resolve a ''rate dispute'' only after it has been determined that a carrier has market dominance—either by the Board, an arbitrator, or by stipulation—it bears emphasizing that arbitration under the rule proposed here would function no differently than the Board's decision-making in a formal rate case. If the arbitrators conclude that there is no market dominance, that would end the arbitration; like the Board, the arbitrators would not proceed to rule on the merits of rate reasonableness. The Board concludes that section 11708(c)(1)(C) does not require market dominance and rate reasonableness issues to be litigated or arbitrated sequentially, only that a finding of market dominance must be made before the arbitration panel may determine rate reasonableness. A contrary reading of the statute would suffer from the same drawbacks discussed above and could contravene the stated goal in adopting the arbitration provision in the first place. *See* S. Rep. No. 114–52 at 7 (stating that the STB Reauthorization

[51] It is an axiom of administrative law that an agency's adoption of a particular statutory interpretation at one point in time does not preclude later different interpretations. *See, e.g., Hinson* v. *NTSB,* 57 F.3d 1144, 1149–50 (D.C. Cir. 1995). If an agency changes course, it must provide ''a reasoned analysis indicating that prior policies and standards are being deliberately changed and not casually ignored,'' *Grace Petroleum Corp.* v. *FERC,* 815 F.2d 589, 591 (10th Cir. 1987) (citing *Greater Bos. Television Corp.* v. *FCC,* 444 F.2d 841, 852 (D.C. Cir. 1970)), and its new interpretation must be permissible under the governing statute, *see Chevron U.S.A., Inc.* v. *Nat. Res. Def. Council,* 467 U.S. 837, 865 (1984).

[52] In *Revisions Final Rule,* EP 730, slip op. at 2–3, the Board allowed parties to concede market dominance in rate disputes arbitrated under section 11708, acknowledging that the arbitration process is voluntary and that market dominance determinations may significantly delay the process. But, if the reference within section 11708(c)(1)(C) to section 10707 requires that ''the Board'' determine market dominance as a prerequisite to arbitrating a ''rate dispute,'' that would seem to preclude *any* resolution of the market dominance issue other than by ''the Board,'' including by stipulation. It could be argued that it would also constrain parties from ''independently seeking or utilizing private arbitration services'' to resolve a market dominance dispute, which would conflict with section 11708(b)(3). Accordingly, the better reading of the statute is that it permits parties to (1) agree to concede market dominance, (2) agree to its determination by an arbitrator within an arbitration (be it one under the auspices of section 11708 or otherwise), or (3) have that issue first be determined by the Board.

[53] In addition, parties have the right to appeal arbitration decisions to the Board under 49 U.S.C. 11708(f), which would include the arbitration panel's market dominance finding.

Act would expand existing work at the STB to encourage and provide arbitration for dispute resolution). By encouraging parties to resolve rate disputes through arbitration in lieu of adjudication but still requiring those parties to adjudicate market dominance before the Board or in a separate arbitration as a mandatory prerequisite, it could undermine the effectiveness of arbitration as an alternative to formal litigation.

Given its modified interpretation of section 11708, the Board will propose that market dominance determinations be made by the arbitration panel under the proposed program.[54] As with the procedures under the Board's current arbitration program, *see Revisions Final Rule,* EP 730, slip op. at 6–7, the carrier may concede market dominance, or the parties may jointly request that the Board determine market dominance. *See* proposed § 1108.29(b)(1)(vi).

B. Other Market Dominance Issues

Petitioners propose that the arbitration panel be required to follow the streamlined market dominance approach that the Board adopted in EP 756. (*See* Pet. 13); *see also Mkt. Dominance Streamlined Approach,* EP 756 (STB served Aug. 3, 2020).[55] However, in their supplemental filing, they indicate that they no longer object to allowing shippers to use the proposed arbitration process if they proceed under a non-streamlined analysis. (Pet'rs Suppl. 5–6.) Petitioners also propose that when deciding market dominance, the arbitration panel not consider evidence of product and geographic competition, nor apply the limit price test as described in *M&G Polymers USA, LLC* v. *CSX Transp., Inc.,* NOR 42123, slip op. at 11–18 (STB served Sept. 27, 2012). (*See id.* at 13–14, 27.) They contend that the limit price test involves detailed policy and legal challenges not appropriate for litigation in a streamlined and expedited arbitration with limited appellate rights. (*Id.* at 27.)

The Board will propose that the complainant in a small rate case arbitration under these procedures may attempt to establish market dominance using either the streamlined or non-streamlined approach.[56] Both the shipper interests and Petitioners appear to agree that there should be no restriction on which market dominance approach a shipper decides to utilize under the proposed program. The Board will also propose prohibiting arbitrators from considering evidence on product and geographic competition and the limit price test as part of the market dominance analysis. The Board does not consider product or geographic competition under either the streamlined or non-streamlined market dominance approach. *See Mkt. Dominance Streamlined Approach,* EP 756, slip op. at 31–32 (STB served Aug. 3, 2020); *Product & Geographic Competition,* 5 S.T.B. 492, 499 (2001), *corrected,* EP 627, (STB served Apr. 6, 2001), *aff'd sub nom. Ass'n of Am. R.Rs.* v. *STB,* 306 F.3d 1108 (D.C. Cir. 2002). Olin states that the limit price test is established precedent, and notes that the FORR proposal does not prohibit its use. (Olin Reply 10–11.) However, the limit price test has been the subject of controversy in rate cases and thus would only add time and complexity to small rate case arbitrations. Accordingly, the Board will propose that the arbitration panel cannot consider the Limit Price Test as part of its market dominance determination. *See* proposed § 1108.29(b)(1)(v).

VIII. Arbitration Decision

A. Rate Reasonableness Standard of Review

Petitioners propose that, when determining rate reasonableness, the arbitration panel follow the standards prescribed in 49 U.S.C. 11708(c)(3) and (d)(1). However, Petitioners also propose prohibiting the arbitration panel from ''considering any type of system-wide adequacy constraint, including the revenue adequacy constraint described in *Coal Rate Guidelines,* 1 I.C.C.2d 520, 535 (1985),'' and relatedly that ''any evidence related to the revenue adequacy of the defendant carrier'' be inadmissible. (Pet. 14–15; *id.,* App. A at 8.) Shippers generally support use of the standards proposed by Petitioners, though some urge the Board to include more specificity regarding the ability of arbitrators to apply market-based factors. Shippers strongly oppose any restrictions on revenue adequacy considerations in arbitrations under the proposed small rate case program.

1. General Standard

Under the statutory provisions of section 11708(c)(3) and (d)(1), when deciding whether a rate is reasonable, an arbitration panel must: (i) Consider the Board's methodologies for setting maximum lawful rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues; and (ii) ensure that its decision is consistent with sound principles of rail regulation economics.

NGFA suggests that the Board add language stating that arbitrators can consider ''flexible market-based standards,'' including ones that are incorporated in the NGFA's own private agreement to arbitrate with BNSF. (NGFA Reply 12.) NGFA states that such additional flexible market-based factors would include: (1) Rate levels on comparative traffic, (2) market factors for similar movements of the same commodity, and (3) overall costs of providing the rail service. (*Id.*) The Joint Shippers state that the Board should adopt the market-based factors proposed by NGFA, as providing arbitrators with such a list of would help arbitrators identify factors with a sound economic basis, which could increase the quality of panel decisions. (Joint Shippers Suppl. 13–14.) In their supplemental filing, Petitioners state that they have no objection to the Board explicitly permitting the arbitration panel to consider these market-based factors. (Pet'rs Suppl. 4.)

The Board will propose the same general standards for rate reasonableness as suggested in the Petition, which closely follows the language of section 11708(c)(3) and (d)(1). The Board agrees with Petitioners that while section 11708(c)(3) requires that the arbitration panel ''consider'' the Board's existing methodologies, the statute does not require that the arbitration panel follow any particular methodology. As Petitioners note, this interpretation permits the arbitration panel flexibility by not requiring it ''to conform precisely to existing methodologies, but rather permits the panel to base its decision on alternative approaches so long as they are consistent with sound railroad economics.'' (Pet. 25.) This interpretation also is broadly similar to one of the key features of FORR, which would also allow parties flexibility to

[54] The Board will determine whether an amendment to the market dominance determination in the existing arbitration procedures under 49 CFR part 1108 should be made after the conclusion of this rulemaking.

[55] Because Petitioners submitted the Petition prior to the Board's adoption of the final rule in EP 756, they stated they reserved the right to revise this proposal in the event the Board adopted a final rule in EP 756 that deviated materially from the Board's original, proposed rule. (*See* Pet. 13 n.47.)

[56] Because both the streamlined market dominance approach and non-streamlined approach comply with the requirements of 49 U.S.C. 10707, use of either approach is permissible under section 11708. The Joint Shippers also argue if the Board were to adopt the ''á la carte'' approach to determining market dominance they proposed in *Mkt. Dominance Streamlined Approach,* Docket No. EP 756, it would mitigate the time and expense of arbitrating market dominance. (Joint Shippers Suppl. 13.) The á la carte approach is the subject of the Joint Shippers' petition for reconsideration in that proceeding and will therefore not be addressed here.

choose how to present and support their offers, including the methodology used. *See FORR SNPRM,* EP 755, slip op. at 26–27 (STB served Nov. 15, 2021). Similar to the FORR proposal, here parties in arbitration would also be able to ''use their preferred methodologies, including revised versions of the Board's existing rate review methodologies or new methodologies altogether.'' *Id.* at 11. Moreover, because arbitration decisions broadly are to be ''consistent with sound principles of rail regulation economics,'' and are not to ''directly contravene[ ] statutory authority,'' the Board expects the arbitration panel to be informed by the rail transportation policy at 49 U.S.C. 10101, to consider the Long-Cannon factors at 49 U.S.C. 10701(d)(2), and to use appropriate economic principles, as would the Board in a decision in a FORR proceeding. *Compare* 49 U.S.C. 11708(d)(1), (h) *with FORR SNPRM,* EP 755, slip op. at 27–28 (STB served Nov. 15, 2021). Also as was the stated intention in FORR, the arbitration program's use of principle-based, non-prescriptive review criteria should facilitate methodological innovation—albeit without the precedential effect anticipated in FORR—with overall complexity constrained by an abbreviated procedural schedule and a streamlined discovery process.

Given the methodological flexibility described above, and because all parties appear to agree to include NGFA's proposed market-based factors in the text of the regulation, the Board will include them as part of its proposal. *See* proposed § 1108.29(b)(2). Furthermore, parties arbitrating pursuant to 49 U.S.C. 11708 are free to present new or modified rate reasonableness methodologies that consider additional market-based factors.

2. Revenue Adequacy

Petitioners also propose prohibiting the arbitration panel from considering any type of system-wide revenue adequacy constraint, including the revenue adequacy constraint described in *Coal Rate Guidelines.* (Pet. 14–15; *id.,* App. A at 8.) They also propose that any evidence related to the revenue adequacy of the carrier be deemed inadmissible. (*Id.* at 15; *id.,* App. A at 8.) Petitioners contend that over the past decade, they have raised ''serious legal, factual, and policy flaws with any constraint premised on the system-wide financial health of a carrier,'' which they characterize as an ''antiquated, utility-style concept of rate regulation that has long since been abandoned in other industries.'' (*Id.* at 14–15.) They state that they will not consent to a such a constraint applying in a small rate case arbitration, especially given the short deadlines and limited appeal rights. (*Id.* at 15.)

Several shippers object to prohibiting the arbitration panel from considering the revenue adequacy constraint in reaching an arbitration decision. The Joint Shippers note that in *Hearing on Revenue Adequacy,* Docket No. EP 761, and *Final Offer Rate Review,* Docket No. EP 755, the ACC has submitted the prototype for a rate dispute methodology that implements the revenue adequacy constraint and that the carriers' proposed revenue adequacy constraint prohibition, combined with the proposed FORR exemption for participating carriers, would foreclose small rate case shippers from using this proposed methodology. (Joint Shipper Reply 5.) In their supplemental filing, the Joint Shippers argue that the revenue-adequacy constraint is especially relevant today because many railroads are reaching long-term revenue adequacy. (Joint Shipper Suppl. 4.) They further argue that Petitioners' assertion that the revenue adequacy constraint is highly contested and that the limited appellate standards governing arbitration decisions does not justify the prohibition. The Joint Shippers also argue that such a prohibition conflicts with Congress's directive in 49 U.S.C. 11708(c)(3) that arbitrators consider revenue adequacy, specifically, that arbitrators ''giv[e] due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues.'' (*Id.* at 7.)

Olin agrees with the Joint Shippers that the program as proposed by Petitioners would effectively insulate railroads from the revenue adequacy constraint, which it argues the Board has recognized as ''an essential first constraint in limiting the extent to which railroads can price their services,'' and which is established precedent. (Olin Reply 7–8; *see also* Joint Shippers Suppl. 4 (noting that the revenue adequacy constraint has long been established as a proper rate reasonableness standard by the Board).) Olin further notes that, by contrast, there is no such limit on revenue adequacy evidence under the proposed FORR process. (Olin Reply 11–12; *see also* U.S. Wheat Suppl. 7.) USDA argues that, if Petitioners insist on limiting arbitrators from considering evidence on revenue adequacy, then shippers should have the option to use FORR or arbitration. (USDA Reply 2.) [57]

In their supplemental filing, Petitioners reiterate their position that controversial issues like revenue adequacy should not be litigated for the first time in small case arbitrations with limited appellate rights. (Pet'rs Suppl. 2.) They emphasize that use of ''any regulatory adequacy constraint'' in rate reasonableness determinations, including ACC's proposed benchmark method, represents a ''grave regulatory misstep.'' (*Id.* at 15.) They further state that, even if revenue adequacy were a lawful method of constraining rates (which they claim it is not), the application of the concept is currently undefined, and allowing arbitrators to define it ''risks departure from sound principles of rail transportation economics.'' (*Id.*) As such, they reiterate that they will not agree to arbitrate rate disputes where shippers are permitted to use a revenue adequacy constraint. (*Id.*)

The Board finds that Petitioners have not sufficiently justified their proposed methodological and evidentiary restrictions pertaining to revenue adequacy, and they will not be included as part of the Board's proposal. Regarding the evidentiary restriction, the regulatory text proposed by Petitioners prohibiting ''any evidence relat[ing]'' to ''the revenue adequacy of the defendant carrier,'' (*see* Pet., App. A at 8 (proposed § 1108.27(e)(2)(iii)), conflicts with section 11708(c)(3)'s requirement that arbitrators give ''due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues (as determined under section 10704(a)(2)).'' It is unclear how the arbitrators could comply with their statutory obligations if absolutely prohibited from considering any evidence concerning revenue adequacy.

Petitioners' proposal that arbitrators be prohibited ''from considering any type of system-wide revenue adequacy-based constraint'' raises similar concerns.[58] For example, the Three-

[57] NGFA states that it takes no position on the proposed exclusion of revenue adequacy considerations though, as discussed above, it argues that if the Board adopts the Rate Increase Constraint, carriers that participate in the proposed small rate case arbitration program should not be permitted to withdraw from the program on that basis alone. (NGFA Reply 10–11, 13.) NGFA further argues that, if adopted, the Rate Increase Constraint should be available for consideration in arbitrations under the proposed small rate case program. (*Id.* at 11.)

[58] Petitioners phrase this restriction more narrowly than their proposed evidentiary restriction, which would more broadly prohibit ''any evidence relat[ing] to the revenue adequacy of the defendant carrier.'' (*Pet.,* App. A at 8 (proposed § 1108.27(e)(2)(i).) However, when the two provisions are considered together, Petitioners appear to intend the restriction on ''any system-wide revenue adequacy constraint'' as a broad exclusion of any methodology involving revenue adequacy, as evidenced by their objection to the use of ACC's proposed benchmark method.

Benchmark methodology uses the Revenue Shortfall Allocation Method (RSAM) benchmark to ''account[ ] for a railroad's need to earn adequate revenues, as required by 49 U.S.C. 10704(a)(2).'' *Rate Guidelines—Non-Coal Procs.,* 1 S.T.B. 1004, 1027 (1996). Indeed, where the revenue a carrier collects from its captive traffic (*i.e.,* the $R/VC_{>180}$ benchmark) exceeds RSAM, use of the Three-Benchmark methodology may operate to constrain a carrier's rates based on its revenue requirements. *See id.* at 1043 (''The greater the difference between the two benchmarks [where RSAM is lower than $R/VC_{>180}$ benchmark], the greater the downward adjustment to the carrier's average rates on its >180 traffic that would still permit it to meet the RSAM revenue need standard.'') Under the regulatory language proposed by Petitioners, the use of RSAM—and hence the entire Three-Benchmark methodology—could arguably be considered outside the bounds of the arbitrators' consideration. Yet Petitioners appear to have no objection to arbitrators relying on the Three-Benchmark methodology for determining the reasonableness of the rate. By contrast, Petitioners object to the arbitrators considering ACC's proposed benchmark method despite it bearing certain similarities to the Three-Benchmark methodology.[59]

Additionally, it is possible that the market-based factors proposed by NGFA—which Petitioners agree arbitrators may consider—could require the consideration of the carrier's capital requirements, which in turn would also run afoul of Petitioners' proposed revenue adequacy prohibitions. Generally speaking, it is difficult to reconcile the methodological flexibility afforded to arbitrators by section 11708 (as attested to by Petitioners, *see supra* Section VIII.A.1) and section 11708's requirement that arbitrators consider the need for differential pricing to attain revenue adequacy with the seemingly expansive limitation on the use of ''any system-wide revenue adequacy constraint'' as proposed by Petitioners.

Accordingly, the Board's proposed regulations do not include a general prohibition on revenue adequacy evidence or methodologies. In addition, the Board will propose adding the phrase ''as determined under section 10704(a)(2)'' to Petitioners' suggested provision mandating that the arbitration panel consider the need for differential pricing to permit a rail carrier to collect adequate revenues.[60] Petitioners' provision is based on language taken directly from section 11708 but omits this phrase. *Compare* Pet., App. A at 9 *with* 49 U.S.C. 11708(c)(3). The reference to section 10704(a)(2) is specifically stated in the statute and therefore should not be excluded from the regulatory text.

B. Arbitration Decision Timeline

Petitioners propose that the arbitration panel issue its decision within 120 days, but again, propose varying starting points; they propose in the body of the Petition that this period would start on the date that the Joint Notice is filed, but propose in the appendix that it would start from the commencement of arbitration (*i.e.,* two business days after the arbitration panel is appointed).

The Board will propose that the arbitration panel issue its decision no later than 30 days after close of the evidentiary phase, rather than within 120 days from either the submission of the Joint Notice or commencement of arbitration. *See* proposed § 1108.27(c)(3). This accounts for the potential extension or shortening of the evidentiary phase deadline and comports with section 11708(e)(3), which requires that the arbitration panel shall issue a decision not later than 30 days after the date on which the evidentiary record is closed.

IX. Relief

Petitioners propose that any relief awarded in a single arbitration be capped at $4 million (indexed for inflation annually using the Consumer Price Index and a 2020 base year) over two years. (Pet. 11.) This monetary cap would apply to prospective relief, retroactive relief, or a combination of the two. (*Id.*) They further propose that any prospective relief in the form of rate prescriptions be limited to one year. (*Id.*) Petitioners state that a $4 million relief cap would capture the majority of potential rate litigants and that relief under the proposed program would be higher, on an annualized basis, than what was originally proposed in *Simplified Standards,* Docket No. EP 646 (Sub–No. 1). (Pet. 27 n.56.)

NGFA states that it agrees with the $4 million/two-year relief cap, but it stipulates that the cap should be reconsidered if the Board adopts a higher cap in FORR. (NGFA Reply 8–9.) Olin argues that the proposed one-year limit on rate prescriptions cuts in half the two-year limit on rate prescriptions proposed under FORR. (Olin Reply 11.) The Joint Shippers note this in their supplemental filing as well, pointing out that Petitioners fail to explain why prescriptive relief should be limited to one year. (Joint Shippers Suppl. 9.) While the Joint Shippers further note that complainants are entitled to four years of relief in any combination of reparations and prescription in a Three-Benchmark proceeding, they state that they do not oppose a general two-year relief period. (*Id.*)

A. Prescription Amount and Length

The Board will propose a relief cap of $4 million and a relief period of two years. An award of $4 million, covering a period of two years (applied to a combination of retroactive and prospective relief), should be of sufficient value to incentivize shippers to use the proposed program while also addressing the carriers' concern that the proposed program remains limited to only smaller rate disputes. The $4 million cap also parallels the relief that is proposed in the FORR process.[61]

The Board will not, however, propose a one-year cap on prescriptions. Here, Petitioners propose that the total relief period—which could include either reparations for past movements or a prescription for future movements, or both—should be two years. However, they also propose (without explanation) that any prescription be limited to a single year. The Joint Shippers correctly point out that this could unfairly limit a shipper's relief.[62] Thus, under the Board's proposal, the length of the prescription could be as long as the total period for relief, which here would be two years. *See* proposed § 1108.28(b). As the Joint Shippers note, this would be consistent with the Board's treatment of relief periods in other contexts. *See Rate Regulation Reforms,* 78 FR 44459

[59] As ACC has described it, the benchmark method relies upon a model to predict competitive benchmark rates for captive rail movements using certain competitive rail movements, which are then—through application of a ''multiplier''—adjusted to ''determine the appropriate degree of differential pricing consistent with the Board's rail revenue adequacy standard.'' Joint Shippers Comment 20, Nov. 12, 2019, *Final Offer Rate Rev.,* EP 755.

[60] *See* proposed § 1108.29(b)(2).

[61] U.S. Wheat argues that the arbitration proposal appears to be a strategic move to stop any increase in the recovery cap in FORR. (U.S. Wheat Suppl. 7.) If the Board proceeds with FORR and considers raising the relief cap there, it can also address whether to make a corresponding change to the relief cap for the proposed small rate case arbitration program at that time.

[62] For example, if a shipper initiates arbitration immediately after a rate takes effect, the arbitration process lasts six months (consistent with the timelines proposed here), and the shipper is successful, it would receive six months of reparations for the period in which the arbitration was conducted. However, if there was a one-year prescription cap, the shipper would be artificially limited to 18 months of total relief even if it had successfully demonstrated that two years of relief was warranted.

(July 24, 2013), EP 715, slip op. at 22–25.

B. Preclusive Effect of Arbitration Decision

Petitioners' proposed regulations would preclude shippers from bringing a rate complaint or other proceeding for the same traffic for the later of (a) two years from the filing of the joint notice to arbitrate or (b) expiration of any rate prescription imposed. (Pet., App. A at 9.) The Board notes that Petitioners' proposal does not seem to account for a situation in which the carrier increases the rate at issue after the arbitration decision. Specifically, if a shipper is unsuccessful in arbitration, Petitioners' proposal would preclude the shipper from challenging the rate for two years, even if the carrier were to raise the rate immediately after the panel rendered its decision. Under Board and court precedent, shippers that have lost a formal rate case may not challenge the same rate for the same traffic, but they may challenge a *new* rate for the same traffic. *See Mkt. Dominance Streamlined Approach,* EP 756, slip op. at 44 (citing *Burlington N. & Santa Fe Ry.* v. *STB,* 403 F.3d 771, 778 (D.C. Cir. 2005); *Intermountain Power Agency* v. *Union Pac. R.R.,* NOR 42127, slip op. 4 (STB served Nov. 2, 2012)).

A similar situation would occur if the shipper is awarded a prescription shorter than two years. For example, if a shipper is awarded a six-month prescription, under Petitioners' proposal, the shipper would be barred from challenging the rate for the 18 months following expiration of the prescription even if the railroad increases the rate during those 18 months. This is again inconsistent with how the Board treats the effect of a rate decision in other contexts. With regard to Three-Benchmark proceedings, the Board has held that ''[i]f . . . a carrier establishes a new common carrier rate once the rate prescription expires, and the new rate exceeds the inflation-adjusted challenged rate, the shipper may bring a new complaint against the newly established common carrier rate.'' *Rate Regulation Reforms,* EP 715, slip op. at 12.

Accordingly, the Board will propose language that makes clear that the preclusive effect of an arbitration decision is terminated if the carrier increases the rate. *See* proposed § 1108.29(d)(3). Specifically, the proposed language would allow a shipper that has either lost an arbitration or prevailed in arbitration but exhausted its prescription to bring a new arbitration for the same traffic if the carrier increases the rate. This modification would ensure fairness and comport with precedent in other contexts, as noted above.

C. Agreements To Modify Relief Cap

The Board will propose permitting carriers and shippers to agree in an individual case to arbitrate under the proposed procedures for a lesser or higher amount and/or a shorter or longer relief period, not to exceed the $25 million cap or five-year period set forth in 49 U.S.C. 11708. *See* proposed § 1108.28(c). As noted above, the Board will propose that any such agreement be noted in the confidential summary that is filed at the conclusion of the arbitration. *See* proposed § 1108.29(e)(1).

X. Appeals and Enforcement

Petitioners propose that the Board include appellate procedures and standards. An appeal would be initiated by the appellant filing a notice, which would allow the Board to formally docket the proceeding. (Pet., App. A at 10.) Petitioners include a proposed notice of appeal form. (Pet., App. C.) This notice would provide only basic information about the appeal, including the date of the arbitration decision and the name of the appealing party; the opposing side would not be named. (*Id.*) The subsequent appellate procedures proposed by Petitioners would closely follow those of 49 CFR 1108.11. (Pet., App. A at 10.)

Petitioners further propose that the Board's standard of review for arbitration decisions would be limited to the same criteria as those governing the existing arbitration process in 49 CFR 1108.11(b). (Pet. 15.)[63] Petitioners propose that the Board's decision would be public, but that the Board should ''maintain the confidentiality of the arbitration decision to the maximum extent possible'' by redacting certain information. (Pet., App. A at 11 (proposed § 1108.31(d).)

Lastly, Petitioners propose that the Board's decision on appeal would be judicially reviewable under the Hobbs Act, 28 U.S.C. 2321 and 2342; stays of arbitration decisions would not be automatic, though could be sought pursuant to 49 CFR 1115.3(f); and enforcement of an arbitration decision would have to be sought in a court of appropriate jurisdiction under the Federal Arbitration Act, 9 U.S.C. 9–13. (Pet. 15.)

The Board will propose appellate and enforcement procedures similar to those proposed by Petitioners. Olin argues that the ability of parties to appeal to either the Board or a court serves as a ''roadblock[ ] to relief with an extra layer of appeals than that provided under FORR.'' (Olin Reply 11; *see also* U.S. Wheat Suppl. 6 (arguing that a railroad will probably always appeal if they lose a case).) However, section 11708(h) sets forth a party's right to appeal an arbitration decision to the Board, and the Board does not determine the federal courts' jurisdiction to review or enforce the Board's decisions. Moreover, the bases for appeal to the Board and the courts are both narrow, a fact which, when coupled with the many other benefits that small rate case arbitration could provide, outweighs this concern.

The Board will propose some modifications to the carriers' proposed confidentiality provisions relating to appeals of the arbitration decision, which are discussed in detail in the following section.[64] In addition, the Board will propose adding a provision stating that parties may seek judicial review of arbitration awards in a court of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. 9–13, in lieu of seeking Board review. *See* proposed § 1108.31(f).[65] This provision already exists for the current arbitration process. *See* 49 CFR 1108.11(b)(1). The Federal Arbitration Act allows parties the right to seek: (i) An order confirming an arbitration award, or (ii) direct judicial review of an arbitration award for ''egregious departures from the parties' agreed-upon arbitration.'' *Hall St. Assocs., L.L.C.* v. *Mattel, Inc.,* 552 U.S. 576 (2008). The Board sees no reason to exclude arbitrations under the proposed program from the provisions of the Federal Arbitration Act.[66]

[63] Specifically, the Board would only review whether: (a) The decision is consistent with sound principles of rail regulation economics; (b) a clear abuse of arbitral authority or discretion occurred; (c) the decision directly contravenes statutory authority; or (d) the arbitral award limit was violated. 49 U.S.C. 11708(h).

[64] It appears that Petitioners propose that the appealing party file its notice of appeal as a means of providing public notice that the appeal had become an official proceeding before the Board, given that they also propose that all filings to the Board concerning the arbitration be kept confidential. As discussed in the following section, the Board proposes that a public version of those filings must be submitted. Accordingly, a notice of appeal would be unnecessary.

[65] Petitioners propose regulatory language stating that ''A party to an arbitration proceeding under this part may appeal the arbitration decision only to the Board.'' (Pet., App. A at 10.) As explained above, the Board will not include this in its proposed regulations.

[66] Additionally, some courts have held that these provisions of the Federal Arbitration Act cannot be waived. *See In re Wal-Mart Wage & Hour Empl. Pracs. Litig.* v. *Class Couns. & Party to Arb.,* 737 F.3d 1262, 1267 (9th Cir. 2013) (''Just as the text of the [Federal Arbitration Act] compels the conclusion that the grounds for vacatur of an

XI. Confidentiality

Petitioners characterize confidentiality as a ''key requirement for future arbitrations.'' (Pet. 22.) They contend that if arbitration decisions are made public, they could influence the marketplace and drive up the stakes for railroads with similarly situated customers and shippers that often move traffic over more than one railroad. (*Id.* at 22–23.) They suggest that this would be unfair given the expedited timelines of the proposed program and the limited grounds for appellate review. (*Id.*) They further contend that a confidential process would focus the parties on the present dispute without the risk of setting precedent in other cases or affecting the market expectations of other entities in the supply chain. (*Id.; see also* Pet'rs Suppl. 8–9 (''[Petitioners] believe that confidentiality of arbitration decisions will help railroads and shippers focus on a swift and amicable solution to the rate dispute at hand, without having to worry about broader implications.'')). Finally, they also contend that, under federal law, there is a presumption of privacy and confidentiality in arbitrations. (*Id.* (first citing *Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.,* 559 U.S. 662, 686 (2010); and then citing *Janvey* v. *Alguire,* 847 F.3d 231, 248 (5th Cir. 2017)).)

As such, Petitioners propose that the ''entirety of the arbitration process'' be deemed confidential. (Pet. 16, 23; *id.,* App. A at 6–8.) They propose that confidentiality would be effectuated through a Confidentiality Agreement, and they include a proposed version of the Confidentiality Agreement with the Petition. (*Id.* at 16; *id.,* App. A at 8; *id.,* App. B.) Petitioners further propose that the arbitration decision would not be submitted to the Board as a matter of course, which is required under the existing arbitration program (49 CFR 1108.9(e)), though a copy would be provided to the Board in the event of an appeal. (Pet. 23, App. A at 9.) Petitioners also propose that under no circumstances would the Board make publicly available a redacted version of the arbitration decision, as currently required under 49 CFR 1108.9(g). (*Id.,* App. A at 9.)

Petitioners propose that, should there be an appeal, the notice of appeal would be formally docketed and made public, but that it would contain limited information. (*Id.* at 16; *id.,* App. A at 10.) Petitioners include a proposed version of the notice of appeal form with the Petition. (*Id.,* App. C.) Under Petitioners' proposal, parties would be required to file all appellate submissions—including the arbitration decision, the petition to vacate or modify the arbitration award, and any reply—under seal, and no public versions would be filed. (*Id.* at 16; *id.,* App. A at 9–11.) They further propose that the Board's appellate decision would be public but would require the Board to maintain the confidentiality of the arbitration decision to the ''maximum extent possible,'' with particular attention paid to ''avoiding the disclosure of information that would have an effect or impact on the marketplace.'' (*Id.,* App. A at 11.) In addition, they propose that in ''no event'' would the Board—in its decision ''or otherwise''—disclose: ''(i) the specific relief awarded by the arbitration panel, if any, or by the Board; or (ii) the Origin-Destination pair(s) involved in the arbitration.'' (*Id.)* They also propose a procedure by which parties would have the opportunity to request redactions of the Board's decision prior to its public release. (*Id.)*

To permit the Board to monitor the proposed small rate case arbitration program, Petitioners propose that the parties would submit a confidential summary to OPAGAC within 14 days after either receiving the arbitration decision, the dispute settles, or the dispute is withdrawn. (*Id.,* App. A at 9–10.) The Petition includes a provision for the Board to publish public quarterly reports on the final disposition of arbitrated rate disputes under the proposed program, using only the categories of information contained in the confidential summaries, and not disclosing the identity of the parties to the arbitration. (*Id.,* App. A at 10.) Petitioners propose that the summaries and quarterly reports include only: (i) The geographic region of the movement(s) at issue; (ii) the commodities at issue; (iii) the number of days from the commencement of the arbitration proceeding to the final arbitration decision; and (iv) a high-level, generic description of the resolution (*e.g.,* settled, withdrawn, dismissed on market dominance, or challenged rates found unreasonable/reasonable). (Pet. 16.)

The USDA and shipper interests object to the idea that arbitration decisions would be kept confidential. USDA states that Petitioners' rationale for keeping decisions confidential is ''vague, unsupported by any data, and, therefore, highly speculative (at best).'' (USDA Reply 2.) As noted above, it further states that ''[t]he fact that transparency might 'drive up the stakes' because railroads 'may have similarly situated customers' (*i.e.,* other customers with unreasonable rates) should be a reason for transparency, not a reason for secrecy.'' (*Id.* at 3.) NGFA also objects to keeping arbitration decisions confidential, which it notes is contrary to NGFA's own private arbitration program with BNSF and the regulations adopted by the Board in *Assessment of Mediation & Arbitration Procedures,* EP 699 (STB served May 13, 2013). (NGFA Reply 7–8); *see also* 49 CFR 1108.9(e), (g). NGFA states that, in its experience, the prospect of a public decision often incentivizes parties to settle. (NGFA Reply 8; *see also* Joint Shippers Suppl. 9.)[67] Olin argues that in prior arbitration rulemakings, railroad interests opposed the idea of confidential arbitration decisions. (Olin Reply 5.) It claims the fact that FORR decisions would not be confidential is another reason why that approach is preferable to arbitration. (*Id.* at 12; *see also* U.S. Wheat Suppl. 6.) In their supplemental filing, the Joint Shippers argue that, if arbitration decisions are kept confidential and railroads who participate in arbitration are exempt from FORR, meaningful oversight would be nearly impossible. (Joint Shippers Suppl. 8–9.)

Petitioners reiterate the need for confidentiality in their supplemental filing. They argue that, without confidentiality, they would not be willing to submit a complex rate reasonableness claim to an arbitration panel using an expedited process with limited discovery and appellate rights. (Pet'rs Suppl. 7.) They contend that confidentiality is not a one-sided benefit to the railroads, as it creates an environment in which railroads are willing to agree to arbitrate small rate disputes quickly and with increased flexibility—the very result shippers have been requesting, and the Board has been seeking, for years. (*Id.* at 8.) They argue that if arbitration decisions were public, parties ''would be motivated to throw the proverbial kitchen sink into the arbitration'' rather than tailor the scope of litigation to the amount immediately in controversy (even if the decisions were deemed non-precedential). (*Id.* at 10.)

In response to NGFA's assertion that making arbitrations public is in the public interest, Petitioners argue that the public interest is better served by having an effective arbitration program, which can only be accomplished through confidentiality. (*Id.*) Petitioners

arbitration award may not be supplemented, it also compels the conclusion that these grounds are not waivable, or subject to elimination by contract.'').

[67] NGFA indicates, however, that it would support redacting confidential information from arbitration decisions, as provided in the Board's existing regulations. (*Id.*)

also argue that the value of confidentiality in arbitration is not disproven because some railroads expressed a different view in comments on an arbitration program that proved to be unsuccessful. (*Id.* at 9 n.9.) Lastly, they state that the fact that the arbitration process would be confidential does not implicate concerns about the integrity of the process, as there are other safeguards in the proposed program, most notably the arbitrator selection process and appellate process. (*Id.* at 10.)

A. Confidentiality in General

Having considered the arguments, it appears that keeping arbitration decisions issued under the proposed program confidential would be more likely to serve as an incentive for carriers to participate in the program.[68] All else being equal, if a carrier has the option between litigating the merits of a rate case before the Board or arbitrating, with the decision in each being public, it is reasonable to find the carrier is more likely to choose litigation, where it has the benefit of more formal legal procedures. In addition, as Petitioners note, one of the key benefits of the arbitration process is its informal nature, which should make it more accessible to parties, particularly small shippers. However, the benefits of informality could be significantly undermined if the arbitration decisions were made public. Specifically, the importance of a public arbitration decision would be greatly elevated, as it could impact not just the dispute at issue, but a broad range of other rate negotiations and disputes. As such, each side would be much more likely to treat the arbitration like litigation, which could have the effect of raising costs to all parties. Further, even though arbitration decisions are non-precedential, confidentiality may further encourage settlement in some cases, as parties will not have to worry about the impact a settlement may have on other rate negotiations.

The Board acknowledges Olin's point that the Board adopted 49 CFR 1108.9(g), which requires the public posting of arbitration decisions under the existing program, at the urging of certain parties—including rail carriers—that there be greater transparency. *See Assessment of Mediation & Arb. Procs.,* EP 699, slip op. at 15 (summarizing arguments by AAR and UP advocating that the publicity of arbitration awards would ensure transparency, discourage extreme positions, and incentivize well-reasoned arbitration decisions, among other things). The Board also understands the argument from USDA and NGFA that the fact that an arbitration decision might impact other rate negotiations could be considered more of a reason to make arbitration decisions public. However, as with many other aspects of the proposed small rate case arbitration program, there are trade-offs to both approaches. Understanding that Petitioners have identified confidentiality as a ''key element'' of their proposal, and to encourage their participation, the Board will propose that the arbitration process here be kept confidential. Even though there were sound reasons for requiring greater transparency in *Assessment of Mediation & Arbitration Procedures,* Docket No. EP 699, the Board understands that a voluntary arbitration program can only be successful if carriers and shippers are willing to use it. The Board finds that the confidentiality trade-off here (designed to incentivize the railroads to participate) is balanced by other aspects of the Board's proposed program (designed to encourage shipper participation), such as affirming a standard that gives the arbitration panel flexibility in deciding what the rate should be and allowing arbitrators to consider revenue adequacy evidence.[69]

To allow the Board to monitor the proposed program, the Board will propose that parties file confidential summaries of each arbitration. The summaries should include the list of information proposed by Petitioners,[70] as well as whether the parties agreed to a different relief cap or period than set forth in the regulations. The Board will propose that the confidential summaries not be published, but that the agency would issue a public quarterly report providing information contained in the confidential summaries, which would not include the identity of the parties to the arbitration. It is unclear whether Petitioners intended for the summary to be shared within the Board, including with the Board Members. The Board will propose that the Board Members be permitted to review the summaries so that they would be able to monitor how the arbitration program is being used in individual cases. Moreover, there would no requirement that the identity of the parties be revealed in the confidential summary, ensuring that that key aspect of confidentiality would be maintained. Lastly, the Board will clarify that parties would have to provide a confidential summary for any matter in which a shipper has submitted an Initial Notice to the carrier. *See* proposed § 1108.29(e). This would ensure that the Board is apprised of matters that are withdrawn or settled during the mediation period. As noted, the Board will also propose a provision requiring the agency to conduct an assessment of the effectiveness of the program in the future. (*See infra* Section XIII.)

However, as noted above, the Board will propose some modifications to Petitioners' confidentiality provisions, specifically regarding appeals of the arbitration decision to the Board. The Board discusses how confidentiality would apply to the different aspects of the proposed small rate case arbitration program below.

B. Arbitration Process and Decisions

The Board will propose that the arbitration process be confidential, including discovery, filings to the arbitrators, the Initial Notice and OPAGAC confirmation letter, the Joint Notice, and confidentiality agreements concerning Waybill Sample data. By proposing to treat these materials as confidential, the Board would not publish them on its website or otherwise make them publicly available. The Board will also propose that any telephonic or virtual conference between the parties and the ALJ to resolve an objection to a party-appointed arbitrator, and rulings by the ALJ on for-cause objections, also be deemed confidential. Parties are invited to comment on whether such communications would constitute ''dispute resolution communications'' as defined by 5 U.S.C. 571(5), and as such would be exempt from disclosure under FOIA pursuant to 5 U.S.C. 574(j).

In regard to the Joint Notice, the definition of ''dispute resolution communication'' in 5 U.S.C. 571(5) does not include a ''written agreement to enter into a dispute resolution proceeding.'' To ensure the confidentiality of the Joint Notice, the Board will not propose that the parties include an express statement that the parties agree to arbitrate in the Joint Notice. The fact that the parties agree to

[68] Notably, section 11708 does not address confidentiality specifically, although the provision at section 11708(c)(1) authorizing the Board to make arbitration available through procedures adopted in a rulemaking plainly permits imposition of such a requirement.

[69] As with market dominance determinations, *see infra* note 50, the Board will determine whether an amendment to the confidentiality regulations of the existing arbitration procedures should be made after the completion of this rulemaking.

[70] Specifically, the summaries should include: (i) The geographic region of the movement(s) at issue; (ii) the commodities at issue; (iii) the number of days from the commencement of the arbitration proceeding to the final arbitration decision; and (iv) a high-level, generic description of the resolution (*e.g.,* settled, withdrawn, dismissed on market dominance, or challenged rates found unreasonable/reasonable).

arbitrate is evidenced by their participation in the program. The Joint Notice would merely be a means to inform OPAGAC when the arbitration phase is underway regarding a dispute, as well as to notify the Director of OE to release the Waybill Sample data to which parties are entitled. As noted above, the Board will propose that specific information regarding pending arbitrations contained in both the Initial Notice and Joint Notice, including the identity of the parties, would not be disseminated within the Board beyond the alternative dispute resolution functions within OPAGAC.

As noted above, however, there is uncertainty about whether the Board would be required to publish and/or release the rulings from the Director of OE on requests for Waybill Sample data. *See* 49 CFR 1001.1 (specifying which Board records are available for public inspection); 49 U.S.C. 1306(b) (stating that rail matters require a ''written statement of that action''); 5 U.S.C. 552(a)(2)(A) (requiring agencies to make certain documents available to the public under FOIA). These materials may not be produced in every arbitration, but for ones in which they are, their release could result in the disclosure of the existence of the arbitration and the identity of the participating parties. Parties are invited to comment on whether such materials require publication and/or whether there are alternative means of preserving the confidentiality of these materials.

Finally, under the Board's proposed procedures, neither the arbitration panel nor the parties would submit the arbitration decision to the Board unless it were appealed. Accordingly, in the absence of an appeal, the Board will not propose posting a redacted version of the arbitration decision on its website, as it does for arbitrations under the existing arbitration program. (*See* 49 CFR 1108.9(g).) (The extent to which the arbitration decision can be kept confidential in the event of an appeal is discussed in the following section.)

The Board will also propose a requirement that parties enter into a Confidentiality Agreement, a model of which is included in Appendix A.

C. Appeals of Arbitration Decisions

The Board will propose that all subsequent appellate submissions—including the arbitration decision, the petition to vacate or modify the arbitration award, and any reply—be filed under seal. However, the Board finds that Petitioners' proposal to have all appellate submissions remain under seal is inconsistent with 49 CFR 1104.14, which requires that ''[w]hen confidential documents are filed, redacted versions must also be filed.'' In addition, while Petitioners have cited authority for the proposition that privacy and confidentiality can be important components of arbitration, there are countervailing concerns once a party seeks judicial or administrative review of arbitration decisions. *Cf. Baxter* v. *Abbott Labs.,* 297 F.3d 544, 548 (7th Cir. 2002) (holding that parties' agreement to keep arbitration confidential does not confer the ''right to keep third parties from learning what th[e] litigation is about''). In addition, Petitioners implicitly acknowledge that FOIA requires that Federal agencies make publicly available both ''final opinions'' as well as ''orders'' made in the ''adjudication of cases.'' 5 U.S.C. 552(a)(2)(A). The fact that Board decisions would be public and precedential also weighs in favor of requiring public versions of the filings that led to and support the Board's decision.

Moreover, Petitioners have not explained (let alone acknowledged) whether and to what extent the Board could withhold these submissions should a third party seek access to them under the requestor provisions of FOIA. *See* 5 U.S.C. 552(a)(3) (requiring that agencies make records available to persons upon request). The Board can withhold certain commercial information under the FOIA exemption at 5 U.S.C. 552(b)(4),[71] but that exemption may not be broad enough to cover the appellate submissions in their entirety, especially since certain aspects of the arbitration award may not be commercial (such as the arbitrator's reasoning).[72] Having the parties prepare public versions of their appellate submissions with commercial or financial information redacted would likely obviate at least some FOIA requests and place the Board in a more informed position to respond to any such request that is made.

The Board will therefore propose a process by which, following the filing of sealed appellate submissions—including the arbitration decision—the filing party would prepare a redacted, public version of those documents; provide the other party an opportunity to request further redactions; and submit the public version to the Board for filing. *See* proposed § 1108.31(a)(3).[73] Any such public version, and the material redacted therein, would be subject to a determination by the Board that the redacted information was not properly designated confidential or highly confidential, and an order from the Board that the public version be resubmitted without the unsupported redactions.

D. Board Decision of Arbitration Appeal

The Board will propose procedures for making publicly available a redacted version of the Board's decision on appeal largely along the lines proposed by Petitioners, including a requirement that the Board pay particular attention to avoiding disclosure that would have an effect on the marketplace. The Board agrees that confidentiality would be a key component of the voluntary arbitration program and, as such, would strive to keep any redacted commercial or financial material within the underlying arbitration decision confidential, including, as appropriate, through redactions to the public version of the Board's decision. The Board notes, however, that it has modified the regulatory text suggested by Petitioners. The language proposed by Petitioners states that a ''Board decision that denies the petition to modify or vacate will do so in a way that maintains the complete confidentiality of the arbitration decision.'' (Pet., App. A at 11.)[74] As explained above, however, parties will be required to prepare a redacted, public version of the arbitration decision for filing in the Board's docket, and hence the arbitration decision will necessarily not be ''complete[ly] confidential[ ].''

Petitioners further propose that the Board shall ''[i]n no event'' disclose the specific relief awarded by the arbitration panel or by the Board, or the origin-destination pair involved in the arbitration. Although in most instances the Board would be able to rule on the appeal without having to disclose the arbitrators' award or origin-destination pair, the Board cannot be certain that this will always be possible, as it may need to address these aspects of the underlying arbitration decision to provide a clear explanation of its appellate ruling. For these reasons, the

[71] This exemption specifically exempts from FOIA ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.''

[72] Indeed, the Administrative Dispute Resolution Act expressly carves out final arbitration decisions from its definition of ''dispute resolution communications,'' which accordingly subjects any such decisions in the government's possession to FOIA, provided another FOIA exemption does not apply. *See* 5 U.S.C. 571(5), 574(j).

[73] As noted above, *see supra* note 60, Petitioners' proposal that parties file a notice of appeal is not necessary, as appellate filings to the Board would be publicly filed.

[74] Petitioners also propose a provision which states that, ''[i]n the event an arbitration decision is appealed to the Board . . . , the arbitration decision shall be filed under seal and . . . shall remain confidential on appeal.'' (Pet., App. A at 9.)

Board has modified Petitioners' proposed language to state that the Board will maintain the confidentiality of the arbitration decision—including the award and origin-destination pair—to the ''maximum extent possible.'' Parties are invited to comment on whether the Board, should it have to reference the arbitrators' award and/or origin-destination pair in its decision, should redact this information from any decision that it makes publicly available, including whether and to what extent it would be permitted to do so under FOIA.[75] In addition, the Board invites parties to comment on whether there are other categories of information that should not be publicly disclosed in its decision, beyond the specific relief awarded and any origin-destination pairs. *See Food Mktg. Inst.* v. *Argus Leader Media,* 139 S. Ct. 2356, 2363 (2019) (suggesting that confidentiality under the FOIA exemption at 5 U.S.C. 552(b)(4) may turn on whether the government promises to keep the information private).

XII. Precedential Value

Petitioners propose that arbitration decisions issued under the proposed program would have no precedential value and, as such, that past arbitration decisions would be deemed inadmissible. NGFA states it does not object to decisions having no precedential value. (NGFA Reply 8.) This would also be consistent with section 11708(d)(5), which expressly provides that arbitration decisions have no precedential effect in any other or subsequent arbitration dispute, as well as the Board's existing arbitration program at 49 CFR 1108.10. Accordingly, the Board will propose that arbitration decisions have no precedential value. The Board will also propose that any such decisions are inadmissible in other arbitrations.

XIII. Program Review

Finally, the Board agrees with those shippers who have argued that there would be benefits to a review of the proposed small rate case arbitration program after a period of time to ensure that the program is working as intended and proving effective. (USDA Reply 3; NGFA Reply 5.) Petitioners have stated that they would agree to the Board conducting such an assessment at the end of a three-year term. (Pet'rs Suppl. 5.) Accordingly, the Board will propose a provision that a review of the proposed program be conducted in the future. The Board will propose that the review occur after a reasonable number of arbitrations have been conducted, though not later than three years after start of the program. *See* proposed § 1108.32. Depending on the outcome of such review, the Board may determine that the arbitration program will continue or that the arbitration program should be terminated or modified at that time.

The Board seeks comment on how it would conduct such a review and the nature of the information it should seek to collect from those who have participated in the arbitration program, including whether the Board should require or request the submission of arbitration decisions as part of its review process.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities, (2) analyze effective alternatives that may minimize a regulation's impact, and (3) make the analysis available for public comment. Sections 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, section 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' section 605(b). Because the goal of the RFA is to reduce the cost to small entities of complying with federal regulations, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates those entities. In other words, the impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

This proposal would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.[76] The proposal imposes upon small railroads no new record-keeping or reporting requirements. Nor does this proposed rule circumscribe or mandate any conduct by small railroads; participation in the arbitration program proposed here is strictly voluntary. To the extent that the rules have any impact, it would be to provide faster resolution of a controversy at a lower cost, especially relative to the Board's existing Stand-Alone Cost, Simplified-SAC, and Three-Benchmark tests. The $4 million relief cap and two-year prescription period would also limit a participating small railroad's total potential liability. Moreover, the purpose of the proposed rules is to create an arbitration process to resolve smaller rate disputes, but as the Board has previously concluded, the majority of railroads involved in rate proceedings are not small entities within the meaning of the RFA. *Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 33–34. Since the inception of the Board in 1996, only three of the 51 cases challenging the reasonableness of freight rail rates have involved a Class III rail carrier as a defendant. Those three cases involved a total of 13 Class III rail carriers. The Board estimates that there are today approximately 656 Class III rail carriers. Therefore, the Board certifies under 5 U.S.C. 605(b) that this proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities as defined by the RFA.

This decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3521, Office of Management and Budget (OMB) regulations at 5 CFR 1320.8(d)(3), and Appendix B, the Board seeks comments about the impact of the new collection for the Arbitration Program for Small Rate Cases (OMB Control No. 2140–XXXX), concerning: (1) Whether the collections of information, as added in the proposed rule, and further described below, are necessary for the proper performance of the functions of the Board, including whether the collections have practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents,

[75] It should also be noted that, even if the Board were to redact this information, it is not the final arbiter in FOIA matters and thus cannot guarantee the continued confidentiality of material that Petitioners propose not be disclosed. *See* 5 U.S.C. 552(a)(4)(B) (authorizing federal district courts to review FOIA matters ''de novo'' and order production of agency records withheld under a FOIA exemption).

[76] For the purpose of RFA analysis for rail carriers subject to the Board's jurisdiction, the Board defines a ''small business'' as only including those carriers classified as Class III rail carriers under 49 CFR 1201.1–1. *See Small Entity Size Standards Under the Regul. Flexibility Act,* 81 FR 42566 (June 30, 2016), EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting).

including the use of automated collection techniques or other forms of information technology, when appropriate.

The Board estimates that the proposed new requirements would add a total hour burden of 273 hours. There are no non-hourly burdens associated with these collections. The Board welcomes comment on the estimates of actual time and costs of the collection of (a) Arbitration ''Opt-In'' Notices (b) Notices of Intent to Arbitrate, (c) Joint Notices to Arbitrate, (d) Post-Arbitration Summaries, and (e) Appeals of Arbitrators' Decision, as detailed below in Appendix B. Other information pertinent to these collections is also included in Appendix B. The proposed rule will be submitted to OMB for review as required under 44 U.S.C. 3507(d) and 5 CFR 1320.11. Comments received by the Board regarding these information collections will also be forwarded to OMB for its review when the final rule is published.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions (Government agencies).

49 CFR Part 1108

Administrative practice and procedure, Railroads.

49 CFR Part 1115

Administrative practice and procedure.

49 CFR Part 1244

Freight, Railroads, Reporting and recordkeeping requirements.

It is ordered:

1. The Board proposes to amend its rules as detailed in this decision. Notice of the proposed rules will be published in the **Federal Register**.

2. Comments are due by January 14, 2022. Reply comments are due by March 15, 2022.

3. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

4. This decision is effective on its service date.

Decided: November 12, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz. Board Member Begeman concurred in part with a separate expression. Board Member Primus concurred with a separate expression.

BOARD MEMBER BEGEMAN, concurring in part:

I am convinced that a voluntary arbitration program could provide a rate review alternative to litigation that some stakeholders might prefer. In fact, I have repeatedly voted to improve the Board's existing voluntary arbitration program, yet that program remains unused. That is why I welcomed Petitioners' proposal and supported instituting this proceeding under my Chairmanship, even planning that the Board would work to propose a rule by March of this year. *See Report on Pending STB Regul. Proc. Fourth Quarter 2020* at 9 (Jan. 4, 2021).

While I generally support the Board's attempt here to try yet again to establish a voluntary arbitration program that will be utilized, this time one designed for smaller rate disputes (and am pleased that the notice of proposed rulemaking is finally being issued and will provide the opportunity for public input), I do not support every aspect of this proposal. Most significantly, I strongly disagree with the decision calling into question whether the Board will *ever* adopt a rate review process to ensure shippers with smaller disputes have a means to formally challenge the reasonableness of a rate before the Board.

The Board's existing rate review processes are unworkable for shippers with smaller disputes, and frankly many with larger ones. As Olin Corporation correctly points out in its August 20, 2020 reply, the Board has an obligation to establish effective rate relief rules for *all* shippers, and that obligation is not discretionary.

BOARD MEMBER PRIMUS, concurring:

While I support the concept of arbitration and concur in this decision, regrettably, I do not believe the proposal will do enough on its own to adequately mitigate the small rate disputes that continue to negatively impact our national rail network. My doubts center on the railroads' history, or lack thereof, of participation in voluntary Board-sponsored arbitration.

On its face, arbitration can be a very useful tool to settle disputes between conflicting parties. However, it seems as if the railroads believe arbitration is a tool better kept unused and locked in the toolbox. Since the Board's implementation of arbitration nearly twenty-five years ago, there has not been one instance where the railroads have utilized the voluntary program. Even after the program was expanded five years ago to include matters involving rate disputes, there continued to be no real desire to participate.

The railroads' hesitation to participate in arbitration seemed to have lessened with the establishment of the Board's Rate Reform Task Force in 2018 and the subsequent proposal of a new tool to address small rate disputes: Final Offer Rate Review (FORR). While forcefully condemning FORR, the railroads were quick to suggest that voluntary arbitration—the same tool that has yet to be used by a single Class I—should be the primary method with which to address small rate disputes. This significant change of heart would have been otherwise noteworthy had the railroads not followed it up by petitioning an unbalanced and essentially unworkable arbitration proposal to the Board.

It is critical the Board equip itself with the tools necessary to address the issues challenging our national rail network. A balanced and robust small rate case arbitration program is one such tool and can be extremely effective—if it is used. But given the railroads' lack of appetite for arbitration, I strongly feel it is now time to add FORR to the Board's toolbox as well. FORR is the perfect complement to arbitration and should not be seen as a competing interest, as both offer different methods to solve small rate case disputes. Accordingly, I concur with this decision with the hope that the implementation of FORR is not far behind.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend parts 1011, 1108, 1115, and 1244 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1011—BOARD ORGANIZATION; DELEGATIONS OF AUTHORITY

■ 1. The authority citation for part 1011 continues to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 49 U.S.C. 1301, 1321, 11123, 11124, 11144, 14122, and 15722.

■ 2. Amend § 1011.7 by revising paragraph (a)(2)(xix) and adding paragraph (b)(7) to read as follows:

§ 1011.7 Delegations of authority by the Board to specific offices of the Board.

(a) * * *

(2) * * *

(xix) To order arbitration of program-eligible matters under the Board's regulations at 49 CFR part 1108, subpart A, or upon the mutual request of parties to a proceeding before the Board.

(b) * * *

(7) Perform any arbitration duties specifically assigned to the Office of Public Assistance, Governmental Affairs, and Compliance or its Director in 49 CFR part 1108, subpart B.

PART 1108—ARBITRATION OF CERTAIN DISPUTES SUBJECT TO THE STATUTORY JURISDICTION OF THE SURFACE TRANSPORTATION BOARD

■ 3. The authority citation for part 1108 continues to read as follows:

Authority: 49 U.S.C. 11708, 49 U.S.C. 1321(a), and 5 U.S.C. 571 *et seq.*

§§ 1108.1 through 1108.13 [Designated as Subpart A]

■ 4. Designate §§ 1108.1 through 1108.13 as subpart A and add a heading for subpart A to read as follows:

Subpart A—General Arbitration Procedures

§ 1108.1 [Amended]

■ 5. Amend § 1108.1 by:

■ a. Removing the word ''part'' wherever it appears and adding ''subpart'' in its place; and

■ b. In paragraphs (a) and (b), removing ''these rules'' and adding ''this subpart'' in its place.

§§ 1108.3, 1108.7, and 1108.8 [Amended]

■ 6. In addition to the amendments set forth above, in 49 CFR part 1108, remove the word ''part'' and add in its place the word ''subpart'' in the following places:

■ a. Section 1108.3(a)(1)(ii);

■ b. Section 1108.7(d); and

■ c. Section 1108.8(a).

■ 7. Add subpart B to read as follows:

Subpart B—Voluntary Program for Arbitration of Small Freight Rail Rate Disputes

Sec.

1108.21 Definitions.
1108.22 Statement of purpose, organization, and jurisdiction.
1108.23 Participation in the Small Rate Case Arbitration Program.
1108.24 Use of the Small Rate Case Arbitration Program.
1108.25 Arbitration initiation procedures.
1108.26 Arbitrators.
1108.27 Arbitration procedures.
1108.28 Relief.
1108.29 Decisions.
1108.30 No precedent.
1108.31 Enforcement and appeals.
1108.32 Assessment of the Small Rate Case Arbitration Program.
1108.33 Exemption from Final Offer Rate Review.

Subpart B—Voluntary Program for Arbitration of Small Freight Rail Rate Disputes

§ 1108.21 Definitions.

As used in this subpart:

(a) *Arbitrator* means a single person appointed to arbitrate under this subpart.

(b) *Arbitration panel* means a group of three people appointed to arbitrate under this subpart.

(c) *Small Rate Case Arbitration Program* means the program established by the Surface Transportation Board in this subpart.

(d) *Arbitration decision* means the decision of the arbitration panel served on the parties as set forth in § 1108.27(c)(3).

(e) *Final Offer Rate Review* means the Final Offer Rate Review process for determining the reasonableness of railroad rates.

(f) *Lead arbitrator* means the third arbitrator selected by the two party-appointed arbitrators or, if the two party-appointed arbitrators cannot agree, an individual selected from the Board's roster of arbitrators using the alternating strike method set forth in § 1108.6(c).

(g) *Limit Price Test* means the methodology for determining market dominance described in *M&G Polymers USA, LLC* v. *CSX Transp., Inc.,* NOR 42123, slip op. at 11–18 (STB served Sept. 27, 2012).

(h) *Participating railroad* or *participating carrier* means a railroad that has voluntarily opted into the Small Rate Case Arbitration Program pursuant to § 1108.23(a).

(i) *Party-appointed arbitrator* means the arbitrator selected by each party pursuant to the process described in § 1108.26(b).

(j) *Pending arbitration* means an arbitration under this subpart in which the arbitration panel has not yet issued the arbitration decision, including a dispute being mediated in the pre-arbitration mediation permitted under § 1108.25(b).

(k) *Rate disputes* are disputes involving the reasonableness of a rail carrier's rates.

(l) *STB* or *Board* means the Surface Transportation Board.

(m) *STB-maintained roster* means the roster of arbitrators maintained by the Board, as required by § 1108.6(b), under the Board's arbitration program established pursuant to 49 U.S.C. 11708 and set forth in subpart A of this part.

(n) *Streamlined market dominance test* means the methodology set forth in 49 CFR 1111.12.

§ 1108.22 Statement of purpose, organization, and jurisdiction.

(a) *The Board's intent.* The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, whenever possible. This subpart establishes a binding and voluntary arbitration program, the Small Rate Case Arbitration Program, that is tailored to rate disputes and open to all parties eligible to bring or defend rate disputes before the Board.

(1) The Small Rate Case Arbitration Program serves as an alternative to, and is separate and distinct from, the broader arbitration program set forth in subpart A of this part.

(2) By participating in the Small Rate Case Arbitration Program, parties consent to arbitrate rail rate disputes subject to the limits on potential liability set forth in § 1108.28.

(b) *Limitations to the use of the Small Rate Case Arbitration Program.* The Small Rate Case Arbitration Program may be used only for rate disputes within the statutory jurisdiction of the Board.

(c) *No limitation on other avenues of arbitration.* Nothing in this subpart shall be construed in a manner to prevent parties from independently seeking or utilizing private arbitration services to resolve any disputes they may have.

§ 1108.23 Participation in the Small Rate Case Arbitration Program.

(a) *Railroad opt-in procedures*—(1) *Opt-in notice.* To opt into the Small Rate Case Arbitration Program, a railroad may file a notice with the Board under Docket No. EP 765, notifying the Board of the railroad's consent to participate in the Small Rate Case Arbitration Program. Such notice may be filed at any time and shall be effective upon receipt by the Board or at another time specified in the notice. The notice should also include:

(i) A statement that the carrier agrees to an extension of the timelines set forth in 49 U.S.C. 11708(e) for any arbitrations initiated under this subpart; and

(ii) A statement that the carrier agrees to the appointment of arbitrators that may not be on the STB-maintained roster of arbitrator established under § 1108.6(b).

(2) *Participation for a specified term.* By opting into the Small Rate Case Arbitration Program, the carrier consents to participate in the program for a term expiring [five years after the effective date of the final rule]. A carrier may withdraw from the Program prior to [five years after the effective date of the

final rule], only pursuant to paragraph (c) of this section.

(3) *Public notice of railroad participants.* The Board shall maintain a list of railroads who have opted into the Small Rate Case Arbitration Program on its website at *www.stb.gov.*

(4) *Class II and Class III carrier participation.* Class II or Class III rail carriers may consent to use the Small Rate Case Arbitration Program to arbitrate an individual rate dispute, even if the Class II or Class III has not opted into the process under paragraph (a)(1) of this section. If a Class II or Class III carrier intends to participate for an individual rate dispute, a letter from the Class II or Class III carrier should be submitted with the notice of intent to arbitrate dispute required under § 1108.25(a). The letter should indicate that the carrier consents to participate in the Small Rate Case Arbitration Program and include the statements required under paragraphs (a)(1)(i) and (ii) of this section.

(b) *Shipper/complainant participation.* A shipper or other complainant seeking to challenge the reasonableness of carrier's rate may participate in the Small Rate Case Arbitration Program on a case-by-case basis by notifying a participating carrier that it wishes to arbitrate an eligible dispute under the Small Rate Case Arbitration Program by filing a written notice of intent to arbitrate with the participating carrier, as set forth in § 1108.25(a).

(c) *Withdrawal for change in law*—(1) *Basis for withdrawal.* A carrier or shipper/complainant participating in the Small Rate Case Arbitration Program may withdraw its consent to arbitrate under this subpart if either: The Board makes any material change(s) to the Small Rate Case Arbitration Program under this subpart after a shipper/complainant or railroad has opted into the Small Rate Case Arbitration Program; or the Board makes any material change(s) to its existing rate reasonableness methodologies or creates a new rate reasonableness methodology after a shipper/complainant or railroad has opted into the Small Rate Case Arbitration Program. However, the Board's adoption of the Final Offer Rate Review process would not be considered a change in law.

(2) *Procedures for withdrawal for change in law.* A participating carrier or shipper/complainant may withdraw its consent to arbitrate under this subpart by filing with the Board a notice of withdrawal for change in law within 10 days of an event that qualifies as a basis for withdrawal as set forth in paragraph (c)(1) of this section.

(i) The notice of withdrawal for change in law shall state the basis or bases under paragraph (c)(1) of this section for the party's withdrawal of its consent to arbitrate under this part. A copy of the notice should be served on any parties with which the carrier is currently engaged in arbitration. A copy of the notice will also be posted on the Board's website.

(ii) Any party may challenge the withdrawing party's withdrawal for change in law on the ground that the change is not material by filing a petition with the Board within 10 days of the filing of the notice of withdrawal being challenged. The withdrawing party may file a reply to the petition within 5 days from the filing of the petition. The petition shall be resolved by the Board within 14 days from the filing deadline for the withdrawing party's reply.

(iii) Subject to the stay provision of paragraph (c)(3)(ii) of this section, the notice of withdrawal for change in law shall be effective on the day of its filing.

(3) *Effect of withdrawal for change in law*—(i) *Arbitrations with decision.* The withdrawal of consent for change in law by either a shipper/complainant or carrier shall not affect arbitrations in which the arbitration panel has issued an arbitration decision.

(ii) *Arbitrations without decision.* A carrier or shipper/complainant filing a withdrawal of consent for change in law shall immediately inform the arbitration panel and opposing party. The arbitration panel shall immediately stay the arbitration. If no objection to the withdrawal of consent is filed with the Board or the Board issues a decision granting the withdrawal request, the arbitration panel shall dismiss any pending arbitration under this part, unless the change in law will not take effect until after the arbitration panel is scheduled to issue its decision pursuant to the schedule set forth in § 1108.27(c). If an objection to the withdrawal of consent is filed and the Board denies the withdrawal, the arbitration panel shall lift the stay, the arbitration shall continue, and all procedural time limits will be tolled.

(d) *Limit on the number of arbitrations.* A carrier participating in the Small Rate Case Arbitration Program is only required to participate in 25 arbitrations during a rolling 12-month period. Any arbitrations initiated by the submission of the notice of intent to arbitrate a dispute to the rail carrier (pursuant to § 1108.25(a)) that has reached this limit can be postponed until the carrier is once again below the limit.

(1) A carrier that has reached the limit may notify the Board's Office of Public Assistance, Governmental Affairs, and Compliance by email (to *rcpa@stb.gov*), as well as the shipper who submitted the notice of intent to arbitrate to the carrier. The Office of Public Assistance, Governmental Affairs, and Compliance shall confirm that the limitation has been reached and inform the shipper (and any other subsequent shippers) that the arbitration is being postponed, along with an approximation of when the arbitration can proceed and instructions for reactivating the arbitration once the carrier is again below the limit.

(2) An arbitration will only count toward the 25-arbitration limit upon commencement of the first mediation session or, where one or both parties elect to forgo mediation, submission of the joint notice of intent to arbitrate to the Board under § 1108.25(c).

§ 1108.24 Use of the Small Rate Case Arbitration Program.

(a) *Eligible matters.* The arbitration program under this subpart may be used only in the following instances:

(1) Rate disputes involving shipments of regulated commodities not subject to a rail transportation contract are eligible to be arbitrated under this subpart. If the parties dispute whether a challenged rate was established pursuant to 49 U.S.C. 10709, the parties must petition the Board to resolve that dispute, which must be resolved before the parties initiate the arbitration process under this part.

(2) A shipper may challenge rates for multiple traffic lanes within a single arbitration under this part, subject to the relief cap in § 1108.28 for all lanes.

(3) For movements in which more than one carrier participates, arbitration under this subpart may be used only if all carriers agree to participate (pursuant to § 1108.23(a)(1) or (4)).

(b) *Eligible parties.* Any party eligible to bring or defend a rate dispute before the Board is eligible to participate in the arbitration program under this part.

(c) *Use limits.* A shipper/complainant may bring a maximum of one arbitration per individual railroad at a time. For purposes of this paragraph (c), an arbitration under this subpart is final, and a new arbitration may be brought against the defendant carrier by the shipper/complainant, when the arbitration panel issues its arbitration decision, or if an arbitration is dismissed or withdrawn, including due to settlement.

(d) *Arbitration clauses.* Nothing in the Board's regulations in this part shall preempt the applicability of, or

otherwise supersede, any new or existing arbitration clauses contained in agreements between shippers/complainants and carriers.

§ 1108.25 Arbitration initiation procedures.

(a) *Notice of shipper/complainant intent to arbitrate dispute.* To initiate the arbitration process under this subpart against a participating railroad, a shipper/complainant must notify the railroad in writing of its intent to arbitrate a dispute under this part. The notice must include: A description of the dispute sufficient to indicate that the dispute is eligible to be arbitrated under this part; a statement that the shipper/complainant consents to extensions of the timelines set forth in forth in 49 U.S.C. 11708(e); and a statement that the shipper/complainant consents to the appointment of arbitrators that may not be on the STB-maintained roster of arbitrators established under § 1108.6(b). The shipper/complainant must also submit a copy of the notice to the Board's Office of Public Assistance, Governmental Affairs, and Compliance by email to *rcpa@stb.gov.* Upon receipt of the notice of intent to arbitrate, the Office of Public Assistance, Governmental Affairs, and Compliance will provide a letter to both parties confirming that the arbitration process has been initiated, and that the parties have consented to extension of the timelines set forth in 49 U.S.C. 11708(e) and the potential appointment of arbitrators not on the Board's roster. The notice and confirmation letter from the Office of Public Assistance, Governmental Affairs, and Compliance will be confidential and specific information regarding pending arbitrations, including the identity of the parties, would not be disseminated within the Board beyond the alternative dispute resolution functions within the Office of Public Assistance, Governmental Affairs, and Compliance.

(b) *Pre-arbitration mediation.* (1) Prior to commencing arbitration, the parties to the dispute may engage in mediation if they mutually agree.

(2) Such mediation will not be conducted by the STB. The parties to the dispute must jointly designate a mediator and schedule the mediation session(s).

(3) Mediation shall be initiated by the shipper/complainant's notice of intent to arbitrate under this part. The parties must schedule mediation promptly and in good faith after the shipper/complainant has submitted its notice of intent to arbitrate to the participating carrier. The mediation period shall end 30 days after the date of the first mediation session, unless both parties agree to a different period.

(c) *Joint Notice of Intent to Arbitrate.* (1) To arbitrate a rate dispute under this subpart, the parties must submit a Joint Notice of Intent to Arbitrate with the Board's Office of Public Assistance, Governmental Affairs, and Compliance, indicating the parties' intent to arbitrate under the Small Rate Case Arbitration Program. The parties should submit a copy of the notice to the Board's Office of Public Assistance, Governmental Affairs, and Compliance by email to *rcpa@stb.gov.* The joint notice must be filed not later than two business days following the date on which mediation ends or, in cases in which the parties mutually agree not to engage in mediation, two business days after the shipper/complainant submits its notice of intent to arbitrate (required by paragraph (a) of this section) to the carrier.

(2) The joint notice shall set forth the following information:

(i) The basis for the Board's jurisdiction; and

(ii) The basis for the parties' eligibility to use the Small Rate Case Arbitration Program, including: That the dispute being arbitrated is solely a rate dispute involving shipments of regulated commodities not subject to a rail transportation contract; that the railroad has opted into the Small Rate Case Arbitration Program; that the shipper/complainant has elected to use the Small Rate Case Arbitration Program for this particular rate dispute; and that the shipper/complainant does not have any other pending arbitrations at that time against the defendant railroad.

(3) The joint notice shall be confidential and will not be published on the Board's website and specific information regarding pending arbitrations, including the identity of the parties, would not be disseminated within the Board beyond the alternative dispute resolution functions within the Office of Public Assistance, Governmental Affairs, and Compliance.

(4) Unless the parties have agreed not to request the Waybill Sample data pursuant allowed under § 1108.27(g), the parties must also submit a copy of the Joint Notice of Intent to Arbitrate on the Director of the Board's Office of Economics, along with a letter providing the five-digit Standard Transportation Commodity Code information necessary for the Office of Economics to produce the unmasked confidential Waybill Sample. Parties may submit the letter and copy of the joint notice by email to *Economic.Data@stb.gov.*

§ 1108.26 Arbitrators.

(a) *Decision by arbitration panel.* All matters arbitrated under this subpart shall be resolved by a panel of three arbitrators.

(b) *Party-appointed arbitrators.* Within two business days of filing the Joint Notice of Intent to Arbitrate, each side shall select one arbitrator as its party-appointed arbitrator and notify the opposing side of its selection.

(1) *For-cause objection to party-appointed arbitrator.* Each side may object to the other side's selected arbitrator within two business days and only for cause. A party may make a for-cause objection where it has reason to believe a proposed arbitrator cannot act with the good faith, impartiality, and independence required of 49 U.S.C. 11708, including due to a conflict of interest, adverse business dealings with the objecting party, or actual or perceived bias or animosity toward the objecting party.

(i) The parties must confer over the objection within two business days.

(ii) If the objection remains unresolved after the parties confer, the objecting party shall immediately file an Objection to Party-Appointed Arbitrator with the Office of Public Assistance, Governmental Affairs, and Compliance. The Office of Public Assistance, Governmental Affairs, and Compliance shall arrange for a telephonic or virtual conference to be held before an Administrative Law Judge within two business days, or as soon as is practicable, to hear arguments regarding the objection(s). The Administrative Law Judge will provide its ruling in an order to all parties by the next business day after the telephonic or virtual conference.

(iii) The Objection to Party-Appointed Arbitrator filed with Office of Public Assistance, Governmental Affairs, and Compliance and the telephonic or virtual conference including any ruling on the objection, shall be confidential.

(2) *Costs for party-appointed arbitrators.* Each side is responsible for the costs of its own party-appointed arbitrator.

(c) *Lead arbitrator*—(1) *Appointment.* Once appointed, the two party-appointed arbitrators shall, without delay, select a lead arbitrator from a joint list of arbitrators provided by the parties.

(2) *Disagreement selecting the lead arbitrator.* If the two party-appointed arbitrators cannot agree on a selection for the lead arbitrator, the party-appointed arbitrators will select the lead arbitrator from the STB-maintained roster of arbitrators using the process set forth in § 1108.6(c).

(3) *Lead arbitrator role.* The lead arbitrator will be responsible for ensuring that the tasks detailed in §§ 1108.27 and 1108.29 are accomplished. The lead arbitrator shall establish all rules deemed necessary for each arbitration proceeding, including with regard to discovery, the submission of evidence, and the treatment of confidential information, subject to the requirements of the rules of this subpart.

(4) *Costs.* The parties to the arbitration will share the cost of the lead arbitrator equally.

(d) *Arbitrator choice.* The parties may choose their arbitrators without limitation, provided that any arbitrator chosen must be able to comply with paragraph (f) of this section. The arbitrators may, but are not required to, be selected from the STB-maintained roster described in § 1108.6(b).

(e) *Arbitrator incapacitation.* If at any time during the arbitration process an arbitrator becomes incapacitated or is unwilling or unable to fulfill his or her duties, a replacement arbitrator shall be promptly selected by the following process:

(1) If the incapacitated arbitrator was a party-appointed arbitrator, the appointing party shall, without delay, appoint a replacement arbitrator pursuant to the procedures set forth in paragraph (b) of this section.

(2) If the incapacitated arbitrator was the lead arbitrator, a replacement lead arbitrator shall be appointed pursuant to the procedures set forth in paragraph (c) of this section.

(f) *Arbitrator duties.* In an arbitration under this subpart, the arbitrators shall perform their duties with diligence, good faith, and in a manner consistent with the requirements of impartiality and independence.

§ 1108.27 Arbitration procedures.

(a) *Appointment of arbitration panel.* Within two business days after all three arbitrators are selected, the parties shall appoint the arbitration panel in writing. A copy of the written appointment should be submitted to the Director of the Board's Office of Economics. The Director shall promptly provide the arbitrators with the confidentiality agreements that are required under § 1244.9(b)(4) of this chapter to review confidential Waybill Sample data.

(b) *Commencement of arbitration process; arbitration agreement.* Within two business days after the arbitration panel is appointed, the lead arbitrator shall commence the arbitration process in writing. Shortly after commencement, the parties, together with the panel of arbitrators, shall create a written arbitration agreement, which at a minimum will state with specificity the issues to be arbitrated and the corresponding monetary award cap to which the parties have agreed. The arbitration agreement shall also incorporate by reference the rules of this subpart. The agreement may also contain other mutually agreed upon provisions.

(c) *Expedited timetables*—(1) *Discovery phase.* The parties shall have 45 days from the written commencement of arbitration by the lead arbitrator to complete discovery. The arbitration panel may extend the discovery phase upon an individual party's request, but such extension shall not operate to extend the overall duration of the evidentiary phase under paragraph (c)(2) of this section, unless separately agreed to pursuant to paragraph (c)(2) of this section.

(2) *Evidentiary phase.* The evidentiary phase consists of the 45-day discovery phase described in paragraph (c)(1) of this section and an additional 45 days for the submission of pleadings or evidence, based on the procedural schedule adopted by the lead arbitrator, for a total duration of 90 days. The evidentiary phase (including the discovery phase) shall begin on the written commencement of the arbitration process under paragraph (b) of this section. The parties may mutually agree to extend the entire evidentiary phase or a party may unilaterally request an extension from the arbitration panel.

(3) *Decision.* The unredacted arbitration decision, as well as any redacted version(s) of the arbitration decision as required by § 1108.29(a)(2), shall be served on the parties within 30 days from the end of the evidentiary phase.

(d) *Limited discovery.* Discovery under this subpart shall be limited to 20 written document requests and 5 interrogatories. Depositions shall not be permitted.

(e) *Evidentiary guidelines*—(1) *Principles of due process.* The lead arbitrator shall adopt rules that comply with the principles of due process, including but not limited to, allowing the defendant carrier a fair opportunity to respond to the shipper/complainant's case-in-chief.

(2) *Inadmissible evidence.* The following evidence shall be inadmissible in an arbitration under this part:

(i) On the issue of market dominance, any evidence that would be inadmissible before the Board; and

(ii) Any non-precedential decisions, including prior arbitrations.

(f) *Confidentiality agreement.* All arbitrations under this subpart shall be governed by a confidentiality agreement, unless the parties agree otherwise. With the exception of the Waybill Sample provided pursuant to paragraph (g) of this section, the terms of the confidentiality agreement shall apply to all aspects of an arbitration under this part, including but not limited to discovery, party filings, and the arbitration decision.

(g) *Waybill Sample.* (1) The Board's Office of Economics shall provide unmasked confidential Waybill Sample data to each party to the arbitration proceeding within seven days of the filing of a copy Joint Notice of Intent to Arbitrate with the Director and accompanying letter containing the relevant five-digit Standard Transportation Commodity Code information. Such data to be provided by the Office of Economics shall be limited to only the following data:

(i) The most recent four years;

(ii) Movements with revenue to variable cost (R/VC) ratio above 180%;

(iii) Movements on defendant carrier(s); and

(iv) Movements with same five-digit Standard Transportation Commodity Code as the challenged movements.

(2) Parties may request additional Waybill Sample data pursuant to § 1244.9(b)(4) of this chapter.

§ 1108.28 Relief.

(a) *Relief available.* Subject to the relief limits set forth in paragraph (b) of this section, the arbitration panel under this subpart may grant relief in the form of monetary damages or a rate prescription.

(b) *Relief limits.* Any relief awarded by the arbitration panel under this subpart shall not exceed $4 million (as indexed annually for inflation using the Consumer Price Index and a 2020 base year) over two years, inclusive of prospective rate relief, reparations for past overcharges, or any combination thereof, unless otherwise agreed to by the parties. Reparations or prescriptions may not be set below 180% of variable cost, as determined by unadjusted Uniform Railroad Costing System (URCS).

(c) *Agreement to a different relief cap.* For an individual dispute, parties may agree by mutual written consent to arbitrate an amount above or below the monetary cap in paragraph (b) of this section, up to $25 million, or for shorter or longer than two years, but no longer than 5 years. Parties should inform the Board of such agreement in the confidential summary filed at the

conclusion of the arbitration, as required by § 1108.29(e)(1).

(d) *Relief not available.* No injunctive relief shall be available in arbitration proceedings under this part.

§ 1108.29 Decisions.

(a) *Technical requirements*—(1) *Findings of fact and conclusions of law.* An arbitration decision under this subpart shall be in writing and shall contain findings of fact and conclusions of law.

(2) *Compliance with confidentiality agreement.* The unredacted arbitration decision served on the parties in accordance with § 1108.27(c)(3) shall comply with the confidentiality agreement described in § 1108.27(f). As applicable, the arbitration panel shall also provide the parties with a redacted version(s) of the arbitration decision that redacts or omits confidential and/or highly confidential information as required by the governing confidentiality agreement.

(b) *Substantive requirements.* The arbitration panel under this subpart shall decide the issues of both market dominance and maximum lawful rate.

(1) *Market dominance.* (i) The arbitration panel shall determine if the railroad whose rate is the subject of the arbitration has market dominance based on evidence submitted by the parties, unless paragraph (b)(1)(vi) of this section applies.

(ii) Subject to § 1108.27(e)(2), in determining the issue of market dominance, the arbitration panel under this subpart shall follow, at the complainant's discretion, either the streamlined market dominance test or the non-streamlined market dominance test.

(iii) The arbitration panel shall issue its decision on market dominance as part of its final arbitration decision.

(iv) The arbitration panel shall not consider evidence of product and geographic competition when deciding market dominance.

(v) The arbitration panel shall not consider evidence on the Limit Price Test when deciding market dominance.

(vi) If a carrier concedes that it possesses market dominance, the arbitration panel need not make a determination on market dominance and need only address the maximum lawful rate in the arbitration decision. Additionally, the parties may jointly request that the Board determine market dominance prior to initiating arbitration under this part.

(2) *Maximum lawful rate.* Subject to the requirements on inadmissible evidence in § 1108.27(e)(2), in determining the issue of maximum lawful rate, the arbitration panel under this subpart shall consider the Board's methodologies for setting maximum lawful rates, giving due consideration to the need for differential pricing to permit a rail carrier to collect adequate revenues (as determined under 49 U.S.C. 10704(a)(2)). The arbitration panel may otherwise base its decision on the Board's existing rate review methodologies, revised versions of those methodologies, new methodologies, or market-based factors, including: Rate levels on comparative traffic; market factors for similar movements of the same commodity; and overall costs of providing the rail service. The arbitration panel's decision must be consistent with sound principles of rail regulation economics.

(3) *Agency precedent.* Decisions rendered by the arbitration panel under this subpart may be guided by, but need not be bound by, agency precedent.

(c) *Confidentiality of arbitration decision.* The arbitration decision under this part, whether redacted or unredacted, shall be confidential, subject to the limitations set forth in § 1108.31(d).

(1) No copy of the arbitration decision shall be served on the Board except as is required under § 1108.31(a)(1).

(2) The arbitrators and parties shall have a duty to maintain the confidentiality of the arbitration decision, whether redacted or unredacted, and shall not disclose any details of the arbitration decision unless, and only to the extent, required by law.

(d) *Arbitration decisions are binding.* (1) By arbitrating pursuant to the procedures under this part, each party to the arbitration agrees that the decision and award of the arbitration panel shall be binding and judicially enforceable in any court of appropriate jurisdiction, subject to the rights of appeal provided in § 1108.31.

(2) An arbitration decision under this subpart shall preclude the shipper(s)/complainant(s) from filing any rate complaint for the movements at issue in the arbitration or instituting any other proceeding regarding the rates for the movements at issue in the arbitration, with the exception of appeals under § 1108.31. This preclusion shall last until the later of:

(i) Two years after the Joint Notice of Intent to Arbitrate; or

(ii) The expiration of the term of any prescription imposed by the arbitration decision.

(3) The preclusion will cease if the carrier increases the rate either: After a shipper/complainant is unsuccessful in arbitration or after a shipper/complainant has been awarded a prescription and the prescription has expired.

(e) *Confidential summaries of arbitrations; quarterly reports.* To permit the STB to monitor the Small Rate Case Arbitration Program, the parties shall submit a confidential summary of the arbitration to the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) within 14 days after either the arbitration decision is issued, the dispute settles, or the dispute is withdrawn. A confidential summary must be filed for any instance in which a shipper/complainant has submitted to the participating carrier a notice of intent to arbitrate, even if the parties did not reach the arbitration phase. The confidential summary itself shall not be published. OPAGAC will provide copies of the confidential summaries to the Board Members and other appropriate Board employees.

(1) *Contents of confidential summary.* The confidential summary shall provide only the following information to the Board with regard to the dispute arbitrated under this part:

(i) Geographic region of the movement(s) at issue;

(ii) Commodities shipped;

(iii) Number of calendar days from the commencement of the arbitration proceeding to the conclusion of the arbitration;

(iv) Resolution of the arbitration, limited to the following descriptions: Settled, withdrawn, dismissed on market dominance, challenged rate(s) found unreasonable/reasonable; and

(v) Any agreement to a different relief cap or period than set forth in § 1108.28(b).

(2) *STB quarterly reports on Small Rate Case Arbitration Program.* The STB may publish public quarterly reports on the final disposition of arbitrated rate disputes under the Small Rate Case Arbitration Program.

(i) If issued, the Board's quarterly reports on the Small Rate Case Arbitration Program shall disclose only the five categories of information listed in paragraph (e)(1) of this section. The parties to the arbitration who filed the confidential summary shall not be disclosed.

(ii) If issued, the Board's quarterly reports on the Small Rate Case Arbitration Program shall be posted on the Board's website.

§ 1108.30 No precedent.

Arbitration decisions under this subpart shall have no precedential value, and their outcomes and reasoning may not be submitted into evidence or

argued in subsequent arbitration proceedings conducted under this subpart or in any Board proceeding, except an appeal of the arbitration decision under § 1108.31.

§ 1108.31 Enforcement and appeals.

(a) *Appeal to the Board*—(1) *Petition to vacate or modify arbitration decision.* A party appealing the arbitration decision shall file under seal a petition to modify or vacate the arbitration decision, setting forth its full argument for vacating or modifying the decision. The petition to vacate or modify the arbitration decision must be filed within 20 days from the date on which the arbitration decision was served on the parties. The party appealing must include both a redacted and unredacted copy of the arbitration decision.

(2) *Replies.* Replies to the petition shall be filed under seal within 20 days of the filing of the petition to vacate or modify with the Board. Replies shall be subject to the page limitations of § 1115.2(d) of this chapter.

(3) *Confidentiality of filings; public docket.* All submissions for appeals of the arbitration decision to the Board shall be filed under seal. After the party has submitted a filing to the Board, the party shall prepare a public version of the filing with confidential commercial information redacted and provide the opposing party an opportunity to request further redactions. After consulting with the opposing party on redactions, the party shall file the public version with the Board for posting on its website.

(4) *Page limitations.* The petition shall be subject to the page limitations of § 1115.2(d) of this chapter.

(5) *Service.* Copies of the petition to vacate or modify and replies shall be served upon all parties in accordance with the Board's rules at part 1104 of this chapter. The appealing party shall also serve a copy of its petition to vacate or modify upon the arbitration panel.

(b) *Board's standard of review.* The Board's standard of review of arbitration decisions under this subpart shall be limited to determining only whether:

(1) The decision is consistent with sound principles of rail regulation economics;

(2) A clear abuse of arbitral authority or discretion occurred;

(3) The decision directly contravenes statutory authority; or

(4) The award limitation was violated.

(c) *Relief available on appeal to the Board.* Subject to the Board's limited standard of review as set forth in paragraph (b) of this section, the Board may affirm, modify, or vacate an arbitration award in whole or in part, with any modifications subject to the relief limits set forth in § 1108.28.

(d) *Confidentiality of Board's decision on appeal*—(1) *Scope of confidentiality.* The Board's decision will be public but shall maintain the confidentiality of the arbitration decision to the maximum extent possible, giving particular attention to avoiding the disclosure of information that would have an effect or impact on the marketplace, including the specific relief awarded by the arbitration panel, if any, or by the Board; or the origin-destination pair(s) involved in the arbitration.

(2) *Opportunity to propose redactions to the Board decision.* Before publishing the Board's decision, the Board shall serve only the parties with a confidential version of its decision in order to provide the parties with an opportunity to file confidential requests for redaction of the Board's decision.

(i) A request for redaction may be filed under seal within 5 days after the date on which the Board serves the parties with the confidential version of its decision.

(ii) The Board will publish its decision(s) on any requests for redaction in a way that maintains the confidentiality of any information the Board determines should be redacted.

(e) *Reviewability of Board decision.* Board decisions affirming, vacating, or modifying arbitration awards under this subpart are reviewable under the Hobbs Act, 28 U.S.C. 2321 and 2342.

(f) *Appeals subject to the Federal Arbitration Act.* Nothing in this subpart shall prevent parties to arbitration from seeking judicial review of arbitration awards in a court of appropriate jurisdiction pursuant to the Federal Arbitration Act, 9 U.S.C. 9–13, in lieu of seeking Board review.

(g) *Staying arbitration decision.* The timely filing of a petition with the Board to modify or vacate the arbitration decision will not automatically stay the effect of the arbitration decision. A stay may be requested under § 1115.3(f) of this chapter.

(h) *Enforcement.* A party seeking to enforce an arbitration decision under this subpart must petition a court of appropriate jurisdiction under the Federal Arbitration Act, 9 U.S.C. 9–13.

§ 1108.32 Assessment of the Small Rate Case Arbitration Program.

The Board will conduct an assessment of the Small Rate Case Arbitration Program to determine if the program is providing an effective means of resolving rate disputes for small cases. The Board's assessment will occur upon the completion of a reasonable number of arbitration proceedings such that the Board can conduct a comprehensive assessment, though not later than three years after start of the program. In conducting this assessment, the Board will obtain feedback from parties that have used the arbitration process. Depending on the outcome of such review, the Board may determine that the arbitration program will continue or that the arbitration program should be terminated or modified at that time.

§ 1108.33 Exemption from Final Offer Rate Review.

Railroads that opt into the arbitration program under § 1108.23(a) will be exempt from having their rates challenged under Final Offer Rate Review (if in effect). The exemption will terminate upon the effective date of the participating carrier no longer participating in the arbitration program under this part, including, due to withdrawal from the arbitration program, as set forth in § 1108.23(c), or termination by the Board of the arbitration program following an assessment under § 1108.32. Upon termination of the exemption, parties are permitted to challenge a carrier's rate using Final Offer Rate Review (if in effect).

PART 1115—APPELLATE PROCEDURES

■ 8. The authority citation for part 1115 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 1321; 49 U.S.C. 11708.

■ 9. Revise the third sentence of § 1115.8 to read as follows:

§ 1115.8 Petitions to review arbitration decisions.

* * * For arbitrations authorized under part 1108, subparts A and B, of this chapter, the Board's standard of review of arbitration decisions will be narrow, and relief will only be granted on grounds that the decision is inconsistent with sound principles of rail regulation economics, a clear abuse of arbitral authority or discretion occurred, the decision directly contravenes statutory authority, or the award limitation was violated. * * *

PART 1244—WAYBILL ANALYSIS OF TRANSPORTATION OF PROPERTY—RAILROADS

■ 10. The authority citation for part 1244 continues to read as follows:

Authority: 49 U.S.C. 1321, 10707, 11144, 11145.

■ 11. Revise § 1244.9(b)(4) to read as follows:

§ 1244.9 Procedures for the release of waybill data.

* * * * *

(b) * * *

(4) *Transportation practitioners, consulting firms, and law firms—specific proceedings.* Transportation practitioners, consulting firms, and law firms may use data from the STB Waybill Sample in preparing verified statements to be submitted in formal proceedings before the STB and/or State Boards (Board), or in preparing documents to be submitted in arbitration matters under part 1108, subpart B, of this chapter, subject to the following requirements:

(i) The STB Waybill Sample is the only single source of the data or obtaining the data from other sources is burdensome or costly, and the data is relevant to issues in a pending formal proceeding before the Board or in arbitration matters under part 1108, subpart B, of this chapter (when seeking data beyond the automatic waybill data release under § 1108.27(g) of this chapter).

(ii) The requestor submits to the STB a written waybill request that complies with paragraph (e) of this section or is part of the automatic waybill data release under § 1108.27(g) of this chapter for use in arbitrations pursuant to part 1108, subpart B, of this chapter.

(iii) All waybill data must be returned to the STB, and the practitioner or firm must not keep any copies.

(iv) A transportation practitioner, consulting firm, or law firm must submit any evidence drawn from the STB Waybill Sample only to the Board or to an arbitration panel impaneled under part 1108, subpart B, of this chapter, unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad. Nonaggregated evidence submitted to the Board will be made part of the public record only if the Board finds that it does not reveal competitively sensitive data. However, evidence found to be sensitive may be provided to counsel or other independent representatives for other parties subject to the usual and customary protective order issued by the Board or appropriate authorized official.

(v) When waybill data is provided for use in a formal Board proceeding, a practitioner or firm must sign a confidentiality agreement with the STB agreeing to the restrictions specified in paragraphs (b)(4)(i) through (iv) of this section before any data will be released. This agreement will govern access and use of the released data for a period of one year from the date the agreement is signed by the user. If the data is required for an additional period of time because a proceeding is still pending before the Board or a court, the practitioner or firm must sign a new confidentiality agreement covering the data needed for each additional year the proceeding is opened.

(vi) When waybill data is provided for use in arbitrations pursuant to part 1108, subpart B, of this chapter, the transportation practitioners, consulting firms, or law firms representing parties to the arbitration and each arbitrator must sign a confidentiality agreement with the STB agreeing to the restrictions specified in paragraphs (b)(4)(i) through (iv) of this section before any data will be released. The agreement with practitioners and firms will govern access and use of the released data for a period of one year from the date the agreement is signed by the user. If the data is required for an additional period of time because an arbitration or appeal of an arbitration is still pending before the Board or a court, the practitioner or firm must sign a new confidentiality agreement covering the data needed for each additional year the arbitration or appeal is pending. The agreement with each arbitrator will allow that arbitrator to review any evidence that includes confidential waybill data in a particular arbitration matter.

* * * * *

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

Appendix A—Model Confidentiality Agreement for Small Rate Case Arbitration Program Proceedings

ARBITRATION NO._____

[NAME OF COMPLAINANT] v. [NAME OF DEFENDANT RAIL CARRIER]

1. Pursuant to 49 CFR 1108.27(f), all information, data, documents, or other material (hereinafter collectively referred to as ''material'') that is produced in discovery to another party to this proceeding or submitted in pleadings will be designated ''CONFIDENTIAL,'' and such material must be treated as confidential. Such material, any copies, and any data or notes derived therefrom:

a. Shall be used solely for the purpose of this proceeding and any STB or judicial review or enforcement proceeding arising herefrom, and not for any other business, commercial, or competitive purpose.

b. May be disclosed only to employees, counsel, or agents of the party requesting such material who have a need to know, handle, or review the material for purposes of this proceeding and any STB or judicial review or enforcement proceeding arising herefrom, and only where such employee, counsel, or agent has been given and has read a copy of this Confidentiality Agreement, agrees to be bound by its terms, and executes the attached Undertaking for Confidential Material prior to receiving access to such materials.

c. Must be destroyed by the requesting party, its employees, counsel, and agents at the completion of this proceeding and any STB or judicial review or enforcement proceeding arising herefrom. However, counsel and consultants for a party are permitted to retain file copies of all pleadings which they were authorized to review under this Confidentiality Agreement, including under Paragraph 10.

d. Shall, in order to be kept confidential, be filed with the arbitration panel only in a package clearly marked on the outside ''Confidential Materials Subject to Confidentiality Agreement.''

2. Any party producing material in discovery to another party to this proceeding, or submitting material in pleadings, may in good faith designate and stamp particular material, such as material containing shipper-specific rate or cost data, or other competitively sensitive information, as ''HIGHLY CONFIDENTIAL.'' If any party wishes to challenge such designation, the party may bring such matter to the attention of the arbitration panel. Material that is so designated may be disclosed only to outside counsel in this arbitration, transportation practitioners, and those individuals working with or assisting such counsel or practitioners who are not regular employees of the party represented, who have a need to know, handle, or review the materials for purposes of this proceeding and any STB or judicial review or enforcement proceeding arising herefrom, provided that such individuals have been given and have read a copy of this Confidentiality Agreement, agree to be bound by its terms, and execute the attached Undertaking for Highly Confidential Material prior to receiving access to such materials. Material designated as ''HIGHLY CONFIDENTIAL'' and produced in discovery under this provision shall be subject to all of the other provisions of this Confidentiality Agreement, including without limitation Paragraph 1.

3. In the event that a party produces material which should have been designated as ''CONFIDENTIAL'' or ''HIGHLY CONFIDENTIAL'' and inadvertently fails to designate the material as ''CONFIDENTIAL'' or ''HIGHLY CONFIDENTIAL,'' the producing party may notify the other party in writing within 5 days of discovery of its inadvertent failure to make the ''CONFIDENTIAL'' or ''HIGHLY CONFIDENTIAL'' designation. The party who received the material without the ''CONFIDENTIAL'' or ''HIGHLY CONFIDENTIAL'' designation will agree to treat the material as highly confidential, unless that party wishes to challenge that designation as set forth in Paragraph 2.

4. In the event that a party inadvertently produces material that is protected by the attorney-client privilege, work product doctrine, or any other privilege, the producing party may make a written request within a reasonable time after the producing party discovers the inadvertent disclosure that the other party return the inadvertently produced privileged document. The party

who received the inadvertently produced document will either return the document to the producing party or destroy the document immediately upon receipt of the written request, as directed by the producing party. By returning or destroying the document, the receiving party is not conceding that the document is privileged and is not waiving its right to later challenge the substantive privilege claim, provided that it may not challenge the privilege claim by arguing that the inadvertent production waived the privilege.

5. If any party intends to use ''HIGHLY CONFIDENTIAL'' material at oral arguments or presentations in this arbitration, or in any STB or judicial review or enforcement proceeding arising herefrom, the party so intending shall submit any proposed exhibits or other documents setting forth or revealing such ''HIGHLY CONFIDENTIAL'' material to the arbitration panel, the Board, or the court, as appropriate, with a written request that the arbitration panel, Board, or court: (a) Restrict attendance at the hearings during discussion of such ''HIGHLY CONFIDENTIAL'' material; and (b) restrict access to the portion of the record or briefs reflecting discussion of such ''HIGHLY CONFIDENTIAL'' material in accordance with the terms of this Confidentiality Agreement.

6. Except for this proceeding, the parties agree that if a party is required by law or order of a governmental or judicial body to release ''CONFIDENTIAL'' or ''HIGHLY CONFIDENTIAL'' material produced by the other party or copies or notes thereof as to which it obtained access pursuant to this Confidentiality Agreement, the party so required shall notify the producing party in writing within 3 business days of the determination that such material is to be released, or within 3 business days prior to such release, whichever is soonest, to permit the producing party the opportunity to contest the release.

7. Information that is publicly available or obtained outside of this proceeding from a person with a right to disclose it publicly shall not be subject to this Confidentiality Agreement even if the same information is produced and designated as ''CONFIDENTIAL'' or ''HIGHLY CONFIDENTIAL'' in this proceeding.

8. Each party has a right to view its own data, information and documentation (*i.e.,* information originally generated or compiled by or for that party), even if that data, information and documentation has been designated as ''HIGHLY CONFIDENTIAL'' by a producing party, without securing prior permission from the producing party. If a party (the ''submitting party'') submits and serves upon the other party (the ''reviewing party'') a written submission or evidence containing the ''HIGHLY CONFIDENTIAL'' material of the submitting party, the submitting party shall also contemporaneously provide to outside counsel for the reviewing party a ''CONFIDENTIAL'' version of such filing that redacts any ''HIGHLY CONFIDENTIAL'' information of the filing party that cannot be viewed by the in-house personnel of the reviewing party. Such Confidential Version may be provided in a .pdf or other electronic format.

9. At the conclusion of the arbitration, the parties shall make no public statements or representations about the arbitration, except for the confidential summary provided to the STB pursuant to 49 CFR 1108.29(e).

10. Appeals of the arbitration decision to the STB shall be subject to the confidentiality provisions of 49 CFR 1108.31(a) and (d). Parties may designate portions of their pleadings in such a proceeding to be CONFIDENTIAL or HIGHLY CONFIDENTIAL, pursuant to the provisions of Paragraph 2.

Appendix B—Information Collection Under the Paperwork Reduction Act

As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501–3521, the Surface Transportation Board (Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval for the new information collection, Arbitration Program for Small Rate Cases, encompassing (a) Arbitration ''Opt-In'' Notices, (b) Initial Notices of Intent to Arbitrate, (c) Joint Notices to Arbitrate, (d) Post-Arbitration Summaries, and (e) Appeals of Arbitrators' Decision, as described in the Collection below. The proposed new collection necessitated by this notice of proposed rulemaking (NPRM) is expected to provide parties with additional options for resolution of smaller rail rate disputes and will further the Board's policy favoring the use of mediation and arbitration procedures.

Description of Collection

Title: Arbitration Program for Small Rate Cases.

OMB Control Number: 2140–XXXX.

STB Form Number: None.

Type of Review: New Collection.

Respondents: Parties seeking to arbitrate certain small rate case matters under a program administered by the Board.

Number of Respondents: 30.

Estimated Time per Response:

ESTIMATED HOURS PER RESPONSE

Type of filing	Number of hours per response
''Opt-In'' Notices	1
Initial Notices	1
Joint Notices	2
Post-Arbitration Summaries	3
Appeals of Arbitrators' Decision	25

Frequency: On occasion.

ESTIMATED AVERAGE ANNUAL NUMBER OF RESPONSES

Type of filing	Number of responses
''Opt-In'' Notices*	3
Initial Notices	21
Joint Notices	18
Post-Arbitration Summaries	21
Appeals of Arbitrators' Decision	6

* Each of the seven ''Opt-In'' Notices have a five-year term and have been averaged over three years and rounded up.

Total Burden Hours (annually including all respondents): 273 (sum of estimated hours per response × number of annual responses for each type of filing).

TOTAL ANNUAL BURDEN HOURS

Type of filing	Hours per response	Annual number of filings	Total annual burden hours
''Opt-In'' Notices *	1	3	3
Initial Notices	1	21	21
Joint Notices	2	18	36
Post-Arbitration Summaries	3	21	63
Appeals of Arbitrators' Decision	25	6	150
Total annual burden hours			273

* Each of the seven ''Opt-In'' Notices have a five-year term and have been averaged over three years and rounded up.

Total ''Non-hour Burden'' Cost: There are no non-hourly burden costs for this collection. The collections may be filed electronically.

Needs and Uses: Under the Interstate Commerce Act, as amended by the ICC

Termination Act of 1995, the Board is responsible for the economic regulation of common carrier rail transportation. Under the proposed 49 CFR part 1108, subpart B, and as described in detail above, Class I (large) rail carriers subject to the Board's jurisdiction may agree to participate in the Board's arbitration program by filing a notice with the Board to ''opt in'' to arbitration. These ''Opt-In'' Notices have a five-year term, and, once a rail carrier is participating in the Board's arbitration program, it may withdraw from participation only if there is a material change in the law regarding how the railroad rates are challenged. To initiate an actual arbitration over a rate dispute, a shipper may submit an Initial Notice of Intent to Arbitrate to the railroad stating that it wishes to invoke the arbitration process. The parties may then explore mediation. If the mediation is waived or is unsuccessful, the parties may send a Joint Notice to Arbitrate to the Board's Office of Public Assistance, Governmental Affairs, and Compliance, alerting that office that they intend to proceed to the arbitration phase of the Board's proposed small rate case arbitration program, upon which time certain waybill data may be available to them.

Upon conclusion of arbitration, the arbitrator's decision is confidential and not filed with the Board. The parties are required, however, to provide a post-arbitration summary to the Board within 14 days after the arbitrators' decision. Finally, the parties may appeal an arbitration decision, requesting that the Board vacate or modify the arbitrators' decision (at which time, a confidential version of the arbitration decision would be provided to the Board). These are the steps that provide for the collection of information under the PRA.

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Part III

Surface Transportation Board

49 CFR Parts 1002, 1111, 1114, et al.
Final Offer Rate Review; Expanding Access to Rate Relief; Proposed Rule

SURFACE TRANSPORTATION BOARD

49 CFR Parts 1002, 1111, 1114 and 1115

[Docket No. EP 755; Docket No. EP 665 (Sub–No. 2)]

Final Offer Rate Review; Expanding Access to Rate Relief

AGENCY: Surface Transportation Board.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: In response to comments received on the notice of proposed rulemaking (*NPRM*) published on September 17, 2019, and to ensure parallel consideration with the proposal in *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes* (*Arb. NPRM*), Docket No. EP 765, published elsewhere in this issue of the **Federal Register**, the Surface Transportation Board (STB or Board) invites parties, through this supplemental notice of proposed rulemaking (SNPRM), to comment on certain modifications to the rate reasonableness procedure, as well as other issues contained in the discussion below.

DATES: Comments are due by January 14, 2022. Reply comments are due by March 15, 2022.

ADDRESSES: Comments and replies may be filed with the Board via e-filing on the Board's website at *www.stb.gov* and will be posted to the Board's website.

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: In January 2018, the Board established its Rate Reform Task Force (RRTF), with the objectives of developing recommendations to reform and streamline the Board's rate review processes for large cases, and determining how to best provide a rate review process for smaller cases. After holding informal meetings throughout 2018, the RRTF issued a report on April 25, 2019 (*RRTF Report*).[1] Among other recommendations, the RRTF included a proposal for a final offer procedure, which it described as ''an administrative approach that would take advantage of procedural limitations, rather than substantive limitations, to constrain the cost and complexity of a rate reasonableness case.'' *RRTF Rep.* 12. Versions of a final offer process for rate review have also been recommended by the U.S. Department of Agriculture (USDA) and a committee of the Transportation Research Board (TRB).

In a notice of proposed rulemaking issued on September 12, 2019, the Board proposed to build on the RRTF recommendation and establish a new rate case procedure for smaller cases, the Final Offer Rate Review (FORR) procedure. *Final Offer Rate Rev.* (*NPRM*), EP 755 et al. (STB served Sept. 12, 2019).[2]

The Board received numerous comments on the *NPRM.* By decision served on May 15, 2020, to permit informal discussions with stakeholders, the Board waived the general prohibition on ex parte communications between June 1, 2020, and July 15, 2020. Meetings took place during the specified period; parties filed memoranda pursuant to 49 CFR 1102.2(g)(4); the memoranda were posted on the Board's website; and parties were permitted to submit written comments in response to the memoranda.[3]

In light of the filed comments and information received in meetings with stakeholders, the Board is issuing this *SNPRM* to invite comment on certain modifications to the rate reasonableness procedure proposed in the *NPRM,* as well as other issues contained in the discussion below. This *SNPRM* also will ensure parallel consideration of the modified FORR proposal with the proposal published elsewhere in this issue of the **Federal Register**, *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes* (*Arb. NPRM*), EP 765 (STB served Nov. 15, 2021).

In addition to seeking comments, the Board will again waive the general prohibition on ex parte communications regarding matters related to this proceeding,[4] to allow discussions of FORR issues in conjunction with ex parte discussions of the arbitration proposal. *See* 49 CFR 1102.2(g); *Final Offer Rate Rev.,* 84 FR 48872 (Sept. 17, 2019), EP 755 (STB served May 15, 2020). The duration of the ex parte waiver will match the ex parte meeting period in Docket No. EP 765, *i.e.,* between November 15, 2021, and February 23, 2022.

Background

In the ICC Termination Act of 1995 (ICCTA), Congress directed the Board to ''establish a simplified and expedited method for determining the reasonableness of challenged rail rates in those cases in which a full stand-alone cost [(SAC)] presentation is too costly, given the value of the case.'' (Pub. L. 104–88, 109 Stat. 803, 810). In the Surface Transportation Board Reauthorization Act of 2015 (STB Reauthorization Act), Public Law 114–110, 129 Stat. 2228, Congress revised the text of this requirement so that it currently reads: ''[t]he Board shall maintain *1 or more* simplified and expedited methods for determining the reasonableness of challenged rates in those cases in which a full [SAC] presentation is too costly, given the value of the case.'' 49 U.S.C. 10701(d)(3) (emphasis added). In addition, section 11 of the STB Reauthorization Act modified 49 U.S.C. 10704(d) to require that the Board ''maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates.'' [5] More generally, the rail transportation policy (RTP) at 49 U.S.C. 10101 states that, in regulating the

[1] The *RRTF Report* was posted on the Board's website on April 29, 2019, and can be accessed at *https://www.stb.gov/stb/rail/Rate_Reform_Task_Force_Report.pdf.*

[2] The proposed rule was published in the **Federal Register**, 84 FR 48872 (Sept. 17, 2019).

[3] The following parties submitted comments, participated in meetings, or submitted comments in response to memoranda: The American Chemistry Council (ACC), The Fertilizer Institute, the National Industrial Transportation League, the Chlorine Institute, and the Corn Refiners Association (collectively, the Coalition Associations); the American Fuel & Petrochemical Manufacturers (AFPM); the Association of American Railroads (AAR); BNSF Railway Company (BNSF); Canadian National Railway Company (CN); Canadian Pacific (CP); CSX Transportation, Inc. (CSXT); Farmers Union of Minnesota, Farmers Union of Montana, Farmers Union of North Dakota, Farmers Union of South Dakota, and Farmers Union of Wisconsin (collectively, Farmers Union); Growth Energy; Indorama Ventures (Indorama); Industrial Minerals Association—North America (IMA–NA); The Kansas City Southern Railway Company (KCSR); MillerCoors; National Grain and Feed Association (NGFA); National Taxpayers Union (NTU); Norfolk Southern Railway Company (NSR); Olin Corporation (Olin); Private Railcar Food and Beverage Association (PRFBA); Samuel J. Nasca; Solvay America, Inc.; Steel Manufacturers Association (SMA); Union Pacific Railroad Company (UP); USDA; U.S. Wheat Transportation Working Group (USW); and Western Coal Traffic League (WCTL). The Board also received a joint comment from several members of the Committee for a Study of Freight Rail Transportation and Regulation of the Transportation Research Board (referred to collectively as the TRB Professors), as well an individual comment and reply from one member of that committee, the late Dr. Jerry Ellig (Dr. Ellig). That committee issued a report titled *Modernizing Freight Rail Regulation* (*TRB Report*) in 2015. *See* Nat'l Acads. of Sciences, Eng'g, & Med., *Modernizing Freight Rail Regul.* (2015), *http://nap.edu/21759.*

[4] The Board previously waived the prohibition on ex parte communications in Docket No. EP 665 (Sub–No. 2). *See Expanding Access to Rate Relief,* EP 665 (Sub–No. 2) (STB served Mar. 28, 2018) (stating that ''[t]he waiver will remain in effect until further order of the Board.'').

[5] Prior to the enactment of the STB Reauthorization Act, section 10704(d) began with a sentence stating that, ''[w]ithin 9 months after January 1, 1996, the Board shall establish procedures to ensure expeditious handling of challenges to the reasonableness of railroad rates.'' *See, e.g.,* 49 U.S.C. 10704(d) (2014).

railroad industry, it is the policy of the United States Government to, among other things, ''provide for the expeditious handling and resolution of all proceedings required or permitted to be brought under this part.'' 49 U.S.C. 10101(15).

In 1996, the Board adopted a simplified methodology, known as Three-Benchmark, which determines the reasonableness of a challenged rate using three benchmark figures. *Rate Guidelines—Non-Coal Proc.,* 1 S.T.B. 1004 (1996), *pet. to reopen denied,* 2 S.T.B. 619 (1997), *appeal dismissed sub nom. Ass'n of Am. R.Rs.* v. *STB,* 146 F.3d 942 (D.C. Cir. 1998). A decade passed without any complainant bringing a case under that methodology. In 2007, the Board modified the Three-Benchmark methodology and also created another simplified methodology, known as Simplified-SAC, which determines whether a captive shipper is being forced to cross-subsidize other parts of the railroad's network. *See Simplified Standards for Rail Rate Cases,* EP 646 (Sub–No. 1) (STB served Sept. 5, 2007), *aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009). In 2013, the Board increased the relief available under the Three-Benchmark methodology and removed the relief limit on the Simplified-SAC methodology, among other things. *See Rate Regul. Reforms,* EP 715 (STB served July 18, 2013) (78 FR 44459, July 24, 2013), *remanded in part sub nom. CSX Transp., Inc.* v. *STB,* 754 F.3d 1056 (D.C. Cir. 2014). Notwithstanding the Board's efforts to improve its rate review methodologies and make them more accessible, only a few Three-Benchmark cases have ever been brought to the Board, and no complaint has been litigated to completion under the Simplified-SAC methodology.

The Board has recognized that, for smaller disputes, the litigation costs required to bring a case under the Board's existing rate reasonableness methodologies can quickly exceed the value of the case. *Expanding Access to Rate Relief,* EP 665 (Sub–No. 2), slip op. at 10 (STB served Aug. 31, 2016). As the Board stated in *Simplified Standards,* ''[f]or some shippers who have smaller disputes with a carrier, even [Simplified-SAC] would be too expensive, given the smaller value of their cases. These shippers must also have an avenue to pursue relief.'' *Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 16. Along similar lines, as the Board has previously stated, simplified procedures ''enable the affected shippers to avail themselves of their statutory right to challenge rates charged on captive rail traffic regardless of the size of the complaint.'' *Non-Coal Proc.,* 1 S.T.B. at 1057.[6]

In public comments, shippers and other interested parties have repeatedly stated that the Board's current options for challenging the reasonableness of rates do not meet their need for expeditious resolution at a reasonable cost.[7] Moreover, because a contract rate may not be challenged before the Board, 49 U.S.C. 10709(c)(1), some complainants[8] shift from contract rates to tariff rates before bringing a rate case, and tariff rates may be higher than prior contract rates.[9] That factor gives complainants a strong interest in having a rate case decided quickly, from start to finish.

Accordingly, the Board has continued to explore ideas to improve the accessibility of rate relief. For example, in *Expanding Access to Rate Relief,* Docket No. EP 665 (Sub–No. 2), the Board sought comment on procedures relying on comparison groups that could comprise a new rate reasonableness methodology for use in very small disputes. The initial comments on that proposal were universally negative. But among the comments submitted in Docket No. EP 665 (Sub–No. 2), the Board received a suggestion from USDA that the Board consider procedural limitations to streamline and expedite its rate reasonableness review as an alternative to substantive limitations. *See* USDA Reply Comment 5–6, Dec. 19, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub–No. 2). USDA specifically recommended a short procedural timeline as a means to make rate reasonableness review accessible for smaller disputes. *See id.* To implement this recommendation, USDA suggested that the Board adopt a final offer procedure whereby parties would submit market dominance and rate reasonableness evidence in a single package offer. *See id.* at 6–7.

The Board already uses a final offer procedure as part of the Three-Benchmark methodology, although it is only one part of the rate reasonableness approach as opposed to providing the overall framework, as the Board is proposing here.[10] One of the benchmarks compares the markup paid by the challenged traffic to the average markup assessed on similar traffic. *See, e.g., Rate Regul. Reforms,* EP 715, slip op. at 11. To improve the efficiency of this part of the Three-Benchmark methodology and ''enable a prompt, expedited resolution of the comparison group selection,'' the Board requires each party to submit its final offer comparison group simultaneously, and the Board chooses one of those groups without modification. *See Simplified Standards,* 72 FR 51375 (Sept. 7, 2007), EP 646 (Sub–No. 1), slip op. at 18.

Although the Board may not require arbitration of rate disputes under current law,[11] and is not doing so here,

[6] *See also Calculation of Variable Costs in Rate Compl. Proc. Involving Non-Class I R.Rs.,* 6 S.T.B. 798, 803 & n.19 (2003) (''[W]e have adopted simplified evidentiary procedures for adjudicating rate reasonableness in those cases where more sophisticated procedures are too costly or burdensome, 'to ensure that no shipper is foreclosed from exercising its statutory right to challenge the reasonableness of rates charged on its captive traffic.' '') (quoting *Non-Coal Proc.,* 1 S.T.B. at 1008); *Mkt. Dominance Determinations—Prod. & Geographic Competition,* 3 S.T.B. 937, 949 (1998) (excluding product and geographic competition from consideration in market dominance determinations so as to ''remove a substantial obstacle to the shippers' ability to exercise their statutory rights.'').

[7] *See, e.g.,* Alliance for Rail Competition Opening Comment 22, June 26, 2014, *Rail Transp. of Grain, Rate Regul. Rev.,* EP 665 (Sub–No. 1) (stating that the Three-Benchmark methodology is too costly and complex for grain shippers and producers in its current form); WCTL Opening Comment 74–76, Oct. 23, 2012, *Rate Regulation Reforms,* EP 715 (the cost and complexity of the Simplified-SAC methodology discourage its use); *Oversight of the STB Reauthorization Act of 2015 Before the Subcomm. on R.Rs., Pipelines, & Hazardous Materials of the H. Comm. on Transp. & Infrastructure,* 115th Cong. (2018) (letter from Chris Jahn, then-President of The Fertilizer Institute, submitted for the record) (due to the time and expense needed to pursue a rate case, it ''does not work'' for most complainants).

[8] Paying a transportation rate is not the only way to establish standing to bring a rate case, and the Board has previously provided guidance in a policy statement for ''complainants that allege indirect harm in rate complaints.'' *See Rail Transp. of Grain, Rate Regul. Rev.,* EP 665 (Sub–No. 1) et al., slip op. at 7–8 (STB served Dec. 29, 2016).

[9] As an example, the most recent rate proceeding involved a complainant that had been served pursuant to contracts for many years and then filed its complaint as soon as its contract expired. *See* Consumers Energy Co. Compl. 4–5, Jan. 13, 2015, *Consumers Energy Co.* v. *CSX Transp., Inc.,* NOR 42142; *see also* Occidental Chem. Corp. Comments 2–4, Oct. 23, 2012, *Rate Regul. Reforms,* EP 715 (paying the tariff rate for extended periods of time while a rate case is litigated—which can add millions of dollars in costs beyond the direct costs of litigation—undermines the utility of a rate challenge, especially if the carrier requires that all rates bundled with the challenged rate also shift to tariff during the pendency of the case); PPG Indus., Inc. Comments 3–4, Oct. 23, 2012, *Rate Regul. Reforms,* EP 715 (noting the effect of bundling and stating that tariff premium could reach $20 million per year of rate litigation). The latter two filings are cited here simply to illustrate the need for expedited rate reasonableness procedures, not to indicate that the Board takes any position in this proceeding—one way or another—on the appropriateness of rate bundling.

[10] The Three-Benchmark methodology also includes more procedural steps and a longer timeline than the FORR procedure proposed here. *See* 49 CFR 1111.10(a)(2).

[11] *See Arb.—Various Matters,* EP 586, slip op. at 3 n.7 (STB served Sept. 20, 2001); *see also* 49 U.S.C. 10704(a)(1); 49 U.S.C. 11704(c)(2). The Board has

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the benefits of *final offer* procedures used in other settings offer support and background for the Board's rule proposed here. For example, final offer procedures are used in commercial settings, including the resolution of wage disputes in Major League Baseball, and final offer arbitration is therefore sometimes referred to as ''baseball arbitration.'' *See, e.g.,* Josh Chetwynd, *Play Ball? An Analysis of Final-Offer Arb., Its Use in Major League Baseball, & Its Potential Applicability to Eur. Football Wage & Transfer Disps.,* 20 Marq. Sports L. Rev. 109 (2009) (noting the final offer procedure ''can lead to a win-win situation as it spurs negotiated settlement at a very high rate''); *see also* Michael Carrell & Richard Bales, *Considering Final Offer Arb. to Resolve Pub. Sector Impasses in Times of Concession Bargaining,* 28 Ohio St. J. on Disp. Resol. 1, 3, 16, 23–24 (2012) (noting that 14 states had codified some form of final offer arbitration for certain labor disputes involving public sector employees and noting that the procedure ''encourages the parties to negotiate toward middle ground rather than staking out polar positions'' and ''encourages the parties to settle before arbitration'').

Similarly, AAR's Circular No. OT–10, ''Code of Car Service Rules/Code of Car Hire Rules,'' sets forth a final offer procedure for car hire arbitration, which is included in Rule 25 (the Arbitration Rule). *See* Circular No. OT–10, Rule 25, *https://www.railinc.com/rportal/documents/18/260773/OT-10.pdf.* The Board has described the Arbitration Rule as an ''integral part'' of its deregulation of car hire rates. *See Joint Pet. for Rulemaking on R.R. Car Hire Comp.,* EP 334 (Sub–No. 8) et al., slip op. at 1 (STB served Apr. 22, 1997). And as noted by the Board's predecessor agency, the Interstate Commerce Commission (ICC), the Arbitration Rule ''provides for negotiation and, when that is not successful, 'baseball style' arbitration, by which the arbitrator will select between the best final offers of the parties.'' *Joint Pet. for Rulemaking on R.R. Car Hire Comp.,* 9 I.C.C.2d 80, 88 (1992).

Finally in this regard, in the *TRB Report* released in 2015, the Committee for a Study of Freight Rail Transportation and Regulation of the TRB (TRB Committee) [12] described the benefits of adopting ''an independent arbitration process similar to the one long used for resolving rate disputes in Canada.'' [13] In particular, the TRB Committee recommended ''a final-offer rule,'' set on a ''strict time limit,'' whereby ''each side offers its evidence, arguments, and possibly a changed rate or other remedy in a complete and unmodifiable form after a brief hearing.'' *TRB Rep.* 211–12. According to the *TRB Report,* adoption of such a procedure could enhance complainants' access to rate reasonableness protections, while expediting dispute resolution and encouraging settlements. *Id.* at 212.

The RRTF agreed that a final offer process—with the decision being made by the Board rather than an arbitrator—could be an effective way to implement procedural limitations, which would improve access to rate relief. *RRTF Rep.* 16. Taking into account these recommendations, the Board's *NPRM* proposed to adopt a FORR process with the following primary features. As proposed, FORR would allow limited discovery, with no litigation over discovery disputes; FORR could only be used if the complainant elected to use the streamlined market dominance approach proposed (and since adopted) in Docket No. EP 756, *Market Dominance Streamlined Approach;* [14] and the procedural schedule would be brief, with a Board decision issued 135 days after the complaint is filed. *See NPRM,* EP 755 et al., slip op. at 8–10, 13–14.

Parties would simultaneously submit their market dominance presentations, final offers, analyses addressing the reasonableness of the challenged rate and support for the rate in the party's offer, and explanations of the methodology used and how it complies with the decisional criteria set forth in the *NPRM. NPRM,* EP 755 et al., slip op. at 12. Parties would next submit simultaneous replies. *Id.*

The complainant would bear the burden of proof to demonstrate that (i) the defendant carrier has market dominance over the transportation to which the rate applies, and (ii) the challenged rate is unreasonable. *NPRM,* EP 755 et al., slip op. at 12–13; *see also* 49 U.S.C. 10701(d)(1), 10704(a)(1), 11704(b); *Union Pac. R.R.—Pet. for Declaratory Ord.,* FD 35504, slip op. at 2 (STB served Oct. 10, 2014). If the Board were to find that the complainant's market dominance presentation and rate reasonableness analysis demonstrate that the defendant carrier has market dominance over the transportation to which the rate applies and that the challenged rate is unreasonable, the Board would then choose between the parties' final offers. In making the rate reasonableness finding and choosing between the offers, the Board would take into account the criteria specified in the *NPRM:* The RTP, the Long-Cannon factors in 49 U.S.C. 10701(d)(2), and appropriate economic principles. *See NPRM,* EP 755 et al., slip op. at 10–13, 84 FR 48872 (Sept. 17, 2019).

The Board proposed a relief cap of $4 million, indexed annually using the Producer Price Index, consistent with the potential relief afforded under the Three-Benchmark methodology. *See NPRM,* EP 755 et al., slip op. at 16.

The Board also sought additional comments on Docket No. EP 665 (Sub–No. 2), including whether to close that docket. *NPRM,* EP 755 et al., slip op. at 17.

Also, on November 25, 2020, the Board instituted a rulemaking proceeding to consider a proposal by

had a *voluntary* arbitration process in place for more than 20 years, and section 13 of the STB Reauthorization Act required adjustments to this process (including the addition of rate disputes to the types of matters eligible for arbitration), but to date parties have not agreed to arbitration of any dispute brought before the Board. *See Arb. of Certain Disps.,* 2 S.T.B. 564 (1997) (adopting voluntary arbitration procedures at 49 CFR part 1108); *Revisions to Arb. Proc.,* EP 730 (STB served Sept. 30, 2016) (making adjustments required by STB Reauthorization Act). In addition to its recommendation for a final offer procedure that would culminate in a decision by the Board, the RRTF recommended legislation that would permit mandatory arbitration of smaller rate cases. *See RRTF Rep.* 14–15.

[12] In 2005, legislation was enacted directing the Secretary of Transportation to enter into an agreement with TRB ''to conduct a comprehensive study of the Nation's railroad transportation system.'' *See* Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users, Public Law. 109–59, section 9007, 119 Stat. 1144, 1925 (2005). The study was funded in 2011, H.R. Rep. No. 112–284, at 287 (2011), and the TRB Committee was formed, *see TRB Rep.* 12–13.

[13] In a well-known process used by Canadian regulators, final offer procedures are administered by an outside arbitrator or panel of arbitrators. In Canada, a complainant may submit its rate dispute to the Canadian Transportation Agency, which refers the matter to an arbitrator or a panel of arbitrators. Canada Transp. Act, S.C. 1996, c. 10, as amended, sections 161(1), 162(1) (Can.). The Canadian statute establishes a two-tiered structure: If the matter involves freight charges of more than $2 million CAD (subject to an inflation adjustment), a 60-day procedure applies, and if the matter involves freight charges of $2 million CAD or less (subject to an inflation adjustment), a 30-day procedure applies. *Id.* sections 164.1, 165(2)(b). Among other things, the 60-day procedure allows the parties to direct interrogatories to one another, and the arbitrator may request written filings beyond the final offers and information initially submitted in support of final offers. *See id.* §§ 163(4), 164(1). In the 30-day procedure, there is no discovery, and the arbitrator may request oral presentations from the parties but may not request written submissions beyond the final offers and replies. *See id.* section 164.1. The arbitrator's decision is issued within 60 days after the matter was submitted for arbitration, or 30 days if the further expedited procedure applies. *Id.* section 165(2)(b). Any resulting rate prescription is limited to two years, unless the parties agree to a different period. *See id.* section 165(2)(c).

[14] *Mkt. Dominance Streamlined Approach,* EP 756 (STB served Aug. 3, 2020) (adopting final rule), 84 FR 48882 (Sept. 17, 2019).

CN, CSXT, KCSR, NSR, and UP to establish a new, voluntary arbitration program for small rate disputes. *Joint Pet. for Rulemaking to Establish a Voluntary Arb. Program for Small Rate Disps.,* EP 765 (STB served Nov. 25, 2020).[15] In a decision served concurrently with this *SNPRM,* the Board is proposing to adopt a form of such an arbitration program. *Arb. NPRM,* EP 765.

As discussed in more detail in the *Arbitration NPRM,* the Board is deferring final action on FORR and issuing this *SNPRM* concurrently with the *Arbitration NPRM* so that both proposals may be considered simultaneously, including the pros and cons of adopting—either with or without modification—the voluntary arbitration rule, FORR, both proposals, or taking other action.

Discussion and Request for Comments

Based on the filed comments and information received in meetings with stakeholders, the Board invites comment on certain modifications to the rule proposed in the *NPRM* and other issues contained in the discussion below. In Part I, the Board addresses comments on the purpose of the rule. In Part II, the Board addresses comments regarding its statutory authority to adopt FORR. In Part III, the Board addresses comments regarding the appropriateness of a final offer procedure. In Part IV, the Board addresses the review criteria for FORR cases. In Part V, the Board addresses discovery and procedural schedule issues, including the Board's proposal to remove the use of adverse inferences and instead adopt a process for motions to compel discovery. The Board also proposes to include mandatory mediation in FORR cases and to extend the proposed procedural schedule to accommodate motions to compel and mandatory mediation. In Part VI, the Board addresses market dominance issues, including the Board's proposal to require only the complainant to submit market dominance evidence on opening. The Board also proposes to allow complainants to choose between streamlined and non-streamlined market dominance approaches and extends the proposed procedural schedule in cases where the complainant selects non-streamlined market dominance. In Part VII, the Board addresses the relief cap. Finally, in Part VIII, the Board addresses other miscellaneous issues. The text of the proposed rule as modified is below.

Although the modifications to the proposed rule described in this decision are not the type that would necessitate additional notice and comment under the Administrative Procedure Act,[16] the Board seeks further comment in this instance in order to determine if the outlined refinements would improve its proposed rule, and so that the modified FORR proposal may be considered in parallel with the proposal in Docket No. EP 765 to establish an arbitration program that could include an exemption from FORR for carriers that participate in the program. *See Arb. NPRM,* EP 765, slip op. at 14. In seeking additional comment, the Board does not limit its authority to adopt modifications that are a logical outgrowth of the NPRM or this SNPRM in any final rule without further comment.

Part I—Purpose of the Rule

The purpose of this proposed rule is to satisfy the statutory requirement that, if the Board determines that a rail carrier has market dominance over the transportation to which a particular rate applies, the rate established by such carrier for such transportation must be reasonable. *See* 49 U.S.C. 10701(d)(1).[17] A shipper's ability to challenge a rate subject to market dominance, and vindicate its statutory right to a Board decision on rate reasonableness, is frustrated where the litigation costs of the Board's available processes exceed the value of potential relief. *Non-Coal Proc.,* 1 S.T.B. at 1049. Furthermore, in addition to litigation costs, a shipper must also take into account the risk associated with the uncertainty of receiving relief and the time it may take to obtain a decision. As described in the *NPRM* and as noted above, the Board has sufficient grounds to conclude that shippers lack meaningful access to the Board's existing rate reasonableness processes with respect to small disputes, due to the complexity, cost, and duration of those processes. *NPRM,* EP 755 et al., slip op. at 3. The Board expects that FORR's procedural limitations should lower the cost of litigating rate disputes, providing complainants who otherwise might be deterred from bringing smaller rate cases under one of the Board's existing processes a more accessible avenue for rate reasonableness review by the Board. *Id.* at 7. Reduced litigation costs should also make it more feasible for complainants to prove meritorious cases, while a final offer selection process would discourage extreme positions and may facilitate settlement. *Id.*

Some rail interests question the need for a new procedure to resolve small rate disputes. (*See, e.g.,* AAR Comment 24; BNSF Comment 3.)[18] Shipper interests uniformly indicate that there is a need for such a procedure. (AFPM Comment 3; Coalition Ass'ns Comment 4; Farmers Union Comment 5–6; Growth Energy Comment 2; IMA–NA Comment 11–12; Indorama Comment 11–12; MillerCoors Comment 13–14; NGFA Comment 6; Olin Comment 1–9; PRFBA Comment 2; SMA Comment 11–12; WCTL Comment 1–2.) The Board will now address those comments.

AAR claims that the Board's only evidence of the problem to be solved—the lack of a meaningful avenue to address rate reasonableness in small disputes—is the ''purported scarcity of rate complaints.'' (AAR Comment 24.) According to AAR, the absence of complaints could be subject to other explanations, for example, that ''many rates are governed by contract, and those that are based on tariffs are generally reasonable.'' (*Id.*)

As indicated in the *NPRM,* however, that is not the only evidence of the problem. As the Board explained, the problem is illustrated by the lack of small rate cases *combined* with repeated shipper statements that they need rate relief but find the Board's existing processes too complex and expensive. *NPRM,* EP 755 et al., slip op. at 2–3; *see also id.* at 3 n.5. Comments from shipper interests in this proceeding bear out that problem. (*See, e.g.,* Farmers Union Comment 5–9 (explaining the challenges faced by customers with small rate disputes, as well as citations to evidence of steadily rising rail transportation rates for agricultural commodities in recent decades);[19]

[15] CP subsequently submitted a letter stating that it ''supports the effort to find a workable, reasonable, accessible arbitration program for small rate cases, and would participate in such a pilot program.'' CP Letter, Jan. 25, 2021, *Joint Pet. for Rulemaking to Establish a Voluntary Arb. Program for Small Rate Disps.,* EP 765.

[16] 5 U.S.C. 551. *See, e.g., Covad Commc'ns Co.* v. *FCC,* 450 F.3d 528, 548 (D.C. Cir. 2006) (recognizing that ''[a]n agency's final rule need only be a 'logical outgrowth' of its notice'').

[17] *See also* 49 U.S.C. 10701(d)(3) (requiring the Board to ''maintain 1 or more simplified and expedited methods for determining the reasonableness of challenged rates in those cases in which a full stand-alone cost presentation is too costly, given the value of the case''); 49 U.S.C. 10704(d)(1) (requiring the Board to ''maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates,'' including ''appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings.'').

[18] Unless otherwise specified, citations to the record are to the record in Docket No. EP 755.

[19] Notwithstanding these widespread rate increases, no rate case addressing rail transportation of agricultural commodities has been filed with the Board or the ICC since *McCarty Farms,* which

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NGFA Comment 5–6; USDA Comment 2–3.)

AAR's reasoning is circular: It suggests that, in order to justify adoption of a new process to determine *whether* specific rates are reasonable, the Board must already have evidence that rates in general *are* unreasonable. Committing to inaction based on such flawed logic would risk leaving shippers without a meaningful avenue to challenge unreasonable rates, in spite of substantial evidence of the need for such relief.

BNSF contends that the Board should not ''sidestep the innate complexity and sophistication of the core task before the agency.'' (BNSF Comment 3.) BNSF's implication seems to be that the subject matter is so complex that it may not be feasible to simplify it sufficiently for use in small disputes (*i.e.,* to address these difficult issues expeditiously and inexpensively enough that a case can be worth pursuing even with a relatively small amount of money at stake). The Board recognizes the concern raised by BNSF—the agency's decades-long efforts to create accessible small rate case processes attests to the difficulty of reconciling the economic complexity of railroad rate review with cost-effective dispute resolution.[20] But the statute's requirement that rates subject to market dominance be reasonable applies to large and small cases alike, and BNSF's concern cannot preclude further reform given Congress's mandate that simplified and expedited methods exist to challenge rate reasonableness in smaller cases. *See* 49 U.S.C. 10701(d)(3), 10704(d)(1).

BNSF also argues that the Board should limit any reforms to ''the discrete population of small sized shippers moving modest sized shipments that are inordinately impacted by the cost and complexity of the STB's current methodologies.'' (BNSF Comment 3–4.) BNSF does not explain how it would be fair or reasonable to limit a remedy to small *shippers* rather than small *disputes* (as the Board has done with other processes with relief caps), or why a potential complainant with a dispute smaller than the cost of using the Board's existing processes should be denied access to a new process merely because of the size of the entity. BNSF suggests that eligibility to participate in a new process should turn on whether the complainant has the ''ability to undertake the expense and burden'' present in a more expensive proceeding. (*Id.* at 3.) But even a large shipper with the means to proceed under one of the Board's existing rate reasonableness processes could not rationally be expected to do so where the time, risk, and cost of using that process would exceed the value of the case. Limiting FORR to small shippers would leave large shippers without recourse to challenge unreasonable rates in smaller cases, and therefore frustrate the statute's reasonableness requirement for rates subject to market dominance. *See* 49 U.S.C. 10701(d)(1).

UP argues that, instead of adopting FORR, the Board could accelerate Three-Benchmark cases by eliminating rebuttal, starting discovery when the complaint is filed, and committing to issue a decision in 60 days. (UP Comment 20–21.) It is far from clear that the length of Three-Benchmark cases presents the only deterrent for potential complainants. For example, the complexity due to defendants' expansive use of ''other relevant factors'' is also likely an issue. *See RRTF Rep.* 51–52. Eliminating the complainant's rebuttal and starting discovery upon the filing of the complaint, even in the name of faster record development, therefore seems unlikely to increase the utility of Three-Benchmark for complainants with small disputes.

For these reasons, based on the record to date, the Board finds that FORR would further the RTP goal of maintaining reasonable rates where there is an absence of effective competition, *see* section 10101(6), by providing increased access to rate reasonableness determinations in small disputes. By facilitating the determination of rate reasonableness in situations where it may not, in practice, have been feasible previously, FORR would also foster sound economic conditions in transportation. *See* section 10101(5). And FORR's short timelines would promote expeditious regulatory decisions and provide for the expeditious handling and resolution of proceedings. *See* section 10101(2), (15).

Part II—Statutory Authority To Adopt FORR

Railroad interests argue that the Board lacks statutory authority to adopt FORR. The Board disagrees for the reasons stated in the *NPRM* and below.

AAR asserts that Congress has not authorized the Board ''to determine the maximum reasonable rate through a baseball-style final offer process.'' (AAR Comment 8.) According to AAR, ''[n]othing in the governing statutes, or in the Administrative Procedure Act, authorizes the Board to adopt an adjudicatory method that so drastically departs from the way agency adjudications and rate-setting proceedings have historically been conducted.'' (*Id.* at 9.) AAR is incorrect. Section 10701(d)(3) authorizes (and in fact, requires) the Board to maintain one or more ''simplified and expedited methods for determining the reasonableness of challenged rates in those cases in which a full [SAC] presentation is too costly, given the value of the case.'' [21] This provision does not expressly identify the specific methods that the Board can use for simplified and expedited rate cases, and courts have affirmed the Board's significant discretion to pursue various ''possible regulatory approaches'' in this area. *See Burlington N. R.R.* v. *ICC* (*McCarty Farms Appeal*), 985 F.2d 589, 597 (D.C. Cir. 1993). AAR does not identify anything in section 10701(d)(3) to support its contention that the Board is limited in rate review proceedings to ''the way agency adjudications and rate-setting proceedings have historically been conducted.'' (AAR Comment 9.) *See also* 49 U.S.C. 10704(d)(1) (requiring the Board to ''maintain procedures to ensure the expeditious handling of challenges to the reasonableness of railroad rates,'' including ''appropriate measures for avoiding delay in the discovery and evidentiary phases of such proceedings.'').[22]

commenced in 1981. *See McCarty Farms, Inc.* v. *Burlington N., Inc.,* 2 S.T.B. 460, 462–63 (1997) (denying rate relief after reopening and remand).

[20] To this end, in the *NPRM,* the Board stated that parties may file comments as to whether and how the Board might provide assistance to parties—particularly smaller entities—regarding how best to utilize the proposed FORR procedure. *NPRM,* EP 755 et al., slip op. at 17. In response, AFPM states that ''support and assistance should be limited to guidance documents and similar materials. AFPM believes STB should focus efforts on implementing the program effectively before pursuing major efforts to supply hands-on assistance.'' (AFPM Comment 10.) The Board remains open to ways in which it might provide assistance to participants.

[21] AAR argues that section 11(c) of the STB Reauthorization Act does not authorize FORR because it refers to ''procedures that are available to parties in litigation before courts.'' (AAR Comment 10–11.) The plain language of section 11(c), on which the *NPRM* did not rely, does not limit the Board to such procedures, but merely requires the Board to ''assess'' those procedures for their ''potential'' use in rate cases, which the Board did in a different proceeding. *See Expediting Rate Cases,* EP 733 (STB served Nov. 30, 2017); STB Reauthorization Act section 11(c) (directing the Board to ''initiate a proceeding to assess procedures that are available to parties in litigation before courts to expedite such litigation and the potential application of any such procedures to rate cases.'').

[22] AAR also argues that ''the Board fails to identify any other agency that uses Final Offer Rate Review outside the arbitral context.'' (AAR Comment 9.) But under the statute, whether another agency might use a final offer process has no bearing on whether the Board may adopt such a procedure. And, as noted in the *NPRM,* the final offer structure is already a central part of adjudications under the Board's Three-Benchmark test. *NPRM,* EP 755 et al., slip op. at 4.

Certain railroad interests also emphasize that ''[f]inal-offer decisionmaking is an *arbitration* technique,'' and contend that because the Board lacks authority from Congress to impose mandatory arbitration, it lacks authority to adopt FORR. (AAR Comment 8–9; *see also* CN Comment 6; CSXT Comment 2.) But the fact that this decision-making structure is often used in arbitration does not mean that FORR *is* arbitration. *See NPRM,* EP 755 et al., slip op. at 4–6 (noting that, in addition to arbitration, the final offer structure is a key part of adjudications by the Board under its existing Three-Benchmark test). Indeed, the *NPRM* made clear that FORR was not an arbitration proposal and that ''*the Board* would make the determination of rate reasonableness as it does under the Board's current options for challenging the reasonableness of rates.'' *See id.* at 4 (footnote omitted).[23] And while it is true that Congress did not authorize mandatory arbitration, it did authorize the development of new methods and procedures for use by *the Board* in evaluating rate reasonableness. 49 U.S.C. 10701(d)(3), 10704(d)(1). The absence of statutory authority for third-party arbitrators to conduct mandatory arbitration does not prohibit the Board from adopting decisional procedures also used by arbitrators.[24] That is particularly true here, where the statutory authorization is open-ended regarding the decisional procedures that the Board may adopt.

AAR cites a decision of a federal district court, in which, according to AAR, ''[t]he court rejected an agency's attempt to use final-offer decisionmaking . . . concluding that the agency lacked statutory authorization to adopt the procedure.'' (AAR Comment 13 (citing *Stone* v. *U.S. Forest Serv.,* No. Civ. 03–586–JE, 2004 WL 1631321 (D. Or. July 16, 2004)).) *Stone* is readily distinguishable. At issue there was a statute allowing owners of private property in a national scenic area an opportunity to avoid certain land use restrictions by selling their land to USDA for fair market value. *See Stone,* 2004 WL 1631321 at *1–2. USDA, acting through the Forest Service, established a procedure for establishing fair market value whereby it compared its own fair market appraisal with the landowner's appraisal and selected the one with the strongest support for value. *Id.* at *3. There was no provision for price negotiation, and no additional appraisals would be considered after an appraisal was selected. *Id.*

In assessing this procedure, the district court noted that ''in all probability the Forest Service would simply ignore'' the landowner's appraisal and ''rely exclusively upon the report of its own appraiser.'' *Id.* at *3. From there, it questioned whether ''Congress ever has or could give a federal agency the power to unilaterally determine the ultimate price it must pay to acquire private property for public purposes, over the objections of an unwilling seller.'' *Id.* at *5. The court concluded that by ''arbitrarily clos[ing] its eyes to additional appraisals submitted by the owner, or categorically prohibit[ing] negotiation regarding the purchase price,'' the Forest Service's procedure would frustrate, rather than further, the statute's goal of affording landowners an opportunity to dispose of burdened property. *Id.* at *7.

Here, the Board would not be using a final offer process to set the price of a transaction to which the government itself is a party, a fact that weighed heavily on the outcome in *Stone.* Accordingly, FORR does not raise the same concerns raised in *Stone:* There is no suggestion that the Board would not fairly consider both parties' final offers, and their respective replies, or the question of whether the shipper has demonstrated both market dominance and that the challenged rate is unreasonable under governing statutory principles, both prerequisites to rate relief. And by expanding accessibility to rate relief, FORR would further implement the statute's directive to create methods and procedures to determine what is reasonable. 49 U.S.C. 10701(d)(3), 10704(d)(1). In this proposed rule, the Board has done so, while specifically accounting for the overarching principles that Congress provided. *See NPRM,* EP 755 et al., slip op. at 10–12. Accordingly, *Stone* is inapposite.

CN argues that because section 10701(d)(3) authorizes development of a simplified ''method,'' and FORR does not provide for an economic methodology that the Board will use to determine the reasonableness of the challenged rate, the statute does not authorize FORR. (*See* CN Comment 6–8.) CN mischaracterizes the statutory language. The definition of ''method'' encompasses ''a procedure or process for attaining an object.'' [25] CN acknowledges that FORR is a procedure, (*see* CN Comment 7), and FORR plainly satisfies the express terms of section 10701(d)(3).[26]

UP claims, without support, that ''[b]y adopting FORR . . . the Board would be unlawfully constraining the exercise of its congressionally delegated authority'' by ''mak[ing] itself a prisoner of the parties' submissions.'' (UP Comment 3.) The simple fact is that the Board's exercise of discretion to offer FORR would not constrain its authority to prescribe a maximum rate under section 10704(a)(1). FORR would instead facilitate the exercise of that authority, and in doing so further Congress's intent that rate review be available at the Board, through the enhancement of shippers' opportunities to challenge rates subject to market dominance under the relevant criteria by providing an additional option available to potential complainants. And even if the Board could be said to be using something less than its congressionally delegated authority (which it is not), the agency may choose to act within a narrower range than Congress authorized. *See, e.g., Midtec Paper Corp.* v. *Chi. & N.W. Transp. Co.,* 3 I.C.C.2d 171, 181 (1986), *aff'd sub nom. Midtec Paper Corp.* v. *United States,* 857 F.2d 1487, 1500 (D.C. Cir. 1988).

Accordingly, the Board would act within its statutory authority in adopting FORR.

Part III—Appropriateness of a Final Offer Procedure

Railroad interests advance a variety of arguments assailing the appropriateness of a final offer procedure for rate reasonableness determinations by the Board. The Board addresses these arguments below.

[23] As courts have recognized, an arbitration is the resolution of a dispute by a private arbitrator. *See, e.g., Stolt-Nielsen S.A.* v. *AnimalFeeds Int'l Corp.,* 559 U.S. 662, 682 (2010) (''[A]n arbitrator derives his or her powers from the parties' agreement to forgo the legal process and submit their disputes to private dispute resolution.''); *IDS Life Ins. Co.* v. *SunAmerica, Inc.,* 103 F.3d 524, 528 (7th Cir. 1996) (arbitration is ''private ordering'').

[24] *See, e.g., Bernhardt* v. *Polygraphic Co. of Am.,* 350 U.S. 198, 203 (1956) (''The nature of the tribunal where suits are tried is an important part of the parcel of rights behind a cause of action. The change from a court of law to an arbitration panel may make a radical difference in ultimate result. . . . Arbitrators do not have the benefit of judicial instruction on the law; they need not give their reasons for their results; the record of their proceedings is not as complete as it is in a court trial; and judicial review of an award is more limited than judicial review of a trial. . . .'').

[25] *See Method,* Merriam-Webster, *http://merriam-webster.com/dictionary/method* (last visited Oct. 13, 2021). Similarly, Black's Law Dictionary defines ''method'' as ''a mode of organizing, operating, or performing something, esp. to achieve a goal.'' *Method, Black's Law Dictionary* (11th ed. 2019).

[26] Even if Congress had used the word ''methodology'' rather than ''method,'' the dictionary definition is very similar and would also include FORR: ''a body of methods, rules, and postulates employed by a discipline: a particular procedure or set of procedures.'' *See Methodology,* Merriam-Webster, *http://merriam-webster.com/dictionary/methodology* (last visited Oct. 13, 2021).

A. Use of a Final Offer Procedure in Adjudication

In addition to its statutory authority arguments discussed above, AAR also argues that, in using FORR, the Board would be ''abandon[ing] its statutory duty to apply the law in determining, based on its own best judgment, the maximum reasonable rate.'' (AAR Comment 10.) Final offer decisionmaking, according to AAR, amounts to the adjudicator deciding which party's proposal ''comes closest to the correct outcome'' rather than determining the correct outcome.

AAR's argument ignores the fact that adjudicators routinely rely on or adopt the parties' submissions or decisional framework. AAR implies that, to reach a ''legally correct outcome,'' the Board must perform a rate analysis distinct from any party's pleadings within each case; otherwise, it somehow violates that provision within § 10704 authorizing it to establish the ''maximum rate.'' But here the Board has established a process and a set of analytical criteria in which to exercise its judgment in individual cases. That approach is not novel. For example, apart from evidence regarding ''other relevant factors,'' which is optional, the Board's Three-Benchmark test comprises a final offer process and a formula—an approach in which the Board exercises its discretion in deciding between the parties' comparison groups under a final offer structure. *See Union Pac. R.R.* v. *STB,* 628 F.3d 597, 601 (D.C. Cir. 2010) (''Since the revenue need adjustment factor is derived from static figures published annually by the Board, the Three Benchmark framework's reasonableness determination generally turns on the Board's selection of a comparison group.'') Likewise, in FORR, the Board would exercise its best judgment at multiple stages, including its determination of whether the challenged rate has been shown to be unreasonable under the governing criteria and, if necessary, its selection of an offer. *See NPRM,* EP 755 et al., slip op. at 10–11.

AAR similarly asserts that in some cases the maximum reasonable rate may be above or below the parties' final offers, whereas in others it may fall between the final offers. (AAR Comment 12.) It claims that, through FORR, the Board would abdicate its independent judgment to determine a maximum reasonable rate, and quotes *McCarty Farms Appeal* for the proposition that ''[o]f course no adjudicator would expect to be able to rely entirely on one side's analysis.'' (*Id.* (citing *McCarty Farms Appeal,* 985 F.2d at 599).)

This argument incorporates the same mistaken assumptions as the argument previously addressed. In particular, AAR assumes that ''what in the Board's view is the actual maximum'' depends solely on the Board's analysis within an individual case. But the Board also ''exercise[s] its independent judgment'' in creating a decisionmaking process with less discretion within the individual case, as in Three-Benchmark. The fact that the Board is applying a process or even a formula created outside of an individual adjudication does not mean it is not an exercise of judgment. AAR's definition of the maximum reasonable rate is telling: ''the rate that *best* achieves the many objectives the Board is statutorily required to consider.'' (AAR Comment 12 (emphasis added).) This argument—which boils down to an appeal that the Board determine the reasonableness of rail rates ''in the abstract''—was rejected in *CSX Transportation,* 568 F.3d at 242. There, the court indicated that in order to give shippers a ''meaningfully effective way to seek some degree of redress for unreasonable rail rates,'' section 10701(d)(3) authorized the Board to adopt procedures even if they do not yield the level of precision seemingly demanded by AAR here. *Id.* Regardless, and as explained at length in the NPRM and in this decision, FORR is a process that achieves the Board's various statutory objectives. *See, e.g.,* 49 U.S.C. 10101(1)–(3), (6), (15), 10701(d)(2), (3), 10704(d)(1).[27] Indeed, in establishing the maximum lawful rate using a FORR process, the Board would continue to balance economic considerations together with administrative feasibility in defining a process ahead of time. *See BNSF Ry.* v. *STB,* 453 F.3d 473, 482 (D.C. Cir. 2006) (''The pursuit of precision in rate proceedings, as in most things in life, must at some point give way to the constraints of time and expense, and it is the agency's responsibility to mark that point.'').[28]

Contrary to AAR's suggestion, nothing in *McCarty Farms* stands for the proposition that the Board may not accept one party's proffered rate where it finds it superior to the rate offered by the other party. In noting that ''no adjudicator would be expected to rely entirely on one side's analysis,'' the court appears to have been merely emphasizing that all submissions in litigation tend to be self-serving to some extent. *See McCarty Farms Appeal,* 985 F.2d at 598–99. In any event, under FORR, each party would have an opportunity to submit analysis with its reply pointing out deficiencies in the other side's analysis, which the Board would consider in assessing the reasonableness of the challenged rate and the merits of the parties' respective offers. *See NPRM,* EP 755 *et al.,* slip op. at 12. Moreover, a final offer process would give parties an incentive to moderate their positions, which is demonstrably absent from SAC (where parties may expect the Board to seek the middle ground).[29] In that regard, parties are reminded that FORR would not reward extreme positions; parties likely would have greater success by presenting more moderate proposals.

UP makes a similar argument, claiming that, unless the Board engages in an issue-by-issue weighing of

[27] UP argues in the same vein that ''the Board might choose the shipper's final offer, even though the rate is below the 'maximum rate' that would otherwise be objectively reasonable, *id.* section 10704(a)(1), or it might decide the challenged rate is better than the alternative, even though it believes the rate exceeds an objectively 'reasonable' rate, 49 U.S.C. 10701(d)(1).'' (UP Comment 5.) According to UP, ''under FORR, the Board would not determine whether a challenged rate is reasonable by measuring it against the maximum reasonable rate calculated using the statutory criteria.'' (UP Comment 9–10.) Like AAR, UP insists that there must be an ''objectively reasonable'' rate outside of any process used to determine the maximum reasonable rate. UP's theory seems to be that the ''statutory criteria'' themselves provide a calculation, and in individual cases, the Board measures the challenged rate against the ''maximum reasonable rate'' resulting from the statute. But in fact, the statute supplies no calculations. Instead, the ICC and the Board have developed processes that are applied in individual cases to produce a maximum reasonable rate—as in FORR. If a party's FORR submission fails to adhere to the statutory criteria, it would be unlikely to prevail on rate reasonableness, and if necessary, selection of an offer.

[28] In its comment in response to the ex parte meeting memoranda, AAR restates these objections, arguing that the Board must engage in a three-step process to rule on rate reasonableness: (1) Determine market dominance; (2) determine whether the challenged rate is unreasonable; and (3) determine the reasonable rate, taking into account the Long-Cannon factors and railroad revenue adequacy. (AAR Comment in Response to Mem. 2–3, Aug. 12, 2020.) Contrary to AAR's argument, the FORR process accounts for each of these three steps. *See NPRM,* EP 755 et al., slip op. at 10–14. As discussed below, the Board confirms in this *SNPRM* that the determination in the third step would be the determination of the maximum reasonable rate.

[29] According to AAR, ''even if final-offer procedures were an acceptable method of retrospective dispute resolution, there is no basis for using them with regard to the Board's 'legislative function' of setting rates prospectively. *See Ariz. Grocery Co.* v. *Atchison, Topeka & Santa Fe Ry.,* 284 U.S. 370 (1932) (unlike backward-looking awards of reparations, prescribing a maximum rate is legislative and forward-looking).'' (AAR Comment 13.) But AAR fails to explain this position, and seems to overlook the fact that the provisions authorizing the Board to develop methods for the resolution of disputes apply specifically to prospective rate-setting. *See* sections 10701(d)(3), 10704(d)(1).

alternatives within each individual case (as opposed to exercising some of its discretion in advance), it fails to protect the public interest. (*See* UP Comment 3–4.) UP is incorrect for the same reasons stated above. UP cites a Board decision that observes that ''the ICC was not the prisoner of the parties' submissions, but rather had the duty to 'weigh alternatives and make its choice according to its judgment of how best to achieve and advance the goals of the [RTP].' '' *Pub. Serv. Co. of Colo.* v. *Burlington N. & Santa Fe Ry.,* NOR 42057, slip op. at 4 (STB served Jan. 19, 2005) (quoting *Balt. & Ohio R.R.* v. *United States,* 386 U.S. 372, 430 (1967) (Brennan, J., concurring)). Again, that is exactly what the Board proposes to do in this rulemaking: Exercise its judgment to develop a procedure for smaller rate cases that will best ''achieve and advance the goals of the [RTP].'' That the Board has affirmed its authority in other cases to exercise its judgment notwithstanding the parties' submissions does not mean it cannot also adopt a final offer procedure where the Board chooses to exercise less discretion. Indeed, UP's issue-by-issue weighing approach would preclude not only FORR, but also the Three-Benchmark test, which has been judicially affirmed. *See supra* at 3; *see also Union Pac. R.R.,* 628 F.3d at 601 (explaining that the Three-Benchmark test generally turns on the Board's selection of a comparison group—a final offer process in which ''the Board's selection is an 'either/or' choice between the parties' final offers, with no modifications allowed'').

UP contends that Three-Benchmark is distinguishable from FORR because parties can claim ''other relevant factors,'' which acts as a ''safety valve.'' (UP Comment 6.) However, ''other relevant factors'' are optional, and in three of the four proceedings decided under Three-Benchmark, the Board rejected all proposed ''other relevant factors.'' [30] Moreover, because litigation over proposed ''other relevant factors'' has substantially expanded the scope of Three-Benchmark cases, it appears that ''other relevant factors'' are a reason—perhaps a primary reason—why complainants have not pursued many Three-Benchmark cases. *See RRTF Rep.* 51–52.[31]

In an analogous argument, UP describes the Federal Communications Commission's (FCC) adoption of final offer arbitration for interconnection rates, which are required to be just and reasonable. (UP Comment 7.) The FCC's procedure requires the arbitrator to ensure that the offers comply with the statutory standards, and if they do not, the arbitrator can take steps designed to result in an outcome that satisfies those standards, including requiring the parties to submit new final offers or adopting a result not submitted by any party. (*See id.*) Such an approach, while certainly permissible, would eliminate the ''either/or'' nature of a final offer selection that the *NPRM* cited as a benefit. *NPRM,* EP 755, slip op. at 13; *see also Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 18 & n.25 (''This ['either/or'' final offer] approach will work as intended only if the parties know that the agency will not attempt to find a compromise position somewhere in the middle. . . . [W]e cannot preserve the incentives created by a final-offer selection process and retain the discretion to formulate our own comparison group. Accordingly, we will not adopt [a proposal for the Board to retain the discretion to modify the parties' final offers], which would defeat the purpose of a final-offer selection process.''). Moreover, as explained in the *NRPM,* the Board's criteria for determining rate reasonableness and choosing between offers would be based, in part, upon consideration of the RTP and the Long-Cannon factors, ensuring that the Board would consider the relevant statutory standards. *NPRM,* EP 755 *et al.,* slip op. at 10–11.[32]

CN argues that, under FORR, the Board would not make a finding that the winning offer is the maximum reasonable rate. (CN Comment 9–10.) While CN is correct that the *NPRM* did not state expressly that the selected offer would be found to be the maximum reasonable rate, it is apparent from other language in the *NPRM* that it would be. *See NPRM,* EP 755 *et al.,* slip op. at 10 (''Each party's final offer should reflect what it considers to be the maximum reasonable rate.''). The Board now clarifies that if a FORR case reaches the final offer selection stage (*i.e.,* the Board has found market dominance and that the challenged rate is unreasonable), the offer selected would be found to be the maximum reasonable rate.[33] Also, the Board clarifies that each party's final offer *must* reflect what it considers to be a maximum reasonable rate. (*See* UP Comment 16 n.8 (questioning the *NPRM*'s use of ''should'' with respect to this issue).[34])

B. ''Full Hearing'' Requirement

AAR argues that FORR would not satisfy the ''full hearing'' requirement of 49 U.S.C. 10704(a)(1), because, according to AAR, the Board ''has tied [its] hands by artificially limiting [its] decisional range to two possibilities'' and has not ''retained [its] full decisionmaking powers.'' (AAR Comment 15–16.) AAR cites *Morgan* v. *United States,* 304 U.S. 1, 12 (1938), for the proposition that ''Congress, in requiring a 'full hearing,' had regard to judicial standards—not in any technical sense but with respect to those fundamental requirements of fairness which are of the essence of due process in a proceeding of a judicial nature.'' (AAR Comment 15.) AAR contends that, just as a judge cannot reject ''fundamental elements of a trial,'' the Board cannot ''announce in advance that it will confine its decisional outcome to the parties' two proposals.'' (*Id.* at 15–16; *see also* CN Comment 10; AAR Comment in Response to Mem. 4, Aug. 12, 2020.)

In a 1984 decision, the ICC rejected an argument that a ''full hearing'' means a formal ''trial-type'' hearing under sections 556 and 557 of the Administrative Procedure Act (APA),

[30] *See E.I. DuPont de Nemours & Co.* v. *CSX Transp., Inc.,* NOR 42099, slip op. at 14–15, 17–19 (STB served June 30, 2008); *E.I. DuPont de Nemours & Co.* v. *CSX Transp., Inc.,* NOR 42100, slip op. at 11–13, 15–18 (STB served June 30, 2008); *E.I. DuPont de Nemours & Co.* v. *CSX Transp., Inc.,* NOR 42101, slip op. at 10–12, 14–16 (STB served June 30, 2008).

[31] With respect to UP's focus on the public interest, as the Coalition Associations point out, UP loses sight of the fact that the Board is proposing to act here because shippers with small rate cases lack reasonable access to the Board's existing rate remedies—a situation which itself impinges on the public interest. (*See* Coalition Associations Reply Comment 11–12.)

[32] According to AAR, a procedure is not actually a final offer procedure unless there is a series of offers back and forth, narrowing the dispute before final offers are submitted to the decision-maker. (*See* AAR Comment 22.) AAR provides no support for this statement. Canadian final offer arbitration, for example, does not require the model suggested by AAR. *See* Canada Transp. Act, S.C. 1996, c. 10, as amended, sections 161(2), 161.1(1) (Can.). Accordingly, this feature is not universal and is not a defining feature of a final offer process.

[33] CN also implies that, under FORR, the Board would choose between final offers without first making a finding that the challenged rate is unreasonable. (CN Comment 9–10.) But the *NPRM* states exactly the opposite. *NPRM,* EP 755 *et al.,* slip op. at 13.

[34] UP further argues that requiring a defendant's final offer to reflect what it considers to be the maximum reasonable rate ''would in many cases require railroads to defend higher rates than they actually want to charge.'' (UP Comment 16 n.9.) The basis for UP's concern is unclear, given that defendant railroads routinely submit rate case analyses that produce R/VC ratios higher than the challenged rate, sometimes much higher. *See, e.g.,* UP Opening Evid. 31, 61 & n.62 (citing workpaper with calculations), *US Magnesium, L.L.C.* v. *Union Pac. R.R.,* NOR 42114. Railroads have not hesitated to defend those rates.

noting that the phrase ''full hearing'' is not the same as the ''on the record'' language that is a significant factor in deciding whether formal hearing procedures are required. *State Intrastate Rail Rate Auth.—Tex.,* 1 I.C.C.2d 26, 34–35 (1984). As the ICC observed, where a hearing on the record is not required, an agency has ''considerable discretion to establish appropriate procedures.'' *Id.* (citing *Vt. Yankee Nuclear Power Corp.* v. *Nat'l Res. Def. Council,* 435 U.S. 519, 524 (1978) (''generally speaking,'' the APA ''established the maximum procedural requirements which Congress was willing to have the courts impose upon agencies in conducting rulemaking procedures.'')).

In denying a petition for review of the ICC's decision, the court of appeals rejected the appellant's contention that by requiring a ''full hearing,'' the relevant statutory provision requires a formal hearing, affirming that such formality will ''obtain only on the requirement of a 'hearing on the record.'" *R.R. Comm'n of Tex.* v. *United States,* 765 F.2d 221, 227 (D.C. Cir. 1985). Notably, the court held that where the formal hearing requirements of the APA are not triggered, the agency has ''substantial flexibility to structure the hearings it must provide.'' *Id.* at 228 (quoting *Sea-Land Serv., Inc.* v. *United States,* 683 F.2d 491, 495 (D.C. Cir. 1982)). This required the ICC to ''conduct whatever proceedings are necessary to ensure that it has sufficient information so that its final decision reflects a consideration of the relevant factors.'' *Id.* (quoting *Sea-Land Serv.,* 683 F.2d at 496).

The Supreme Court has confirmed that agencies have such discretion. In *Pension Benefit Guaranty Corp.* v. *LTV Corp.,* 496 U.S. 633 (1990), the Court upheld a Pension Benefit Guaranty Corporation (PBGC) decision after a lower court had, among other things, found the decision arbitrary and capricious because the ''PBGC's decisionmaking process of informal adjudication lacked adequate procedural safeguards.'' *Id.* at 644. The Supreme Court reversed, explaining that, per *Vermont Yankee,* ''courts are not free to impose upon agencies specific procedural requirements that have no basis in the APA'' and that the court of appeals ''did not point to any provision in [PBGC's governing statute] or the APA which gives [respondent] the procedural rights the court identified.'' *Id.* at 654–55. It concluded that PBGC's determination ''was lawfully made by informal adjudication, the minimal requirements for which are set forth in the APA, 5 U.S.C. 555, and do not include such [further] elements.'' *Id.* Here, AAR and other railroad commenters do not point to any language in sections 10701(d)(3), 10704(a)(1), or otherwise, that restricts the Board's discretion to set a rate by selecting the best of two offers after it finds the challenged rate unreasonable and considers appropriate statutory principles.

AAR's reliance on *Morgan,* a decision that predates enactment of the APA, is also misplaced. Contrary to AAR's suggestion, the ''full hearing'' requirement, as interpreted in *Morgan,* speaks not to how an agency renders its decision, but rather to the parties' rights in agency adjudications to be ''heard.'' FORR provides sufficient opportunity for parties to be heard and to critique opposing arguments, similar to parties' opportunities under other rate reasonableness procedures such as Three-Benchmark.

Morgan involved an order by the Secretary of Agriculture setting maximum rates to be charged at Kansas City stockyards. *Morgan,* 304 U.S. at 13. There, USDA opened an inquiry into the rates charged at the stockyards and collected a voluminous amount of evidence. *Id.* at 15–16. The Secretary of Agriculture held an oral argument to consider the evidence, but USDA's Bureau of Animal Industry (which was seeking to set the rates) submitted no briefing, and other than what it said at argument, ''formulated no issues and furnished [the stockyard entities] no statement or summary of its contentions and no proposed findings.'' *Id.* at 16. The Secretary denied a request by the stockyard entities for a tentative report, ''to be submitted as a basis for exceptions and argument,'' and instead adopted findings prepared by the Bureau of Animal Industry, leaving the stockyard entities no ''opportunity . . . for the examination of'' those findings until after the Secretary had served his order. *Id.* at 17. In reversing a lower court that had affirmed the Secretary's order, the Supreme Court held that a ''full hearing'' includes ''a reasonable opportunity to know the claims of the opposing party and to meet them.'' *Id.* at 18. It further held that ''[t]hose who are brought into contest with the Government in a quasi-judicial proceeding aimed at the control of their activities are entitled to be fairly advised of what the Government proposes and to be heard upon its proposals before it issues its final command.'' *Id.* at 18–19.

The concerns underlying the Supreme Court's decision in *Morgan* are not present with respect to FORR, under which both parties would have ample opportunity to be heard, with two rounds of briefing. Moreover, because the Board would confine its choice to one of two proposals (only after finding the challenged rate unreasonable), the defendant would know the complainant's claim and the rate that it might face should the Board select the complainant's offer, and would have an opportunity to respond to that offer. Even assuming *Morgan* survived enactment of the APA, which is not clear, FORR clearly satisfies its interpretation of a ''full hearing.''

C. Burden of Proof

AAR suggests that FORR would relieve the complainant of its burden of proof, because the Board would simply consider the burden carried if it selected the complainant's offer. (*See* AAR Comment 16.) However, this is not what the *NPRM* proposed. As described in the following section, the complainant must still meet its burden by establishing that the challenged rate is unreasonable. *NPRM,* EP 755 *et al.,* slip op. at 13. And as made clear above, each party's final offer *must* reflect what it considers to be a maximum reasonable rate. The fact that a party's analysis of the reasonableness of the challenged rate would almost certainly be the same analysis supporting its offer does not mean the Board would simply pass by the rate reasonableness step. On the contrary, even if the complainant's offer is superior to the defendant's offer, the complainant would not prevail if it failed to prove that the challenged rate is unreasonable. *See NPRM,* EP 755 *et al.,* slip op. at 12–13.

AFPM states that it does not ''share STB's assertion that the burden of proof must always be on the complainant (*e.g.,* rail shipper) and encourage[s] STB to consider scenarios where the burden of proof is on the rail carrier.'' (AFPM Comment 8.) However, the Board has long held that complainants bear the burden of proof in rate reasonableness proceedings. *See, e.g., Union Pac. R.R.,* FD 35504, slip op. at 2; *Duke Energy Corp.* v. *Norfolk S. Ry.* (*Duke/NS*), 7 S.T.B. 89, 100 (2003).

WCTL states that the parties' presentations ''may be akin to ships passing in the night, and the Board might find each method has merit.'' (WCTL Comment 10.) To address this issue, WCTL proposes that the Board follow the approach used in larger rate cases, in which shippers may select one of several ''constraints'' to prove entitlement to rate relief. (*See id.* at 10–11 (citing *Coal Rate Guidelines, Nationwide,* 1 I.C.C.2d 520, 534 n.35 (1985).) It asks that the Board in FORR cases similarly allow the complainant

shipper to select the governing methodology, so long as the Board finds the methodology, and final offer developed using that methodology, to be reasonable. (*Id.*) WCTL also notes that because complainants bear the burden of proof in rate reasonableness cases, ''[i]t is only fair that the party with the burden of proof can select the maximum rate standard it chooses to utilize to prove its case, and that the Board accept this choice if it is reasonable and supported.'' (*Id.* at 11.)

WCTL apparently intends its proposal to apply in both the evaluation of the reasonableness of the challenged rate, and, if the challenged rate is found unreasonable, the selection of offers. But applying it in the selection of offers would eliminate the final offer element of FORR—rather than selecting between two offers, the Board would simply stop at the complainant's offer if it were ''reasonable and supported.'' (*See id.* at 11.) The beneficial incentives and dynamics produced by a final offer process, discussed above and in the *NPRM,* would be unavailable. *See NPRM,* EP 755 et al., slip op. at 4–7. Nor would it be appropriate to apply WCTL's proposal to the evaluation of the challenged rate. Simply because a shipper may select one of several of the Board's established constraints to challenge a rate in a larger case, it does not follow that a shipper should be entitled to dictate the methodology used in an expedited FORR proceeding (potentially including a methodology of the shipper's own creation introduced for the first time in a particular case). A fundamental aspect of FORR is that the Board would provide more flexibility in methodologies and would consider both sides' proposed methodologies for evaluating the reasonableness of the challenged rate. WCTL's argument to the contrary, it would not be fair to the defendant to establish a principle dictating in advance the selection of the complainant's methodology in a FORR case even where there is persuasive evidence that the defendant's methodology yields a result that better satisfies the statutory standards.

D. Specific Scenarios Under FORR

Some railroad interests posit scenarios intended to show that FORR suffers from conceptual flaws that would prevent it from functioning properly.

In a purely hypothetical argument, AAR poses a scenario in which the complainant's offer is below the jurisdictional threshold, *see* 49 U.S.C. 10707(d)(1)(A), and hence ''impermissibly low,'' and yet the complainant otherwise proves that the defendant's offer—be it the challenged rate or otherwise—is unreasonable and hence ''impermissibly high.'' (*See* AAR Comment 16–17.) As the *NPRM* pointed out, however, the Board may not set the maximum reasonable rate below the level at which the carrier would recover 180% of its variable costs of providing the service. *NPRM,* EP 755 et al., slip op. at 10 n.21. Given the either/or nature of a final offer process, a complainant would have to submit a final offer at or above the jurisdictional threshold to be entitled to relief, regardless of whether its methodology supports a lower rate.

UP claims that, in a FORR case, the Board could never select a railroad's final offer. (*See* UP Comment 11–14.) This claim starts from the incorrect premise that, in every case, ''the railroad's final offer will be equal to or exceed the challenged rate.'' (*See id.* at 11–12, 21–22 (mistakenly assuming that discovery would be unfair to defendants because the railroad's final offer and the challenged rate ''will inevitably be the same'').)[35] In the abstract, UP may not want to ''conced[e] that the challenged rate is unreasonable,'' but in specific cases it could be an effective strategic decision for the railroad to offer a rate that is lower than the challenged rate but higher than the complainant's offer.[36]

UP also describes a hypothetical situation in which a complainant submits very compelling evidence that the challenged rate is unreasonable and no evidence whatsoever in support of its offer. (*See* UP Comment 15–16.) In that situation, UP argues, the Board would have to accept that unsupported (and unreasonably low) offer, because it cannot prescribe the challenged rate after finding it unreasonable. (*See id.*) UP again assumes, incorrectly, that a railroad's final offer must be identical to the challenged rate. Such a scenario is also extremely unlikely because it is implausible that a complainant's analysis producing an unsupported and unreasonably low rate could satisfy FORR's proposed decisional criteria to show that the challenged rate is unreasonable.

E. FORR's Encouragement of Settlements

The *NPRM* observed that a final offer procedure may help to encourage the private settlement of disputes. *NPRM,* EP 755 *et al.,* slip op. at 7. AAR contends that, if FORR does encourage settlements, it will not create precedent that will guide parties in future disputes. (AAR Comment 20.) While AAR's observation may be true, at least in part, it fails to demonstrate a problem with FORR. Increasing the frequency of settlements, and therefore avoiding the cost and time of litigation, would be a better outcome for parties and the Board. *See, e.g., U.S. Dep't of Energy* v. *Balt. & Ohio R.R.,* NOR 38302S *et al.,* slip op. at 5 (STB served June 28, 2017) (''Wherever possible, the Board's longstanding policy is to encourage the private resolution of disputes through voluntary negotiations among all interested parties.''). By contrast, if most disputes are litigated, that would be a less favorable development, even though precedent would develop more quickly.[37]

AAR also argues that it is unreasonable for a railroad to face the ''coercive pressure'' inherent in a final offer procedure, which is what encourages settlements. (*See* AAR Comment 21–22.) AAR asserts that the risks faced by shippers and railroads are not reciprocal, because the Board would never prescribe a rate higher than the challenged rate. (*See id.; see also* UP Comment 14–16, 18.)

This lack of reciprocity is a result of the Board's statutory mandate to regulate railroad conduct, rather than shipper conduct. *See, e.g.,* 49 U.S.C. 10704(a)(1) (authorizing the Board to prescribe a rate or practice for a carrier). It may be true that that statutory limitation could produce different incentives than parties have in other final offer procedures. But in proposing FORR, the Board has weighed the competing considerations and determined that FORR would provide sufficient benefits (*see, e.g., NPRM,* EP 755 *et al.,* slip op. at 4–7) even if it were found not to afford the full settlement incentives present in certain other contexts.[38] Additionally, while the

[35] UP also argues that a railroad concerned about its ability to defend the challenged rate would settle instead. (*Id.* at 13.) Settlement is possible, of course, but UP provides no support for the idea that it would *necessarily* happen—for example, the parties' positions could still diverge too much to allow for a negotiated resolution.

[36] This strategic decisionmaking is analogous to what happens in other types of litigation. In a SAC case, for example, a party can deliberately take a less aggressive position on an element of the analysis if it is concerned about its likelihood of success—a decision that changes what the party ultimately submits as the SAC rate.

[37] Without citing support, AAR claims that uncertainty would deter negotiated outcomes. (*See* AAR Comment 18; *see also* CN Comment 19; BNSF Comment 4–5, 8.) But the *NPRM* cited multiple sources supporting the opposite proposition. *NPRM,* EP 755 *et al.,* slip op. at 5–7.

[38] In a related argument, AAR contends that FORR would have a detrimental effect on railroad revenue adequacy, outside the context of an individual dispute, because it would ''creat[e] a coercive downward force on rates.'' (AAR Comment

Continued

Board would not prescribe a rate higher than the challenged rate in a FORR case, as indicated in the *NPRM,*[39] there is still considerable risk to a complainant that brings an unsuccessful FORR case that the carrier may conclude based on the Board's evaluation of the economic analyses that it has more latitude to set a higher rate. And should the Board find the challenged rate has not been shown to be unreasonable in a given case, the Board's findings could have a preclusive effect on that complainant in subsequent litigation. *See, e.g., Martin* v. *Garman Const. Co.,* 945 F.2d 1000, 1004 (7th Cir. 1991) (''Agency adjudications are afforded collateral estoppel effect, provided appropriate safeguards are met.'') (citing *United States* v. *Utah Constr. & Mining Co.,* 384 U.S. 394, 421–22 & n.18 (1966)). Finally, any lack of reciprocity is balanced by the defendant carrier's possession of market dominance—a prerequisite in any rate case before the Board, including FORR. *See* 49 U.S.C. 10707.[40] The very existence of a rate case that satisfies the market dominance threshold indicates an inherent imbalance in bargaining power that favors carriers, while the statutory requirements that rates subject to market dominance be reasonable, and that the Board maintain simplified procedures for smaller cases, reflect Congressional intent to level this playing field. *See* 49 U.S.C. 10701(d)(1), (3).

AAR also asserts—similar to its prior claims in opposing other efforts at reforming the Board's rate review processes [41]—that rates adopted through FORR settlements would become the basis for comparison groups in Three-Benchmark cases, ''further driving railroad pricing down.'' (*See* AAR Comment 22–23.) That could be true, but the argument would apply whenever *any* shipper obtained a lower rate, either through a Board decision (using any rate reasonableness process) or a settlement. Indeed, any decision favorable to a shipper in a Three-Benchmark case, a process that AAR supports, would set the stage for similar decisions in other cases and similar arguments about so-called ratcheting. So, in essence, AAR is asserting that any rate reasonableness process—whether FORR or some other approach—that results in meaningful opportunities for shippers to show that rates are unreasonably high must be rejected because it could result in reduced revenues for the railroads. The Board will, of course, remain vigilant about the adequacy of railroad revenues,[42] but accepting an argument that it should not adopt any process that could provide meaningful rate relief would undermine the very law that the Board is bound to administer and enforce.

F. Comparisons to Canadian Final Offer Arbitration

CN argues that concerns regarding final offer arbitration are mitigated in Canada because the process and results are confidential and decisions are non-precedential, but that FORR lacks these features. (CN Comment 24; *see also* CSXT Comment 2.) While a certain degree of confidentiality and lack of precedent could enhance the benefits of a final offer process,[43] rate reasonableness decisions by the Board are precedential and made available to the public (with exceptions for certain confidential material). *See* 5 U.S.C. 552(a)(2) (requiring that agencies make ''available for public inspection'' final opinions and orders made in the adjudication of cases); *Pac. Gas & Elec. Co.* v. *Fed. Power Comm'n,* 506 F.2d 33, 38 (D.C. Cir. 1974) (noting that agency adjudications ''constitute binding precedents''). In proposing FORR, the Board has weighed these considerations and, based on the record to date, concludes that FORR would provide sufficient benefit even without being confidential and non-precedential.

CN also states that Canadian final offer arbitration does not provide for reparations. (CN Comment 25.) In fact, Canadian final offer arbitration does provide monetary relief covering the pendency of the litigation, although, unlike reparations awarded by the Board, it cannot reach back two years prior to the complaint. *See* Canada Transp. Act, S.C. 1996, c. 10, as amended, section 165(6) (Can.). This difference is less significant than it might appear, because complainants in rate cases before the Board often wait to switch from a contract to a tariff rate until shortly before they file their complaints, to minimize the time they pay the tariff rate. *See, e.g., Consumers Energy Co.* v. *CSX Transp., Inc.,* NOR 42142, slip op. at 1, 284 (STB served Jan. 11, 2018) (complaint filed in 2015; reparations calculation started from 2015). The reasonableness of those contract rates is not subject to challenge before the Board (*see* 49 U.S.C. 10709(c)), meaning that, in practice, the reparations period often begins around the time the complaint is filed, rather than two years earlier.

CP states that Canadian final offer arbitration proceedings are complex and expensive for both parties, and that, because CP does not know what arguments shippers will make, it ''must be overly expansive in its briefing, addressing all possible arguments that the complainant might raise.'' (CP Comment 5–8 (predicting that briefing in FORR cases will be overbroad, with parties submitting ''a vast amount of materials'').) Canadian final offer arbitration may be complex, but the more relevant issue here is how FORR compares to the Board's existing rate reasonableness processes. If it is sufficiently less costly than Three-Benchmark, for example, then it could still help to expand access to rate relief. Moreover, several shipper interests with member companies that have participated in Canadian final offer arbitration tout its success. (*See, e.g.,* NGFA Comment 7 (''Some of NGFA's member companies have had successful experiences with the Canadian final offer arbitration procedures . . . .''); Farmers Union Reply Comment 2 (''In your practitioner's experience in working with Canadian researchers, we found that [final offer] procedures between shippers and carriers rarely went to fruition but were settled many times . . . .'').) And none of the shipper interests have expressed concerns similar to those raised by CP, despite the fact that it is the shipper interests that support FORR based on its expected reduced cost and complexity.

Part IV—Review Criteria

As noted above, the Board stated that, in reviewing offers, it would take into account the RTP, the Long-Cannon factors in 49 U.S.C. 10701(d)(2), and

25.) AAR provides no support for this claim. Although FORR is intended to encourage settlements, it would not require them, and any railroad may choose to defend its rate as reasonable. If a market dominant railroad does not believe its rate is reasonable, as required by 49 U.S.C. 10701(d), then it should be incentivized to negotiate a lower rate. In other words, to the extent FORR would put downward pressure on high rates, it would function as a legitimate mechanism for indirectly enforcing the statutory requirement that rates subject to market dominance be reasonable.

[39] *See NPRM,* EP 755 *et al.,* slip op. at 14.

[40] A complainant challenging a rate that is subject to market dominance (*i.e.,* any complainant whose case under FORR reaches the rate reasonableness phase) would not have the options that UP assumes would be available to complainants. (*See* UP Comment 14–16 (assuming, for example, that if a complainant loses, it could simply choose not to move traffic under the rate that was at issue in the case, or that, ''in many situations,'' the challenged rate is constrained by market forces).)

[41] *See* AAR Suppl. Comment 10–11, Feb. 26, 2007, *Simplified Standards for Rail Rate Cases,* EP 646 (Sub–No. 1) (predicting incorrectly that the Three-Benchmark approach would ''inevitably result in an overall ratcheting down of rates towards an average'').

[42] The Board is cognizant of the concern raised by the court in *McCarty Farms Appeal* that frequent and regular use of a comparison group approach could reduce rates to the lowest revenue to variable cost ratio used in the comparison group. *See McCarty Farms Appeal,* 985 F.2d at 597.

[43] (*See* TRB Professors Comment 5 & n.17.)

appropriate economic principles. *See NPRM,* EP 755 *et al.,* slip op. at 10–13.

Some shipper interests request additional information regarding the review criteria proposed in the *NPRM,* while railroad interests strongly oppose the proposal to rely on criteria as opposed to a defined economic methodology. The Board continues to propose a non-prescriptive, multi-factor test, which would apply in the rate reasonableness determination regarding the challenged rate and, if necessary, in selecting between the offers. *See NPRM,* EP 755 *et al.,* slip op. at 10–12. But, to aid commenters on this *SNPRM,* the Board will provide some additional information about what it would expect to consider.

A. Additional Information Regarding Review Criteria

USDA asks the Board to be more explicit about the types of actions that would not satisfy the criteria. (USDA Comment 4.) Similarly, AFPM asks the Board to define ''appropriate economic principles,'' and NGFA suggests that the Board provide a ''more detailed discussion of the potential criteria and statutory standards.'' (AFPM Comment 7; NGFA Comment 10.) And while the Coalition Associations support the Board's proposal, they state that the absence of a specific economic methodology requires complainants to take a ''leap of faith.'' (Coalition Ass'ns Comment 2.)

To mitigate this uncertainty, the Board will provide additional information here. First, parties seeking to satisfy the criteria might submit, for example, robust comparison group approaches, cross-subsidy analyses, analyses that incorporate market-based factors (*see, e.g.,* BNSF Mem. 1–2 (Mtg. with Board Member Begeman); NGFA Reply 12, Aug. 20, 2020, *Joint Pet. for Rulemaking to Establish a Voluntary Arb. Program for Small Rate Disps.,* EP 765), or new analyses relying on constrained market pricing (CMP) principles, which are discussed further below. The Board declines to propose to determine in advance whether specific methodologies (including those identified above) would satisfy the review criteria; rather, that determination would take place in individual cases, and submitting a methodology in one of these categories would not guarantee a party's success.[44] And this list is certainly not exhaustive; parties could also seek to satisfy the review criteria with methodologies that are not listed here. But parties who are uncertain about how to choose a methodology might consider one of these examples as a starting point.

Second, the Board clarifies that parties would not be expected to address every RTP factor, all of the Long-Cannon factors (see further discussion below), or every type of appropriate economic principle. In other proceedings, the Board and parties rely on the RTP factors that are relevant to the individual case, and the same would be true in FORR cases.

In particular, the Board would rely primarily on the RTP factors that have previously been relied on in the rate reasonableness context: The policy to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail, 49 U.S.C. 10101(1); to promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by the Board, section 10101(3); and to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital, section 10101(6). *See, e.g., Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 34 (relying on RTP factors (3) and (6)); *W. Coal Traffic League—Pet. for Declaratory Ord.,* FD 35506, slip op. at 16–17 (STB served July 25, 2013) (relying on RTP factor (1) in distinguishing the Board's rate regulation from public utility regulation). To the extent parties seek to rely on RTP factors that have not been relied on in the rate reasonableness context, they must take care to demonstrate how those factors relate to the economic analysis of the reasonableness of the rate.

AAR argues that the Board does not provide enough detail on how it would protect revenue adequacy in a FORR case. (AAR Comment 24–25; *see also* CN Comment 13–14.) In a FORR case, if a party submits an analysis that fails to explain how it accounts for revenue adequacy—with regard to the reasonableness of the challenged rate as well as support for the offer—the party would be less likely to prevail. And if a party's analysis does not adequately account for revenue adequacy, the opposing party could draw attention to this problem in its reply.

With respect to the Long-Cannon factors, the *NPRM* indicated that, in deciding between offers, the Board would give due consideration to (i) the carrier's efforts to minimize traffic transported at revenues that do not contribute to going concern value, (ii) the carrier's efforts to maximize revenues from traffic that contributes only marginally to fixed costs, and (iii) whether one commodity is paying an unreasonable share of the carrier's overall revenues, while recognizing the policy that rail carriers earn adequate revenues. *NPRM,* EP 755 et al., slip op. at 11. CN points to the Board's statement in a prior decision that there is ''no feasible way to incorporate such an analysis into a method for resolving small rate disputes without raising litigation expenses and rendering the 'simplified' method too expensive,'' and implies that this discussion applied to the Long-Cannon factors in general. (*See* CN Comment 19–20 (citing *Simplified Standards for Rail Rate Cases* (*Simplified Standards NPRM*), EP 646 (Sub–No. 1), slip op. at 22 (STB served July 28, 2006)).) But in fact, in that decision the Board was referring specifically to the first factor, observing that rail capacity had become tight (as opposed to the excess capacity that existed when Staggers was enacted) and so ''a railroad is not likely to carry any traffic that does not contribute to going concern value.'' *See Simplified Standards NPRM,* EP 646 (Sub–No. 1), slip op. at 22. Parties could choose to rely upon this conclusion in FORR cases, making the first Long-Cannon factor unlikely to be a significant aspect of the analysis, though parties could still address how it is accounted for in their proposed methodology.

Because the Board must give due consideration to the Long-Cannon factors when assessing the reasonableness of rates, parties should generally address how their methodologies would allow the Board to take the issues raised by these factors into account. As discussed above, parties may use Board precedent to make arguments about the degree and manner in which a particular factor should be considered by the Board in relation to a proposed methodology.[45]

[44] The Coalition Associations describe a rate benchmarking methodology and argue that it would be appropriate to use in a FORR case. (*See* Coalition Ass'ns Comment 19–25.) The Board agrees with AAR, however, that this issue is beyond the scope of the proceeding, where the Board did not seek comment on particular methodologies. (*See* AAR Reply Comment 5–6.) The appropriateness of methodologies would be decided on a case-by-case basis under the proposed approach.

[45] For example, the ICC described the Long-Cannon factors as ''certain checks on obviously inefficient management.'' *Coal Rate Guidelines, Nationwide,* EP 347 (Sub–No. 1), slip op. at 10, 13–14 (ICC served Feb. 24, 1983); *see also Coal Rate Guidelines, Nationwide* (*Coal Rate Guidelines*), 1 I.C.C.2d 520, 540–41 (1985) (discussing the Long-Cannon factors in establishing the management

Continued

Finally, appropriate economic principles would encompass Board and ICC precedent (also discussed further below), court precedent reviewing Board and ICC decisions, generally accepted economic theory (*e.g.,* presented in experts' verified statements or citations to academic literature), and analogous economic regulatory materials from other tribunals, such as federal courts and agencies. Reliance on these sources would hardly be an innovation; parties and the Board already can and do cite Board precedent, for example, as well as academic literature and analogous materials from other tribunals. *See, e.g., Total Petrochems. & Ref. USA, Inc.* v. *CSX Transp., Inc.,* NOR 42121, slip op. at 220 (STB served Sept. 14, 2016) (relying on Board precedent); *Consumers Energy Co.,* NOR 42142, slip op. at 19 n.20 (citing academic literature); *AEP Tex. N. Co.* v. *BNSF Ry.,* NOR 41191 (Sub–No. 1), slip op. at 7–8 (STB served May 15, 2009) (citing analogous federal court precedent). Expressly referencing these sources among the review criteria ensures that parties and the Board can continue to cite them in the same ways and with the same frequency that they do in other types of proceedings.

B. Vagueness Arguments

Citing *FCC* v. *Fox Television Stations, Inc.,* 567 U.S. 239 (2012), AAR contends that FORR is unconstitutionally vague because railroads do not know in advance what the Board might find unreasonable, inasmuch as the methodology is chosen within the case—railroads will not know in advance how to conform their conduct to the demands of the law. (*See* AAR Comment 17–19; *see also* CN Comment 18–19; BNSF Comment 4–5, 7–8.) AAR also states that predictable application is necessary to prevent the adjudicator from acting in an arbitrary or discriminatory way. (AAR Comment 19.)

Although any agency standard must be sufficiently clear to pass constitutional muster,[46] *Fox Television* has little resemblance to the circumstances here. Unlike the FCC in that case, the Board here is not changing course mid-proceeding and purporting to regulate railroad conduct without providing notice of what that regulation requires. *See* 567 U.S. at 254. To the contrary, the Board is proposing procedural rules for the adjudication of railroad rates under the precise criteria established by statute. Following the Board's adoption of FORR, railroads would continue to be entitled under section 10701 to ''establish any rate for transportation'' over which they do not have market dominance. Where there is market dominance, railroads would also continue to be entitled to charge a rate so long as it is reasonable. The Board would also consider the reasonableness of rates challenged under FORR using the same statutory criteria and economic principles applied in past rate cases using other processes. The *NPRM* made clear that a railroad in a FORR proceeding may use ''existing rate review methodologies'' to defend the challenged rate or its final offer, as well as other methodologies that follow the applicable criteria. *NPRM,* EP 755 et al., slip op. at 12.

AAR's argument overstates the predictability of other types of litigation before the Board and understates the predictability of a FORR case. In almost every recent SAC case litigated to a merits decision, both shippers and railroads have raised novel issues, some of which reach the core of the SAC concept. *See, e.g., Ariz. Elec. Power Coop.* v. *BNSF Ry.,* NOR 42113, slip op. at 140–42 (STB served Nov. 22, 2011) (accepting a new calculation proposed by the defendant railroad for use in the discounted cash flow analysis); *Consumers Energy Co.,* NOR 42142, slip op. at 25–27 (addressing a new proposed method for traffic group selection); *E.I. DuPont de Nemours & Co.* v. *Norfolk S. Ry.,* NOR 42125, slip op. at 282–84 (STB served Mar. 24, 2014) (accepting a new adjustment proposed by the complainant shipper to the terminal value calculation). Not all of these issues are purely matters of economic policy; many also require adjudication as to how a hypothetical railroad might operate differently than the defendant, an inherently non-quantitative weighing of evidence and argument. *See, e.g., E.I. DuPont de Nemours & Co.,* NOR 42125, slip op. at 39–40 (requiring, for the first time, that a SARR carrying predominantly carload traffic account for car classification and blocking). Notwithstanding parties' posturing in negotiations before a rate case, (*see* BNSF Comment 8), they cannot predict the resolution of these novel, potentially case-dispositive issues in advance—nor can the Board, before the development of an administrative record. SAC, however, is not unconstitutionally vague and has been upheld on judicial review. *See, e.g., Consol. Rail Corp* v. *United States,* 812 F.2d 1444, 1456–57 (3d Cir. 1987); *Potomac Elec. Power Co.* v. *ICC,* 744 F.2d 185, 192–95 (D.C. Cir. 1984).

Adjudication of claims under 49 U.S.C. 10702 and 11101, addressing the reasonableness of practices and the common carrier obligation, respectively, bears even greater resemblance to the approach proposed here. Each involves a case-specific, multi-factor analysis. *See, e.g., CF Indus., Inc.—Pet. for Declaratory Ord.,* FD 35517, slip op. at 4–5 (STB served Nov. 28, 2012) (describing legal standard in unreasonable practice cases); *Union Pac. R.R.—Pet. for Declaratory Ord.,* FD 35219, slip op. at 3–4 (STB served June 11, 2009) (describing legal standard in common carrier obligation cases).[47] The ICC and the Board have followed this approach for more than a century, with judicial approval, despite parties' inability to ''know in advance what the Board might deem unreasonable'' with the specificity that AAR would apparently require, (AAR Comment 17–18). *See, e.g., Lake-and-Rail Butter & Egg Rates,* 29 I.C.C. 45, 46–47, 49–51 (1914) (enforcing the common carrier obligation); *Bodine & Clark Livestock Comm'n* v. *Great N. Ry.,* 63 F.2d 472, 477–78 (9th Cir. 1933) (affirming the ICC's determination regarding the reasonableness of a practice); *Granite State Concrete Co.* v. *STB,* 417 F.3d 85, 92–93 (1st Cir. 2005) (specifically

efficiency constraint). Not every case would be likely to involve ''obviously inefficient management,'' and parties may seek to explain why that is the case.

[46] In *Freeman United Coal Mining Co.* v. *Federal Mine Safety & Health Review Commission,* 108 F.3d 358, 362 (D.C. Cir. 1997), a case cited by CN, the court noted that regulations need not achieve ''mathematical certainty'' or ''meticulous specificity,'' and may instead embody ''flexibility and reasonable breadth.'' *Id.* (quoting *Grayned* v. *City of Rockford,* 408 U.S. 104, 110 (1972).) Applying these principles, the court found that the regulation at issue, which broadly required that mine structures ''be maintained in good repair to prevent accidents and injuries to employees'' was ''sufficiently specific to provide notice . . . of the conduct that it required or prohibited.'' *Id.*

[47] The factors in such cases can be quintessential examples of the ''incommensurate interests'' that CN found so problematic in its comment: for example, weighing safety considerations against the economic interests of a railroad or its customer. *See* CN Comment 20; *see also, e.g., N. Am. Freight Car Ass'n* v. *Union Pac. R.R.,* NOR 42119 (STB served Mar. 12, 2015); *Bar Ale, Inc.* v. *Cal. N. R.R.,* FD 32821 (STB served July 20, 2001). The ICC and the Board have performed these analyses lawfully and with judicial approval, *see, e.g., Granite State Concrete,* 417 F.3d at 95–96, and without an advance explanation as to how they would balance potentially competing interests. Therefore, contrary to CN's argument regarding the Long-Cannon factors, (*see* CN Comment 20–21), regulating railroad practices or rates using a non-prescriptive, multi-factor test is not ''void for vagueness'' even if some of the factors are incommensurate interests. *Cf. Gentile* v. *State Bar of Nev.,* 501 U.S. 1030, 1048–51 (1991). CN also does not support its attempt to analogize FORR to the situation in *Gentile,* a First Amendment decision that specifically addresses ''[t]he prohibition against vague regulations of speech.'' *See id.*

affirming the STB's application of the legal standard).[48]

AAR characterizes FORR as distinct from these other agency processes in terms of predictability, implying that the Board has given no hint as to how it would reach a decision. (*See* AAR Comment 17–19; AAR Comment in Response to Mem. 5, Aug. 12, 2020.) That is not so; the *NPRM* stated the criteria that would apply in determining rate reasonableness,[49] and if necessary, choosing an offer.[50] These criteria would signal to parties what rates might be found unreasonable. For instance, if a defendant railroad is charging vastly more for the challenged traffic than it does for comparable traffic, if it is aware of costly inefficiencies that a new railroad would not adopt, or if its revenue from the challenged rate is out of proportion to its properly attributable capital requirements and other costs of service, (*see* BNSF Mem. 2 (Mtg. with Board Member Begeman)), then it could reasonably predict a lower likelihood of success in a FORR case.[51] In other words, there is a continuum of predictability with respect to litigation—rather than the binary distinction AAR proposes—and FORR is closer on the continuum to other types of litigation than AAR acknowledges. (*See* Olin Comment 11 (citing *Board of Trade* v. *United States,* 314 U.S. 534, 546 (1942) (ratemaking ''is fluid and changing—the resultant of factors that must be valued as well as weighed'')).) FORR's level of predictability, which is in line with unreasonable practice cases and other adjudications requiring the tribunal to weigh multiple factors, does not render it unconstitutionally vague.

AAR states that, ''it remains unclear whether the Board will even disclose *when deciding the case* the methodology it used to choose the winner.'' (AAR Comment 19.) To clarify, when deciding a case under FORR, the Board would explain the basis for its decision, as it does in every case. AAR's concern apparently stems from a comment made by the TRB Professors, who suggest that the Board can ''fully . . . discharge its obligations without going into detail on the reasons it chose one offer rather than the other.'' (TRB Professors Comment 5.) However, in a FORR case, as in all other cases, the Board would have to provide enough detail to supply a reasoned basis for its decision. *See, e.g., Motor Vehicle Mfrs. Ass'n* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 43 (1983). Consequently, AAR's concern that the Board would issue FORR decisions without explaining its reasons for selecting one offer rather than the other, or on the reasonableness determination as to the challenged rate, is unfounded.[52]

AAR argues that, because FORR would rely on general criteria rather than a pre-determined methodology, FORR decisions would not provide useful guidance in future cases even if the Board did explain its reasoning. (AAR Comment 20.) It is a significant overstatement to claim, as AAR does, that FORR decisions would provide ''little if any guidance'' to future litigants. As parties observe which methodologies can be successfully employed within the constraints of FORR, they could adopt—and perhaps even improve upon—those methodologies in future cases. AAR appears to assume that each FORR case would involve a completely different methodology than any prior case. Such a development is possible, but parties have strong incentives to be guided by precedent, because it is more efficient to build on economic and legal work that has already been performed in prior cases. Also, parties to other proceedings involving case-specific, multi-factor tests can and do cite precedent on a regular basis. *See, e.g.,* Ark. Elec. Coop. Opening Evid. & Arg. 4–5, Mar. 16, 2010, *Ark. Elec. Coop.—Pet. for Declaratory Ord.,* FD 35305 (unreasonable practice case); UP Reply 31–38, May 5, 2015, *Sherwin Alumina Co.* v. *Union Pac. R.R.,* NOR 42143 (common carrier obligation case).

C. Board Precedent

AAR asserts that any rate reasonableness process adopted by the Board must be ''tethered to'' CMP,[53] arguing that FORR deviates from ''historic agency practice.'' (*See* AAR Comment 14; *see also* CN Comment 11–14.) However, AAR overstates the degree to which the Board has adhered to CMP in developing previous rate reasonableness processes. In adopting the Three-Benchmark test, the Board stated:

> whether using an SAC analysis or CMP's alternative top-down approach (both of which are highly data-intensive), a CMP presentation can be quite expensive and thus not feasible where the amount of money at issue is not great enough to justify the expense. Accordingly, the ICC instituted this rulemaking in 1986 to search for simpler, less expensive procedures for assessing rate reasonableness in small cases.

Non-Coal Proc., 1 S.T.B. at 1008 (footnote omitted). The Board also explained the development of Three-Benchmark as follows: ''the ICC decided that it must find some means other than CMP to meet the dual objectives of

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[48] Even in a cost-of-service rate case before another agency, which bears greater resemblance to traditional utility ratemaking—a mode of regulation that has been established far longer and with greater continuity than any of the Board's rate processes—the regulator or a reviewing court may change a significant component of the analysis within an individual litigation. *See, e.g., United Airlines, Inc.* v. *FERC,* 827 F.3d 122, 134–36 (D.C. Cir. 2016) (overturning agency's allowance of income taxes in cost of service for carriers structured as partnerships).

[49] AAR disagrees with similar reasoning proffered by Olin; AAR states that Olin ''misses the point'' because, ''[i]n the rate context, the elastic term 'reasonable' has specific meaning.'' (AAR Comment in Response to Mem. 5, Aug. 12, 2020.) In this attempt to distinguish rate reasonableness from unreasonable practice cases and rulings on the common carrier obligation, AAR does not cite any statutes or case law. *See id.* AAR relies instead on an article, which does not even support the point for which AAR cites it, much less provide statutory or precedential support. *See id.* AAR further notes that, with respect to rate reasonableness, Congress has required the Board to account for railroad revenue adequacy and the Long-Cannon factors. *See id.* But the FORR process does account for these considerations. *See NPRM,* EP 755 et al., slip op. at 10–12.

[50] CSXT asserts that the *NPRM* ''fails to set forth any substantive standard that it would use to choose between the 'final offers.'" (CSXT Comment 1.) No other commenter makes such a claim, for good reason: The *NPRM* directly stated the non-prescriptive criteria that would provide the substantive standard in FORR cases. *NPRM,* EP 755 et al., slip op. at 10–12.

[51] AAR does not address whether the discussion it cites from *Paralyzed Veterans of America* v. *D.C. Arena, L.P.*, 117 F.3d 579, 584 (D.C. Cir. 1997) survives *Perez* v. *Mortgage Bankers Association*, 575 U.S. 92 (2015). (*See* AAR Comment 19). It does not matter here, however, for the reasons stated above. Far from ''promulgat[ing] mush,'' *see Paralyzed Veterans.* 117 F.3d at 584, the Board has proposed a test that requires the balancing of multiple factors stated in advance, as in other types of adjundicaton.

[52] AAR claims that FORR would not require the parties' offers or supporting methodologies to incorporate the stated review criteria. (AAR Comment in Response to Mem. 3, Aug. 12, 2020.) However, as the *NPRM* explained, a party that disregards these criteria would likely lose, because the criteria will guide the Board's determinations. *See NPRM,* EP 755 et al., slip op. at 11. AAR fails to distinguish this situation from any other litigation, where a party can choose to submit pleadings that disregard the substantive principles governing the proceeding, but in doing so scuttle its own case.

[53] CMP, which the ICC adopted in *Coal Rate Guidelines,* contains three main constraints on the extent to which a railroad may charge differentially higher rates on captive traffic. The revenue adequacy constraint is intended to ensure that a captive shipper will ''not be required to continue to pay differentially higher rates than other shippers when some or all of that differential is no longer necessary to ensure a financially sound carrier capable of meeting its current and future service needs.'' *Coal Rate Guidelines,* 1 I.C.C.2d at 535–36. The management efficiency constraint is intended to protect captive shippers from paying for avoidable inefficiencies (whether short-run or long-run) that are shown to increase a railroad's revenue need to a point where the shipper's rate is affected. *Id.* at 537–42. The SAC constraint is intended to protect a captive shipper from bearing costs of inefficiencies or from cross-subsidizing other traffic by paying more than the revenue needed to replicate rail service to a select subset of the carrier's traffic base. *Id.* at 542–46.

enabling a railroad to differentially price its traffic and protecting a complaining captive shipper from bearing an undue share of a carrier's revenue requirements.'' *Id.* at 1012–13. The Board concluded that ''other procedures can, and indeed must, be made available for those cases in which CMP simply cannot be used—because the traffic is so infrequent or widely dispersed that it is not susceptible to a SAC presentation or because the case is so small in value that the substantial expense of a CMP presentation (whether through the top-down approach or SAC's bottom-up approach) cannot be justified.'' *Id.* at 1021 (footnote omitted).

Similarly, when the ICC began the inquiry that led to the Three-Benchmark test, it explained that its *Coal Rate Guidelines* decision, the source of CMP, might not be a good fit outside the circumstances for which it was developed: ''[*Coal Rate Guidelines*] arose out of a request to set rate standards for high-volume shipments from newly-developed reserves in the Western United States. We acknowledge that the specifics of the guidelines finally adopted are particularly well suited to high-volume, long-term movements, where the cost and complexity of rate regulation are not disproportionate to the public and private interest in developing economically efficient rates.'' *Rate Guidelines—Non-Coal Proc.,* EP 347 (Sub–No. 2), slip op. at 1–2 (ICC served May 21, 1986).[54]

To be sure, Three-Benchmark's revenue-to-variable cost (R/VC) benchmark tests are meant to account for ''all of the relevant statutory and economic principles,'' while meeting the Board's ''dual objective'' of both permitting differential pricing and protecting captive shippers from bearing an undue share of a railroad's revenue requirements. *Non-Coal Proc.,* 1 S.T.B. at 1012–13, 1041.[55] These are the same objectives that support CMP. *Id.* at 1012–13. AAR argues that, unlike SAC or Three-Benchmark, FORR does not account for ''market-driven outcomes and principles.'' (AAR Comment 14; *see also* BNSF Comment 7.) The FORR review criteria, however, expressly account for these factors. *See NPRM,* EP 755 et al., slip op. at 10–11. If a complainant's FORR presentation does not adequately account for the necessity of demand-based differential pricing, for example, it likely would be unable to prove that the challenged rate is unreasonable.

According to AAR, the Board's existing processes have been fine-tuned through notice and comment and judicial review, and the Board has not provided a reasoned explanation for its departure from those established methods. (AAR Comment 14–15; *see also* BNSF Comment 5–6; CN Comment 14.)[56] However, the FORR proposal arose in the context of the agency's long and difficult search for a solution for smaller rate disputes, and the *NPRM* explained in detail the reason for its proposal. *See NPRM,* EP 755 et al., slip op. at 3–4, 6–7, 17. Again, the Board and the ICC have already recognized the need for non-CMP methods, and FORR expressly accounts for ''the basic economic principles that have long guided the Board in judging the reasonableness of rates,'' (AAR Comment 15). BNSF argues in addition that, under FORR, a party could ''select only the favorable elements of an existing methodology while discarding less favorable elements (including essential procedural protections).'' (BNSF Comment 5–6.) However, if a party relies on a modified version of an existing methodology that deviates from the principles identified in the *NPRM* as review criteria, the party is less likely to succeed on rate reasonableness, and if necessary, selection of an offer. And if a party's submission is deficient, as BNSF appears to contemplate, the opposing party can explain this deficiency in its reply.

Finally, AFPM argues that ''appropriate economic principles'' should not include agency precedent because the industry has changed dramatically due to consolidations. (AFPM Comment 7.) The Board disagrees. Board and ICC precedent would have value in the FORR small dispute context—it constitutes a significant part of the agency's implementation of Staggers and ICCTA, establishes important concepts, and has been tested on judicial review[57]—and that is true even if the specific methodologies developed and implemented in prior cases do not turn out to be the ones used in a given FORR case.[58]

Part V—Discovery and Procedural Schedule

Railroad interests raised concerns with the *NPRM*'s proposed approaches to discovery and the FORR procedural schedule. Shipper interests proposed several changes to these approaches. Below, the Board addresses the comments and changes proposed in this SNPRM in response to comments.

A. Discovery

In the *NPRM,* the Board proposed to disallow litigation over discovery disputes in FORR cases. *NPRM,* EP 755 et al., slip op. at 8. Instead, the Board proposed to take any unreasonable withholding of relevant information into account in choosing between the offers—for example, by giving less weight to an argument that could be undercut by the information that was withheld or by making other adverse inferences. *Id.* Railroad interests strongly oppose the proposal to rely on adverse inferences rather than motions to compel. (*See* AAR Comment 3, 18–19; BNSF Comment 6–7; UP Comment 23.) The Coalition Associations also

[54] In the *Simplified Standards NPRM,* the Board stated that, ''while this Three-Benchmark approach would not replicate directly the results of a SAC analysis, it would import that constraint indirectly by comparing the challenged rate against rates for other potentially captive movements that are constrained by some form of the SAC test.'' *Simplified Standards NPRM,* EP 646 (Sub–No. 1), slip op. at 28. That characterization, however, relied directly on the eligibility criteria that the Board had initially proposed (because the criteria would ensure that most rates were not eligible for Three-Benchmark, meaning that most rates in a comparison group would be constrained by SAC, *see id.*)—and the Board chose not to adopt those criteria in the final rule. *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 89–94.

[55] BNSF argues that approaches relying on R/VC ratios, including the 180 R/VC threshold, are inaccurate. (*See* BNSF Comment 4.) This resembles a position adopted by the TRB Professors in their report, but as the *TRB Report* acknowledges, reliance on R/VC ratios (at least for market dominance) is built into the statute and would require the enactment of legislation to remove. *See TRB Rep.* 134–35. Also, even if BNSF were correct, its argument would support the Board's adoption of FORR: the Board's existing rate processes all rely on R/VC ratios, and although some FORR cases might also use R/VCs (depending on the methodology selected), it is likely that not all FORR cases would do so.

[56] CN cites *McCarty Farms Appeal* to argue that ''the unexplained jettisoning of CMP cannot pass for reasoned decision-making.'' (CN Comment 14.) But in *McCarty Farms Appeal,* the court concluded that the ICC had not sufficiently explained its adoption of a particular comparison-group methodology only after finding that the methodology had ''no evident connection'' to the statutory goals undergirding CMP, including railroad revenue adequacy. *Id.* at 595–99. By contrast, in resolving a dispute under FORR the Board would account for the relevant statutory criteria, including (as explained further below) revenue adequacy.

[57] *See, e.g., Consol. Rail Corp* v. *United States,* 812 F.2d 1444 (3d Cir. 1987); *BNSF Ry.* v. *STB,* 526 F.3d 770 (D.C. Cir. 2008); *BNSF Ry.* v. *STB,* 748 F.3d 1295 (D.C. Cir. 2014).

[58] Also, contrary to AFPM's suggestion, much of the cited precedent was developed after industry consolidation. *See, e.g., Union Pac. Corp.—Control & Merger—S. Pac. Rail Corp.,* 1 S.T.B. 233 (1996) (merger); *CSX Corp.—Control & Operating Leases/Agreements—Conrail Inc.,* 3 S.T.B. 196 (1998) (acquisition and division of assets); Rep. on Rate Case Rev. Metrics, 3d Quarter 2021, *available at https://www.stb.gov/wp-content/uploads/Report-on-Rate-Case-Review-Metrics-Third-Quarter-October-1-2021.pdf* (listing 19 rate case dockets that reached merits decisions after 1998); *Simplified Standards,* EP 646 (Sub–No. 1) (one of several rate reasonableness rulemakings completed after 1998).

oppose this proposal and recommend instead that the Board adopt an expedited process for motions to compel. (Coalition Ass'ns Comment 10–11; *see also* UP Comment 23 (''if the Board were to move forward with FORR, it would have to develop actual procedures for resolving discovery disputes.'').) Other shipper interests, while not directly opposing the proposal, question how it would apply. (*See* AFPM Comment 5–6; NGFA Comment 7–8, 10.)

The Board acknowledges the concerns raised over the use of adverse inferences and recognizes that a motion to compel procedure would present a more exacting means of resolving discovery disputes. Therefore, although it detracts from the Board's goal of a highly expedited procedural schedule, the Board proposes to remove the use of adverse inferences and instead adopt a process for motions to compel similar to the Coalition Associations' proposal.

Under the proposed process, each party would be permitted to file a single motion to compel that aggregates all of the discovery disputes with the other party. (Coalition Ass'ns Comment 10.) A motion to compel would need to explain how the requested material is relevant either to a methodology that the party may present in its opening submission or to market dominance. Each party's motion to compel, if any, would have to be filed on the 10th day before the close of discovery (or, if not a business day, the last business day immediately before the 10th day). The procedural schedule would be tolled while motions to compel are pending. (*Id.*) Each party would be permitted seven days to reply to the other party's motion to compel, but in the interest of expediting the schedule (and contrary to the Coalition Associations' proposal), replies to replies would not be permitted. (*See id.*) The Board would issue a decision in 10 business days. Upon issuance of a decision on motions to compel, the procedural clock would resume, and any party ordered to respond to discovery would have to do so within the remaining 10 days in the discovery period. (*See id.*) The Board also proposes to grant the Coalition Associations' request to extend the discovery period from 21 days to 35 days; otherwise, with motions to compel now permitted, parties would have to file such motions after only 11 days of discovery. (*See* Coalition Ass'ns Comment 9–10; AAR Comment 23 (expressing concern that FORR would provide too little time for record development).) Because parties would be able to use motions to compel for discovery enforcement, the Board would not adopt the *NPRM*'s alternative procedure involving adverse inferences.[59] Despite this addition, parties should seek to resolve discovery disputes among themselves rather than filing motions to compel. *See* 49 CFR 1114.31(a)(2)(i) (motions to compel in stand-alone cost and simplified standards rate cases—which would now include FORR—must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to answer discovery to obtain it without Board intervention).

Both NGFA and AFPM ask the Board to provide more guidance as to what parties should produce in discovery in FORR cases. (*See* NGFA Comment 7–8, 10; AFPM Comment 5–6.) The Board understands NGFA's and AFPM's interest in reducing uncertainty with respect to discovery. But the material a party seeks in discovery depends to a significant extent on the methodology it plans to present. Above, the Board describes examples of methodologies that a party might present in a FORR case; information in support of one of these methodologies would be a type of material that parties could seek in discovery, provided that it is appropriately limited in scope and production burden given the brief discovery period. *See NPRM,* EP 755 et al., slip op. at 8 (''narrowly tailored, targeted discovery requests based on the information that the other side could reasonably be expected to provide in a short period of time, focusing on the key information needed to prove or defend a rate case''). The Board confirms, as suggested by NGFA, that a complainant may notify the defendant of the data and information it intends to seek in discovery at the same time it provides notice of its intent to file a complaint. (NGFA Comment 9–10.)

The Coalition Associations argue that, because rate reasonableness methodologies could involve revenue adequacy, the Board should make more years of waybill data available—enough to cover a business cycle. (*See* Coalition Ass'ns Comment 11–13.) The Coalition Associations are correct that, depending on the methodology a party chooses, more than four years of waybill data could be relevant. That would not be the case in every FORR proceeding, however, and the Board is mindful of the need to disclose no more confidential waybill data than necessary. *See Proc. on Release of Data from the ICC Waybill Sample,* 4 I.C.C.2d 194, 197–212 (1987). Therefore, four years of waybill data would be the default in FORR cases, but a party could request more years if special circumstances support such a request in an individual case. Also, as requested by the Coalition Associations, the Board confirms that, as in Three-Benchmark cases, waybill access (subject to appropriate protective orders) would include the full sample, including unmasked revenue. (*See* Coalition Ass'ns Comment 13.)

B. Procedural Schedule

AAR argues that the burden of FORR's short timelines falls disproportionately on the defendant, because the complainant can take as much time as it wants to prepare its case before initiating litigation. (*See* AAR Comment 23; *see also* BNSF Comment 7 (contending without explanation or citation of authority that the impact of these deadlines is contrary to complainants' burden of proof).) To a certain degree, AAR's arguments simply reflect the nature of litigation. A plaintiff in a civil action in court controls the timing of case initiation and therefore has essentially unlimited time to prepare its case (subject to the statute of limitations), because it decides when to file a complaint. The defendant in such a case has to prepare its response with limited time. And the Board notes that this situation exists in the Board's other rate reasonableness processes as well.

It is true that this imbalance may be more pronounced under FORR because the deadlines are shorter and the methodology more flexible. But this imbalance would be mitigated by the Board's proposal to extend the discovery deadlines and adopt a motion to compel process, as discussed above, and to require a mandatory mediation period, as discussed below. Moreover, the Coalition Associations point out that, unlike defendants, complainants must make their cases largely based on information in the possession of the opposing party. (*See* Coalition Ass'ns Comment 9.) In this regard, shorter discovery deadlines favor the defendants and further balance out the burden that railroad interests describe. In any event, even assuming that the procedural schedule in FORR might, in some cases, place a proportionately greater burden upon defendants than in other rate review processes, such a burden must be weighed against the likelihood that rate relief may be functionally unavailable in a small dispute.

[59] Though the Board no longer proposes to adopt the adverse inferences discussed in the *NPRM,* the Board notes that, in the event a party does not comply with a Board order on a motion to compel, the provisions of 49 CFR 1114.31(b) would apply in a FORR proceeding.

In addition to proposing to lengthen several deadlines in the record development portion of a FORR proceeding, the Coalition Associations propose to reduce the Board's decision time from 90 days to 60 days. (Coalition Ass'ns Comment 8.) The Coalition Associations state as support the fact that Canadian final offer arbitration provides for decisions in as little as 30 days and no more than 60 days. (*Id.*) The Board declines to adopt this proposal. Canadian final offer arbitration decisions are informal, confidential, non-precedential, and may be formulated by a single individual. *See* Canada Transp. Act, S.C. 1996, c. 10, as amended, section 161(1) (Can.) (arbitration is conducted by a single arbitrator unless the parties agree to have a panel of three arbitrators). FORR decisions, by contrast, would be public precedential decisions that must be supported by a majority of the Board, which can have as many as five decision-makers. Moreover, FORR decisions are subject to the requirements of the APA, including the requirement that the agency ''articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'' *See Motor Vehicle Mfrs. Ass'n,* 463 U.S. at 43 (internal quotation marks omitted).

In the *NPRM,* the Board proposed to omit mandatory mediation because it would add time and possibly expense but stated that the Board would be prepared to facilitate mediation if requested by the parties. *NPRM,* EP 755 et al., slip op. at 14. CN argues that this explanation does not account for an interest in mediation ''to promote positive and mutually agreeable outcomes for the parties.'' (CN Comment 17–18.) NGFA, by contrast, argues that mandatory mediation is unnecessary in FORR cases. (NGFA Reply Comment 16.) NGFA asserts that, if a shipper reaches the point of filing a complaint, it has already reached an impasse in commercial negotiations with the railroad. (*Id.*) But the Board's mediation program has led to post-complaint settlements, to the benefit of the parties and the Board. *See, e.g., Twin City Metals, Inc.* v. *KET, LLC,* NOR 42168 (STB served Sept. 23, 2020). After reviewing the comments, the Board agrees with CN that mediation can produce substantial benefits, and is persuaded, based on the current record, that the possibility of achieving settlement through mediation would outweigh a modest lengthening of FORR's procedural timeline. *See, e.g., Assessment of Mediation & Arb. Proc.,* EP 699, slip op. at 2, 4 (STB served May 13, 2013) (''The Board favors the resolution of disputes through the use of mediation and arbitration procedures, in lieu of formal Board proceedings, wherever possible . . . . If a dispute is amicably resolved, it is likely that the parties would incur considerably less time and expense than if they used the Board's formal adjudicatory process.'') Therefore, the Board now proposes to include mandatory mediation in FORR cases, ensuring that FORR's mediation approach remains consistent with other rate reasonableness procedures.

To accommodate a 20-day mediation period, the Board will extend the pre-complaint notification period by 20 days beyond the time period proposed in the *NPRM,* to a total of 25 days. This timing is analogous to SAC, where mediation takes place between the pre-complaint notification and the filing of the complaint. *See* 49 CFR 1109.4. Also analogous to SAC, the mediation period in FORR cases would begin on the date of appointment of the mediator(s).[60] *See* section 1109.4(f). Both of these features—beginning mediation before the filing of the complaint, and having the mediation period run from the date of appointment of the mediator(s)—are intended to preserve as much as possible the expedited nature of the FORR procedures themselves.

The following procedural schedule is the result of the changes described:

Day –25	Complainant files and serves notice of intent to initiate case; mediation begins on date of appointment of mediator(s).
Day 0	Complainant files complaint; discovery begins.
Day 35	Discovery ends.
Day 49	Simultaneous filing of rate reasonableness analyses, final offers, and complainant's market dominance presentation.
Day 59	Simultaneous filing of replies; defendant's market dominance reply.
Day 66	Complainant's letter informing the Board whether it elects an evidentiary hearing on market dominance.
Day 73	Optional telephonic evidentiary hearing before administrative law judge (market dominance).
Day 149	Board decision.

[60] The Board would appoint a mediator or mediators as soon as possible after the filing of the notice of intent to initiate a case. Also, as in the Board's other rate case processes, parties would be required to meet or otherwise discuss discovery and procedural matters. In FORR cases, this discussion would be required to take place within three days after the complaint is filed.

The filing of a motion to compel by either party would toll this schedule as discussed above.

As stated in the *NPRM,* this timeline balances the need for due process—for example, allowing parties to reply to each other's submissions—and the Board's underlying goal of constraining the cost and complexity of rate litigation by limiting the overall duration of the proceeding. *NPRM,* EP 755, slip op. at 14.

To preserve the effects of the procedural limitations described above, requests for extensions of time would be strongly disfavored, even if both parties consent to the request. Therefore, parties are encouraged not to spend the scarce time available under this procedure on preparing extension requests. Joint requests to allow time to negotiate a settlement, including joint requests for additional mediation, are an exception and would be considered by the Board. A party would be permitted to accept the other party's final offer at any time.

Additional procedural schedule issues regarding market dominance are addressed below.

Part VI—Market Dominance

A. Procedural Issues

The Board indicated in the *NPRM* that both complainant and defendant would be required to submit market dominance analyses as part of their simultaneous opening submissions. *See NPRM,* EP 755, slip op. at 12 (''On reply *parties* would not be able to modify their market dominance presentations. . . .''), 14 (''Simultaneous filing of market dominance *presentations*'') (emphasis added). The Board is concerned, however, that doing so would require the defendant to anticipate in this opening submission what the complainant might present regarding market dominance, without even knowing (as discussed below) whether the complainant has selected streamlined or non-streamlined market dominance. Accordingly, the Board proposes to revise the procedure so that only the complainant—as the party with the burden—is required to submit market dominance evidence on opening. Only the defendant would be required to address market dominance on reply. This approach is aligned with the pleadings in Three-Benchmark. *See* 49 CFR 1110.10(a)(2)(i)(F), (H).

The procedural schedule proposed above reflects two differences from the market dominance timeline established in *Market Dominance Streamlined Approach,* Docket No. EP 756. *See* 49

CFR 1111.12. The complainant's letter informing the Board whether it elects an evidentiary hearing would be due seven days after the filing of replies, rather than 10 days, in recognition of FORR's expedited schedule. *Cf.* section 1111.12(d)(2). And the hearing itself would be held 14 days after replies, unless the parties agree on an earlier date, rather than the date when the complainant's rebuttal evidence would be due, because FORR does not include written rebuttal evidence. *Cf. id.*

B. Option To Use Non-Streamlined Market Dominance

In the *NPRM,* the Board proposed that FORR could only be used if the complainant also elected to use the streamlined market dominance approach, which at that time was proposed in *Market Dominance Streamlined Approach,* Docket No. EP 756. *NPRM,* EP 755 et al., slip op. at 9. The streamlined market dominance approach has since been adopted. The Board stated that the streamlined market dominance approach ''would complement and enhance the streamlined rate reasonableness procedure proposed here'' and that ''the expedited timelines proposed here may make it too difficult for parties to litigate a non-streamlined market dominance presentation.'' *NPRM,* EP 755 et al., slip op. at 9. However, the Board also recognized that ''there may be merit to giving complainants the option of choosing between streamlined and non-streamlined market dominance in FORR cases,'' and expressly sought comment on whether complainants should have this choice. *Id.* at 9–10.

Some shipper interests advocate giving complainants such a choice, while others support the restriction of FORR to streamlined market dominance.[61] (*See* AFPM Comment 6 (supporting restriction); NGFA Comment 9 (same); Olin Comment 18 (FORR should not be restricted to streamlined market dominance; if non-streamlined market dominance proves to be an issue, the Board can address it later, *e.g.,* by imposing page limits); Coalition Ass'ns Comment 13–15 (opposing restriction and proposing bifurcated pleadings when complainant chooses non-streamlined market dominance); NGFA Reply Comment 4 (NGFA does not object to the Coalition Associations' proposal); *see also* TRB Professors Comment 4 (''We see no rationale for this restriction. If complainants can make a showing of dominance in other ways without violating the FORR time limits, they should be permitted to do so.'').)

The Board is persuaded by Olin, the Coalition Associations, and the TRB Professors that complainants should have the option of choosing between streamlined and non-streamlined market dominance in FORR cases. Accordingly, the Board now proposes not to limit FORR complainants to streamlined market dominance. Limiting FORR in this way could effectively deny access to FORR for many potential complainants—those who are unable to satisfy one or more of the streamlined factors—which is contrary to FORR's goal of improving access to rate reasonableness determinations. Instead, complainants in this situation would be permitted to try to carry their market dominance burden using a non-streamlined presentation if they believe they can do so in the time available. *See Mkt. Dominance Streamlined Approach,* EP 756, slip op. at 1 (''It is established Board precedent that the burden is on the complainant to demonstrate market dominance.''). The fact that complainants would have less time to do so in a FORR case does not diminish this burden; complainants choosing non-streamlined market dominance would still have to demonstrate ''an absence of effective competition from other rail carriers or modes of transportation for the transportation to which a rate applies,'' 49 U.S.C. 10707(a).

Providing this choice is intended to ensure that FORR can proceed where market dominance can be established with relatively straightforward evidence (commensurate with the small disputes that FORR addresses with respect to rate reasonableness), even if the complainant is unable to use the streamlined approach. Whether market dominance is actually straightforward enough to allow a complainant to meet its burden in a very short time must be evaluated by the complainant; by choosing non-streamlined market dominance in a FORR case, the complainant would assume the risks presented by the short FORR timeline. Requests for extension of time would be strongly disfavored, as discussed above, even if the complainant chooses non-streamlined market dominance. Therefore, complainants should not choose non-streamlined market dominance with the expectation that the Board will grant extensions sufficient to allow them to assemble a market dominance presentation as voluminous as the ones in other rate reasonableness procedures.

The Board recognizes that defendants are likely to face a more difficult analysis in a case using non-streamlined market dominance, and unlike complainants, they may not have time to prepare in advance of litigation. Therefore, in cases where the complainant chooses non-streamlined market dominance, the deadline for replies would be extended by 20 days. The resulting 30-day interval between opening and reply aligns with Three-Benchmark cases, where complainants may also elect to use non-streamlined market dominance. *See* 49 CFR 1111.10(a)(2)(i)(H).[62]

Complainants must state their choice of streamlined or non-streamlined market dominance in their opening market dominance submission. *See Mkt. Dominance Streamlined Approach,* EP 756, slip op. at 37 (''the Board agrees with WCTL that shippers may not be able to decide whether to pursue a streamlined market dominance approach until discovery has been completed.'').[63]

The following procedural schedule would apply in cases where the complainant elects non-streamlined market dominance:

Day –25	Complainant files and serves notice of intent to initiate case; mediation begins on date of appointment of mediator(s).
Day 0	Complainant files complaint; discovery begins.
Day 35	Discovery ends.
Day 49	Simultaneous filing of rate reasonableness analyses, final offers, and complainant's market dominance presentation.
Day 79	Simultaneous filing of replies; defendant's market dominance reply.

[61] Railroad interests did not address this issue.

[62] The Board rejects the Coalition Associations' proposal to add a separate round of pleadings for market dominance. (*See* Coalition Ass'ns Comment 14.) The Coalition Associations make this proposal in response to the Board's concern that that ''the expedited timelines proposed here may make it too difficult for parties to litigate a non-streamlined market dominance presentation.'' *NPRM,* EP 755, slip op. at 9. But for reasons explained above, the Board has proposed a different approach to address this concern. Moreover, the Coalition Associations' proposal, which would add three more rounds of pleadings (market dominance opening, market dominance reply, and market dominance rebuttal), (*see* Coalition Ass'ns Comment 14), is disproportionate to FORR, which is intended to be simplified and expedited.

[63] Because complainants would not state their choice between streamlined and non-streamlined market dominance until their opening submissions, *see Mkt. Dominance Streamlined Approach,* EP 756, slip op. at 37, it would be impractical to extend the deadline for opening submissions in cases using non-streamlined market dominance as the Board has done for replies. Such an increase would be inappropriate in any event, because expedited timelines are part of the core concept of FORR, and because it is the complainant's choice to use non-streamlined market dominance.

Day 169 ..... Board decision.

The filing of a motion to compel by either party would toll this schedule as discussed above.

Part VII—Relief Cap

In the *NPRM,* the Board proposed to establish a relief cap of $4 million, indexed annually using the Producer Price Index, which would apply to an award of reparations,[64] a rate prescription or any combination of the two. *NPRM,* EP 755 et al., slip op. at 16. This is consistent with the potential relief afforded under the Three-Benchmark methodology.[65] *Id.* The Board further proposed that any rate prescription be limited to no more than two years unless the parties agree to a different limit on relief. *NPRM,* EP 755, slip op. at 14. Such a limit would be one-fifth of the 10-year limit applied in SAC cases and less than half of the five-year limit applied in Simplified-SAC and Three-Benchmark cases, *see Expanding Access to Rate Relief,* EP 665 (Sub–No. 2), slip op. at 6, thereby accounting for the expedited deadlines of the FORR procedure. The Board also requested comment on the advisability of a two-tiered relief procedure in which the top tier has a longer procedural schedule and no limit on the size of the relief. *NPRM,* EP 755 et al., slip op. at 16.

Railroad interests object to the proposed relief cap, arguing that it is too high. AAR argues that the $4 million relief cap is arbitrary because, in this context, it is not based on the cost of litigating the next-more-complicated method, on which the Board relied in setting relief caps for other rate reasonableness procedures. (AAR Comment 23; *see also* CN Comment 14–16; UP Comment 23–24.) The *NPRM,* however, explained why it would not make sense to rely on the next-more-complicated method here: ''because FORR does not prescribe a particular methodology—nor a methodology necessarily less precise than any pre-existing procedure—the Board's prior rationale for capping relief based on the cost of the next more complicated procedure does not necessarily or neatly apply here.'' *NPRM,* EP 755 et al., slip op. at 15. And the *NPRM* also explained the Board's rationale for applying a $4 million relief cap: ''[a]pplying a relief cap based on the estimated cost to bring a Simplified-SAC case would further the Board's intention that Three-Benchmark and FORR be used in the smallest cases, and applying the same $4 million relief cap, as indexed, would provide consistency in terms of defining that category of case.'' *Id.* at 16.

According to UP, putting FORR and Three-Benchmark into the same ''small case'' category does not make sense because the Board ''justifies the adoption of the FORR procedure on the basis that it would be more affordable to litigate than the Three Benchmark test.'' (UP Comment 24.) Instead, UP argues, the FORR relief cap ''should be designed to funnel into the Three Benchmark test,'' which UP suggests is the next-more-complicated procedure. (*See* UP Comment 24; *see also* CN Comment 15–16.)[66] UP assumes without support that the cost of a procedure is a perfect proxy for its accuracy, so that if FORR is less costly to litigate than Three-Benchmark, it must be less accurate. (*See* UP Comment 24 (''If the FORR procedure were just as expensive and accurate as the Three Benchmark test, there would be no need for the Board to adopt the proposed rule. . . . [T]he proposal's significant discovery limitations and abbreviated timeline . . . would inevitably sacrifice precision.'').)[67] The Board disagrees. By applying fast timelines and a simplified procedure, the Board intends that FORR would be less costly to litigate, but that does not inevitably mean the analysis is less accurate. Parties' ability to choose their methodology would allow the use of analyses that are equally accurate or more accurate, if the party presenting it can prepare the analysis quickly enough to present it in the time available.[68] This is to say that UP's argument unnecessarily forecloses the possibility that FORR will strike a better ''balance'' than Three-Benchmark between providing a ''reasonably accurate methodology'' while avoiding the expense associated with SAC. *See BNSF Ry.,* 453 F.3d at 482.

CN argues that the $4 million relief cap is actually higher than the $4 million cap on Three-Benchmark because a complainant can use FORR every two years rather than every five years. (CN Comment 15–16.) CN is correct that FORR, as proposed, could be used more frequently than Three-Benchmark, but that difference is offset by the fact that a FORR complainant could only receive a rate prescription for two years rather than five years under Three-Benchmark. A FORR complainant may not be able to receive the full $4 million because its rate prescription expires at the two-year mark; a Three-Benchmark complainant, by contrast, would have three more years to receive the benefits of a prescription.

AAR also contends that the $4 million relief cap would not limit FORR to small cases because there is no limit on disaggregation of cases. (*See* AAR Comment 23–24 (''a large chemical company could file 100 simultaneous FORR complaints for the same rate for the transportation of the same commodity for 100 different origin and destination pairs and potentially win $4 million for each complaint.'').) If disaggregation actually proved to be a problem, the Board could address it as it has committed to do in Three-Benchmark cases.[69] But as discussed below, the Board has not held that the mere filing of simultaneous Three-Benchmark cases by the same complainant automatically constitutes ''abuse'' or ''improper'' disaggregation.

[64] The standard reparations period reaches back two years prior to the date of the complaint. 49 U.S.C. 11705(c) (requiring that complaint to recover damages under 49 U.S.C. 11704(b) be filed with the Board within two years after the claim accrues).

[65] As proposed, the relief cap would incorporate indexing that has previously been applied to the Three-Benchmark cap, so that the cap for FORR is the same as the cap for Three-Benchmark.

[66] CN states that the estimated cost of bringing a Three-Benchmark case is $250,000. (CN Comment 16 (citing *Simplified Standards,* EP 646, Sub–No. 1, slip op. at 32).) But the most recently reported estimate of the cost to litigate a Three-Benchmark case is actually $500,000, based on a case completed in 2010. *See* US Magnesium, L.L.C. Comment, V.S. Howard Kaplan 4, Oct. 23, 2012, *Rate Regul. Reforms,* EP 715.

[67] As part of an argument that a final offer procedure will increase the cost and complexity of rate cases, UP claims that ''the 90 days the Board now proposes to grant itself to decide each case, *see NPRM,* EP 755 et al., slip op. at 14—the same amount of time as for a Three Benchmark case, *see Simplified Standards,* [EP 646 (Sub–No. 1),] slip op. at 23—appears to be a recognition that deciding cases under the FORR proposal would require the evaluation of complex, competing evidentiary submissions.'' (UP Comment 19–20.) UP's expectation that FORR cases would present ''complex analyses''—analogizing to Three-Benchmark, (*id.*)—undermines its argument in the context of the relief cap that FORR's procedural streamlining renders it less accurate than Three-Benchmark, (*id.* at 24).

[68] UP claims that ''the Board also relies on the fact that Canada caps the relief available under its final offer framework,'' and yet the Board does not explain why FORR would have a higher relief cap than Canadian final offer arbitration. (UP Comment 24.) UP mischaracterizes the *NPRM.* The *NPRM* clearly referenced the Canadian relief cap in seeking comment on the two-tier idea; it did not ''rel[y] on the fact that Canada caps relief'' as support for the $4 million relief cap. *NPRM,* EP 755 et al., slip op. at 16. In any event, as discussed above, Canadian final offer arbitration is an informal, non-precedential process.

[69] *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 32–33 (''The limits on relief that we establish here do not include a mechanical mechanism to police against attempts to divide a large dispute into multiple smaller disputes. It is not clear that such a mechanism is necessary at this time. The Board has ample discretion to protect the integrity of its processes from abuse, and we should be able to readily detect and remedy improper attempts by a shipper to disaggregate a large claim into a number of smaller claims, as the shipper must bring these numerous smaller cases to the Board.'').

See E.I. DuPont de Nemours & Co. v. *CSX Transp., Inc.,* NOR 42099 et al., slip op. at 3–4 (STB served Jan. 22, 2008).

Shipper interests, by contrast, object to the proposed relief cap because they believe it is too low or that there should be no cap at all. (*See* Coalition Ass'ns Comment 15–17; AFPM Comment 9; Farmers Union Reply Comment 5; Olin Comment 15–16; USDA Comment 5–7; USW Comment in Response to Mem. 5; WCTL Comment 8–9; *see also* TRB Professors Comment 5 (arguing against a cap).)

The Coalition Associations argue that reparations should not apply towards the $4 million relief cap, suggesting that the Board could adopt a separate cap for reparations, or, if the cap applies to both reparations and rate prescriptions, it should be $8 million. (*See* Coalition Ass'ns Comment 15.) The combined cap that the Coalition Associations find confusing, (*id.*), is identical to the one adopted for Three-Benchmark in 2007:

> The limit on relief will apply to the difference between the challenged rate and the maximum lawful rate, whether in the form of reparations, a rate prescription, or a combination of the two. Any rate prescription will automatically terminate once the complainant has exhausted the relief available. Thus, the actual length of the prescription may be less than 5 years if the shipper ships a large enough volume of traffic so that the relief is used up in a shorter time.

Simplified Standards, EP 646 (Sub–No. 1), slip op. at 28. The Coalition Associations ''agree that the FORR relief caps should be *no less than* the caps previously adopted for Three-Benchmark cases,'' although they argue that the cap in Three-Benchmark cases should be higher. (Coalition Ass'ns Comment 16 (citing the effects of rate bundling).) However, both changes to the relief cap for Three-Benchmark and determinations regarding rate bundling are outside the scope of this rulemaking. *See NPRM,* EP 755 et al., slip op. at 4 n.7.

The Coalition Associations assume that FORR cases would be lane-specific, with the relief cap applying to a single origin-destination pair. (Coalition Ass'ns Comment 16.) They argue that it would be unreasonable to require complainants to aggregate multiple origin-destination pairs into a single case under a single relief cap. (*Id.* at 16–17.) The Board intends to address this issue in a manner similar to its treatment in Three-Benchmark cases. There, the Board established that a complainant is not categorically precluded from filing multiple complaints at the same time, with the relief cap applying separately to each complaint. *See E.I. DuPont de Nemours & Co.,* NOR 42099 et al., slip op. at 3 (''If DuPont wished to seek relief of up to $1 million on each individual rate for each origin/destination pair, it needed to file separate complaints for each.''). However, the Board retained its discretion to prevent the use of Three-Benchmark as ''a vehicle for adjudicating multiple parts of a larger dispute.'' *Id.* at 3–4; *Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 32–33. The Board would anticipate doing the same with respect to FORR upon adoption.

The Coalition Associations further propose that, if a party presents a sufficiently rigorous rate methodology, it should be able to ask the Board to waive any FORR relief cap on a case-by-case basis. (Coalition Ass'ns Comment 17; *see also* USDA Comment 6 (relief should be uncapped if the complainant can ''demonstrate very convincingly the rate is exceptionally unreasonable.'').) But the Board's purpose in proposing FORR is to fill a gap in the availability of rate reasonableness determinations for small disputes. As discussed below in reference to the two-tier idea, experiences litigating FORR cases may provide further insight into whether FORR could also work in the resolution of larger disputes. Therefore, although the Board will not propose the Coalition Associations' approach here, this concept or similar ones may be considered at a later time.

Several commenters express concern that defendants could ''game'' the relief cap by setting high initial rates such that any relief cap will be quickly exhausted, which would in turn free the railroad to charge the inflated rate for any remainder of the prescription period. (*See* Olin Comment 17; WCTL Comment 8–9; AFPM Comment 9.) The Board would anticipate addressing this conduct in individual cases should it happen, and the Board would retain the ability to revise its processes to counteract any abuses that may arise. WCTL cites *Major Issues,* in which the Board adopted a relief calculation—the Maximum Markup Methodology (MMM)—to foreclose the potential for abuse. (WCTL Comment 9 (citing *Major Issues in Rail Rate Cases,* EP 657 (Sub–No. 1), slip op. at 9–15 (STB served Oct. 30, 2006)).) But WCTL does not propose the adoption of MMM here, and its proposed solution—removing the relief cap—would disconnect FORR from its purpose as a small dispute resolution mechanism before there is case experience to support such a change. As WCTL notes, moreover, the Board adopted a case-by-case approach to this issue for its current small rate case procedures in *Simplified Standards,* which was decided almost a year after *Major Issues. See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 33. Olin proposes a different solution: Using the expired contract or previously used tariff rates as the starting point for applying the cap on reparations and rate prescription. (Olin Comment 17.) Olin offers no explanation as to how this solution would work in practice. In any event, this may be an appropriate remedy in cases where abuses are shown to have occurred, but, consistent with *Simplified Standards,* the Board will not adopt Olin's proposal for all cases in advance.

USDA states that the Board's practice of using relief caps to ''channel'' disputes to the appropriate procedure, based on the cost of the next-more-complicated procedure, fails to account for potential complainants' uncertainty as to their likelihood of success in a rate case. (USDA Comment 5–6.) According to USDA, ''it is not clear FORR logically fits into the same channeling structure as'' the Board's existing rate reasonableness procedures. (USDA Comment 6.) USDA's second point directly supports the *NPRM,* which concluded that, ''because FORR does not prescribe a particular methodology—nor a methodology necessarily less precise than any pre-existing procedure—the Board's prior rationale for capping relief based on the cost of the next more complicated procedure does not necessarily or neatly apply here.'' *NPRM,* EP 755 et al., slip op. at 15. For that reason, the Board has not based its proposed approach on its prior ''channeling'' practice here, instead relying on the rationale discussed above. *Id.* at 16 (rather than setting a cap based on the next-more-complicated procedure, the *NPRM* proposed a cap based on a general analogy to Three-Benchmark, given that Three-Benchmark and FORR are both intended for use in small rate disputes).

Finally, some commenters expressed support for the idea of a two-tiered relief procedure in which the top tier has a longer procedural schedule and no limit on the size of the relief. (*See, e.g.,* AFPM Comment 10–11; Olin Comment 16; SMA Comment 11–12; TRB Professors Comment 5.) However, it would be premature to propose expanding FORR beyond its initial purpose, which is permitting access to rate reasonableness determinations for small disputes. In the future, the Board could assess whether FORR may be appropriate for larger disputes. Should that be the case, the Board could consider adopting a two-tiered process like the one referenced in

the *NPRM*—or other ways of expanding FORR's application.[70]

Accordingly, the Board continues to propose the relief cap proposed in the *NPRM.*

Part VIII—Miscellaneous Issues

A. InterVISTAS Report

AAR states that InterVISTAS Consulting Inc. (InterVISTAS), a consultant that prepared a report for the Board in 2016,[71] rejected Canadian final offer arbitration as providing no guidance for rate case alternatives, due to the confidentiality of that process. (AAR Comment 19–20.) AAR implies that InterVISTAS's conclusion supports AAR's position regarding FORR. (*See id.*) While the *NPRM* mentioned the Canadian system as an example of final offer procedures, it relied primarily on recommendations from USDA and the *TRB Report. NPRM,* EP 755 et al., slip op. at 2, 4, 6–7. Both USDA and the TRB Professors discussed the benefits of using a short procedural timeline, combined with a final offer process, in general terms, and did not limit themselves to describing the Canadian system. *See* USDA Reply Comment 5–7, Dec. 19, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub–No. 2); *TRB Rep.* 138, 211–12; Tr. 24–25, Pub. Roundtable, Oct. 25, 2016.[72] The Board found both of these analyses persuasive, *NPRM,* EP 755 et al., slip op. at 4, 6–7, and InterVISTAS's reluctance to draw conclusions specifically from the Canadian process, because of its confidentiality, does not provide a reason to disregard them.

BNSF argues that InterVISTAS warned against simplification of Three-Benchmark or Simplified-SAC because it ''risks moving the approaches further away from the bedrock CMP principles, undermine[s] the reliability of the tests, and would not necessarily incentivize shippers to use those tests.'' (*InterVISTAS Rep.* xvii; BNSF Comment 3 n.1; *see also* NSR Comment 1–4.) In the body of its comment, however, BNSF itself supports ''further simplifications of existing STB mechanisms'' notwithstanding this conclusion from InterVISTAS. (BNSF Comment 3, 9 (''Among the concepts that BNSF has supported is a streamlined comparison group approach built on existing Three Benchmark methodology but using prescribed factors to minimize complexity of presentation and disputes.'') In any event, the Board is not bound to follow the recommendations of particular studies.

B. Application to Class II and III Railroads

In the *NPRM,* the Board proposed that FORR would not be available to challenge purely local movements of a Class II or Class III rail carrier.[73] *NPRM,* EP 755 et al., slip op. at 16–17. However, FORR would be available in challenges where the movement involves the participation of a Class I railroad as well as a Class II or Class III railroad. *See Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 101–02 (stating that excluding combined movements would shut out a significant portion of domestic rail traffic and could create perverse routing incentives).

Some shipper interests argue that, contrary to the Board's proposal, FORR should be available to challenge purely local movements of a Class II or Class III rail carrier. (*See* Coalition Ass'ns Comment 18; NGFA Comment 10; Farmers Union Comment 10.) AFPM states that it does not oppose expanding FORR to smaller carriers, but if that would delay implementation, the rule should be implemented in phases. (AFPM Comment 10.)

As the Board gains experience with the FORR procedure, the arguments made by these commenters could provide a reason to expand FORR to purely local movements of a Class II or Class III rail carrier. Based on the record to date, however, the Board is reluctant to allow the potential for smaller railroads to be the defendants in any initial cases under FORR. *See, e.g.,* Am. Short Line & Reg'l R.R. Ass'n Comment 4–5, Feb. 26, 2007, *Simplified Standards for Rail Rate Cases,* EP 646 (Sub–No. 1) (describing the impacts new rate reasonableness procedures would have on small railroads in particular). Accordingly, the Board proposes to retain the exclusion from FORR of purely local movements of a Class II or Class III rail carrier at this time.

C. Regulatory Impact Analysis

In his comment, the late Dr. Ellig proposed that the Board conduct a ''regulatory impact analysis'' (RIA), which is a form of a cost-benefit analysis, in these proceedings and in *Market Dominance Streamlined Approach,* Docket No. EP 756. (Ellig Comment 3–4; *see also* AAR Comment 25.)[74] Other parties did not comment on this proposal. While the Board need not conduct a formal RIA,[75] the Board is, as described throughout this decision, carefully weighing the benefits and burdens associated with particular aspects of the proposed FORR approach. *See, e.g., supra* at 8–11, 21–25, 34–38, 40, 42–43, 47.

D. Issues Outside the Scope of These Proceedings

Commenters raise several issues that are outside the scope of these proceedings. (*See* Coalition Ass'ns Comment 25–27 (asking the Board to move forward with reciprocal switching and bottleneck changes); AFPM Comment 10 (following the TRB Professors' recommendation, stating that the Board could order reciprocal switching as a rate case remedy); Olin Comment 13–15 (asking the Board to prohibit rate bundling); USDA Comment 4 (requesting a definition of revenue adequacy for purposes of rate reasonableness determinations).) Also, Farmers Union states that, ''[i]n its August 31, 2016 decision in this proceeding [*Expanding Access to Rate Relief,* EP 665 (Sub–No. 2)], the Board

[70] This approach bears some resemblance to USDA's suggestion of a FORR ''pilot phase.'' (*See* USDA Comment 5.)

[71] *An Examination of the STB's Approach to Freight Rail Rate Regul. & Options for Simplification* (*InterVISTAS Report*), InterVISTAS Consulting Inc., Sept. 14, 2016, *available at https://www.stb.gov/wp-content/uploads/STB-Rate-Regulation-Final-Report.pdf.*

[72] A transcript of this public roundtable is available on the Board's website at *https://www.stb.gov/wp-content/uploads/TRANSC-Intervistas-Roundtable-Oct.-25-2016.pdf.*

[73] Currently, Class III carriers have annual operating revenues of $40.4 million or less in 2019 dollars. Class II rail carriers have annual operating revenues of less than $900 million but in excess of $40.4 million in 2019 dollars. The Board calculates the revenue deflator factor annually and publishes the railroad revenue thresholds in decisions and on its website. 49 CFR 1201.1–1; *Indexing the Annual Operating Revenues of R.Rs.,* EP 748 (STB served July 12, 2021) (the annual deflator factor for 2020 is 1.0000, meaning that the 2020 thresholds are the same as the thresholds stated in 2019 dollars). The Board recently modified the thresholds for classifying rail carriers by raising the Class I revenue threshold. *See Mont. Rail Link, Inc.—Pet. for Rulemaking—Classification of Carriers,* EP 763 (STB served Apr. 5, 2021).

[74] AAR similarly argues that the Board failed to conduct a cost/benefit analysis of this rule, citing Executive Order 12866's requirement that executive agencies make a ''reasoned determination that the benefits of the intended regulation justify its costs'' and the *Policies and Procedures for Rulemakings* of the U.S. Department of Transportation (DOT). (AAR Comment 25.) The cited provision of Executive Order 12866 does not apply to ''independent regulatory agencies,'' including the Board. *See* 49 U.S.C. 1301(a); *see also Vt. Yankee,* 435 U.S. at 524–25, 543–48 (''Agencies are free to grant additional procedural rights in the exercise of their discretion, but reviewing courts are generally not free to impose them if the agencies have not chosen to grant them.''). In any event, and as noted above, the Board has carefully considered the need for regulatory reform, FORR's anticipated benefits and burdens, and alternative approaches, including the comparison group approach proposed in Docket No. EP 665 (Sub–No. 2).

[75] *See Vill. of Barrington, Ill.* v. *STB,* 636 F.3d 650, 670–71 (D.C. Cir. 2011) (stating that ''neither the Board's authorizing legislation nor the [APA] requires the Board to conduct formal cost-benefit analysis'').

said (at n.3) that it would address issues like standing and agricultural rate transparency in a subsequent decision.'' (Farmers Union Comment 9–10.) The Board notes that it has already issued a decision addressing standing and publication of rates for agricultural products. *See Rail Transp. of Grain, Rate Regul. Rev.,* EP 665 (Sub–No. 1) et al., slip op. at 7–8 (STB served Dec. 29, 2016), *recons. denied* (STB served June 30, 2017).

Docket No. EP 665 (Sub–No. 2)

Unlike the universally negative reactions to the Board's comparison group proposal in the initial comments in Docket No. EP 665 (Sub–No. 2),[76] commenters more recently expressed some interest in that approach. (*See, e.g.,* NGFA Comment 11; AAR Reply Comment 2, Jan. 10, 2020, *Expanding Access to Rate Relief,* EP 665 (Sub–No. 2).) However, the EP 665 (Sub–No. 2) comparison group proposal, FORR, and the arbitration program proposed in Docket No. EP 765 all seek to address the same issue: Access to rate reasonableness determinations in small disputes. As long as the Board is moving forward with the arbitration program and/or FORR, it would not be an efficient use of administrative resources to pursue the comparison group proposal simultaneously—particularly in light of the possibility that some or all of its objectives might be better accomplished through modifications to the Three-Benchmark test rather than creating an additional comparison group approach. *See* ACC Comment 7–9, Nov. 14, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub–No. 2). The Board therefore proposes to close Docket No. EP 665 (Sub–No. 2) but may revisit some of the ideas presented there depending on future developments and whether additional steps in the small rate dispute context appear necessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) Assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. sections 601–604. In its notice of proposed rulemaking, the agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have a ''significant impact on a substantial number of small entities,'' § 605(b). The impact must be a direct impact on small entities ''whose conduct is circumscribed or mandated'' by the proposed rule. *White Eagle Coop.* v. *Conner,* 553 F.3d 467, 480 (7th Cir. 2009).

In the *NPRM,* the Board certified under 5 U.S.C. 605(b) that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.[77] The Board explained that its proposed changes to its regulations would not mandate or circumscribe the conduct of small entities. The rule requires no additional recordkeeping by small railroads or any reporting of additional information. Nor do these rules circumscribe or mandate any conduct by small railroads that is not already required by statute: The establishment of reasonable transportation rates when a carrier is found to be market dominant. As the Board noted, small railroads have always been subject to rate reasonableness complaints and their associated litigation costs, the latter of which the Board expects will be reduced through the use of this procedure.

Additionally, the Board concluded (as it has in past proceedings) that the majority of railroads involved in these rate proceedings are not small entities within the meaning of the Regulatory Flexibility Act. *NPRM,* EP 755 et al., slip op. at 18 (citing *Simplified Standards,* EP 646 (Sub–No. 1), slip op. at 33–34). Since the inception of the Board in 1996, only three of the 51 cases filed challenging the reasonableness of freight rail rates have involved a Class III rail carrier as a defendant. Those three cases involved a total of 13 Class III rail carriers. The Board estimated that there are approximately 656 Class III rail carriers. Therefore, the Board certified under 5 U.S.C. 605(b) that the proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities within the meaning of the RFA.

This *SNPRM* revises the rules proposed in the *NPRM;* however, the same basis for the Board's certification in the *NPRM* applies to the *SNPRM.* Therefore, the Board certifies under 5 U.S.C. 605(b) that the *SNPRM* will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, DC 20416.

Paperwork Reduction Act

In this proceeding, the Board proposes to modify an existing collection of information that was approved by the Office of Management and Budget (OMB) under the collection of Complaints (OMB Control No. 2140–0029). In the *NPRM,* the Board sought comments pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501–3549, and OMB regulations at 5 CFR 1320.8(d)(3) regarding: (1) Whether the collection of information, as modified in the proposed rule in the Appendix, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. One comment was received, as discussed below.

In the only comment relating to the PRA burden analysis, Dr. Ellig questioned the factual basis for the Board's estimate that the adoption of FORR would result in four additional complaints per year. (Ellig Comment 12.) For most collection renewals, the Board uses the actual number of filings with the Board over the previous three years and averages them to get an estimated annual number of those filings to use in its PRA burden analysis. For new rules, however, the Board may not have historical data that allows for such averages, so it must estimate based on its experience, often considering analogous regulatory changes made in the past. Here, while the FORR procedure would be new, the Board previously has adopted other rate reasonableness procedures. Based on its substantial experience with the complexities of prior rate reasonableness litigation, and how such complexities impacted the number of

[76] *See, e.g.,* AAR Comment 2, Nov. 14, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub–No. 2) (''the Board should not proceed to propose new rules and should discontinue this proceeding.''); NGFA Comment 7, Nov. 14, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub–No. 2); ACC Comment 7–9, Nov. 14, 2016, *Expanding Access to Rate Relief,* EP 665 (Sub–No. 2).

[77] For the purpose of RFA analysis for rail carriers subject to Board jurisdiction, the Board defines a ''small business'' as only including those rail carriers classified as Class III rail carriers under 49 CFR part 1201, General Instructions section 1–1. *See Small Entity Size Standards Under the Regul. Flexibility Act,* EP 719 (STB served June 30, 2016) (with Board Member Begeman dissenting).

complaints filed each year, the Board estimated that it would receive approximately four additional complaints each year due to the FORR procedure. As no party submitted any specific information that would lead to a more precise estimate, the Board continues to find that the FORR procedure would likely lead to approximately four additional cases per year.

Dr. Ellig also commented that the Board did not provide a source for its estimated PRA burden hours or non-burden costs (*i.e.,* printing, copying, mailing and messenger costs) for the existing types of complaints and the four additional complaints expected to be filed due to the FORR procedure. (*Id.*) These burden hours and non-burden costs were derived from the burden hours and non-burden costs the Board estimated for existing complaints in its 2017 request to OMB for an extension of its collection of complaints—and, with respect to FORR, downward adjustments based on FORR's procedural streamlining. *See* STB, *Supporting Statement for Modification & OMB Approval Under the Paperwork Reduction Act & 5 CFR pt. 1320,* OMB Control No. 2140–0029 (Mar. 2017), *https://www.reginfo.gov/public/do/DownloadDocument?objectID=72159101.* In its supporting statement for that request, which OMB approved, the Board explained that its burden estimates were ''based on informal feedback previously provided by a small sampling (less than five) of respondents.'' (*Id.* at 2–3.) The Board has been provided no other data upon which it could adjust its estimate.

If FORR is adopted, this modification and extension request of an existing, approved collection would be submitted to OMB for review as required under the PRA, 44 U.S.C. 3507(d), and 5 CFR 1320.11.

List of Subjects

49 CFR Part 1002

Administrative practice and procedure, Common Carriers, Freedom of information.

49 CFR Part 1111

Administrative practice and procedure, Investigations.

49 CFR Part 1114

Administrative practice and procedure.

49 CFR Part 1115

Administrative practice and procedure.

It is ordered:

1. The Board requests comments on revisions to its proposed rule as set forth in this decision. Notice of this request for comment will be published in the **Federal Register**.

2. The procedural schedule is established as follows: Comments on this decision are due by January 14, 2022; replies are due by March 15, 2022.

3. The general prohibition on ex parte communications is waived regarding matters related to this proceeding, between November 15, 2021, and February 23, 2022.

4. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

5. This decision is effective on its service date.

Decided: November 12, 2021.

By the Board, Board Members Begeman, Fuchs, Oberman, Primus, and Schultz. Board Member Begeman dissented in part with a separate expression. Board Members Primus and Schultz concurred with separate expressions.

BOARD MEMBER BEGEMAN, Dissenting in part:

During my tenure, I became convinced that not all shippers have a viable rate review process available to them at the Board, which was a driving factor in why I established the Rate Reform Task Force in 2018 while serving as the Acting Chairman. I know many stakeholders share in my frustration that, here we are, nearly four years since the Task Force went to work, and the Board has still not adopted a rate review process to enable shippers with smaller disputes to bring a rate case here. To continue, indefinitely, with the status quo is not acceptable. That is why I strongly dissent on today's decision to the extent it further delays adoption of a final rule to reform the Board's rate review regulations.

As interested parties may have gleaned through the Board's quarterly reports on Pending Regulatory Proceedings, the Board has had ample opportunity to adopt a final rule to provide a viable rate review process for smaller rate disputes, after proposing and receiving public comment on the FORR proposal in 2019 and 2020 and then developing a final rule for action in October 2020. But it takes the support of a Board *majority* for that much-needed final action. Until then, shippers, and particularly smaller shippers, are the ones who may be literally paying the price for the Board's inaction on a final rule. I am not okay with that.

Today's decision recognizes that, prior to the Task Force's creation, years of work had already been expended in trying to determine how the Board could best improve the accessibility of rate relief. Yet it was not until the Board proposed FORR that many stakeholders coalesced around a new rate review option. And while I support exploring the feasibility of a new voluntary arbitration program specific to small rate disputes and the effort to provide another alternative to litigation, that effort should not come at the expense of shippers' ability to pursue formal rate relief while consideration of an arbitration proposal plays out.

But rather than amending the Board's regulations today and finally ensuring that *all* shippers have access to Board rate review, the Board is instead issuing a supplemental notice of proposed rulemaking, even though a well-reasoned final rule was prepared by staff and ready for final Board action over a year ago. The only substantive change in today's decision from last year's draft final rule is permitting additional ex parte communications. It is my hope those meetings will finally convince a Board majority to vote in support of a final rule.

My time at the Board has almost run out, and I know some shippers may be thinking that theirs has too. I thank the Task Force, the great team of staff who prepared the FORR notice of proposed rulemaking and draft final rule, and the many stakeholders for their contributions to helping bring needed reform to the agency's rate review processes. Please don't give up.

BOARD MEMBER PRIMUS, concurring:

As I wrote in the EP 765 decision, the Board should implement FORR along with small rate case arbitration and should do so expeditiously. While I do not believe FORR to be the magic bullet that will solve all the network's rate challenges, it does represent a new and unique attempt to address an old and festering issue. For those who will nitpick or outright oppose this effort, I respond by saying no methodology is perfect and the Board should be given the flexibility and latitude to bring forth thoughtful solutions that may ultimately enhance the viability of our national rail network.

I would also like to acknowledge and applaud the work of our fellow Board member and past Chairman, Ann Begeman. In 2018, under her leadership, the Board established the Rate Reform Task Force, which ultimately laid the groundwork that resulted in the creation of FORR the following year. Ann's efforts then, and the efforts of the current Board under the leadership of Marty Oberman, are a testament to the

Board's continued desire to work collaboratively to address some of the network's most pressing issues. As one of the Board's newest members, I am honored to be a part of this vitally important endeavor.

BOARD MEMBER SCHULTZ, concurring:

The Board is issuing two rulemaking proposals to provide a new option to resolve small rate disputes between railroads and shippers. Although I have concurred with issuing the supplemental notice of proposed rulemaking (NPRM) in this docket and voted for the arbitration program proposal in Docket No. EP 765, I am not in favor of the Board adopting both rules. I concurred with issuing this supplemental NPRM for two reasons. First, this proceeding began in 2019, well before I joined the Board in January of this year, and I have not had the opportunity to meet with stakeholders about the proposed rule. Issuing the supplemental NPRM and waiving the prohibition on ex parte communications will allow me to discuss the rule with stakeholders. Second, the Board is concurrently seeking public comment on a proposed rule in Docket No. EP 765, *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes,* and I believe it is important for stakeholders to be able to review, and comment on, the text of both proposed rules at the same time.

I am of the firm belief that the arbitration program proposal in Docket No. EP 765 represents the better path forward for shippers and railroads alike. However, I welcome the opportunity to speak with stakeholders about the proposed final offer rate review program in this docket.

Jeffrey Herzig,

Clearance Clerk.

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend parts 1002, 1111, 1114, and 1115 of title 49, chapter X, of the Code of Federal Regulations as follows:

PART 1002—FEES

■ 1. The authority citation for part 1002 continues to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), (a)(6)(B), and 553; 31 U.S.C. 9701; and 49 U.S.C. 1321. Section 1002.1(f)(11) is also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Amend § 1002.2 by revising paragraph (f)(56) to read as follows:

§ 1002.2 Filing fees.

* * * * *

(f) * * *

Type of Proceeding	Fee
* * * * * * *	
PART V: Formal Proceedings:	
(56) A formal complaint alleging unlawful rates or practices of carriers:	
(i) A formal complaint filed under the coal rate guidelines (Stand-Alone Cost Methodology) alleging unlawful rates and/or practices of rail carriers under 49 U.S.C. 10704(c)(1)	$350.
(ii) A formal complaint involving rail maximum rates filed under the Simplified-SAC methodology	350.
(iii) A formal complaint involving rail maximum rates filed under the Three Benchmark methodology	150.
(iv) A formal complaint involving rail maximum rates filed under the Final Offer Rate Review procedure	150.
(v) All other formal complaints (except competitive access complaints)	350.
(vi) Competitive access complaints	150.
(vii) A request for an order compelling a rail carrier to establish a common carrier rate	350.

* * * * *

PART 1111—COMPLAINT AND INVESTIGATION PROCEDURES

■ 3. The authority citation for part 1111 is revised to read as follows:

Authority: 49 U.S.C. 10701, 10704, 11701, and 1321

■ 4. Amend § 1111.3 by revising paragraph (c) to read as follows:

§ 1111.3 Amended and supplemental complaints.

* * * * *

(c) *Simplified standards.* A complaint filed under Simplified-SAC or Three-Benchmark may be amended once before the filing of opening evidence to opt for a different rate reasonableness methodology, among Three-Benchmark, Simplified-SAC, or stand-alone cost. If so amended, the procedural schedule begins again under the new methodology as set forth at §§ 1111.9 and 1111.10. However, only one mediation period per complaint shall be required. A complaint filed under Final Offer Rate Review may not be amended to opt for Three-Benchmark, Simplified-SAC, or stand-alone cost, and a complaint filed under Three-Benchmark, Simplified-SAC, or stand-alone cost may not be amended to opt for Final Offer Rate Review.

■ 5. Amend § 1111.5 by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 1111.5 Answers and cross complaints.

(a) *Generally.* Other than in cases under Final Offer Rate Review, which does not require the filing of an answer, an answer shall be filed within the time provided in paragraph (c) of this section. An answer should be responsive to the complaint and should fully advise the Board and the parties of the nature of the defense. In answering a complaint challenging the reasonableness of a rail rate, the defendant should indicate whether it will contend that the Board is deprived of jurisdiction to hear the complaint because the revenue-variable cost percentage generated by the traffic is less than 180 percent, or the traffic is subject to effective product or geographic competition. In response to a complaint filed under Simplified-SAC or Three-Benchmark, the answer must include the defendant's preliminary estimate of the variable cost of each challenged movement calculated using the unadjusted figures produced by the URCS Phase III program.

(b) *Disclosure with Simplified-SAC or Three-Benchmark answer.* The defendant must provide to the complainant all documents that it relied upon to determine the inputs used in the URCS Phase III program.

(c) *Time for filing; copies; service.* Other than in cases under Final Offer Rate Review, which does not require the filing of an answer, an answer must be filed with the Board within 20 days after the service of the complaint or within such additional time as the Board may provide. The defendant must serve

copies of the answer upon the complainant and any other defendants.

* * * * *

(e) *Failure to answer complaint.* Other than in cases under Final Offer Rate Review, which does not require the filing of an answer, averments in a complaint are admitted when not denied in an answer to the complaint.

* * * * *

■ 6. Amend § 1111.10 by adding paragraph (a)(3) to read as follows:

§ 1111.10 Procedural schedule in cases using simplified standards.

(a) * * *

(3)(i) In cases relying upon the Final Offer Rate Review procedure where the complainant elects streamlined market dominance:

(A) Day –25—Complainant files notice of intent to initiate case and serves notice on defendant.

(B) Day 0—Complaint filed; discovery begins.

(C) Day 35—Discovery closes.

(D) Day 49—Complainant's opening (rate reasonableness anaylsis, final offer, and opening evidence on market dominance). Defendant's opening (rate reasonablesness analysis and final offer).

(E) Day 59—Parties' replies. Defendant's reply evidence on market dominance.

(F) Day 66—Complainant's letter informing the Board whether it elects an evidentiary hearing on market dominance.

(G) Day 73—Telephonic evidentiary hearing before an administrative law judge, as described in § 1111.12(d) of this chapter, at the discretion of the complainant (market dominance).

(H) Day 149—Board decision.

(ii) In cases relying upon the Final Offer Rate Review procedure where the complainant elects non-streamlined market dominance:

(A) Day –25—Complainant files notice of intent to initiate case and serves notice on defendant.

(B) Day 0—Complaint filed; discovery begins.

(C) Day 35—Discovery closes.

(D) Day 49—Complainant's opening (rate reasonableness analysis, final offer, and opening evidence on market dominance). Defendant's opening (rate reasonableness analysis and final offer).

(E) Day 79—Parties' replies. Defendant's reply evidence on market dominance.

(F) Day 169—Board decision.

(iii) In addition, the Board will appoint a liaison within five business days after the Board receives the pre-filing notification.

(iv) The mediation period in Final Offer Rate Review cases is 20 days beginning on the date of appointment of the mediator(s). The Board will appoint a mediator or mediators as soon as possible after the filing of the notice of intent to initiate a case.

(v) With its final offer, each party must submit an explanation of the methodology it used.

* * * * *

■ 7. Amend § 1111.11 by revising paragraph (b) to read as follows:

§ 1111.11 Meeting to discuss procedural matters.

* * * * *

(b) *Stand-alone cost or simplified standards complaints.* In complaints challenging the reasonableness of a rail rate based on stand-alone cost or the simplified standards, the parties shall meet or otherwise discuss discovery and procedural matters within 7 days after the complaint is filed in stand-alone cost cases, 3 days after the complaint is filed in Final Offer Rate Review cases, and 7 days after the mediation period ends in Simplified-SAC or Three-Benchmark cases. The parties should inform the Board as soon as possible thereafter whether there are unresolved disputes that require Board intervention and, if so, the nature of such disputes.

■ 8. Amend § 1111.12 by revising paragraphs (c) and (d)(1) and (2) to read as follows:

§ 1111.12 Streamlined market dominance.

* * * * *

(c) A defendant's reply evidence under the streamlined market dominance approach may address the factors in paragraph (a) of this section and any other issues relevant to market dominance. A complainant may elect to submit rebuttal evidence on market dominance issues except in cases under Final Offer Rate Review, which does not provide for rebuttal. Reply and rebuttal filings under the streamlined market dominance approach are each limited to 50 pages, inclusive of exhibits and verified statements.

(d)(1) Pursuant to the authority under § 1011.6 of this chapter, an administrative law judge will hold a telephonic evidentiary hearing on the market dominance issues at the discretion of the complainant in lieu of the submission of a written rebuttal on market dominance issues. In cases under Final Offer Rate Review, which does not provide for rebuttal, the telephonic evidentiary hearing is at the discretion of the complainant.

(2) The hearing will be held on or about the date that the complainant's rebuttal evidence on rate reasonableness is due, except in cases under Final Offer Rate Review, where the hearing will be held 14 days after replies are due unless the parties agree on an earlier date. The complainant shall inform the Board by letter submitted in the docket, no later than 10 days after defendant's reply is due, whether it elects an evidentiary hearing in lieu of the submission of a written rebuttal on market dominance issues. In cases under Final Offer Rate Review, the complainant shall inform the Board by letter submitted in the docket, no later than 7 days after defendant's reply is due, whether it elects an evidentiary hearing on market dominance issues.

* * * * *

PART 1114—EVIDENCE; DISCOVERY

■ 9. The authority citation for part 1114 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 1321.

■ 10. Amend § 1114.21 by adding paragraph (a)(4) to read as follows:

§ 1114.21 Applicability; general provisions.

(a) * * *

(4) Except as stated in § 1114.31(a)(2)(iii), time periods specified in this subpart do not apply in cases under Final Offer Rate Review. Instead, parties in cases under Final Offer Rate Review should serve requests, answers to requests, objections, and other discovery-related communications within a reasonable time given the length of the discovery period.

* * * * *

■ 11. Amend § 1114.24 by revising paragraph (h) to read as follows:

§ 1114.24 Depositions; procedures.

* * * * *

(h) *Return.* The officer shall either submit the deposition and all exhibits by e-filing (provided the filing complies with § 1104.1(e) of this chapter) or securely seal the deposition and all exhibits in an envelope endorsed with sufficient information to identify the proceeding and marked ''Deposition of (here insert name of witness)'' and personally deliver or promptly send it by registered mail to the Office of Proceedings. A deposition to be offered in evidence must reach the Board not later than 5 days before the date it is to be so offered.

* * * * *

■ 12. Amend § 1114.31 by revising paragraphs (a) and (d) to read as follows:

§ 1114.31 Failure to respond to discovery.

(a) *Failure to answer.* If a deponent fails to answer or gives an evasive answer or incomplete answer to a question propounded under

§ 1114.24(a), or a party fails to answer or gives evasive or incomplete answers to written interrogatories served pursuant to § 1114.26(a), the party seeking discovery may apply for an order compelling an answer by motion filed with the Board and served on all parties and deponents. Such motion to compel an answer must be filed with the Board and served on all parties and deponents. Except as set forth in paragraph (a)(2)(iii) of this section, such motion to compel an answer must be filed with the Board within 10 days after the failure to obtain a responsive answer upon deposition, or within 10 days after expiration of the period allowed for submission of answers to interrogatories. On matters relating to a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(1) *Reply to motion to compel generally.* Except in rate cases to be considered under the stand-alone cost methodology or simplified standards, the time for filing a reply to a motion to compel is governed by 49 CFR 1104.13.

(2) *Motions to compel in stand-alone cost and simplified standards rate cases.* (i) Motions to compel in stand-alone cost and simplified standards rate cases must include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to answer discovery to obtain it without Board intervention.

(ii) In a rate case to be considered under the stand-alone cost, Simplified-SAC, or Three-Benchmark methodologies, a reply to a motion to compel must be filed with the Board within 10 days of when the motion to compel is filed.

(iii) In a rate case under Final Offer Rate Review, each party may file one motion to compel that aggregates all discovery disputes with the other party. Each party's motion to compel, if any, shall be filed on the 10th day before the close of discovery (or, if not a business day, the last business day immediately before the 10th day). The procedural schedule will be tolled while motions to compel are pending. Replies to motions to compel in Final Offer Rate Review cases must be filed with the Board within 7 days of when the motion to compel is filed. Upon issuance of a decision on motions to compel, the procedural schedule resumes, and any party ordered to respond to discovery must do so within the remaining 10 days in the discovery period.

(3) *Conference with parties on motion to compel.* Within 5 business days after the filing of a reply to a motion to compel in a rate case to be considered under the stand-alone cost methodology, Simplified-SAC, or Three-Benchmark, Board staff may convene a conference with the parties to discuss the dispute, attempt to narrow the issues, and gather any further information needed to render a ruling.

(4) *Ruling on motion to compel in stand-alone cost, Simplified-SAC, and Three-Benchmark rate cases.* Within 5 business days after a conference with the parties convened pursuant to paragraph (a)(3) of this section, the Director of the Office of Proceedings will issue a summary ruling on the motion to compel discovery. If no conference is convened, the Director of the Office of Proceedings will issue this summary ruling within 10 days after the filing of the reply to the motion to compel. Appeals of a Director's ruling will proceed under 49 CFR 1115.9, and the Board will attempt to rule on such appeals within 20 days after the filing of the reply to the appeal.

* * * * *

(d) *Failure of party to attend or serve answers.* If a party or a person or an officer, director, managing agent, or employee of a party or person willfully fails to appear before the officer who is to take his deposition, after being served with a proper notice, or fails to serve answers to interrogatories submitted under § 1114.26, after proper service of such interrogatories, the Board on motion and notice may strike out all or any part of any pleading of that party or person, or dismiss the proceeding or any part thereof. Such a motion may not be filed in a case under Final Offer Rate Review. In lieu of any such order or in addition thereto, the Board shall require the party failing to act or the attorney advising that party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the Board finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

* * * * *

PART 1115—APPELLATE PROCEDURES

■ 13. The authority citation for part 1115 continues to read as follows:

Authority: 5 U.S.C. 559; 49 U.S.C. 1321; 49 U.S.C. 11708.

■ 14. Amend § 1115.3 by revising paragraph (e) to read as follows:

§ 1115.3 Board actions other than initial decisions.

* * * * *

(e) Petitions must be filed within 20 days after the service of the action or within any further period (not to exceed 20 days) as the Board may authorize. However, in cases under Final Offer Rate Review, petitions must be filed within 5 days after the service of the action, and replies to petitions must be filed within 10 days after the service of the action.

* * * * *

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